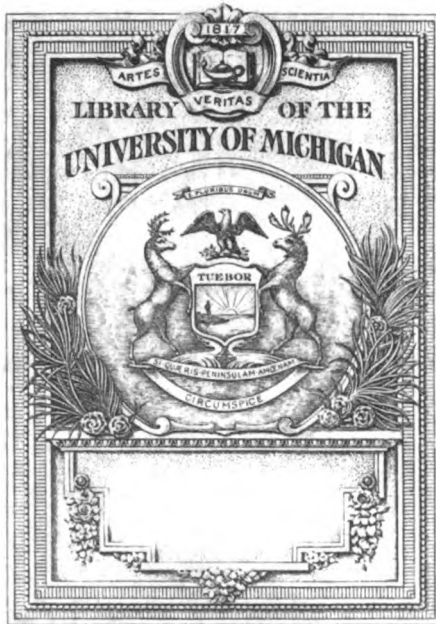




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Jus Parliamentarium:

OR, THE

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ANCIENT POWER,
JURISDICTION,
RIGHTS and LIBERTIES,
OF THE
MOST HIGH COURT
OF
PARLIAMENT,
REVIVED and ASSERTED.

In TWO PARTS.

BY

WILLIAM PETTY, Esq;

Late of the INNER-TEMPLE, and Keeper of the RECORDS in
the Tower of LONDON.

LONDON,

Printed for and Sold by JOHN NOURSE, at the *Lamb* without *Temple Bar*; M. GREEN, at *Charing Cross*; CÆSAR WARD, and RICHARD CHANDLER, at the *Ship* without *Temple Bar*, and at their Shops in *Coney Street, York*, and at *Scarborough Spaw*; GEORGE HAWKINS, at *Milton's Head* between the *Temple Gates* in *Fleet Street*, and at *Tunbridge Wells*; and THOMAS WALLER, in the *Middle Temple Cloysters*. MDCCXXXIX.

NEW YORK

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Duke of S O M E R S E T,

Earl of *Hertford*, Viscount and
Baron *Beauchamp of Hacche*, Ba-
ron *Seymour*, and Baron *Seymour*
of *Troubridge*, Lord of the Ho-
nours of *Cockermouth* and *Pet-*
worth, Chancellor of the Uni-
versity of *Cambridge*, one of
His Majesty's most Honourable
Privy Council, one of the Go-
vernors of the *Charter-House*,
and Knight of the Most Noble
Order of the Garter.

May it please your GRACE,

ALL Men, who know any Thing of the
History of *England*, know that your
Country is highly indebted to your Grace,
and your illustrious Ancestors for its Religion
and Liberty. A Royal Lady of the Family of
SEYMOUR, gave us our first Protestant King:
and in his short Reign, notwithstanding his Mi-
nority;

D E D I C A T I O N.

nority, the Reformation took deep Root, by the Care and Courage of his Uncle and Protector, one of your Grace's glorious Forefathers.

To attempt to enumerate the great Actions of that Duke of SOMERSET, and of the other Heroes of your Grace's most noble House, would be injurious to their Fame, unless I had fate down to write a copious History of the Kingdom : and that Detail is the less necessary at present, because the World sees the Beauties of their Characters copied and improved in your Grace's Conduct.

In those Times of Difficulty and Danger which you have seen, your Grace has been resolved and unmoved ; your Zeal for the Constitution has gained you the hearty Affection of all good *Englishmen* ; as your princely Dignities and Fortunes, which your Grace so well knows how to enjoy, command their Respect and Reverence.

Editors of posthumous Works, have immemorially claimed a Right to chuse proper Patrons for them ; permit me therefore, GREAT SIR, to offer to your Protection the following excellent Treatise written in Defence of our happy Constitution ; and to subscribe my self, may it please your GRACE,

Your GRACE's most humble,

most obedient, and

most devoted Servant,

T H E

P R E F A C E.

THE following Treatise was compiled by WILLIAM PETYT late of the Inner Temple Esq; deceased, and Keeper of the Records in the Tower of London: An Office to which he was deservedly advanced for his indefatigable Enquiries, and uncommon Penetration into the Knowledge of our ancient Records and legal Antiquities; more particularly those which give a true Idea of the Frame and Constitution of this limited Monarchy: A Government which consists in the Execution of Laws dictated by Reason and Experience, and receiving their binding Force from the Consent of the People governed; not flowing from, or depending upon the misinformed Judgment, or capricious Will of One, or a few.

This Course of Reading (which was our Author's favourite Employment) naturally centered in the Study of such Records as relate to the Antiquity, Nature, Power, Rights, and Privileges of both the Houses of Parliament: Consequently he was to consider those which might be useful in the Solution of several incidental Questions, agitated in his Time with much Warmth: viz. Whether the King had a Power to dispense with the Law, Common or Statute †? and whether, and in what Cases, Liberty of Speech in Parliament was cognizable and punishable out of Parliament?

† This Power is condemned by the Bill of Rights, 1 Will. & Mar.

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In Part of Mr. PETYT's Time, the Dispensing Power was boldly advanced by the Flatterers at Court, and steadily and successfully repelled by the Free People of England: Repelled so unanimously! that a rich King, whose Title to the Crown was not controverted, but on the contrary, within a little Time before, recognized with the strongest Expressions of Duty and Affection by every County, City, and Borough in England; whose Commissions gave being to the Militia throughout the Realm; whose Fleet and Army respectively were of Force superior to those of the Invader; repelled, I say, unanimously! that this King was in a full Convention of the Estates of the Kingdom declared to have abdicated the Government, and that his Throne was thereby vacant; scarce a Town having shut its Gates; or County having arrayed its Militia; not one Ship of War nor Regiment having engaged in Fight, on his behalf. Thus this impotent arbitrary Prince was obliged to leave his vast Treasure and royal annual Revenue behind; to live an Exile in a foreign Court, and long afterwards to owe his daily Bread to the Bounty of that Neighbour, whose Friendship and Example had suggested and promoted the destructive Counsels and Attempts which gave occasion for this wonderful Revolution. There he lived, to behold the clearest Evidence of the Errors of his Conduct: He saw the true Political English Constitution, by its own due Poize, resettle itself upon its ancient Basis, the Law of the Land. A modern French Writer, remarking to this purpose upon the Misfortunes of some of our ill-advised Monarchs, says, that an ENGLISH King is a Prince always tottering, upon a Throne never to be shaken.

Some publick Transactions and political Views towards the latter end of King Charles the Second, and in the Reign of King James the Second, are proper to be remembered, the better to discover the principal Reason why our Author applied himself to this Branch of Reading. In the former of these Reigns, some Men who had more Learning than Honesty

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*nessly (in order to gain Favour at Court) prostituted their Pens in Subversion of the Rights of the Subject: * Sir Robert Filmer wrote against the Notion, † That Government is founded upon Compact: ‡ Sir George Mac Kenzie wrote for Unlimited Passive Obedience, and against the Lawfulness of altering or limiting the Succession by Authority of Parliament, &c. and † Sir Roger L'Esrange, in weekly Libels against the Constitution, maintained every Position that could tend to enslave his Country and destroy the Rights of Mankind: To which add Dr. Brady, and many others of the Stamp.*

On the other hand, the Commons, in the Parliaments called about that Time, were dissatisfied with the Administration of Affairs: They were therefore unwilling to give Treasure as fast as it was misapplied, and complained of the Influence of French Counsels without doors. These Complaints were propagated and supported by the Pens of several able Writers; some of them Men of Wit and Raillery, others of close serious Reasoning: Then it was that the Body of Mercenaries undertook to maintain several extraordinary Points; they would prove, That the Laws are the King's Laws; that from him they receive their binding Force; that Parliaments owe their very Essence to the Royal Favours; that they are only for Counsel; that they are not very ancient; that the Commons were not anciently a constituent Part of Parliaments; with many other Doctrines of the like mischievous Tendency. Some of the Judges of the Land were also too complying with whatever they understood to be the Pleasure of the Prince: The Court of King's Bench undertook to restrain the Liberty of the Press, by Rule of Court; suppressed a Presentment made by the Grand Jury; brought Fitzharris

* PATRIARCHA.

† The Truth of this Doctrine is asserted in the Vote of Abdication.

‡ JUS REGIUM.

† OBSERVATORS.

See our Author's Dedication to the Earl of Essex, prefixed to The ancient Right of the Commons of ENGLAND asserted, &c.

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to his Trial, while he was under an Impeachment of the House of Commons, before the Lords in Parliament, for a mysterious Piece of Treason; with other Acts of Power, which by the Country Party of that Time were held illegal and arbitrary.

In the succeeding Reign, Matters grew much worse: The Dispensing Power solemnly argued, and judicially affirmed in Westminster Hall, was carried into Execution in Cases of the greatest Notoriety and Importance, so as at once to repeal all the Laws for the Establishment and Preservation of Religion: And the Fathers of the Church were made to answer as Criminals, for having in private presented a Petition (as bound by their Duty) against such illegal Proceedings.

*In Times like these, our Author (doubtless to the Diminution of his private Profit) earnestly applied himself to search out the surest Evidence concerning several of the Questions then in Debate. There are already two small Volumes of his in Print; one intituled, The ancient Right of the Commons of ENGLAND asserted, &c. the other, Miscellanea Parliamentaria, &c. both published in his Life time. What the Reader now receives was his Opus Magnum, his Great, choice, and last Work: He had prepared it for the Press, as appears by the INTRODUCTION; and as he survived the Reign of King James the Second, he would doubtless have printed it, if Death had not prevented him. 'Tis probable, that, as more Matter occurred to him, he continued to enlarge this Treatise; for, there is a fair Copy of Part of it in the Library of the Inner-Temple, as of an entire Work; but it wants one hundred Pages of our First, and all our Second Part; which therefore (we may reasonably conjecture) were compiled after that Copy was taken. Our Author's Collection of Records is apposite to his Purpose; his Reasoning upon them is generally strong and conclusive; his Authorities are of the best Kind, approved Historians and Law Writers, but more especially Statutes and Rolls of Parliament. In the Progress of his Work, he sets the Antiquity and Constitution of
our*

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our Parliaments in a clear Light: insomuch that this Treatise, beyond any other that has been published, explains that Law, (the Law of Parliament) which, as Lord Coke tells us, is known but to few.

Our Author, in his INTRODUCTION, sets out with the Opinions of some very great Men concerning the Excellence of our Constitution above Absolute Monarchies.

In his First Chapter, he shews the Authority of Parliament in determining Questions new, weighty, or difficult; and incidentally proves that Parliaments were formerly annual; and that the Commons were a Part of them.

The Second Chapter contains Instances where the Judges adjourned Matters into Parliament, because of Difficulty; and ex consequenti, & inconvenienti, he concludes, that Pag. 29, 30. the Twelve Judges cannot by any Resolution of theirs, make any new Precedent in Matters which concern the fundamental Constitution of the Government, and the general State of the whole Kingdom.

The Third Chapter is a Pursuit of the same Topick, with some little Variation: It is to prove from Precedents, that the Judges in Westminster Hall are not by Interpretation to set aside an Award in Parliament. He all along observes, that the Commons made a Part of the Estates of Parliament; and in this Chapter he gives his Opinion who were the Persons that compos'd the Council so often mentioned in Law-Books. 38, 39.

The Fourth Chapter in the main pursues the same Argument; being to shew, that Doubts in Law of great Importance were to be settled by the Legislature, and not by the Judges: And of this he produces several notable Instances.

In the Fifth, he shews, that the Judges are not by Construction to supply Defects or Doubts upon Acts of Parliament; but that the Legislature will provide additional explanatory Acts. And he makes a Latitude of Construction by 66. the Judges ridiculous enough, by a Quotation from Lord Ellesmere.

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The

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The Necessity there was to have recourse to the Authority of the Legislature, for the Amendment of Records and Feofails (which is shewn in the Sixth Chapter) seems to go a great way towards the Proof of the Doctrine, that the Judges in Westminster Hall, in Matters new and difficult, are to wait for the Aid of Parliament; and are not to undertake the Amendment of the Law by their own Authority: A Doctrine, which doubtless contributes much to the Security of the Rights of a free People; and which is not to be met with even in Idea, under any Arbitrary Government. This justifies that pathetick Remark, 'Tis a miserable State of Slavery, when the Law is uncertain or unknown.

The Seventh Chapter, against Non Obstantes, shews them to have been a novel Invention in England in the Time of King Henry the Third; that they were about that Time imported from the Court of Rome, and were eagerly adopted by that arbitrary Prince. Our Author here rightly observes, that Statutes which give the Crown a Power to dispense with former Statutes, or with themselves, are a sufficient Proof that there is not a Dispensing Power in the Crown. This Chapter also contains Instances from the Rolls of Parliament, in early Times, of noble Efforts against a foreign Introduction. The ancient Course of Parliament in making Laws, is here explained; with the Time and Reason, when, and why it was altered. Our Author likewise gives us the Transactions concerning the Marriage-Treaty, &c. of our Queen Mary the First with Philip of Spain, pretty much at large; but this he thought necessary, in order to make a proper Use of them, to disprove the Legality of the Dispensing Power. He may be thought prolix concerning the King's Power of appointing Sheriffs for a longer Time than one Year: But when the Reader weighs his Reasonings, he will see the Occasion for stating the Progress of that Matter; the rather, because four or five of his Parliamentary Authorities had been suppressed in the common Editions of the Statute-Book. The Argument against Non Obstantes, drawn from the

Pag. 104, &c.
119, &c.
136, &c.
149, 151.
152.

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the Statute settling the Precedency of the Peerage and great Officers of the Crown, is curious as well as conclusive; in which, I think, he has the better of our Oracle of the Law. Pag. 170.
The Distinction between malum in se and malum prohibitum, is used in expounding the Law in many Cases; therefore is fit to be attended to, with the Reasons against it. 176.
This Chapter is of an extraordinary Length; as being written with a Design to refute that destructive Doctrine of the Dispensing Power, which would, in reality make the Laws, the Laws of the King, and not of the Kingdom. 178.

The next Chapter contains an Impeachment of a Great Chancellor, who was first Minister, (among other Things) for dispensing with the Law.

The following Chapter seems intended as a natural Pursuit of the same Argument: For, as the Dispensing Power had, in our Author's Time, received the Sanction of a judicial Determination in its Favour, it seemed proper to shew that Judges may err, and have erred corruptly; and have been severely punished for it, by the superior Power of Parliament. Here therefore we have a remarkable Instance of the Crime, and the Punishment: Their Crime was, endeavouring, by their extrajudicial Resolutions, to undermine the Authority of Parliament; and to bring Men within the Danger of High Treason, for obtaining an Act of Parliament from the King in his Minority; which Act these Judges, and other great Men of their Confederacy, held to be derogatory from the Regal Power: Their Crime was in Parliament adjudged High Treason, and some of them were executed accordingly; some met with milder Censures, and others saved themselves by Flight. Here we see that, blinded by Avarice and Ambition, Judges have become Legicides: The Danger of that Crime is instanced in the Fates of Le Spencer, Thorpe, Trefilian, &c. Empson and Dudley. Our Author applauds the Constancy of the Judges under Queen Elizabeth, who apologized for themselves (among other Reasons) by the Terror of those Examples. He severely enough censures the Time-serving

197, 198:
184, 196.
211.
207.

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201. *servings of another great Man, by imputing it to a Decay of his Understanding. He teaches, that there may be Treason against the Laws; and, with a due Deference to our Monarchy, shews, That the King can do no Wrong; but may be misinformed, or deceived, or give illegal Commands, which*
210, 211. *are void by just Prerogative; but that his Misinformers and the Actors are to be punished.*

The Ninth Chapter contains Articles of Impeachment of High and notable Offences (or, as they are now called, High Crimes and Misdemeanors) against Cardinal Wolsey: But we do not here find any Judgment. Some of our Historians seem to think he was condemned in a Premunire; of which, undoubtedly, he had been guilty. This great Man's Fall ought to make every Premier Minister reflect, and ask himself, How many sincere Friends he could chuse out from among some hundreds of humble Servants at his Levee.

227. *The Apology of the House of Commons to King James the First, touching their Privileges (taken from the Journals of the House) is a curious Piece; drawn up with Reason and good Manners, without Harshness of Style or Bitterness of Spirit; which too often abound in the publick Acts, when there has been a Misunderstanding between King and People. It was a great Misfortune to these Kingdoms, that the Voice of the Charmer could not be heard, charming so wisely. The Neglect of these sober Representations sowed the Minds of Men, so that they bred up their Children with jealous and disaffected Notions even of the Kingly Power itself: While, on the other Hand, the Statesmen never took care to mend Matters, but rather made them worse; as not believing that the Power, which they found themselves possessed of, was capable of Diminution: They never thought of the terrible Account to which they were afterwards called.*

245, &c. *The SECOND PART contains an Account of Invasions upon the Liberty of Speech in Parliament in several Reigns, ending in the Time of King Charles the First. There are broken*
Notes

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Notes from the Journals of the Commons, in the Time of King James the First, which though they do not give a perfect Debate, yet serve to inform the Reader what was in Substance urged and relied on by the several Members who spoke.

The Book concludes with an excellent Argument against the Legality of imposing any Tax, &c. without Authority of Parliament; and indeed whoever considers the great Variety of arbitrary and illegal Projects and Attempts of Impositions in the Reign of King James the First, will easily perceive, that he sowed the Seed of all those Misfortunes which his Son reaped in such great Abundance. When the People were for a long time debarred of their Rights and Properties, and had broke through Forms to recover them, it was too natural for them not to rest satisfied with their own: Besides, that great Advantages were thereby given to artful ambitious Men to cover their foul Designs, and effect their wicked Purposes, under the Appearance of the Publick Good.

I shall conclude this Preface with a Reflection of the Noble Historian, more rational and more nervous than all that ever was said or written besides, upon the occasion of the infamous Judgment for Ship-money; and which his Detractors have never (that I have met with) done him the Justice to remember. His Words are as follow:

“ — And here the Damage and Mischief cannot be expressed, that the Crown and State sustained by the deserved Reproach and Infamy that attended the Judges, by being made use of in this, and like Acts of Power; there being no Possibility to preserve the Dignity, Reverence, and Estimation of the Laws themselves, but by the Integrity and Innocency of the Judges. And no Question, as the Exorbitancy of the House of Commons, in the next Parliament, proceeded principally from their Contempt of the Laws, and that Contempt from the Scandal of that Judgment; so the Concurrence of the House of Peers in that Fury, can be imputed to no one thing more, than to the

* D

“ Irre-

History of the
Rebellion,
Vol. 1. pag. 55.
Oxford Edit.
1704.

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“ Irreverence and Scorn the Judges were justly in ; who had
“ been always before looked upon there as the Oracles of the
“ Law, and the best Guides to assist that House in their Opi-
“ nions and Actions : And the Lords now thought themselves
“ excused for swerving from the Rules and Customs of their
“ Predecessors (who in altering and making of Laws, in
“ judging of Things and Persons, had always observed the
“ Advice and Judgment of those Sages) in not asking Que-
“ stions of those, whom they knew no body would believe ;
“ thinking it a just Reproach upon them (who out of their
“ Courtship had submitted the Difficulties, and Mysteries of
“ the Law, to be measured by the Standard of what they
“ called General Reason, and explained by the Wisdom of
“ State) that they themselves should make use of the Licence,
“ which the others had taught them, and determine that to
“ be Law, which they thought to be reasonable, or found to
“ be convenient.

“ If these Men had preserved the Simplicity of their An-
“ cestors, in severely and strictly defending the Laws, other
“ Men had observed the Modesty of theirs, in humbly and
“ dutifully obeying them.”



A TABLE

A

L I S T

O F

S U B S C R I B E R S .

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Concerning annual Parliaments, called for the redressing of the State of the Realm in such Things as required Amendments, and in particular for the final determining of all such Cases, where the Law failed, and no Remedy had been ordained; or where Points in former Statutes had need of Exposition, and where the Judges of the Courts in Westminster Hall differed in their Opinions, what the Law was in several Cases.

Page 1.

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Several Authorities to prove that by the ancient Law and Custom of England, when any Case of Difficulty did happen to arise in Westminster Hall, the Judges adjourned such Causes, propter Difficultatem, usque ad proximum Parliamentum.

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A N

A N

INTRODUCTION.

WE are told by the reverend and pious Author The Govern-
ment of the
Tongue, by the
Author of the
Whole Duty
of Man, the
fourth Impres-
sion, §. 8. p.
134, &c. of the *Whole Duty of Man*, that “ Flattery
“ is such a Mystery, such a Riddle of Iniquity,
“ that its very Softnesses are its cruelest Rigour, its Balm
“ corrodes, and to comprise all in the Psalmist’s excellent
“ Description, its *Words are smoother than Oil, and yet be*
“ *they very Swords.*

“ ’Tis indeed a collective, accumulative Baseness, it be-
“ ing in its Elements a Compound and a Complex of the
“ most fordid hateful Qualities incident to Mankind.”

And he instances in three, *viz.*

“ 1. Lying,

“ 2. Servility,

“ 3. And Treachery;

“ which being detestably deformed single, must in Con-
“ junction make up a loathsome monstrous Guilt.”

And first he saith, “ We may take Lying to be the very
“ Corner-Stone of the Fabrick, for take it away, and the
“ whole falls to the Ground.

“ * A Parasite would make but a lean Trade of it, that
“ should confine himself to Truth.

“ It is indeed strange to consider with what gross im-
“ pudent Falshoods Men of this Trade will court their
“ Patrons.

* *Assentatores non quæ conducunt, sed quæ Principi placent ac grata sunt, consulunt. Hinc vulgari, sed minimum vero proverbio jactatur, eum, qui vult Principibus gratus esse, non Veronam, sed Placentiam professici oportet: hoc est, non vera, sed principi grata & placentia dicat. Apertissimi Politici per Lambertum Danicum Collecti, pag. 580.*

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“ How many in former Ages have not only amassed together all sublunary Excellencies, that have ransacked Heaven to supply their Flattery, deified their Princes, and persuaded them they were Gods, who at last found they were to die like Men? .

“ As to the second, Servility and Abjection of Humour, there needs no other Proof than what already has been given, this Charge being implicitly involved in the former, of Lying, the condescending to that being the Mark of a disingenuous Spirit.

“ And accordingly the nobler Heathens looked on it as the Vice of Slaves and Vassals, below the Liberty of a Freeman, as well as of an honest Man.

“ And to compleat this famous Composition, in the third Place, Treachery comes in, a Crime of so odious a Kind,

“ That to name it, is to implead it. Yet how intrinsic a Part this of Flattery is, will need no Skill to evidence.”

And what can be a greater Piece of Treachery, than for any to inveigle a Prince (under the Notion of a sovereign Prerogative, and imperial Power) to violate his Coronation Oath, which he so publicly and solemnly had taken, for the observing and keeping of the Laws and Customs of the Realm; and to make him break in upon those ancient and undoubted Laws of his Country, which fixed the Crown on his Head, and put a Bar to the Pretensions of all others.

And therefore our wise Ancestors, whenever they come to impeach such as Criminals, deservedly branded them with the just notorious Mark of being false, and Traitors to both King and Kingdom.

But to proceed ;

“ It is a common Observation of Flatterers, that they are all like the Heliotrope, open only towards the Sun, but shut and contract themselves towards Night, and in cloudy

“ cloudy Weather ; let the Object of their Adoration be
 “ but eclipsed, they can see none of those Excellencies
 “ which before dazled their Eyes.

“ And however inconstant they may seem to others,
 “ they are indeed always true and constant to them-
 “ selves,

“ True to their fixed Principles of courting the Great-
 “ nefs, not the Man.

“ What they expect from those sycophanting Arts is
 “ commonly

“ 1. Either Honour,

“ 2. Or Wealth.”

Hitherto out of the religious Author of the *Whole Duty of Man*.

Of all these there are such Crowds of Examples in History, that it would be very impertinent here to mention any of former Ages ; especially considering our own, which is much more apt to furnish Precedents for the future, they being such absolute Originals as the skillfullest Masters of the past Times in the Art of Flattery come far short of ; they seeming not to have had Chymistry enough to sublimate Royal Power to so high a Degree of Perfection in this Part of the World, as to assert an *Imperium planè Despoticum*, and that too *Jure Divino*, especially if it be considered what *Bodin* hath observed ; namely,

That *Terræ Populi omnes ad aquilonem positi, libertatem quandam spirant.*

Bodin de Reip.
lib. 1. cap. 8.
pag. 117. im-
press. Anno
1591.

This alone may suffice to overthrow all Pretence of the Antiquity of Despotical Power in these *Northern Nations*.

Yet to clear the Matter somewhat further :

I will give an illustrious Example, (though hundreds more might easily be added) of the Truth of *Bodin's* Observations, as to *England*.

The

The Lord Chancellor *Bacon* tells us, that the People of *England* love the Laws thereof, and nothing will oblige them more than a Confidence of a free enjoying of them.

Raft. Stat.
The Statute of
Merton,
20 Hen. III.
cap. 9. fol. 6.
Coke's 2^d Infl.
fol. 96.

What the Nobles of *England* upon a particular Occasion once said, with one Voice in Parliament, *Tempore Hen. III. Nolumus Leges Angliæ mutari*, we will not have the Laws of *England* altered, is imprinted upon the Hearts of all *Englishmen*, who take themselves to have as good a Title to their Laws, as to the common Air they breath in.

But this was in my Lord *Bacon's* Time.

Now what Reward those Sycophants deserve, who following the Current of the Times, allured by private Hopes, and the Arguments of Vain-glory and Self-interest ;

And with whom

Coelum est venale, Deusque.

Let us hear the profound Judgment of *Plutarch**, grounded upon great Experience, and balanced by deep Observation.

Bene autem multis faciunt, faith he, qui eos bonos reddunt quorum opera multi indigent ; sicut contra, qui principes Reges Tyrannosque solent corrumpere, Sycophanta, Calumpniatores, atque Adulatores, ab omnibus profligantur, atque puniuntur, ut qui lathale venenum non in unum aliquem injecerunt calicem, sed in fontem publicum & quo universos uti norint.

“ But they are profitable to many that make them
“ good, who are useful to many ; as on the other Hand
“ Sycophants, Detractors, and Flatterers, who use to cor-
“ rupt Kings and Princes are run down and punished by
“ all Men, as People that cast deadly Poison, not into

* *Plutarch. lib. Maxime cum Principibus viris Philosopho esse disputandum, 2 Moral. p. 383. Quæ admodum non uno supplicio dignus est qui fontem publicum, unde bibant omnes, veneno inficit, ita nocentissimus est qui Principis animum pravis infecerit opinionibus, quæ mox in tot hominum perniciem redundant. Nam si capite plectitur, qui Principis monetam vitiaverit, dignior est eo supplicio, qui Principis ingenium corruerit ?*

“ some

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“ some one Cup, but into a Fountain that is publick,
 “ which they know all Men make use of.”

And therefore it is no Misrepresentation which the Lord Bacon makes of those pernicious Instruments so destructive of the Affection of Allegiance of Subjects, in the Counsel he gave to the Duke of *Buckingham*. “ In respect of the
 “ King your Master, *saieth he*, you must be wary that you
 “ give him true Information ; and if the Matter concern
 “ his Government, that you do not flatter him ;

“ If you do, you are as great a Traitor to him in the
 “ Court of Heaven, as he that draws his Sword against
 “ him.

“ For the Law is the Hedge and Fence about the Liberty of the Subjects, and whilst the Prerogative runs
 “ within its ancient and proper Banks,

Lord Bacon's Resuscitation, part 1. fol. 53. His Speech whilst Attorney General.

“ The main Chanel thereof is so much stronger ; for
 “ Overflows, *as he adds*, evermore hurt the Chanel.”

And though it must be confess'd this is true, that Princes are easily inclined to embrace such Opinions which their Judges deliver for Law, and their Divines for Gospel, for the Advancement of their Prerogatives,

Yet from the Chronicles of all Times it is evident, that parasitical Minions, prompted by the Motives of their own Preferments, naturally become factious and seditious against all Governments whatsoever, that are established by Laws ; looking upon Law as their common Enemy : And for that Reason have been generally observed, either to deprave or corrupt it by their odious Opinions, or else to supplant and destroy it by their wicked Practices.

To whom it may well be said, in the Words of the Poet,

*Discite Justitiam moniti, & non temnere Divos ;
 Vendidit hic Auro Patriam, dominumque potentem,
 Imposuit : Fixit Leges pretio, atque refixit.*

Virgil. Æn. cap. 6.

b

But

But whenever the long Hands of the Law took hold of them, they never wanted Confidence to say, that all their Designs and Actions were purely out of Loyalty and Zeal to the Service and Honour of their Princes.

When as, upon due Reflection made, it was too visible that by all those their Designs and Actions they were worshipping their great Idol, *Interest*; from whence it hath so often happened in the World, that they have made the Reigns of Kings so very unfortunate, and calamitous both to themselves, and their Subjects.

Now to pursue such Men with deserved Infamy and Re-proach, and to make out the Force and Evidence of this Truth.

I say, that

King James the Sixth's Speech to his first Parliament held in England. Pulton's Stat. 1 Jac. cap. 2. fol. 1157, or 1151.

1. King *James VI.* of *Scotland*, in his Speech to his * Parliament in *England*, told them, "That not only the
" Royal Prerogative, but the Peoples Security of Lands,
" Livings, and Privileges, are preserved and maintained
" by the ancient fundamental Laws, Privileges, and Cu-
" stoms of this Realm.

" And that by the abolishing and Alteration of them,
" nothing but present Confusion must fall upon the whole
" State and Frame of the Kingdom."

King Charles the First's Declaration to all his loving Subjects, published with the Advice of his Privy Council. Exact Collection of Declarations, pag. 28, 29.

2. And his Son King *Charles I.* was of the same Judgment, when he published to all Posterity, "That the Law
" was the Inheritance of every Subject, and the only Se-
" curity he could have for his Life or Estate, and the which
" being neglected or disesteemed, under what specious
" Shew soever, a great Measure of Infelicity, if not ir-
" reparable Confusion, must, without Doubt, fall upon
" them."

3. Then, in a Word, it is God alone who subsists by himself.

* *Parliamentum Angliæ est Curia, quæ, si vetustatem spectes, est antiquissima; si dignitatem, est honoratissima; si Jurisdictionem, est Capacissima.*

Hinc ego nec metas rerum, nec tempora pono. Coke's 4th Institute, p. 36.

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The Right of Crowns and Kingdoms exist in mutual Dependance and Relation.

4. The Sovereignty, Lives, Honours, Liberties and Estates are all under the Guard of the Law, which when invaded by Fraud, or destroyed by Force, farewell all Peace and Happiness either to Prince or People.

Sir *Edward Coke* hath truly observed, that the Nobility of *England* have ever had the Laws of *England* in great Estimation and Reverence, as their best Right.

Coke's 2^d Inst. fol. 97.

And so have the Kings of *England* as their principal Royalty and Right, belonging to their Crown and Dignity.

This made *Henry I*, that noble King, surnamed *Beauclerk*, to write to Pope *Paschall*.

Notum habeat Sanctitas vestra, quod me vivente, (auxiliante Deo,) dignitas & usus Regni nostri Angliæ non minuentur, & si ego, quod absit, in tantâ me dejectione ponerem,

Literæ Hen. I. patri venerabili Paschali summo Pontifici. Cronicon Joannis Brompton, Anno Dom. m. cap. 3. col. 999. lin. 36.

1. *Optimates mei,*
2. *Inimio totius Angliæ populus,*
id nullo modo paterentur.

For a King of *England* therefore to despise the Law of *England*, it is, saith King *James I*, to neglect his own Crown.

King James the First's Speech to the Lords and Commons attending him at Whitehall, the 20th of March, 1609, in the Collection of his Works, fol. 532. Fortescue de laudibus Legum Angliæ, cap. 9. pag. 25.

It being certain that he cannot change the Laws of his Kingdom *ad Libitum suum*, because he governs his People *Principatu nedum Regali sed & Politico*, not so much by a Regal as a Political Power.

If his Authority were merely Regal he might change the Laws of the Kingdom, and might lay Taxes and other Impositions upon them, without their Consent, which is such a Power as the Civil Law expresseth when it saith, *quod Principi placuit Legis habet Vigorem*, what the Prince pleaseth to appoint, obtains the Force of a Law.

But the Power of a King who governs his People politically, is quite different, forasmuch as he can neither change

change the Laws without the Consent of his Subjects; nor burden his People against their Wills with new Impositions, because his People enjoy their Estates freely, being governed by Laws of their own making, and are not liable to be polled by their King, nor any other ;

And in like manner a People is happy under a King that governs with an Authority that is purely regal, provided he do not abuse it to Tyranny.

Of such a King it is that *Aristotle* speaks in his third Book of *Politicks*, saying that *it is better for a People to be governed by an excellent Person, than by an excellent Law.* But because it does not always happen that the Prince is such a Person, *St. Thomas* in the Book that he wrote to the King of *Cyprus* concerning the Government of Princes, wisheth that *Kingdoms were so constituted, as the King might not have Power to govern Tyrannically, if he would, which only can be, where the Regal Power is restrained by a Political Law.*

“ Rejoice therefore, most excellent Prince, saith the
“ *Chancellor Fortescue*, that the Law of the Kingdom, in
“ which you are to succeed is such, for it will yield great
“ Security and Comfort both to yourself and your Peo-
“ ple.”

*The Earl of
Clarendon's
Survey of Mr.
Hobbes's Le-
viathan, p. 107.*

And another Lord Chancellor, the late Earl of *Clarendon*, told us, he must say again upon Mr. *Hobbes's* Chapter of the *Nutrition and Procreation of a Common-wealth*,
“ That he hath proposed a very ungracious Method to him-
“ self in forming his Government, by assigning a greater
“ Power and Authority to his Sovereign, than any honest
“ Magistrate desires, or will ever exercise, or can think
“ himself secure in ; and such a Liberty and Property to
“ the Subject, as they can take no Delight in, and con-
“ sequently can never wish well to that Government un-
“ der which they shall enjoy no more.

“ Nor will they ever believe themselves to be in Pos-
“ session of Liberty or Plenty, when it is in the Power
of

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“ of any one Man to dispossess them of both or either, at
“ his Good Will and Pleasure, without any Violation of
“ any Justice they can resort to, or complain of.

“ It is a very uncomfortable Propriety, proceeds that
“ learned Chancellor, that any Man can have in his Lands
“ and Goods, because his Neighbour cannot take them
“ from him, if his Prince can justly take them from them
“ and give them to his Neighbour.

“ Princes have their particular Affections and Inclina-
“ tions which sway them as much as other Men, and are
“ prevailed upon by the same strong Motives and Impul-
“ sions; and if they may take away all from those they
“ do not like, and as much as they think fit from those
“ they like less, to give to those they love, and to such as
“ they like better, there can be no valuable Propriety in
“ any body but the Sovereign alone; and when it is once
“ found to be in him alone, he will not be long able to
“ defend his own Propriety, or his own Sovereignty.”

It is *Machiavel's* Exception against the entertaining of
Foreign Forces, “ That they are only mercenary, and
“ therefore indifferent in their Affections which Party wins
“ or loses; and no doubt those Soldiers fight most reso-
“ lutely who fight to defend their own.

“ And surely they who have nothing of their own to
“ lose but their Lives, are as apt to throw those away
“ where they should not, as where they should be ex-
“ posed; and it is the usual Artifice in all Seditions, for
“ the Leaders and Promoters of them, to persuade the
“ People, that the Tendency and Consequence of such
“ and such Actions done by the Magistrate, extends to the
“ depriving them of all their Propriety, the Jealousy of
“ which hurries them into all those Acts of Rage and De-
“ spair which proves so fatal to Kingdoms; and there was
“ never yet a wise and fortunate Prince, who hath not
“ enervated those Machinations, by all the Professions, and
“ all the Vindications of that Propriety, which they are so

c

“ vigilant

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“ vigilant to preserve and defend : And therefore it is a
 “ wonderful preposterous Foundation to support a Govern-
 “ ment, to declare that the Subject has no Propriety in
 “ any thing that excludes the Sovereign from a Right of
 “ disposing it ; and it may be easily believed, that there
 “ is not a Prince in *Europe*, that is civilized, would be
 “ able to retain his Sovereignty one whole Year, after he
 “ should declare, as Mr. *Hobbes* doth, That his Subjects
 “ have no Right in any thing they possess ; but that he
 “ may dispose of all they have.

“ For though they do too often invade that Propriety,
 “ and take somewhat from them that is not their own,
 “ they bear it better under the Notion of Oppression and
 “ Rapine, and as they look upon it as the Effect of some
 “ powerful Subject’s evil Advice (which will in time be
 “ discovered, and reformed by the Justice of the Prince,
 “ as hath often fallen out) than they would ever do under
 “ a Claim of Right, that could justly take away all they
 “ have, because it is not the Subject’s, but their own.

“ And if Mr. *Hobbes* had taken the Pains, and known
 “ where to have been informed of the Proceedings and
 “ Transactions of *William the Conqueror*, he would have
 “ found Cause to believe, That that great King did ever
 “ dexterously endeavour, from the Time that he was as-
 “ sured that his Possession would not be disturbed, to di-
 “ vest himself of the Title of a *Conqueror*, and made his
 “ legal Claim to what he had got by the Will of *Edward*
 “ *the Confessor*, whose Name was precious to the Nation,
 “ and who was known to have a great Friendship for
 “ that Prince, who had now recovered what had been
 “ his.

“ And he knew so well the ill Consequence must attend
 “ the very Imagination that the Nation had lost its Pro-
 “ priety, that he made haste to grant them an Assurance,
 “ that they should still enjoy all the Benefits and Privi-
 “ leges which were due to them by their own Laws and
 “ Customs,

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“ Customs, by which they should be still governed ; as
“ they were during that whole King’s Reign, who had
“ enough of the unquestionable Demefne and Lands be-
“ longing to thofe great Men who had perifhed with their
“ Pofterity in the Battle with *Harold*, to diftribute to thofe
“ who had born fuch Shares and run fuch Hazards in his
“ prosperous Adventure.

“ And thofe Laws and Customs which were BEFORE the
“ Conqueft, are the fame which the Nation and Kingdom
“ have been fince governed by to this Day, with the Ad-
“ dition of thofe Statutes and Acts of Parliament which
“ are the Laws of the fucceffive Kings, with which they
“ have gratified their Subjects, in providing fuch new Se-
“ curity for them, and Advantages to the Publick, as upon
“ the Experience and Obfervation of the Ages and Times
“ when they were made, contributed to the Honour and
“ Glory of the King, as well as the Happinefs of the Peo-
“ ple ; many of which are but the Copies and Transcripts
“ of ancient Land-marks, making the Characters more plain
“ and legible of what had been practifed and underftood
“ in the preceding Ages, and the Obfervation whereof are
“ of the fame Profit and Convenience to King and
“ People.

“ Such were the Laws in *Tully’s* Time, which Mr.
“ *Hobbes* wonderfully cites to prove that which *Tully* ne-
“ ver heard of, and which indeed is quite contrary to the
“ End of his Difcourfe. Is it poffible that *Tully* could
“ ever have faid, *Let the Civil Law be once abandoned, or*
“ *but negligently guarded, (not to fay oppreffed) and there*
“ *is nothing that any Man can be fure to receive from his*
“ *Anceftor, or to leave to his Children?* And again, *Take*
“ *away the Civil Law, and no Man knows what is his own*
“ *and what another Man’s?* I fay, (fays the Chancellor) he
“ could never have mentioned and infifted upon this grand
“ Security of Mankind, if he had underftood the Laws to
“ be nothing but the Breath of the Sovereign, who could
“ grant

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“ grant and dissolve, or repeal this Law, with the speaking a Word that his Will or Fancy dictates to him.

“ How can any Man receive from his Ancestor, or leave to his Children, if he be not sure that his Ancestors had, and that his Children should have a Propriety? It was the Importance of, and the Delight in this Propriety, that produced that happy and beneficial Agreement between the Sovereign Power and the Naked Subject, which is mentioned before ; that introduced the Beauty of Building, and the cultivating the Earth by Art as well as Industry, by securing Men that they and their Children should dwell in the Houses they were at the Charge to build, and that they should reap the Harvest of those Lands, which they had taken the Pains to sow : Whatever is of Civility and Good Manners, all that is of Art and Beauty, or of real and solid Wealth in the World, is the Product of this Paction, and the Child of beloved Propriety : And they who would strangle this Issue, desire to demolish all Buildings, eradicate all Plantations, to make the Earth barren, and Mankind to live again in Tents, and nourish the Cattle by successive Marches into those Fields where the Grass grows. Nothing but the Joy of Propriety reduced us from this Barbarity ; and nothing but Security in the same, can preserve us from returning into it again.

“ Nor will any Man receive so great Prejudice and Damage by this Return, as the Kings and Princes themselves, who had a very ample Recompense, which they still enjoy, by dividing their unprofitable Propriety with their Subjects, having ever since received much more Profit from the Propriety in the Hands of the Subjects, than they did when it was in their own, or than they do from that which they reserved to themselves ; and they continue to have the more or less upon a true Account, as this Paction is the more or less exactly observed and complied with.” — Thus far that Great Man.

But

But he that desires to find out the Original of the *English* Laws, let him consult *Bracton, ex illustri Stemmata ortum, qui claruit* (as *Balæus* notes) *anno post Messiam ex* Balæus Cent. III. cap. 98. fol. 282. *Virgine natum MCCXL, sub 29 Henrici III; cujus beneficio totos viginti annos Præsidis Justitiæ supremi munere fungebatur*: So that by a reasonable Computation of Time we may suppose him to have lived near the Days of *Richard* the First. This Judge of so profound Knowledge in the ancient Laws and Customs of the Nation, hath laid down and delivered for a Rule to all Posterity, and there ought to be little Difficulty to believe him, That † *Legis Vigorem habet quicquid de Consilio & de Consensu*

1. *Magnatum,*
2. *Reipublicæ communi sponse,*
3. *Authoritate Regis sive Principis,*

Præcedente, justè fuerit definitum & approbatum. That is, “Whatsoever was regularly determined and approved of,
 “ 1. By the Counsel and Consent of the Great Men,
 “ 2. By the general Agreement of the Commonalty,
 “ 3. With the Regal Authority first obtained,
 “ That had the Force of a Law.”

There is yet behind another Branch of *Bracton*, which is also of great Import, and it is this: *Hujusmodi verò Leges Anglicanæ & Consuetudines, Regum Authoritate, jubent* Bracton lib. 1. cap. 2. fol. 1. *quandoque, quandoque vetant, & quandoque vindicant, & puniunt Transgressores; quæ quidem tum fuerint approbatæ Consensu utensium*, & Sacramento Regum confirmatæ, mutari non poterunt nec destrui sine Communi Consensu & Consilio eorum omnium, quorum Consilio & Consensu fuerunt promulgatæ †.*

† BRACTON'S Rule concerning the Authority by which General Laws were ordained in England in old Times.

* The ancient English Law and Customs were not to be changed or abrogated, but by the common Assent of all those by whom they were promulgated and made.

† Nihil tam conveniens est naturali Æquitati, quam unumquodque dissolvi posse ex ligamine, quo ligatum est.

From whence it is too obvious to admit of a Denial; but that such are the *Antiquæ Libertates Angliæ*, not only in *Bracton's* Time, but in preceding Ages. And therefore,

1. *Non Obstantes* could not then be brought into Fashion, nor,

2. Was the Notion of declaring Acts of Parliament to be void, by virtue of the Judge's Expounding Power, then hatched.

Rot. Parliam.
15 Edw. III.
Nº 50. dor.

And as for after Times, the Statute of the 15th of *Edward* the Third proves that *Le Grand Chartre*, & *le Chartre de la Forest*, & *les autres Statutes*, were made,

1. *Per le Roy & ses Progenitors*,

2. *Piers*,

3. *Et la Commune de la Terre*.

Rastall's Stat.
15 Edw. III.
cap. 1.

1. From whence it must be granted me, That not only *Magna Charta*, and *Charta de Foresta*, but all other following Statutes 'till the 15th of *Edward* the Third, were made,

By the King, Peers, and Commons of the Land.

2. It must likewise be granted me, from the Words of *Bracton*, that such Laws could not be changed, nor repealed, but by common Consent of the Promulgators thereof. In a word, these Authorities run apparently counter to the Rhapsodies of the hasty and huddled Thoughts of most, if not of all our Historians who have writ since the *Reformation*. Nay indeed many of the Notions and Principles they have published to the World, touching the Absoluteness of our old *English* Monarchy, are so palpably inconsistent with these Authorities, that they may very well be taken for downright audacious Affronts to the Truth of all Antiquity.

Utopia, p. 47.
48. printed
Anno 1685.

“ But Judges (saith Sir *Thomas More*, who was Lord
“ Chancellor of *England*) must be made sure that they
“ may declare always in favour of the Prerogative: They
“ must be often sent for to Court, that the King may hear
“ them

“ them argue those Points in which he is concerned ; since
 “ that, how unjust soever any of his Pretensions may be, yet
 “ still some one or other of them, either out of Contra-
 “ diction to others, or the Pride of Singularity, or that they
 “ may make their Court, would find out some Pretence
 “ or other, to give the King a fair Colour to carry the
 “ Point. For if the Judges do but differ in Opinions,
 “ the clearest Thing in the World is made by that means
 “ disputable ; and Truth being once brought in question,
 “ the King upon that may take Advantage to expound the
 “ Law for his own Profit : The Judges that stand out will
 “ be brought over, either out of Fear or Modesty : And
 “ they being thus gained, all of them may be sent to the
 “ Bench to give Sentence boldly, as the King would
 “ have it.

“ For fair Pretences will never be wanting, when Sen-
 “ tence is to be given in the Prince’s Favour.

“ It will either be said, that Equity lyes of his Side ;
 “ or some Words in the Law will be found founding that
 “ Way, or some forced Sense will be put on them : And
 “ when all other Things fail, the King’s undoubted Pre-
 “ rogative will be pretended, as that which is above all
 “ Law, and to which a religious Judge had need to have
 “ a special Regard.

Sir *Edward Hyde*, after Earl of *Clarendon* and Lord Chan-
 cellor of *England*, in an eloquent and learned Speech which
 he made against the Ship-money Judges, before the Lords
 in Parliament, speaks as follows :

*Rushworth's
 Historical Col-
 lections, Part 24
 fol. 1360.*

“ My Lords,

“ There cannot be a greater Instance of a sick and
 “ languishing Common-wealth, than the Business of that
 “ Day. Good God ! how have the Guilty these late
 “ Years been punished, when the Judges themselves have
 “ been such Delinquents. ’Tis no marvel, that an irre-
 “ gular, extravagant, arbitrary Power, like a Torrent,
 “ hath

I N T R O D U C T I O N.

“ hath broken in upon us, when our Banks and our Bul-
 “ warks, the Laws, were in custody of such Persons.
 “ Men who had lost their Innocence, could not preserve
 “ their Courage; nor could we look that they who had
 “ so visibly undone us themselves, should have the Virtue
 “ or Credit to rescue us from the Oppression of other
 “ Men.”

It was once said by one who always spoke excellently,
 “ That the Twelve Judges were, like the Twelve Lions
 “ under the Throne of *Solomon*, under the Throne in Obe-
 “ dience, but yet Lions. Your Lordships shall this Day
 “ hear of Six, who (be they what they will be else) were
 “ no Lions, who upon vulgar Fears delivered up the pre-
 “ cious Forts they were trusted with, almost without As-
 “ fault; and in a tame and easy Trance of Flattery and
 “ Servitude lost and forfeited (shamefully forfeited!) that
 “ Reputation, Awe and Reverence, which the Wisdom,
 “ Courage and Gravity of their venerable Predecessors had
 “ contracted and fastened to the Places they now hold;
 “ and even rendered that Study and Profession, which in
 “ all Ages hath been, and I hope now shall be of an ho-
 “ nourable Estimation, so contemptible and vile, that, had
 “ not this blessed Day come, all Men would have had
 “ that Quarrel to the Law itself, which *Marius* had to the
 “ *Greek* Tongue, who thought it a Mockery to learn that
 “ Language, the Masters whereof lived in Bondage under
 “ others.

“ And I appeal to these unhappy Gentlemen themselves,
 “ with what a strange Negligence, Scorn and Indignation,
 “ the Faces of all Men, even of the meanest, have been
 “ directed towards them; since, to call it no worse, that
 “ fatal Declension of their Understandings in those Judg-
 “ ments, of which they stand here charged before your
 “ Lordships.

“ But, my Lords, the Work of this Day is the greatest
 “ Instance of a growing and thriving Common-wealth too,
 “ and

“ and is as the Dawning of a fair and lasting Day of Happiness to this Kingdom.

“ It is in your Lordships Power (and I am sure it is in your Lordships Will) to restore the dejected broken People of this Island to their former Joy and Security, the Successors of these Men to their old Privileges and Veneration, & *sepultas propè Leges revocare.*

But had that Noble Lord lived 'till this Day, and seen the fatal Alterations and Revolutions that have since his Time happened to these three Kingdoms, by that Expounding Power to which the Judges have in *Westminster Hall* so confidently pretended, which gave the Rise and Growth to all our late Miseries and Calamities; What wonderful Coincidents both in Causes and Consequences would he have observed! How then would he have burst forth into bitter Exclamation, *Hinc illæ Lachrymæ!* And above all, could not fail to have been struck dumb upon the reading of his Highness the Prince of *Orange's* Declaration, out of which I humbly beg leave to give this that follows:

“ It is both certain and evident to all Men, that the publick Peace and Happiness of any State or Kingdom cannot be preserved, where the Laws, Liberties and Customs established by the lawful Authority in it, are openly transgressed and annulled; more especially where the Alteration of Religion is endeavoured; and that a Religion, which is contrary to Law, is endeavoured to be introduced: Upon which, those who are immediately concerned in it, are indispensably bound to endeavour to preserve and maintain the established Laws, Liberties and Customs, and above all the Religion and Worship of God, that is established among them; and to take such a Care, that the Inhabitants of the said State or Kingdom may never be deprived of their Religion, nor

e

“ of

“ of their Civil Rights ; which is so much the more ne-
 “ cessary, because the Greatness and Security both of
 “ Kings, Royal Families, and of all such as are in Au-
 “ thority, as well as the Happiness of their Subjects and
 “ People, depend in a most special manner upon the
 “ exact Observation and Maintenance of these their Laws,
 “ Liberties and Customs.”

Upon these Grounds it was, that his Highness saith,
 “ He could not any longer forbear to declare, That to his
 “ great Regret he saw, that those Counsellors, who lately
 “ had the chief Credit with the King, had overturned the
 “ Religion, Laws and Liberties of these Realms, and sub-
 “ jected them in all things that related to their Consci-
 “ ences, Liberties and Properties to arbitrary Government ;
 “ and that not only by secret and indirect Ways, but in
 “ an open and undisguised Manner.

“ Those evil Counsellors, for the advancing and co-
 “ louring this with some plausible Pretext, did invent
 “ and set on foot the King’s dispensing Power ; by virtue
 “ of which, they pretended, that according to Law, he
 “ could suspend or dispense with the Execution of the
 “ Laws that had been enacted by Authority of King and
 “ Parliament, for the Security and Happiness of the Sub-
 “ ject ; and so had rendered those Laws of no effect :
 “ Though there is nothing more certain, than that as no
 “ Law can be made but by the joint Concurrence of King
 “ and Parliament, so likewise Laws so enacted, which se-
 “ cure the publick Peace and Safety of a Nation, and the
 “ Lives and Liberties of every Subject in it, cannot be re-
 “ pealed or suspended, but by the same Authority.

“ For (as he goes on) though the King may pardon the
 “ Punishment that a Transgressor hath incurred, and to
 “ which he is condemned, as in the Cases of Treason or
 “ Felony ; yet it cannot be with any Colour of Reason in-
 “ ferred from thence, that the King can entirely suspend
 “ the Execution of those Laws relating to Treason or Fe-
 “ lony ;

“ lony ; unless it is pretended, that he is cloathed with a
 “ despotick and arbitrary Power, and that the Lives, Li-
 “ berties, Honours and Estates of the Subjects depend
 “ wholly on his good Will and Pleasure, and are entirely
 “ subject to him ; which must infallibly follow, on the
 “ King’s having a Power to suspend the Execution of Laws,
 “ and to dispense with them.

“ And (as he proceeds) those evil Counsellors, in order to
 “ the giving some Credit to this strange and execrable
 “ Maxim, had so conducted the Matter, that they had
 “ obtained a Sentence from the Judges, declaring that his
 “ Dispensing Power was a Right belonging to the Crown :
 “ As if it were in the Power of the Twelve Judges, to
 “ offer up the Laws, Rights and Liberties of the whole
 “ Nation to the King, to be disposed of by him arbitrarily
 “ and at his Pleasure, and expressly contrary to Laws
 “ enacted for the Security of the Subjects. And in order
 “ to the obtaining that Judgment, those evil Counsellors
 “ had before-hand examined secretly the Opinion of the
 “ Judges, and procured such of them as could not in Con-
 “ science concur in so pernicious a Sentence, to be turned
 “ out, and others to be substituted in their Rooms ; ’till
 “ by the Changes which were made in the Courts of Ju-
 “ dicature, they at last obtained that Judgment. And
 “ they had raised some to those Trusts who made open
 “ Profession of the Popish Religion, though those were by
 “ Law rendered incapable of all such Employments.”

Thus much out of his Highness’s Declaration.

But to spare nothing for Truth’s sake, to oblige those
 who maintain Absolute Monarchy, we will to this subjoin
 Dr. *Heylin’s* Survey of the State of *France*, taken by him-
 self when he was there, which he saith was described
 more punctually than ever theretofore in the *English*
 Tongue.

*Dr. Heylin’s
 Epistle Dedicatory to the Mar-
 quis of Dor-
 chester, of his
 Survey of the
 State of France.*

In

Dr. Heylin's
Survey, &c.
cap. 4. P. 247.

In his *Fourth* Chapter of his *Survey*, he informs us,
 “ That the Government of the King of *France* is merely
 “ indeed Regal, or, to give it the true Name, Despotical:
 “ Though the Country be his Wife, and all the People his
 “ Children, yet doth he *never* govern as an Husband or a
 “ Father: He accounteth of them all as of his Servants,
 “ and therefore commandeth them as a Master.

“ In his Edicts, which he over frequently sendeth about,
 “ he never mentioneth the Good-Will of his Subjects, nor
 “ the Approbation of his Council; but concludeth all of
 “ them in this Form: *Car tiel est nostre Plaisir; Sic volo,*
 “ *Sic jubeo.*”

And a little after,

Page 247.

“ They therefore which have writ of Republicks, do
 “ most applaud and commend this mixed Manner of Rule,
 “ which is equally compounded of the Kingdom and the
 “ *Politeia*, because in those the Kings have all the Power
 “ belonging to their Title, without Prejudice to the Po-
 “ pulacy.

“ In those there is referred,

“ 1. To the King, Absolute Majesty;

“ 2. To the Nobles, convenient Authority;

“ 3. To the People, an incorrupted Liberty;

“ All in a just and equal Proportion. Every one of those
 “ is like the Empire of *Rome*, as it was moderated by
 “ *Nerva*, *Qui res olim dissociabiles miscuerat, Principatum*
 “ *& Libertatem*; wherein the Sovereignty of one enda-
 “ maged not the Freedom of all.

“ A rare Mixture of Government (proceeds the Doctor)
 “ and such at this Time is the Kingdom of *England*; a
 “ Kingdom of a perfect and happy Composition; where-
 “ in,

“ 1. The King hath his full Prerogative,

“ 2. The Nobles all due Respect,

“ 3. And the People, amongst other Blessings, perfect
 “ in this, that they are Masters of their own Purfes, and
 “ have

“ have a strong Hand in the making of their own
“ Laws.

“ On the other Side, in the Regal Government of
“ *France*, the Subject frameth his Life merely as the
“ King’s variable Edicts shall please to enjoin him ; is ra-
“ vished of his Money as the King’s Task-masters think fit,
“ and suffereth many other Oppressions.

“ In *France*, it is the only Study of some Men to find Dr. Heylin’s
Survey, &c.
pag. 249.
“ out Devices of enriching themselves, and undoing the
“ People.

“ As for Monopolies, they are there so common, that
“ the Subject taketh no notice of them.”

From the King, the Doctor descends to the Subjects ; Pag. 251.
“ *Ab Equis, quod aiunt, ad Asinos :*” And the Phrase, he
says, is not much improper, the *French* Commonalty being
called the King’s *Asses*.

“ These are divided in Three Ranks or Classes :

“ 1. The Clergy,

“ 2. The Nobles,

“ 3. The Peasants.

“ Out of which certain Delegates or Committees chosen
“ upon Occasion, and sent to the King, did anciently con-
“ cur to the making of the supreme Court for Justice in
“ *France*. It was called,

“ 1. The Assembly of the Three Estates, or,

“ 2. The *Conventus Ordinum* ;

“ and was just like the Parliament of *England* : But those
“ Meetings are now forgotten, or out of Use ; neither in-
“ deed, as this Time goeth, can they (as the Doctor con-
“ ceives) any way advantage the State.

“ For whereas (saith he) there are Three principal, if not
“ sole Causes of those Conventions, which are,

“ 1. The disposing of the Regency during the Non-age
“ or Sicknes of a King ;

* GOLDASTUS saith, Franci Comitia celebrabant omniura ordinum Conventus in qui-
bus de Causis sacris, profanis, publicis, privatisque decernebatur. *Goldast. Rerum Alma-
nicarum*, tom. 3. fol. 8.

“ 1. The

“ 2. The granting Aids and Subsidies ;
 “ 3. And the redressing of Grievances ;
 “ There is now another Course taken in them : The Par-
 “ liament of *Paris*, which speaketh as it is prompted by
 “ Power and Greatness, appointeth the Regent ; the Kings
 “ themselves with their Officers determine of the Taxes ;
 “ and as concerning their Grievances, the King’s Ear is
 “ open to private Petitions.”

Upon which the Doctor makes the following Obser-
 vation :

“ This is that little of a Common-wealth which went to
 “ the making up this Monarchy, escheated or rather de-
 “ voured by the KING ; that Name alone containing in
 “ it both Clergy, Princes and People. So that some of
 “ the *French* Counsellors may say with *Tully* in his Oration
 “ for *Marcellus* unto *Cæsar*, *Doleo que cum Republica im-*
 “ *mortalis esse debeat, eam unius mortalium Anima consistere.*”

Dr. Heylin’s
 Survey, &c.
 pag. 258.

Lastly, In his *Fifth* Chapter, wherein he gives an Ac-
 count of the base and low Estate of the *French* Peasants,
 he tells us,

Pag. 260.

“ That they are People of any the most unfortunate,
 “ not permitted to enjoy the Fruit of their Labours, and
 “ such as above all others are subject to that Sarcaſm in
 “ the Gospel, *This Man planted a Vineyard, and doth not*
 “ *drink of the Fruit thereof :*

“ *Nec profunt domino, quæ profunt omnibus, Artes.*

“ Yet were their Case not altogether so deplorable, if
 “ there were but Hopes left them of a better, if they could
 “ but compass Certainty, that a painful Drudging, and a
 “ thrifty Saving would one Day bring them out of that
 “ Hell of Bondage.

“ In this, questionless, they are entirely miserable, in
 “ that they are sensible of the Wretchedness of their pre-
 “ sent Fortunes, and dare not labour nor expect an Al-
 “ teration.”

Hitherto Dr. *Heylin* in his Survey of *France*.

But

But, What is the Reason why those miserable and wretched People expect no Alteration of their Condition? Why, the Reason must be evident to all Mankind; The French have lost their *Augustissimus Francicarum Libertarum Conventus*, & *Sacra Anchora*; i. e. The Assembly of their Three Estates, whereby their Government is now become Despotical.

Now for the Illustration of what hath been said in this *Introduction*; and that not only the present, but future Ages may be better enabled to understand and have a right Notion of several weighty Points relating to the ancient Government of this famous Kingdom; I have, after great Pains and Charges, at last adventured to publish the following Treatise to the World: And I cannot persuade myself that the ingenuous and judicious Reader will think his Time ill spent in perusing that which I have here given him with all the Truth and Sincerity of an impartial and unbiassed Mind: And that himself will find that the main End and Scope of the whole hath been only levelled at the publick Good and Happiness both of King and People.

For whatever I have, or shall say in this Collection, I would not be so understood as if I denied to the King his just Prerogatives. No; I never did, nor I hope never shall. For I hold this Golden Royal Maxim:

“That the King’s Prerogative is to defend the People’s Liberties; and that the People’s Liberties strengthen the King’s Prerogative.”

*Fallitur egregie quisquis sub Principe credit
Servitium; nunquam Libertas gratior extat,
Quam sub Rege pio. Quos præficit ipse regendis
Rebus, ad Arbitrium Plebis Patrumque reducit,
Conceditque libens, Meritis seu Præmia poscant,
Seu punire velint. —*

King Charles
the First’s Speech
in Parliaments,
upon signing the
Petition of
Right
See Pulton’s
Stat. An. 3
Car. I.

Claudian de
Laudibus Sti-
liconis, lib. 3.
pa. 183. imp.
Amstel. 1628.

Which, although it was spoke of the *Roman* Govern-
ment, yet it is a most excellent and lively Description
of

INTRODUCTION.

of the constituent Parts of this Political Government of *England*.

And therefore every Good Man, even from the Nature and Rule of Government in general, ought to honour the Constitution, and reverence the Laws of this our Country, according to that of the Poet,

Vir Bonus est Quis ?

Qui Consulta Patrum, qui Leges Juraque servat.

Hooker's Ec-
clesiastical Po-
lity, in his Life,
fol. 51.
Anno 1607.

“ For of Law (says the Learned and Reverend Mr. *Hooker*)
“ there can be no less acknowledged, than that

“ 1. Her Seat is the Bosom of God,

“ 2. Her Voice is the Harmony of the World ;

“ 3. All Things in Heaven and Earth do her Homage,
“ the very least as feeling her Care, and the greatest as not
“ exempted from her Power.

“ Both Angels, and Men, and Creatures of what Con-
“ dition soever, though each in different Sort and Manner,
“ yet all with uniform Consent admiring her as the Mo-
“ ther of their Peace and Joy.”



Jus

Jus Parliamentarium,

OR, THE
 ANCIENT JURISDICTION
 OF THE
 Most High Court of Parliament
 OVER THE
 INFERIOR COURTS
 IN
 WESTMINSTER HALL, &c.

PART I.

CHAP. I.

Concerning annual Parliaments, called for the redressing of the State of the Realm in such things as require Amendment, and in particular for the final determining of all such Cases, where the Law failed, and no Remedy had been ordained: Or where Points in former Statutes had need of Exposition, and where the Judges of Westminster Hall differed in their Opinions concerning what the Law was in several Cases.

SIR Henry Spelman gives us an Account that the *English-Saxons* had their Folcmote, which was held *semel quotannis sub initio calendarum Maii (tanquam in annuo Parlamento)*. And that to such Yearly Assemblies *convenere regni Principes, tam Episcopi, quam Magistratus, Liberique homines*. Wherein *consulitur de communi salute*,

1. *De Pace,*
2. *De Bello,*
3. *Et de Utilitate publica promovenda,*

A

This

This I understand from the Subject Matters whereof that Council did treat and debate, that it could be no other Assembly, than that which was called their *Witenagemote*, or what we now call Parliament.

Spelm. Con-
cill. Tom. I.
fol. 334.

And Sir *Henry* farther observes, that under King *Beornulfe*, *Annis singulis, concilia singula, id est, concilia quatuor in quatuor annis celebrata.*

Camden,
Brit. fol. 202.

Mr. *Camden*, out of an old Book of the Abby of *Abbindon*, informs us, that *Abbindon* was in the *Saxon* Times called *Sheouesham, civitas famosa*, and that *hic sedes regia, huc, cum de regni præcipuis & arduis tractaretur negotiis, concursus fiebat populi.* And Mr. *Somner* thus, — *Eloperhoo, Eleoperho, locus conciliorum Anglo-Saxoniorum frequentia celeberrimus — Hæc autem loco illi ad concilia annuatim celebranda ab Anglo-Saxonibus designato adeo conveniunt — ut mihi videatur veri non ab simile, loci nomen, ibi mendose scriptum Sheouesham pro Cleovesham, and places it in umbilico or medio regni, which he takes Abbindon there to have been.*

Somneri Dic-
tionar. Saxo-
nico-Latino-
Anglicum in
voce Eleope-
rho.

Idem in voce
Abbanbune,
Abindonia.

But to descend to latter Ages.

Mr. Prynne's
3d Tome of
The Supreme
Ecclesiastical
Jurisdiction
of our English
Kings, fol.
157.

I. Pope *Gregory X*, having in the third Year of *Edward I*, sent *Reymundus de Negoriis*, his Chaplain, as his Nuncio into *England*, for certain Affairs of the Church, especially to demand and receive of that King, *Annuum censum, in quo constat eidem teneri pro instanti, & septem transactis annis, in quibus non fuit census hujusmodi persolutus*, which I understand was King *John's* annual Tribute of a thousand Marcs.

Edward I, upon the Receipt of the Pope's Bull, sent the following Answer to the Pope himself.

Rot. Clauf. 3.
Ed. 1. m. 9.
Cedula.

*S*anctissimo in Christo patri & domino domino *G.* divina providentia sacrosanctæ Romanæ & universalis ecclesiæ summo pontifici, *Edwardus ejusdem gratia rex Angliæ, dominus Hiberniæ, & dux Aquitaniæ, cum reverentia & honore salutem & pedum oscula beatorum.*

Mandavit nobis olim per literas Apostolicas, quas prona mentis devotione recepimus, vestra sanctitas reverenda, ut annum censum, in quo, sacrosanctæ Romanæ ecclesiæ ratione, regni Angliæ pro octo præteritis annis asseritis nos teneri, venerabili viro magistro R. de Negoriis capellano vestro assignari liberaliter ac integre nomine prædictæ Romanæ ecclesiæ faceremus.

Nuper autem alias literas vestras recepimus cum reverentia, continentes, quod cum nos responsonem petitionis solutionis census annui memorati, quam nobis prædictus capellanus vester exposuit, vestræ & ecclesiæ Romanæ nomine, diligenter deliberatione consilii procerum regni nostri in Parlamento, quod circa octabas Resurrectionis Dominicæ celebrari in Anglia consuevit, pro eo duxerimus reservand. quod tempore receptionis

receptionis prædictarum literarum vestrarum noviter ejusdem regni nostri gubernacula sumpseramus : nunc de hujusmodi censu sine ulteriori procrastinatione impendi faceremus eidem satisfactionem plenariam capellano.

Fatemur siquidem, sanctissime pater & domine, [nos] ad Parliamentum nostrum in octabis Resurrectionis Dominicæ proximo præteritis regni nostri

1. Prælatos &
2. Proceres

evocasse, ibique multa statuisse, divina gratia favente, quæ

1. Meliorationem status ecclesiæ Anglicanæ,
2. Reformationem regni ejusdem respiciunt,
3. Et communis profectus populi sapiant incrementa.

Set antequam eidem Parlamento, propter negotiorum multitudinem quæ reformationis remedio indigebant, finem imponere valeremus, eodem capellano vestro responsonem debitam sibi fieri instanter postulante, quædam nos gravis invasit, sicut Domino placuit, infirmitas corporalis, quæ perfectionem multorum aliorum negotiorum & deliberationem petitionis census annui supradicti, de quo dolemus non modicum, impedivit, sicque cum occasione infirmitatis hujusmodi, (a qua per Dei gratiam, cujus est percutere & mederi, incepimus convalere) idem Parliamentum fuerit dissolutum, & propter hoc nequiverimus super petitione census ejusdem deliberationem habere, cum

1. Prælati &
2. Proceribus

antedictis, sine quorum communicato consilio sanctitati vestræ super prædictis non possumus respondere ; ut jurejurando in coronatione nostra præstito sumus astricti,

Quod jura regni nostri servabimus illibata, nec aliquid, quod diadema tangat regni ejusdem, absque ipsorum requisito consilio faciemus.

Reverendæ benignitati vestræ humiliter supplicamus, & pro dono petimus speciali, quatenus moleste non ferat sanctitas vestra, si ad præsens vobis super prædictis, sicut vellemus, non possumus respondere ; immo patientia vestra paterna, si placet, nos super hoc habere dignetur de gratia excusatos.

Pro firmo scituri, pie pater & domine, quod in alio Parlamento nostro, quod ad festum Sancti Michaelis proximo futurum intendimus, dante Domino, celebrare, habito & communicato consilio cum

1. Prælati &
2. Proceribus

memoratis, vobis super præmissis certam de ipsorum consilio dabimus responsonem.

Conservet vos Dominus ecclesiæ sanctæ suæ per tempora longiora.

Teste meipso apud Westmin. xix. die Januarii, anno regni nostri tertio.

Thus

Thus have I given the Reader this so remarkable an Answer, which *Edward I.* gave the Pope's Bull, and that at length, to prevent all Cavils.

And now I expect it will be asked how I can apply the Answer to my Purpose? To whom I say I will make use of it by way of

REFLECTIONS.

The first is, that before the third of *Edward I.* Son and next Successor to *Henry III.* who reigned thirty six Years, *Parliamentum circa octabas Resurrectionis Dominicæ celebrari in Anglia consueverat*: That is, a Parliament had been accustomed to be held in *England* about *Easter*, and the Law says, that it is a thing incident and inseparable to a Custom to be Time out of Mind.

The Conclusion then of this Reflection must be, that there were annual Parliaments long before 49 *Hen. III.*

My second Reflection is, that the King farther tells the Pope, that he had held *Parliamentum in octabis Resurrectionis Dominicæ (tunc) proximo præteritis.*

Rot. Statut. n.
Coke's 2 Inst.
fol. 156.

Now the Parliament which King *Edward* here means, was the Parliament of *Westminster* the first, which was held *lendemain de la clause de Pasche, l'an de son reign 3. annoque Domini MCCLXXV.* and called out of the King's great Zeal and Desire to redress the State of the Realm in such things as required Amendment for the common Profit of the holy Church, and of the Realm.

The Conclusion of this Reflection must be, that at that Parliament the Statute of *Westminster* the first was made.

My third is this; In the Answer it is said, that the King to that Parliament, *regni Prælatos & Proceres evocavit.*

Objection.

There is no Commons, say some, to be found in this Parliament, nor any thing that tends towards a Proof that the Commons had any Share in making any Laws therein; but the *Prælati & Proceres* were the only Members thereof.

For the Commons, as at this Day known, are not to be found amongst the Community of *England* in old Historians; and the King and his Council were Judges whether, and when, Burgesses ought to come to Parliament.

Answer.

There are some Degrees of Shame, over which when People are once past, all things become so familiar to them, that they can no more be put out of Countenance.

But now to refute the Objection; for who can expect such gross Errors should be confuted before this Age, since in former Times they were not so much as dreamt of?

Rot. Statut. n.
Coke's 2 Inst.
fol. 156.

The Statute-Roll of the Parliament of *Westminster* the first, proves, beyond all Contradiction, that these Laws were made *per l'assentment*

1. *Des Archevesques, Abbes, Priors,*
2. *Countes, Barones,*
3. *Et tout le Communalty de la Terre illonques summones.*

Or, as the Register of Writs, a Book of great Authority in the Law, faith in a Writ framed upon the XXVth Chapter of this very Statute, that

Registrum omnium Breuium tam Originalium quam Judicialium, fol. 189.

De Communi Concilio regni statutum fuit.

What then must the Conclusion of this Reflection be? Why this, that under the general Phrase of *regni Prælati & Proceres*, mentioned in *Edward* the First's Answer, the Commons must of Necessity be comprehended, as well as the Archbishops, Bishops, Abbots, Priors, Earls and Barons.

And, by like Conclusion, the Commons were not first introduced into Parliament, nor could first begin to be an essential Part of Parliament in the 49th of *Henry III.* by Rebellion, which was but eleven Years before 3 *Edw. I.* notwithstanding so many mercenary Pens have in bulky Volumes confidently asserted they did.

And as for the House of Lords, it hath been with equal Assurance published to the World; that about the same time that King called what Earls and Barons he thought fit to Parliament, and no others; and that what he began, that is, to call such Earls and Barons *quos dignatus est*, such as he pleased, *Edward I.* and his Successors, constantly observed.

And then very complementally conclude, that as these new Constitutions of Parliaments had their Origin from the King's Authority, so from the same Authority and Time it was known, that this most excellent great Council received its Perfection, and became exactly fitted for the Government of these Nations.

Fabulæ Fabulissimæ

But all this requires a more copious Discourse, to detect and lay open the transparent Sophistry of such pernicious Misconceits and desperate Positions, touching the original Constitution of our *English* Parliaments;

And therefore I pass on,

II. In the Parliament Roll of the 5th of *Edward II.* among other Ordinances made at *London*, this was one:

De Parlement tenir de Ana en Ana.

PUR ceo que moultz gentz sont delaies en la court de Roy de leur demaunde, partant que la partie alledg, que les demaundans ne devient estre responduz saunz le Roi; & auxint moultz de gentz greves par les ministres de Roi; encountre droiture des queles grevances home ne purra avoir recoverier saunz commune Parlement: Nous ordainoms, que le Roi teigne Parlement une foiz par ann, ou deux foiz, si mestier soit, & ceo en lieu convenable.

Rot. Parl. 5 Ed. II. Ordinationis apud London, N^o. 29.

B

Et

Et que en meismes les Parlements soient les pledz, que sont en la dite forme deslaiez, & les pledes la ou les justices sont en diverses opinions, recordes & termiez.

Et en meisme la manere soient les bills terminez, que liverex seront en Parlement si avant, come lei & reson le demaunde.

Pulton's Stat.
4 Edw. III.
cap. 14.

III. To back which by a Statute made 4 *Ed. III.* it was accorded that a Parliament should be holden every Year one, and more often, if need be; so that it is plain, this Statute was but declaratory of the ancient Custom of the Realm in that Point.

Idem. Stat.
36 Edw. III.
cap. 10.

IV. Besides by the Statute of the 36th of the same King, it was enacted, That for Maintenance of the Articles of that Parliament, and Statutes, and Redrefs of diverse Mischiefs and Grievances, which daily happened, a Parliament should be holden every Year, as at another Time has been ordained by another Statute.

V. In a Parliament held the 50th Year of this Reign,

Rot. Parl.
50 Edw. III.
No. 186.

Item, prie la Commune, que pleise establir par estatute, en cest present Parlement, que chescun an soit tenu un Parlement, de faire corrections en Roialme des errors & fauxities, si uuls y soient trovez.

Respons.

En droit du Parlement chescun an il y a ent estatutz & ordinances faits les queux soient duement gardes & tenus.

VI. Moreover in the Parliament 1 *Richard II.* the Commons made use of the Ordinance 5 *Edward II.* by way of Petition; which, together with the Answer that was given thereunto, I have thus translated.

Rot. Parl.
1 Rich. II.
No. 95.

Item, Because many People are delayed in the King's Court of their Demands; for that sometimes the Party alledges, that the Demands ought not to be answered without the King, and sometimes the Party Plaintiff alledges in like Manner, and also many People are aggrieved by the King's Ministers, against Right of which Grievances a Man cannot have Remedy without a Parliament: May it please our Lord the King to hold a Parliament once a Year, at the least, and that in a Place convenient; and that in such Parliaments the Pleas so delayed, and the Pleas in which the Justices of different Opinions may be recorded and determined; and that in like manner such Bills as shall be delivered in Parliament may be determined, as Reason and Law shall require.

Respons.

Vid. Stat.
14 Edw. III.
cap. 5.

As for the holding a Parliament every Year, let the Statutes made for the same be held, the King will have his Pleasure. And as for the Pleas, concerning which the Justices differ in Opinions, there are Statutes

Statutes already enacted thereupon, which the King wills that they may be kept and firmly held.

VII. Furthermore, amongst other Causes for which the Parliament of 2 Richard II. was called, the Lord Bishop of *St. David's* by the King's Command declared,

Secondment, pur ce que autre foiz a la priere des seigneurs & communes estoit ordaignez & assentuz, que parlement serroit tenuz chescun an, mesme nostre Seigneur le Roy, veuillant tout dis faire tenir tout bone covenant & mettre en execution chescun ordinance fait en ses parlements si ad il pur tant fait somondre ce parlement.

Rot. Parl.
2 Rich. II.
No. 4.

These are Instances produced to prove that the Judges of *Westminster* were not to follow their own Discretions and Opinions in Matters of Difficulty, which arose in their respective Courts; but the Judgment of such extraordinary Cases were to be directed and regulated in Parliament, where the ultimate, decisive, and judicial Power was lodged, and not in the Judges whose Authority was always subservient to that of the supreme Court of the Kingdom.

VIII. Lastly, at another Parliament held at *Westminster* 11 Richard II. *Thomas de Woodstock*, Duke of *Gloucester*, the King's Uncle, and *Thomas de Arundel*, Bishop of *Ely*, *de communi consensu totius parliamenti*, sent to the King then at *Eltham*, *qui salutarent eum ex parte*

Knighton de
Eventibus An-
glie, col. 2681.
lin. 33.

1. *Procerum,*

2. *Et Communium,*

parliamenti sui, sub tali sensu verborum, ei referentes vota eorum :

Domine Rex,

1. *Proceres & Domini,*

2. *Atque totus populus communitatis*

parliamenti vestri cum humillima subjectione se commendant excellentissimo — regalis dignitatis vestrae cupientes prosperum iter invincibilis honoris vestri contra inimicorum potentiam, & validissimum vinculum pacis & dilectionis cordis vestri erga subditos vestros in augmentum commodi vestri erga Deum & salutem animae vestrae, & ad inedicibilem consolationem totius populi vestri quem regitis. Ex quorum parte haec vobis intimamus, Quod ex antiquo statuto habemus & consuetudine laudabili & approbata, cujus contrarietati dici non valebit, quod Rex noster convocare potest Dominos & Proceres regni atque Communes semel in anno ad parliamentum suum, tanquam ad summam curiam totius regni: In qua omnis aequitas relucere deberet absque qualibet scrupulositate vel nota, tanquam sol in ascensu meridiei, ubi pauperes & divites pro refrigerio tranquillitatis & pacis, & repulsione injuriarum, refugium infallibile quaerere possent, ac etiam errata regni reformare, & de statu & gubernatione regis & regni cum sapientiori consilio

consilio tractare, & ut inimici regis & regni intrinseci & hostes extrinseci destruantur, & repellantur, quomodo convenientius & honorificentius fieri poterit, cum salubri tractatu in eo disponere & prævidere, qualiter quoque onera incumbentia regi & regno levius, ad ediam communitatis, supportari poterunt.

Videtur etiam eis, quod ex quo onera supportant incumbentia, habent etiam supervidere qualiter & per quos eorum bona & catalla expendantur; i. e.

That by ancient Statute and Custom laudable and approved, which no Man could deny, the King might once in the Year, convene his Lords and Commons to his Court of Parliament, as to the highest Court of the whole Realm.

In which Court (they said) all Equity ought to shine forth, without the least Cloud or Shadow, like the Sun in his Meridian Glory; where Poor and Rich, refreshed with Peace and Ease of the Oppressions, may always find infallible and sure Refuge and Succour: The Grievances of the Kingdom may be redressed, and the State of the King, and Government of the Realm, debated with wisest Counsels; the domestick and foreign Enemies of King and Kingdom destroyed and repelled; and that the Charges of both may be sustained with more Ease to the People.

It seemed also to them, that since they bare their Charges, they should have a Right to inspect, how and by whom their Goods and Chattels were expended.

Thus we have seen the Antiquity of calling annual Parliaments; it being truly observed,

Sir Edward Turner, then Speaker of the House of Commons, his Speech to K. Char II, Friday, February 8, 1666. on a Prorogation, fol. 12.

I. That nothing conduceth more to the Happiness of a Nation, than a right Understanding between the Prince and the People; and nothing more advanceth this Correspondence, than frequent Meetings in Common Council: For by the Wisdom of our Fore-Fathers, the Security of our Lives, Liberties, and Properties, is lodged in our *English* Parliaments: And that so gracious have been our Kings, that for the Satisfaction of their People, they made several Laws, some for Triennial, some for Annual Parliaments.

Lord Chancellor Nottingham's Speech to both Houses of Parliament, March 6, 1678-9, fol. 18.

II. We use to say, and say truly, that the King, when seated in Parliament, is then in the Fullness of his Majesty and Power, and shines forth with the brightest Lustre.

Ibid. fol. 9, 10. K. Charles II. his Letter, directed to the Speaker of the Commons from Breda, April 14, 1660, f. 4.

III. For a Parliament is the great, the wise, and powerful Council of this Nation.

IV. And lastly, his late Majesty, in a Letter sent to the Speaker of the House of Commons from *Breda*, declared, That he did believe Parliaments

Parliaments to be so vital a Part of the Constitution of the Kingdom, and so necessary for the Government of it, that he well knew, neither Prince nor People could be in any tolerable Degree happy without them.

And therefore for the Judges of *Westminster-hall* to presume to give any decisive Opinions in Matters of high Deliberation, and the greatest and weightiest Affairs, which may concern the Well-being of the Church, and all other Interests of the Crown, and Nation, what is it, but an intolerable Usurpation, both upon the King's Prerogative Royal, and the Rights and Being of Parliaments? Which consequently alters and destroys the whole Frame and Constitution of the Government itself.

So that there is no Reason in the World for those Judges, under the vain and absurd Notion of being the only Keepers and Expounders of the Laws for Publick Good, to deny to adjourn all such Cases *usque ad proximum Parliamentum, propter difficultatem*, or rather, *propter impotentiam & defectum potestatis suæ*, as belonging *ad aliud forum & ad aliud examen*, which, by the Law and Custom of the Realm, was to be held *semel in anno*, and of which Law and Custom they were obliged by their solemn Oaths, made *coram Deo, Angelis, & Hominibus*, before God, Angels, and Men, to take Notice, and for what concerned them, bound to observe and keep, leaving it to the Pleasure of the King, whether he would call an annual Parliament, or not, in which such Cases might be considered of and determined: For Judges ought to determine or prophesy *de futuris*.

Now it being so evident, *quod ex antiquo statuto, & consuetudine laudabili & approbata, cujus contrarietati dici non valebit*, that a Parliament was to be holden once a Year, or oftener, if need were, the Judges of *Westminster-Hall* could have no Colour to proceed hastily to Judgment, especially in Cases of such Weight, which either directly, or by Consequence, affected the whole Nation, under Pretence that there must otherwise have been Delay or Defect of common Justice, for want of a Parliament to redress Grievances.

Since it was no more to be supposed that a Parliament should be discontinued beyond the legal Time of meeting, than that there should be no Judges seen in *Westminster-Hall*, or that the Courts there should not be suffered to sit in Term-time: For the one depended upon the Will and Pleasure of the King no more than the other, and the former was as firmly established, as the latter is or can be.

So that for any Judges to have fancied this, would have been a strong Instance of what Mens Wits could do when once they have resolved to break through any thing.

But no Pretence of Necessity or Danger, no Insinuation of doing the Prince Service, nor any Excuse, that what was done, was done out of a good Intention for general Benefit, or to say, that was done according

ording to Conscience, or the best Measure of a Man's Understanding, can by the Rules of Justice be allowed to justify any Advice or Counsel, which tends to overthrow the Constitution of the Kingdom, and to subvert the Laws of the Land; such Advice and Counsel never can, nor ever ought to be justified by any Circumstance or Occasion whatsoever.

The Ld. Keeper's Speech in the Upper House of Parliament, November 3, 1640. p. 14. Speeches and Passages of Parliament, from the 3d of Nov. 1640. p. 14.

A Declaration of diverse Rights and Liberties of the People, to the King's most excellent Majesty, Anno 3 Car. I.

Pulton's Stat. 3 Car. I.

Lib. 2. cap. 2. p. 50, 51.

And it is further to be noted, that if any under the Prince, as his Instrument, that have had the distributing of Justice to his People, have not done as they ought, the Fault is their own; for, according to the Golden Rule and Maxim of the ROYAL MARTYR, *He serves the King best, that serves him with Honesty and Integrity.*

And give me leave to add out of the *Petition of Right* (to which he gave his Royal Assent) that all Officers and Ministers ought to serve the King according to the Laws and Statutes of this Realm^b, as they tendred the Honour of his Majesty, and the Prosperity of this Kingdom.

Sir Thomas Smith, Doctor of Laws, and Secretary of State to Queen Elizabeth, in his Tract *De Republicâ & Administratione Anglorum*^c, informs the learned World, what the ancient Government of England was, whose Words are these:

De Parlamento [Anglorum] ejusque Potestate.

IN Comitibus Parliamentariis posita est omnis augustæ absolutæque potestatis vis: Quippe quemadmodum robur & virtus Angliæ dicuntur in acie residere, quia illic cum dynastia cæteraque nobilitate plebeque Rex ipse adest; ita quoties in pate de rebus arduis deliberatio incidit, dynastia regulique præstantioris in republica partis vice defunguntur; equites, armigeri, nobiles, & plebei, reliquæ multitudinis locum obtinent; cleri nomine conveniunt præsules; mox animam quasi & colophonem addit jussus principis.

Quod bonum felixque regno totique reipublicæ sit monent, simulque super eo consilia communicant; tum post bene longum deliberandi spatium, ter recitata pro more loci schedula, & in utraque domo ratidibus agitata, seorsimque ambarum partium calculis comprobata, regio demùm assensu confirmatur: quodque sic gestum est, principis & universi regni factum interpretamur.

Proindè nullus postea cuiquam oboriri debet querelæ locus; sed quia rescindi amplius non potest, & promulgatis semel legibus omnes tenemur acquiescere, firmum, stabile, & sanctum appellamus; & legis apud nos vigorem habet, quicquid hujusmodi consensus perfecit.

Parlamentaria comitia veteres leges jubent est irratas, novas inducunt; præsentibus juxta ac futuris modum constituunt; jura & possessiones hominum privatorum commutant; spurios natalibus restituunt; cultum divinum sanctionibus corroborant; pondera & mensuras variant; jus in regno succedendi præscribunt; incerti juris controversas dirimunt,

ubi

ubi nihil lege cautum fuit ; censum agunt ; capitaciones & vectigalia indicunt ; delictorum gratiam faciunt ; afflictas & majorum sceleribus perditas familias erigunt ; vitæ necisque potestatem in eos obtinent, quos ad hujusmodi disquisitiones princeps avocaverit.

Atque, ut concludam breviter, quicquid in centuriatis comitiis, aut in tribunitiis populus Romanus efficere potuisset, id omne in comitiis Anglicanis, tanquam in cætu

1. Principem,
2. Populumque

repræsentante, commode transigitur.

Interesse enim illorū conventu omnes intelligimur cujuscunque amplitudinis, status aut dignitatis, princepsve aut plebs fuerit, sive per teipsum hoc fiat, sive per procuratorem.

Nam omnibus peræque gratum esse oportet, quicquid ex senatus consulto parlamento profectum est, ut quod pro imperio & potestate decernat

1. Serenissimorum principum majestas,
2. Episcopi. regulique,
3. Equites & cives,

qui eo a provinciis & municipiis ablegati plebem referunt.

Which being translated runs thus :

Of the Parliament, and Powers thereof in Parliamentary Assemblies, all the Strength of Imperial and Absolute resideth. For that, as the Strength and Courage of *England* are said to consist in the Militia, because there, together with the great Officers, and the rest of the Nobility and common People, the King himself is present ; so whenever in Time of Peace, Matters of weighty Moment are to be debated, the Officers and the Noblemen act the more honourable Parts in the Common-Wealth ; the Knights, Esquires, Gentlemen and Plebeians, answer to common Soldiers ; the Prelates are assembled in the Name of the Clergy, and then the Prince's Assent gives as it were Life and Perfection to the whole.

They advise what may be beneficial and happy to the Kingdom, and the whole Community, and consult together thereupon ; then after a Debate of some Length, a Scroll having been thrice read, according to Custom, and argued in both Houses, and carried by the Votes of each House apart, is finally confirmed by the Royal Assent ; and what is so pass'd we look upon as the Act of the Prince, and of the whole Kingdom.

And therefore no Man afterwards must pretend to make Complaints, for because it cannot be rescinded, and Laws being once published we are all bound to acquiesce in them, therefore we call them firm, stable, and sacred ; and that has amongst us the Force of a Law, that hath been thus assented to.

Parliamentary.

JUS PARLIAMENTARIUM.

Parliamentary Assemblies 1. Repeal former Laws; 2. Enact new ones; 3. Regulate Times present and to come; 4. Transfer the Rights and Possession of private Persons; 5. Legitimate Bastards; 6. Make Laws concerning the Worship of God; 7. Change Weights and Measures; 8. Settle the Right of Succession; 9. Determine Controversies where the Law is uncertain, or has made no Provision; 10. Value Mens Estates; 11. Impose Pole-Money and Customs; 12. Pardon Offences; 13. Restore Families that are ruined by the Delinquencies of their Ancestors; 14. They have Power of Life and Death over those that are employed by the Prince in such Cases.

And to conclude in a Word, whatever the People of *Rome* could do in their *Comitia Centuriata*, or *Tribunitia*, all those Things are properly transacted in *English* Parliaments, as being Assemblies in which both

1. Prince, and
2. People

are represented; for we are all supposed to be present in that Assembly, of whatever Quality, State, or Dignity, whether Noble or Ignoble, either in Person or by our Representatives.

For whatever proceeds from an Act of Parliament, ought to be equally acceptable to all, as being authoritatively decreed

1. By the Majesty of most Serene Princes,
2. By Bishops and Noblemen, and
3. By Knights and Citizens,

who being deputed by the Counties and Burroughs, represent the Commonalty of the Land.

By this we may sufficiently be informed, what entire, plenary, and absolute Authority, Preheminence and Jurisdiction, were inseparably annexed, united, and belonging to Parliaments.

And for a full Confirmation that these were no Fancies of the learned and loyal Secretary, I will add thereunto the highest Proof and Evidence that can be given, *viz.* an old Statute made in the 17th Year of *Edward II.*

Pacito coram
Domino Re-
ge apud West-
min. de ter-
mino Sanctæ
Trinitatis
Anno Regni
Regis Edwar-
di filii Regis
Edwardi 17^o.

Les Choses que seront establir pur l'estate.

I. *De nostre Seigneur le Roy, & de ses Heirs.*

II. *Et pur l'estate du Roialm, & du Peuple, soient trettez en Parliaments, par nostre Seigneur le Roi, & par l'assent*

1. *Des Prelats, Countes, & Barons,*
2. *Et la Communalte du Reaum,*
auxint come ad este accustomé ceo en arere.

Thus

Thus the Statute in general; but to be more particular.

I. Whatever concerned the establishing of the State of the King and his Heirs.

II. Whatever concerned the Estate of the Realm, and People, was to be treated of in Parliaments.

III. Not by the Judges of *Westminster Hall*, but according to all the Rules of Equity and Justice in the World, and the admirable Order and firmest Composition of the best Governments: *viz.*

1. By the King;
2. By the Prelates, Earls, Barons; and
3. By the Communalty, or the Commons of the Realm.

This was no new Law, introduced in the Reign of *Edward II.* It was only declarative, what the *Lex & Consuetudo Parliamenti* was in Times past.

For as for the Judges, it was solemnly declared, *per Seignours du Parlement, sur deliberation & advisement, & per assent du Roy [R. II.]* in these Words: *Quex bas courts & places ne sont que executors d'auncien leys, & custumes du roialm, & ordinances & establishments du Parlements.*

Rot. Parliam.
11 R. II. part
3. N^o 14.

Here we have a direct Text, which warrants the general Propositions I at first laid down: *viz.*

I. That the redressing of the State of the Realm, in such Things which required Amendment, and that in particular the final determining of all such Cases where the Law failed, and no Remedy had been ordained, was the proper Business, not of any Inferior Courts, but of the supreme Court of the Kingdom; the Parliament.

Several Conclusions drawn from the general Propositions which have been laid down in this Chapter.

II. Or where Points in former Statutes had need of Exposition, that was not to be done but by Parliament.

III. Or where the Judges of *Westminster Hall* differed in their Opinions, what the Law was in several Cases; the Right of declaring the Law was only in Parliament.

Because *les bas courts & places* in *Westminster Hall*, were but Executors of the ancient Laws and Customs of the Realm, and Ordinances and Establishments of Parliament.

IV. Which was to be held *once* at least in every Year.

D

For

Coke, lib. 10.
in Præfat.

For *Andrew Horn*, whom *Sir Edward Coke* calls *Vir eruditus satis & prudens*, and who flourished *sub regno Edwardi primi*, in his Chapter de *Abufion de la Common Ley*, tells us, that

Le Myrrou
des Justices,
cap. 5. sect. 1.
p. 282.

Une abufion est, que ou les Parlements se duiffent faire pur le salvation des almes des trespaffors, & ceo a Londres & deux foitz per An, la ne font ils forsque rarement, & alia volunt le Roy, pur aides & cuilets de treseore.

So that it was one Abufion in the Law, and a main one too, that whereas Parliaments ought in those Times to be held twice a Year, they were then but rarely held at the Pleasure of the King, for Aids and getting of Money.



C H A P.

C H A P. II.

Several Authorities to prove, that by the ancient Law and Custom of England, when any Case of Difficulty did happen to arise in Westminster Hall, the Judges adjourned to such Cases, propter Difficultatem, usque ad proximum Parliamentum.

BRAC^TON, a famous Judge in the Reign of King Henry III. Bracton, lib. 1. cap. 2. fol. 1. b. tells us, *Si aliqua nova & inconsueta emerferint, & quæ prius usitata non fuerint in regno, si tamen similia evenerint, per simile judicentur, cum bona sit occasio a similibus procedere ad similia. Si autem talia nunquam prius evenerint, & obscurum & difficile sit eorum judicium, tum ponantur judicia in respectum usque ad Magnam Curiam (i. e. to the Parliament) ut ibi per concilium curiæ terminentur.*

And he gives the following Reason, wherefore such an Adjournment ought to be: *viz.*

Licet sint nonnulli qui de propria scientia præsumentes, quasi nihil juris ignorent, nolunt alicujus consilium expetere; in quo casu honestius & consultius eis foret consilium habere quam aliquid temere definire, cum de singulis dubitare non sit inutile.

Pursuant to this ancient Rule of Law, the Statute of *Westminster* the Second was made *ann. 13 Edw. I.* which enacts, That whensoever from thenceforth it should fortune in the Chancery, that in one Case a Writ is found and in like Case falling under like Law, and requiring like Remedy is found none; *Concordent clerici de cancellaria in brevi faciendo vel atterminent, quærentes in proximum Parliamentum; & scribantur casus, in quibus concordare non possunt, & referant eos ad proximum Parliamentum.* Coke's 2^d Inst. fol. 405. Stat. Westm. ii. cap. 24.

From hence we may observe, that though the Court of *Chancery* is only mentioned in this Statute, yet the Reason of the Statute extends (as we shall show by and by) to the rest of the Courts in *Westminster Hall*, in Cases of Difficulty. And indeed *Bracton* himself proves it: for he says in general,

“If any new and unusual Matters arise in Judgment, the giving of Judgment ought to be respited 'till the Sitting of a Parliament, that there they may be considered of and determined.” For which he gives

gives this Reason: That though some presume to that Degree upon their own Learning and Judgment, as if they had so digested every Point of Law, that they were above asking the Advice of any; yet it was more honourable and safe for them to have Advice, than to determine any Thing rashly, and over hastily.

Inter commu-
nia de Termi-
no S. Trinit. de
ann. 28 Edw. I.
penes Reme-
moratorem
Dom. Thesaur.
in Scaccario
remanente.
Cantebr. pro
episc. Eliensi.

In *Trinity Term, Ann. 28 Edw. I.* it appears, That upon *Saturday*, being the Feast of *St. Barnabas*, *Robert Hereward*, Steward to the Bishop of *Ely*, came, and on the Bishop's Behalf shewed to the Treasurer, the Barons, and others of the King's Council present in the *Exchequer*, that the said Bishop claimed lately before the King being then at *Ely*, this Liberty, *viz.* That no Steward nor Marshal, nor any other Minister of the King ought to execute his Office within the Isle of *Ely*, but by the Bishop's Ministers; and that the King adjourned the said Bishop to prosecute that his Claim, either in Person or by Attorney, at the King's Return to *London*, before the King's Council; and to shew and alledge for himself whatever, &c.

Wherefore the said *Robert*, in the Bishop's Name, offered to prosecute the said Claim, and to shew and alledge for the said Bishop, how he claimed to have the said Liberty, &c.

Whereupon, *Thesaurario & aliis de concilio regis ibi presentibus visum fuit, quod discussio super negotio prædicto habeatur in Parlamento, coram eodem & concilio suo, & non alibi*, unless the King should expressly command otherwise: And therefore it was ordered, That the said *Robert*, or some other for the Bishop, should prosecute the Matter *ad proximum Parliamentum*.

Inter commu-
nia de Term.
S. Mich. ann. 4
Edw. II. in
Scaccario de
Mag. Will. de
Testa adjor-
nato ad Parliam-
entum,

In *Trinity Term, 4 Edw. II.* *William Servats*, Citizen of *London*, came before *H. de Lacy* Earl of *Lincoln*, then the King's *Locum Tenens*, the King himself being in *Scotland*; & *coram Thesaurario, Baronibus, Justiciariis, de utroque Banco, & aliis de concilio regis*; and exhibited a Petition to them, the Sum of which was,

That himself and one *Champnez* had been summoned by *William Testa* to appear at a Court held before Master *Raymund, generalis auditor causarum curiæ domini Bertrandi Albiensis Episcopi, Camerarii domini Papæ*, in an Action of Debt, at the Suit of one *Perys*: and that notwithstanding the said *William Servats* had served the said *William Testa* with the King's Prohibition; yet the said *Servats* and *Champnez* were excommunicated under the Seal of the Pope's Chamberlain, which (saith the Petition) was prejudicial to the Royal Dignity of our Lord the King; and if it were suffered, *poit tourner a Roi & a son People a grand bounte & damage*: And in the Conclusion of the Petition, prays an Attachment against the said *William Testa*; and produced a Copy of the Prohibition.

This done, *William Testa* was ordered to appear, who confessed, that he had cited the said *Servats* and *Champnez* as aforesaid; but that he had certified the Citation to the said Auditor, before he had received

ceived the King's Prohibition : But that since the Receipt thereof, he had attempted nothing against the Tenor of the said Prohibition.

After which the Record proceeds thus : That forasmuch as the said *William Testa*, at his coming into *England*, when he was admitted *ut Nuncius Papæ*, had been enjoined *ex parte domini Regis*, not to attempt any thing *contra Regem & consuetudinem Regni*, in Derogation of the Royal Dignity, &c.

And forasmuch as it was manifest, that Pleas of Debt and Goods, concerning the Subjects of the Kingdom, and especially Matters of Contract made within the Realm, which did not relate to Matters testamentary or matrimonial, belonged wholly to the Secular Courts, and to the King's Crown and Dignity : And forasmuch as the said *William Testa* acknowledged, that he had cited the said *Servats* and *Champnez* to appear out of the Realm, in such a Plea, viz. *de ipso magistro Willielmo, inde ad iudicium*.

And the said *William Testa* was thereupon adjourned *de die in diem, ad audiendum & recipiendum quod curia inde consideraverit*, &c.

After all which the Record concludes : *idem Willielmus de Testa adjornatur super præmissis ad proximum Parliamentum domini Regis*.

But it may be objected, That there is no mention made in these Authorities, that the Judges adjourned both these Cases to the next Parliament, *propter difficultatem*. OBJECTION.

To which I answer, That though it be not expressly declared to be *propter difficultatem* ; yet, from the Account given of the Proceedings in both the Records, it is plain, that if it was not by reason of Difficulty in Point of Law, it must then be for the Weightiness of the Matters ; which made the Judges to see it very good Reason as well as their Duty not to determine those Cases themselves, but to adjourn them to Parliament, especially the Case of *William de Testa*. ANSWER.

For the Judges could not but very well remember, that he had been impeached and convicted *in pleno Parlamento tanto anno 35 Edw. I. super variis novis & intolerabilibus gravaminibus, oppressoribus, injuriis, & extortionibus, auctoritate domini Papæ communitati [Angliæ] factis* : Which, if they should have been tolerated, would manifestly tend to the Decay of God's Worship, the Ruin of the *English* Church ; the Prejudice, Hurt, and Dishonour of the Crown, and of the Power, Jurisdiction, and Dignity of the *English* Diadem ; and the total Subversion of the State of the Kingdom, and the Laws and Customs thereof. Thus far out of the Impeachment against *William de Testa*. Plac. Parliam. fol. 376. usque 385.

But, besides all this, the better to prepare the Reader's Understanding in the Research we have in hand, it will not be improper in this Place to acquaint him with the Statute of 24 *Hen. VIII.* which ordained, That no Appeals should be used, but within this Realm ; wherein among other Things it is declared, Pulton's Statutes, 24 Hen. VIII. cap. 12.

E

I. That

No Appeals to be used, but within this Realm.

1. That the King's most noble Progenitors,
2. And the Nobility,
3. And the Commons of the Realm,

Had at diverse and sundry Parliaments, as well in the Time of *Edw. I. Edw. III. Rich. II. Hen. IV.* and other noble Kings of this Realm, made sundry Ordinances, Laws, Statutes, and Provisions, for the entire and sure Conservation of the Prerogative, Liberties, and Preheminenes of the Imperial Crown of this Realm, and of the Jurisdiction spiritual and temporal of the same; to keep it from the Annoyance as well of the See of *Rome*, as from the Authority of other foreign Potentates, attempting the Diminution and Violation thereof; as often and from time to time as any such Annoyance or Attempt might be known or espied.

What the Judges had to do in those important and weighty Matters.

Now upon a very slight Speculation into this great Law, I think one may without any Stiffness and Opiniatritie from thence fairly conclude, That the Judges of *Westminster Hall* had nothing to do in those so momentous and so high Points, which concerned the perpetual State of the Kingdom, unless perhaps their humble Advice was asked upon some particular Question: For all those Ordinances, Laws, Statutes, and Provisions, said to be made in the Time of *Edw. I.* and other Kings of this Realm, were made

By the King, and the Lords, and the Commons of this Realm.

I will not digress farther, but will return and proceed to shew, That it was the current Practice of ancient Times for the Judges to adjourn Causes, *propter difficultatem, usque ad proximum Parliamentum.*

Inter memorandum. de Parl. Ed. II. tento apud Lincoln. in quindena S. Hilarii, ann. reg. dicti Regis nono. N^o 1.

In a Parliament held at *Lincoln, anno 9 Edw. II. Injunctum fuit Cancellario, & Thesaurario, & Justiciariis, de utroque banco* (saith the Record) *quod ipsi negotia coram eis in placeis suis pendentia, quæ extra Parliamentum non possent terminari, sub compendio in scriptis redigi facerent; & ea in dicto Parlamento referrent, ita quod ibi de eisdem fieret quod deberet.*

Now certainly let any Man of Sense and Honesty read and weigh the Import of this so plain an Authority; and he must acknowledge,

Many Cases in Law happened in ancient Times in inferior Courts, which were no where determinable but in Parliament.

1. That there were Cases of such a Nature, which in those Times usually fell out, and happened in the respective Courts of *Westminster Hall*, which neither could, nor ought, according to the Law of the Land, to be determined *extra Parliamentum.* And how that Law came to be totally altered and changed by Parliament, has never yet appeared to me.

2. That the Chancellor, Treasurer, and the rest of the Judges, were enjoined to state such Cases in Writing, and to report or declare them in Parliament:

3. So

3. So as in Parliament they might be finally resolved and determined.

My Conclusion from hence shall then be, That the Judges of *Westminster Hall* did not in old Times assume or exercise such a supereminent Power, as some of their Successors have in latter Times done.

In the 17th Year of King *Edward II.* *Roger de Mortimer* with several others rebelled against that King: Whereupon an Inquisition was taken, and thereby it was found, That *Adam* Bishop of *Hereford* was engaged in the Rebellion. The Inquisition being returned into the *King's Bench*, *præceptum est Vicecomiti Hereford, quod attachiaret prædictum Episcopum, &c.* Who appearing in Court, pleaded to the Jurisdiction thereof, in these following Words: *viz.*

Flacit. coram dom. Reg. apud Wigorn. Hereford. Gloucest. & Westmon. de term. S. Hilar. ann. reg. Edw. fil. Edw. 17.

Quod ipse est Episcopus Hereford, ad voluntatem Dei, & Summi Pontificis, & quod materia prædictorum articulorum sibi impositorum adeo ardua est, quod ipse non debet in curia hic super prædictis sibi impositis respondere, nec inde respondere potest absque offensa divina, & sanctæ Ecclesiæ.

Whereupon the Court ordered him personally to appear *de die in diem ad audiendum judicium suum in hac parte.*

Thus the Matter stood 'till the next Parliament, in which we find the Bishop charged, *coram ipso domino Rege in pleno Parlamento*, upon the same Inquisition, with some additional Articles: To all which he pleaded the same Plea as before; and then was delivered to the Archbishop of *Canterbury* as his Ordinary, to have him *coram domino Rege* at a certain Day.

It is true, he was afterwards tried in the *King's Bench*, and the Jury found, That he was *de concordia & adbærentia Rogeri de Mortuomari; ideo consideratum est [per curiam] quod prædictus Episcopus tanquam convictus, &c.*

And it is as true, that in the Parliament 1 *Edw. III.* his Conviction was reversed, for several Errors; amongst which this was one:

Ex Rot. Pat. 3 Edw. III. pars 1. m. 33. Adnullatio recordi, & processus & judicii super Adam. Wigorn. episc.

*Dicit etiam Episcopus, quod in prædicto recordo continetur, quod ipse die Veneris proximo post festum Sancti Petri in cathedra venit apud Westmonasterium, coram ipso domino Rege in pleno Parlamento, &c. nullus dies datus ei fuit in Parlamento, &c. unde petit judicium.**

That is, There was no Day entered upon Record in the *King's Bench*, when the Bishop should appear in Parliament; for want of which the Cause was discontinued: And this the Bishop assigned for plain Error.

* By this it appears, that the Practice of those Times was in the Courts of Westminster Hall, whenever a Cause was adjourned into Parliament, to enter the Continuance of it upon the Rolls, as the Judges of Assize do at this Day, when they adjourn a Cause into the Common Pleas, propter difficultatem.

Now

Now for the better understanding of this extraordinary Case, we must farther consider, That there was a strong opinion in those Days, that the Bishops were not subject to the Temporal Power in criminal Matters, but were to be remitted to the Correction and Censure of the Pope alone: And this is made out by the following Petition of the whole Body of the Clergy, in the Parliament 18 *Edw. III.* which runs in this Form:

Rot. Parliam.
18 *Edw. III.*
n. 23. Artic. 1.
inter Petitiones Cleri.

A nostre Seignieur le Roy prient l'Ercevesque de Cantirbirs, & autres Prelates, & la Clergie de son Roialm, que pleise à lui en maintenance del estate de seint Esglise, grantier & ordiner, que nul Ercevesque ne Evesque soit desormes empeschés ne paraynez, devant ses justices en cause criminale, per queconque voie, desicome sur tiele cause nule alme ne les poet jugger s' n'oun le Pape soulement.

To which that King gave Answer:

Quant au primer article, il avys, que en cause de crime nule Ercevesque ne Evesque soit empeschés devant les justices, si le Roy ne le command especialment, tanque autre remedie soit ordeine.

Conclusions to the main Point in Question.

From all which, these Conclusions, as to the main Point in Question, seem to me to be with great Clearness deducible:

I. That the Bishops pleading in the *King's Bench*, that he was Bishop of *Hereford*, at the Will of God and the Pope, and that the Matter of the said Articles, wherewith he was charged was so difficult, that he ought not to make Answer to that Charge in that Court, nor could make Answer thereunto, without offending God and Holy Church; was no other than a direct Plea to the Jurisdiction of the Court.

II. And that the then Judges of the *King's Bench* did not assume to themselves a Power by their Votes to over-rule that Plea in a summary way, upon Pretence that in case they should mistake the Law, yet the Bishop, if not executed as a Traytor, or his Heirs, might afterwards have a Writ of Error in Parliament: But the Judges, according to the legal Practice of those and succeeding Ages, 'till modern Times, paid so much Reverence to a Parliament, that they stayed all farther Proceedings against the Bishop, and left the Plea to the weighty Consideration and Judgment of the next Parliament.

The Year Book,
2 *Edw. III.*
fol. 7.

In *Hilary Term*, ann. 2 *Edw. III.* one *Elizabeth Caller* sued an Execution for Damages recovered upon the Statute of *Hue and Cry*, upon which the Sheriff of *Staffordshire* returned, that he had levied Ten Marks upon the Bishop of *Coventry* and *Lichfield's* Tenants within
the

the Hundred of *H.* To which the Bishop said, That the Tenants of that Hundred were discharged by a Charter of Exemption granted by King *Richard I.* Whereupon some Disputes in Law arising, there came a Writ to the Judges, *Quod si difficultas aliqua interfit*, the Record should be transmitted to the Parliament; and the Parties were adjourned, &c. *

Now though the King's Writ was sent in this Case, yet even that is a convincing Proof, that it was the Duty as well as Practice of that Age, for the Judges to adjourn Causes to Parliament, *si difficultas aliqua interfit*.

Anno 14 of the same King, Sir *John Staunton* and his Wife, having passed a Fine of certain Lands to *Thomas Grantborn*, who reverted them back, and by that means settled them upon the Wife; Sir *Jeffry Staunton* as next Heir brings his *Formedon en le descendre* in the *Common Pleas*, where (after some Proceedings) upon a Demurrer in Law, Sir *Jeffry* could not get the Judges to proceed to Judgment: Upon which he petitions the King in Parliament; they examine the Matter, and afterwards order a Writ under the Great Seal, containing the whole Matter, to be sent to the Judges there, willing them thereby, if the Matter so stood, to proceed to Judgment without Delay. They not doing it, an *Alias* is sent; and the Judges doing nothing then neither, and Sir *Jeffry* renewing his Petition; the Lords commanded the Clerk of the Parliament, Sir *Thomas de Drayton*, to go to Sir *John Stonore* and the rest of the Judges of the *Common Pleas*, and to require them, according to the Plea pleaded, to proceed to Judgment, or else come into the House with the whole Record, so as in Parliament Judgment might be given for one or other of the Parties.

Rot. Parliam. 14 Edw. III. The grand Question concerning the Judicature of the House of Peers stated and argued, p. 139. writ by the late Lord Hollis.

The Judges came at the Day, and the Business was heard; and it was adjudged that Sir *Jeffry* should recover: and a Writ under the Great Seal was sent to the Judges to give Judgment accordingly.

In the same Year, viz. 14 Edw. III. it was enacted, That by the Stat. 14 Edw. III. cap. 6. Misprision of a Clerk in any Place, wheresoever it be, no Process should be annulled or discontinued, by mistaking in writing one Syllable or one Letter too much or too little; but as soon as the Thing is perceived by the Challenge of the Party, or in any other manner, it shall be hastily amended in due Form, without giving Advantage to the Party that challengeth the same, by reason of such Misprision.

This Statute as it evinceth what the Authority of Parliament was in those Days, so it proves that the Jurisdiction of *Westminster* was not then so great, as in latter Times some have taken it to be.

Two remarkable Instances, amongst several others, occur in our Books, of the Judges in *Westminster Hall* suspending their Judgment, in Cases arising upon the Constructions of this Act, 'till they had consulted with the Lords of Parliament.

Some Instances produced out of our Law Books, that the Judges of Westminster Hall suspended giving their Opinions what the Sense of an Act of Parliament was, 'till they had consulted with the Lords of Parliament.

* Here we see a Continuance by a Dies datus to the Parties in Parliament.

I. *John Martell* of *Sleford* brought a *Præcipe quod reddat*, in which Issue being joined, there was a Verdict for the Plaintiff.

The Year Book,
Hill. 39 Edw.
III. fol. 21. a.

Bealknap said, the Writ was brought by *John Martell* of *Sleford*, and in the *Venire facias Sleford* is omitted: Wherefore he prayed, that the Court would not give Judgment upon that Verdict.

Thorp: This may be amended by the Statute; for heretofore we doubted by reason of some Diversity in a Sur-name in a Writ: And the Writ was carried into Parliament; and the Lords who made the Statute, said, That their Meaning was, that in all such Cases the Process should be amended.

The Year Book,
Trin. 40 Edw.
III. fol. 34.

II. In the 40th Year of the same King, a Writ of Cozenage was brought by *L. de M.* against *T. de B.* in which Process was awarded 'till the Parties pleaded to Issue. Then the Defendant made Default, and a *Petit Cape* was awarded; at the Return whereof a Discontinuance of Process was alledged; for that the Plaintiff by his Writ demandeth the Manor *Tybynribroke*, and in the *Habere facias visum (broke)* was omitted.

Bealknap upon that Occasion said, The Statute of *ann. 14 Edw. III. cap. 6.* appoints, That if there be a Letter or a Syllable too much or too little in a Record, it may be amended; but where there is a Word wanting, the Statute makes no Provision.

Thorp said, It had been formerly debated before them, Whether or no, if a Word were wanting in a Record, it might be amended; as when there wanted but a Letter or a Syllable; and that Sir *Hugh Green* and himself went together, * *A le council*, to the Council, where were present at least twenty four Bishops and Earls, and enquired *de ceux qui fieront le Statute*, of those who made the Statute, Whether a Record ought to be amended in such a Case or not?

These two Instances bring the Matter home: For we see that the Judges were guided by the Lords of Parliament, how they ought to expound an Act of Parliament; the true Sense of which was either unknown, or much doubted of by those Judges, who happily might have been Judges at the Time when the Act passed.

OBJECTION. But perhaps it may be objected, as to the last Case, That the Archbishop, who was then present in the Council, said, *Que ceo estoit un nice demande & vain question de eux*, Whether it might be amended or no: For he said, it might be as well amended in this Case as if it were but a Letter: For if a Letter or Syllable was wanting in a

* OÙ est dit en 40 Edw. III. que les Justices alount all Council, appier per 39 Edw. III. que ilz alount al Parlement à scaver l'opinion de ceux qui fieront la ley. *Coke*, lib. viii. fol. 158. *Blackmore's Case*.

Word, it was no Word; whereby if the whole Word were wanting, it might be amended, as well as if it wanted but a Letter or a Syllable: For there was no more Difference in the one Case than in the other.

To this I answer, that the Strength of this Objection is a full Evidence to prove my Proposition, that some modern Judges have enlarged and extended their Jurisdiction beyond the ancient, just, and legal Bounds of their Predecessors; who paid so profound a Submission to the Judgment even of the * Privy Council. ANSWER.

For, as the Lord Chancellor *Ellesmere* says, oftentimes the reverend Judges had such a grave Regard in their Proceeding, that before they would resolve or give Judgment in new Cases, they desired to consult with the King's Privy Council, as appeared in divers Cases in King *Edward* the Third's time. *The Speech of the Lord Chancellor Ellesmere in the Exchequer Chamber, touching the Post-nati, p. 50. Judges consulted with Privy Council.*

III. *R. W.* assaulted *Adam Brabson*, in the Presence of the Justices of Assize at *Winchester*, for which *A. B.* complained by Bill before the said Justices, alledging his Offence to be in Despite of the King and his Justices, to his Damage of one hundred Pounds: *R. W.* pleaded *not guilty*, and was found *guilty*, Damages taxed to ten Pounds: Thereupon the Judges awarded him to Prison in the Sheriff's keeping. *The Book of Assizes, 39 Edw. III. placito.*

And for the Fine, and that which should be farther done for the King, for the Assault done in the Presence of the Judges, they would have the Advice of the King's Council.*

IV. For in a like Case, because *R. C.* did strike a Juror at *Westminster*, which passed in an Inquest against one of his Friends; it was adjudged by all the Council, That his Right Hand should be cut off, and his Lands and Goods forfeited to the King. These the Chancellor said, were the Words in the Book. *Mich. Term. 19 Edw. III. Fitzherbert's Abridgment, tit. Judgment, placito 174.*

In this Case he noteth three Things:

1. The Judges consulted with the Council.
2. They had a like Case before, when the Council was also consulted with, *viz.* 19 *Edw.* III. And yet they would not proceed in this Case, before they had again consulted with the Council.
3. That before *ann.* 19 *Edw.* III. there was no like Case or Precedent for such a Judgment; and therefore the Judges would not themselves pronounce that heavy Judgment before they had conferred with the Council touching the same: And after they had had the Opinion and Advice of the King's Council, they proceed to that Judgment. *Three Things noted by the Lord Chancellor Ellesmere from the foregoing Cases.*

* *A: is supposed by some.*

* *In the Book it is, Ils voit aver advise de Council le Roy, no mention being made of Privy.*

V. *Thomas*

The Year Book,
Mich. Term,
39 Edw. III.
fol. 35.

V. *Thomas Ughtred*, Knight; brought a *Formedon* against a poor Man and his Wife: They came and yielded to the Demandant, which seemed suspicious to the Court; whereupon they examined the Matter, and stayed Judgment, because it was *suspicious* [*& vicious.*]

And *Thorpe* said, That in like Case of *Giles Blacket*, it was spoken of in Parliament, “ And we were commanded, that when any like Case should come, we should not go to Judgment without good Advice, “ [*car il ferroit malveys example.*] Wherefore sue to the Council, and as “ they will have us to do, we will, and otherwise not in this Case.”

*Notes upon the
same Cases.*

Thus the Chancellor. And now give me leave to make my Notes upon what he hath told us.

Did the Judges before they would resolve or give Judgment in new Cases, oftentimes consult with the King's Privy Council?

Let me then note,

1. Of how much greater Authority must it have been, for the Judges to have consulted with the Publick Council of the Kingdom?

And did the Judges well know that a like Case had been adjudged before that, *viz.* That a Man's Right Hand should be cut off for striking in *Westminster Hall*: And yet would they not, when a second Case happened, pronounce that heavy Judgment, until they had first advised with the King's Council, and known their Opinion therein.

Then let me in the next Place note,

2. What the learned Judges of those Times would have done, upon grave and serious Deliberation, if a Case had come before them, upon which had depended no less than the Weal and Safety of the whole Nation. How unfit and uncapable would they have adjudged themselves to have been to resolve and determine any such great and concerning Case, before they had first received the Direction and Order of the High Court of Parliament therein for their Warrant?

Now if this be the true State of all these Transactions of the Judges of *Westminster Hall*, as it is,

Let me lastly note,

3. Whether it must not be a mere Mockery, for any indifferent Man to be told, that the Judges in those Days did ever dream that they had any such enormous Jurisdiction, or boundless Authority, as to declare Acts of Parliament to be void; which were the highest Security to *Englishmen* under Heaven; because the King, Lords, and Commons, and in them the whole Kingdom, had consented to the making thereof. Such a monstrous Conceit was far from being passant, and in vogue for Law *in diebus illis.*

But more of this hereafter.

VI. In the 33^d of *Henry* the Sixth, a Question arose in the *Exchequer Chamber*, before all the Judges of *England*, in a private Case, The Year Book 33 Hen. VI. fol. 17, 18. Whether a Bill certified before them as an Act of Parliament, were really an Act of Parliament, or no? The Difficulty consisted in this, that the Lords had made some Addition to the Bill after it came up from the Commons; and it did not appear, that it had been carried down to the Commons again, after such Addition made by the Lords, to have the Commons Assent thereto.

And upon a long and full Debate of the Matter, after *Kirkeby* of the *Rolls*, and *Faukes*, Clerk of the Parliament, had been examined about it, *Fortescue*, who was then Chief Justice of the *King's Bench*, and who gave the Rule, said, "This is an Act of Parliament, and we will be well advised before we annul any Act done in the Parliament: And peradventure the Matter ought to stay 'till the next Parliament; and then we may be certified by them of the Certainty of the Matter; but notwithstanding we will be advised, what we ought to do, &c."*

This was wholesome Advice; and no doubt the Judges followed it.

But it may be objected, That this Case being concerning a Transaction in the very Parliament, could not be well determined by the Judges, before they were informed by the Parliament itself, how the Matter of Fact truly stood; and that *Fortescue* said, *Peradventure le mater doit attendre jusques al prochain Parlement & adonques nous poiomus estre certifie par eux del certeintie del mater*: So that it seems *Fortescue* says only peradventure the Matter ought to stay 'till the next Parliament. OBJECTION.

To this I answer, Let the whole Case be taken together, and let the Subject Matter be considered; and then I think it will appear, ANSWER.

1. That the Word *peradventure* was not spoke slightly, or at random; but in that Place had an emphatical Signification; as when a Man speaking seriously and with Concernment, says to another, *Peradventure you had better have done this*; or, *Peradventure you had better not have done that*. Now that this must be the Sense of that Word, seems to me to be clear.

2. By the Case itself it evidently appears, that the Judges never gave Judgment at all in it. And,

3. From the Context, "We will be well advised before we annul any Act done in the Parliament; *Peradventure* the Matter ought to

* *Fortescue*, c'est un act de Parlement, & nous voilloums estre bien avise devant que nous annullaums aucun act faite en le Parlement; & *peradventure* le mater doit attendre jusques al prochain Parlement, & adonques nous poiomus estre certifie per eux del certeinte del mater, mes non obstaunt nous voilloums estre avise que ferra fait, &c.

“ stay ’till the next Parliament; ” It is plain, that Matters of Difficulty in Point of Fact, which concerned the Parliament itself, were not to be decided in *Westminster Hall*, but to be adjourned by the Judges in the King’s High Court of Parliament, so as to keep themselves within the Circle of their sage Predecessors.

Stat. 27 Eliz.
cap. 8. videlicet
Stat. 31. Eliz.
cap. 1.

The Statute of the 27th of *Queen Elizabeth* cannot be understood to have changed or altered this ancient Course and Practice of Law in Adjournments to be made to Parliaments, *propter difficultatem*.

Because, in the very Act there is a Clause added, that no Reversal or Affirmation in the *Exchequer Chamber* shall be so final, but that the Party aggrieved may sue in Parliament for a further Examination of the Judgment.

And that Statute gives a Writ of Error before the Judges of the *Common Pleas*, and the Barons only in seven Actions there enumerated.

But the principal Reason of the making of the Act is thus given; because the High Court of Parliament was not in those Days so often holden, as in ancient Time it had been.

*Adjournments
out of the Ex-
chequer
Chamber, and
other inferior
Courts into Par-
liament, fre-
quent in old
Times.*

Besides as Adjournments into the *Exchequer Chamber* for Advice of all the Judges, were frequent in old Times; so we see from the before-mentioned Case in 33 *Henry VI*, which was also in the *Exchequer Chamber*, it was adviseable to adjourn it from thence into Parliament.

Coke’s 2^d Inst.
fol. 408.

In a Word, the Lord Chief Justice *Coke* tells us, That Matters of great Difficulty were of ancient Times usually adjourned into Parliament, to be resolved and decided there; and that there are infinite Precedents thereof in the Rolls of Parliament.

But besides all this, there was another Way to determine Difficulties in Point of Law, which should arise in *Westminster Hall*.

Pulton’s Stat.
14 Edw. III.
cap. 5.

The Statute of 14 *Edward III*. recites, that diverse Mischiefs had happened, for that in the *Chancery*, *King’s Bench*, *Common Bench*, and *Exchequer*, &c. Judgments have been delayed, sometimes for Difficulty, and sometimes for diverse Opinions of the Judges, and sometimes for other Cause; for which Reason it was enacted, That at every Parliament there should be chosen a Prelate, two Earls, and two Barons, who were to be commissioned to hear, by Petition, such Complaints of such Delays and Grievances, and to cause to come before them the Judges, and the Tenor of the Records, and Processes of Judgments so delayed; and by Advice of the Chancellor, Treasurer, and the Justices of both Benches, and as many of the King’s Counsel as they should think fit, to direct what Judgment the Court should give.

But was this all? No, there is a memorable Clause in the Statute, which follows in these very Words, *viz.*

“ And

“ And in case it seemeth to them that the Difficulty be so great, that it may not well be determined without Assent of the Parliament, that the said Tenor, or Tenors, should be brought by the said Prelate, Earls, and Barons, unto the next Parliament, and there a final Accord should be taken, what Judgment ought to be given in the Case.”

From whence we may observe :

OBSERVATIONS.

I. That the Statute was made to ease the Parliament of Complaints touching Delays, by reason of Difficulty, and the diverse Opinions which had happened amongst the Judges in *Westminster Hall*.

II. That the Parliament of the 14th of *Edward III.* very well knew, and wisely foresaw, that several Difficulties in Points of Law might arise, too great to be determined, even by five Peers, though assisted by the Chancellor, the Treasurer, the Judges, and as many of the King's Counsel as they should please to call to them ; and therefore the Parliament reserved the Determination of such Difficulties to themselves, lest the Judges should make Inroads upon the Law, by their Opinions.

I cannot now tell, how well the Statute was executed in every Parliament in the long Reign of *Edward III.* No doubt many Examples may be found in the Execution thereof.

And this is certain, that in 9 *Richard II.* there was a Commission granted, wherein this Statute of the 14th of *Edward III.* is recited at large, the Commission was made to thirteen Commissioners *de audiendo querelam Thomæ Lovel de assensu Parliamenti*, commanding the Chancellor, the Treasurer, the Justices, and others of the King's Counsel, to attend and assist the said Commissioners.

Rot. Pat.
9 R. II. pars
3. No. 31. dor-
so De audien-
do querelam
Thomæ Lovel,
de assensu
Parliamenti.

Now the true Reason of all that hath been said, is well delivered to us by these following Authorities.

I. The Lord Chief Justice *Popham*, in his Argument touching the Union of both Kingdoms in King *James* the First's Time, cited a Resolution in Parliament, when himself served as Speaker, that whereas it was proposed to have a Law made that the Judges might use their Discretion in appointing Tryals in foreign Countries, in respect the meaner Sort of People were outweighed with the Power of great Men, in some Shires that were Parties to the Suits, it was upon grave Advice and Consultation denied, with this Answer ; That it was better to live under a certain known Law, though hard sometimes in a few Cases, than to be subject to the alterable Discretion of any Judges.

Moor, p. 798.

II. Judge

Crook Eliz.
fol. 567, 568.

II. Judge *Gawdy*, in a Case betwixt *Williams* and *Williams*, *Trin. 39 Elizabeth*, has these Words; “ Altho’ it were a greater Mischief, “ yet it is to be suffered, rather than have the Law to be changed, “ unless it be by Parliament.”

Popham’s Re-
ports, fol. 79.

III. The Lord Chief Justice *Popham*, in *Dillon* and *Frame’s* Case, says thus; “ How precise soever the Letter is against the Execution “ of these contingent Uses, the Intent thereof is yet more strong and “ precise against them, which I will prove clearly by the Statute it- “ self, which is of greater Authority than the particular Opinion or “ Conceit of any Judge whomever; for it is the Judgment of all the “ Judges, and all the Realm also, which ought to bind all, and to “ which all ought to give Credit.”

Moor, p. 828.
*The great Ab-
surdity of the
late Notion,
that the Judges
had a Power to
declare Acts of
Parliament
void.*

Moreover, the Lord Chancellor *Egerton*, in his Speech to Sir *Henry Montague*, censures some former Judge or Judges, for challenging a Power to the Judges of the Court of *King’s Bench*, to correct all Misdemeanours, as well extrajudicial as judicial, and to judge Statutes and Acts of Parliament to be void, if they conceived them to be against common Right and Reason; whereas (he saith) they ought to have left it to the King, and to the Parliament, to judge what was common Right and Reason.

Hilary Term,
21 Hen. VII,
fol. 2.

And if it should be otherwise, it would be the greatest Absurdity in the World: For, as the Year Book of *Henry VII.* saith, “ An Act of “ Parliament is one of the highest Records that is in the Law, and “ such a Record, to which every one in *England* is privy, and shall “ be bound by it.”

Finch’s No-
motechnia,
lib. 2. cap. 1.
fol. 21. b.
23 Eliz. *Dyer*.
375. 1 H. VII.
19. b. 37. Aff
Pl. 17.

For the Parliament, as Serjeant *Finch* proves, has absolute Power in all Cases, both to make Laws, and judiciously to determine Matters in Law, to try Men for their Lives, to reverse Errors in the Court of *King’s Bench*, especially where there appears to be any common Mischief, which cannot be redress’d by the ordinary Course of Law: In such Cases, the Parliament is the proper Court. And whatsoever they do, is in the Nature of a Judgment. And if the Parliament itself err, which may happen, such Error can be revers’d no where but in Parliament.

21 Edw. III.
46. Brook
Parl. 16.

And there the Judges have no Voice, but are only Assistants, and under the Rule and Command of the Lords.

*Justices of Peace
Expounders of
Statutes as well
as the Judges.*

It must be admitted, that the Judges are Expounders of Statutes, and so are the Justices of Peace in a County Sessions; in whose Commission, as Mr. Justice *Dalton* informs us, there is this particular Clause inserted, *viz.* “ That if any Case of Difficulty arise before them, “ in Matters within their Commission, that then they shall not proceed to Judgment, but in the Presence of one of the Justices of either “ Bench, or of a Judge of Assize.”

*Dalton’s Jus-
tice, cap. 5.
fol. 17.*

Which Direction to Judicatures, inferior to those at *Westminster*, seems to have taken its Pattern from the profound Respect and Submission which the Courts of *Westminster Hall* in all former Times paid, and ought by the ancient Law of the Realm still to pay to their superior Court, *viz.* the Parliament, which is the supremest Judicature in the Realm, and to which the Judges are accountable for all their Judgments, which are there upon Occasion to be revised, discussed, and finally decided.

It may be said, That every Precedent ought to have a Commencement. Coke, 12 Report 74. 75.

But it must be answered, True it is, that every Precedent hath a Commencement; but when Authority and Precedent are wanting, there is need of great Consideration, before that any thing of Novelty shall be established, to provide that such new Precedents be not against the Law of the Land. *Judges ought to be very careful how they presume to make new Precedents, for fear they should be afterwards found to contradict the Law of the Land.*

Yet it cannot be proved by any History, or Record, that the Law of the Land did ever warrant either the Judges of the *King's Bench*, *Common Pleas*, or Barons of the *Exchequer*, or All Twelve of them in Conjunction, though headed with the Lord Keeper or Lord Chancellor, to frame and make any new Precedents, in such Matters as concerned the fundamental Constitution of the *English* Government, and the general State of the whole Kingdom.

Had there ever been any such Law; then,

1. Such an immense Jurisdiction in the Hands of Twelve *Durante bene placito* Judges, would have long ago assumed all Things to itself, outfacing and trampling down all opposite Claims of Right and Property. *The dangerous Consequences that would have inevitably happened to the whole Kingdom, if the Judges of Westminster Hall had ever had such an extravagant Power as to make new Precedents in Matters concerning the fundamental Constitution of our English Government, exposed.*

2. It would have been perpetually forging new Prerogatives, and interpreting every thing so as the Judges conceived would best defend and maintain them; nor would it have contented itself without being always on the March forwards, alledging and urging one Encroachment to authorize and justify another.

3. Lawyers would have been extremely enamoured with, and very ambitious of the High Dignity and Honour of a Judge; and all the Chicanneries imaginable would have been made use of, to obtain that Name.

4. What Flattery and Sycophantry, what Crouching and Fawning, what earnest and continual Applications, what Striving and Struggling would there not have been, to clamber one above another, in order to mount themselves up to so lofty a Seat of Authority as the Place of a Judge? Besides,

5. As a natural Result of such a chimerical Pretence, there never would have wanted Legions of mercenary Tongues to speak, and stipendiary Pens to write in Defence of its Practices; nor

H should

should any Man, without running the Hazard of being utterly ruined for a defamatory Libeller against the Government, have dared to say, That the Decisions of the Judges were exorbitant and illegal.

6. In fine, Had there ever been such an extravagant Jurisdiction, it must necessarily (if not withheld by continual Miracles) have thrown both Church and State into endless Mischiefs, because it would naturally have become absolute and unlimited.

The Judges of Westminster Hall never invested with any such Power.

But that the Twelve Judges in *Westminster Hall* were ever invested with any such Power, I positively deny; and for a full and clear Proof that I am in the right, let the Reader well consider the following Authority:

Foulton's Statutes, 12 E. II.

“ Forasmuch as divers People of the Realm of *England* and *Ireland*,
“ have heretofore many times suffered great Mischiefs, Damage, and
“ Diffensions;

“ 1. By reason that in some Cases, where the Law failed, no Remedy was ordained;

“ 2. And also, forasmuch as some Points of the Statutes heretofore made, had need of Exposition:

“ Our Lord King *Edward*, Son to King *Edward*, desiring that full Right be done to his People, at his Parliament holden at *York*, in the third Week after the Feast of *St. Michael*, the 12th Year of his Reign; by the Assent,

“ 1. Of the Prelates, Earls, Barons,

“ 2. And the Commonalty of his Realm,

“ there assembled, hath made these Acts and Statutes here following:

“ The which he willeth to be straightly observed in his said Realm
“ and Land.”

Thus far the Preamble of that Statute: From whence we may learn,

1. That in such Cases of Difficulty, where there were no direct Law, nor Example, or Precedent:

2. Or where new Cases happened, upon Statutes which needed Exposition:

The true and certain Rule in those Times was, to have them provided for, and determined, not by the Judges of *Westminster Hall*, but in Parliament.

The Conclusion of the Chapter.

To conclude this Chapter, and to sum up the Reasons of the whole in short, I will give the Reader some part of a most excellent Speech which King *James I.* made to both Houses of Parliament, in the fifth Year of his Reign. His Words are these:

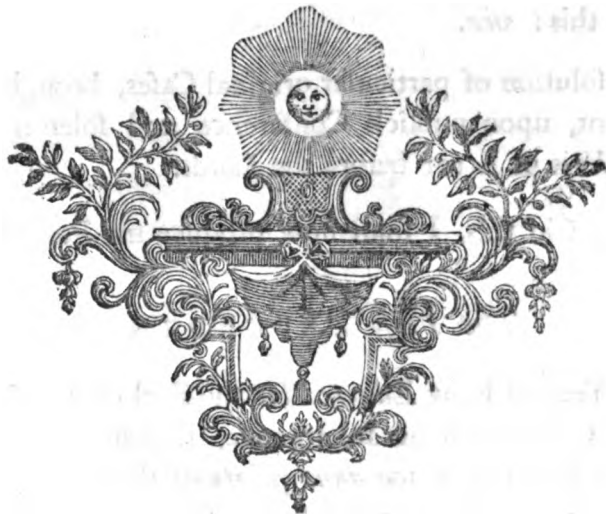
“ Where

“ Where there is Variety and Uncertainty in Cafes of Law ; although
 “ a juft Judge may do rightly, yet an ill Judge may take Advantage to
 “ do wrong ; and then are all honeft Men, that fucceed him, tied in a
 “ manner to his unjuft and partial Conclufions.

*x James I. his
 Speech to both
 Houfes of Par-
 liament, deli-
 vered in the
 Great Chamber
 at Whitehall,
 the laft Day of
 March, 1607.
 His Works,
 fol. 509, 512.*

“ Wherefore leave not the Law to the Pleasure of the Judge ;
 “ But let your Laws be looked into : For I defire not the abolifhing of
 “ the Laws, but only the clearing and fweeping off the Ruff of them ;
 “ and that by Parliament our Laws might be cleared, and made known
 “ to all the Subjects.

“ Yea rather it were lefs Hurt, that all the approved Cafes were
 “ fet down, and allowed by Parliament, for ftanding Laws in all
 “ Time to come.”



C H A P.

C H A P. III.

Several Precedents produced to prove, that an Award in Parliament was of so high a Regard in the Law, that it could not be changed, or altered, by any Interpretation of the Judges in Westminster Hall; and that because it was an Award in Parliament.

THE Reader will perhaps expect, as preliminary to the PRECEDENTS hereafter made use of, that I should inform him, what an Award in Parliament anciently was; which I take to have been this: *viz.*

What was anciently an Award in Parliaments.

A final Resolution of particular original Cafes, brought and given in full Parliament, upon publick Conference and solemn Debate; and not upon a Writ of Error before the Lords.

And having said this, I shall now produce my Precedents.

The First PRECEDENT.

Rot. Parliam.
8 Edw. II. Pe-
titiō Comitū
Athol. N^o 34.

In the 8th Year of King *Edward* II. the Earl of *Athol* petitioned the King and his Council for his Inheritance, which had been given away during the Ordinances (made *anno quinto* of that King,) and contrary thereunto; and prayed, that the said Gift might be repealed, and his Inheritance restored; forasmuch as he had lost all his Lands in *Scotland*, for taking part with the King.

Which Petition by the King's Commandment was read, *en plein Parlement devant*

1. *Prelates, Countes, Barons,*
2. *Et tous autres.*

Where the Petition was answered,
Per Assent & Acord de touz;

That the said Earl had formerly forfeited his Inheritance to the King, and therefore could not demand it again, as his Inheritance; and that the King had given him other Lands to the Value thereof,
because

because he could not restore the Earl to the Land itself, which he claimed as his Inheritance.

After all which the King commanded the Earl's Petition, with the Answer, to be enrolled in *Chancery* and both Benches.

The Second PRECEDENT.

In the 12th Year of King *Edward II.* *Hugh de Audeley* the younger, and *Margaret* his Wife, preferred their Petition in the Parliament held at *York*, three Weeks after *Michaelmas*, directed, *A nostre Seignieur le Roy, & son Council, Prelates, Countes, & Barons de sa terre*, praying,

Rot. clauf. 12
Edw. II. m. 5.
dorfo.

Whereas the King by his Charter long before the Ordinances made (5 *Edw. II.*) by Assent of his Council had given and granted to Monsieur *Piers de Gaveston*, and the said *Margaret* his then Wife, the County of *Cornwall*, and all the Lands and Tenements that had belonged to *Edmond* late Earl of *Cornwall* at the Day of his Death, to hold to them and the Heirs of their two Bodies begotten; whereof they were seized by Virtue of the said Gift, long time before the said Ordinances; and had Issue, which survived the said Earl. And whereas also the King had resealed the said County, and other the Lands and Tenements so given, into his own Hands; That he and his Council would be pleased to restore to the said *Hugh* and *Margaret* the said County and the said Lands, as the Right of the said *Margaret*, to hold in Manner aforesaid; having Regard to the Grand Charter, which wills, That a Widow, after the Death of her Husband shall incontinently have her Inheritance and her Marriage; and that Right shall not be delayed; and that none shall be ousted of his Frank-tenements, without Award and Judgment of the Law of the Land: And also having Regard to the Statute of *Westminster* the Second, which wills, That Lands given in Tail, shall remain to them to whom they are given, and to their Heirs, according to the Will of the Donor; and to these Statutes, which will, That the great Charter, and other Statutes theretofore ordained, should be held in all Points.

Magna Charta.
cap. 8.

cap. 29.

Stat. Westm.
ii. cap. 1.

Hitherto the Petition.

Then the Record proceeds thus:

Postea in Parlamento ejusdem domini Regis, tento apud Eborum a die Paschæ in unum mensem anno supradicto; The said Petition having been fully debated in pleno Parlamento: And forasmuch as recordatum fuit,

1. *Tam per Prælatos, quam per Comites, Barones,*
2. *Et totam Communitatem Regni;*

That formerly it had been agreed, ordained and resolved, as well by the aforesaid Prelates, Earls and Barons, as by the whole Commonalty of the said Kingdom, That all the Grants and Gifts made by the King

to the said *Peter* and *Margaret* of the aforesaid County, and other Castles, Manors, Lands and Tenements whatsoever, had been revoked and made void, as to the said *Peter* and the said *Margaret* and their Issue: Therefore, *in hoc Parlamento*,

1. *Per Prælatos, Comites, & Barones,*
2. *Et totam Communitatem Regni, concordatum est & consideratum,*

I. That the said County, and all other the said Castles, Manors, Lands and Tenements whatsoever, with their Appurtenances, should remain entirely to the King, quit from the said *Hugh* and *Margaret*, and the Issue of the said *Peter* and *Margaret*, for ever.

II. That the Charters and Escripts, made by the King in what Manner soever, should be brought into Chancery, and there cancelled: And the Enrollments thereof, in that Court, should be cassated and annulled.

III. And that That Award, or Judgment, should be entered in the *Rolls* of Parliament, and in the *Chancery*; and should be sent from thence into the *Exchequer*, and both Benches, to be there enrolled *in memoriam perpetuam*.

Pursuant to which, Writs were sent to the Judges of the several Courts, commanding them to enroll the same accordingly, with this following Clause:

Et, quantum in vobis est, teneri & adimpleri faciatis juxta tenorem responsionis supradictæ, & hoc nullatenus omittatis, &c.

Now whosoever looks into the Nature of this *Precedent*, and will seriously examine the Circumstances thereof, must confess, That it is very incongruous and absurd to suppose, that the Judges in *Westminster Hall* durst presume, after the Dissolution of Parliament, to change or alter any thing in this Award, by their Interpretations.

The Third PRECEDENT.

Petit. Parliam.
1 Edw. III.
pro Eliz. de
Burgo.

In the Parliament held 1 *Edw. III.* *Elizabeth de Burgo* petitioned the King and his Council, setting forth, That *Edw. II.* in the 16th Year of his Reign, commanded her by Writ to come to him to *York* at *Christmas*; where (by the Conspiracy and subtle Contrivance of *Hugh Spencer* the younger, *Robert de Baldock*, afterwards Chancellor, and *William de Cliffe*,) they had caused her to be arrested, and become bound to him, that she would not receive any that were Contrarians to him, nor marry herself, nor convey her Lands to any without his especial Licence; and if she should fail in any of the Premises, That
then

then her Lands and Tenements, Goods and Chattels, should be forfeited to the said King.

Whereupon she prayed, That the said Obligation might be vacated, and re-delivered to her.

Upon which Petition King *Edward III.* sent his Writ to *Richard de Armyng*, Clerk of the Privy Seal, to bring the Bond before the King, and his Council in that Parliament; which he did.

And, the Bond being afterwards brought *en plein Parlement*, the Record says :

Pur ce que avys est par

1. *Ercevesque, Evesque, Countes, & Barons,*

2. *Et autres Grandees, & tout le Comminaltie;*

That the said Bond was made contrary to Law, and against all manner of Reason. The said Bond was,

Per Agard del Parlement,

illonques damne; and so was delivered to the said *Elizabeth*.

The Fourth PRECEDENT.

In a Parliament likewise held the 1st of *Edward III.* the Archbishop of *York* petitioned against *Richard de la Pole*, then the King's Butler, suggesting in his Petition, That *Athelstan*, formerly King of *England*, had by his Charter granted to the then Archbishop of *York* and his Successors, all Liberties in the River of *Hull*, that Heart could think, or Eye could see: And that afterwards King *Henry III.* had by his Charter granted to *Walter Giffard* then Archbishop of *York* afore said, that himself and his Successors should hold and enjoy his Port and Prizes, as well of Wines as of other Merchandizes there arriving, in like manner as *Walter Gray*, and other the Predecessors of the said *Walter Giffard* had held the same.

And avers, That from the Time of King *Athelstan's* Grant, 'till the Confirmation thereof by King *Henry III.* the Archbishop's Predecessors had taken and enjoyed the Prizes of Wines in the River of *Hull*, in like manner, as the King's Progenitors had taken and enjoyed the same in other Parts of the Kingdom; and from the Time of the said Confirmation 'till such Time as *Matthew Columbers*, late Butler to King *Edward I.* obstructed the then Archbishop, to take and enjoy the same :

And that the Archbishop and his Predecessors had from that Time been frequently hindered by the King's Butlers to take the Prizes afore said.

Upon which Petition the King directed his Writ to *Richard de la Pole* his Butler, reciting an Inquisition, which had been taken in the Reign of King *Edward II.* and returned into Chancery, which had

Placita coram domino Rege apud Ebor. de Term. S. Trin. ann. reg. regis Edw. III. post conquestum primo.

also been produced before himself and his Council, whereby the Matter of Fact had been found for the Right of the Archbishop.

And reciting also, That one *Benedict Fulsham*, and others, late Butlers to the said King *Edward II.* being personally present before the King and his Council in Parliament, would say nothing to the contrary, but that they found the King seized of the said Prizes, when they entered upon their Offices.

And reciting farther, That the Treasurer and Barons of the *Exchequer* had certified the King and his Council, that they did not find that the King's Progenitors had been seized of the said Prizes in the River of *Hull*, before the making of the said Charter of King *Henry III.*

And therefore it was commanded him the said *Richard*, to permit the Archbishop to take his Prizes, or personally to appear in the Court of *King's-Bench*, to shew Cause, *Quare mandatis Regis toties ipsi directis parere contempserit.*

At which Day the said *Richard de la Pole* appeared, and the Archbishop likewise; and the said *Richard* was required to answer the King for his Contempt, in not obeying the King's Writ; who offering to prove, that the King had a Right to the said Prizes, and not the Archbishop;

The Archbishop insisted, That the said *Richard* had Day given him only to answer his Contempt, and for no other Cause; and that forasmuch, as *prædicta consideratio* was made in so solemn a Place as in Parliament;

1. *Per ipsum Regem,*
2. *Prælatos, Comites, Barones,*
3. *Et Communitatem Regni in eodem Parlamento convocatos;*

A qua consideratione the aforesaid Writ issued to the said Butler as the King's Servant, to execute the same;

And that *prædicta consideratio* could not be revoked, *alibi quam in Parlamento*; nor the King's Right to the said Prizes, if he had any, be determined in that Court upon that Writ; nor that the Archbishop ought to answer the King thereupon; 'till he were put into Possession of the said Prizes, *prætextu considerationis prædictæ*: He therefore prayed, That the said Butler might be commanded, as before, to let him take the same Prizes, and that he be punished for his Contempt, &c.

Quod amoveat
manus dom.
Reg. ab hujus-
modi prius,
&c.

Whereupon a farther Day being given, the King in the mean time directed his Writ to the Justices under the Privy Seal, commanding them, if they conceived any Doubt in the Matter, to disclose the same before him and his Council; that he might be informed of his Right, before a final Determination were made.

In Obedience to this Writ, the Record and Process of and in the said Cause were carried to the King, *quia videbatur Justiciariis hic fore dubium*

dubium in curia ista ulterius procedere in negotio prædicto.; who delivered them to the Chancellor, and commanded him to assemble all the King's Council in *Chancery*, that Justice might there be done.

Afterwards, as well the Archbishop as the said *Richard*, appeared before the Chancellor, the Treasurer, the Justices, and others of the King's Council in *Chancery*; where the said *Richard* said, as before, That the said Archbishop had no Right to the said Prizes; but that they belonged to the King in Right of his Crown, as he offered to prove by divers Reasons and Evidences; as also that there were divers Errors in the said Record and Process in Parliament, as he then offered to prove.

Et postea coram ipso Cancellario & Thesaur. Justiciariis & aliis de Concilio in Cancellaria convocatis, tam Archiep. quam prædictus Richardus de la Pole, &c.

But the Archbishop said, as before, that the said *Richard* had Day given him to answer for his Contempt only; and not to defend the King's Right, nor to assign Errors in the Proceedings of the Parliament: And that he the Archbishop ought not to answer thereupon, 'till he were put in Possession of the said Prizes, *virtute considerationis prædictæ in prædicto Parlamento factæ*; which Consideration could be revoked no where but in Parliament: In which Consideration also the King's Right was saved; but that it could not be determined upon that Writ directed to the Butler. Wherefore he again prayed to be restored to his Possession, and that the Butler might be punished; and said he was ready to answer the King when and where.

After which follows the Opinions of the Chancellor, Treasurer, the Justices, and others of the King's Council, *viz.*

That forasmuch as the aforesaid *Consideration* was made in Parliament, pursuant to which the said Writ had issued forth to the said Butler; by which Writ the said Butler had Day given to answer the King only for his Contempt: And forasmuch also, that as well in the said Consideration, as in the said Writ, the King's Right is saved, which could not be determined in that Court upon that Writ; and because it is unreasonable that the said Archbishop should answer the King concerning his Right to the Premises, 'till such Time as he had been put into Possession of the said Prizes as had been considered in Parliament: The whole Council was of Opinion, That the Execution of the said Consideration in Parliament ought not to be superseded; and that the Archbishop should have a Writ to put him into Possession.

I shall make but one single Remark upon this Precedent.

The REMARK.

The King, we see, referred the Consideration of this Case, *Cancellario, & Thesaurario, Justiciariis & aliis de Concilio.*

A Remark upon the foregoing Precedent.

Now here will arise a great Question, *viz.* Who those *alii de Concilio* were, who were to be Co-assessors with the Chancellor, Treasurer, and Justices in this Case?

K

This,

This, indeed, is a material Question, and very fit to be resolved.

Coke's 1st Inst.
l. 2. fol. 110. a.

The King of *England*, says the Lord *Coke*, is armed with diverse Councils;

The Law of
England hath
armed the King
with several
Councils to as-
sist him in the
just and legal
Administration
of his Govern-
ment.

1. One whereof is called *Commune Concilium*, and is the Court of Parliament, and so it is legally called in Writs, and judicial Proceedings, *Commune Concilium Regni Angliæ*.

2. And another is called *Magnum Concilium*; this is sometimes applied to the Upper House of Parliament, and sometimes, out of Parliament Time, to the Peers of the Realm, Lords of Parliament, who are called *Magnum Concilium Regis*; for the Proof whereof, take one Record for many in the 5th Year of King *Henry IV.* at which Time there was an Exchange between the King and the Earl of *Northumberland*, whereby the King promiseth to deliver to the Earl, Lands to the Value of, &c. *per advice & assent des Estates de son Realme & de son Parlement (parensi que Parlement soit devant le Feast de St. Lucy) ou autrement per advice de son grand Council & auters Estates de son Realme que le Roy ferra assembler devant le dit Feast in case que le Parlement ne soit.* And that herewith agreeth the Act of Parliament in 37 *Edward III. cap. 18.* where it is said, *before the Chancellor, Treasurer, and the great Council.*

3. (As every Man knoweth) the King hath a Privy Council for Matters of State; (as for Example) *Henricus de bello Monte, baro de magno & privato Concilio Regis juratus*; and many others before and after.

4. The fourth Council of the King are his Judges of the Law, for Law Matters, and this appeareth (he saith) frequently in our Books, and must be intended when it is spoken generally by the Council, it is to be understood *secundum subjectam materiam*, for Example, if it be legal, then by the King's Council of the Law, *viz.* the Judges.

But under the good Favour of so eminent a Judge, the Reader ought to be truly informed, that in the Reigns of *Edward I. Edward II.* and *Edward III.* and later Times, the King's learned Council consisted of all these, *viz.*

The constituent
Members of the
King's learned
Council in former
Ages.

1. The Chancellor; the Master of the *Rolls*, and Masters in *Chancery*.

2. The Justices of the *King's Bench*.

3. The Justices of the *Common Pleas*.

4. The Treasurer, Chancellor, Barons and Chamberlains of the *Exchequer*.

5. The Secretaries of State, Clerk of the Privy Seal, and Clerk of the Wardrobe.

6. The Justices in Eyre, Justices assign'd, Justices in *Wales*, and the King's Serjeant at Law.

7. And

7. And likewise other Persons, whom the King thought fit to call, and advise with.

As appears by ancient Rolls, and other Records;

These were the King's Council, so often mentioned in Petitions and Acts of Parliament, and not that which we now call the Privy Council.

So that by a Deduction from these Particulars, we may learn, that the Justices in *Westminster Hall* were but a Part of that Council, and, being compared with the Whole, were the least Part thereof; and therefore,

Distinguenda sunt Tempora.

From hence it is unquestionably evident, that there must be a vast Difference, and a plain Distinction, between the Authority of the solemn Resolution of that Council, and the Opinions of the Twelve Judges, considered either

There was anciently a vast Difference between the Resolutions of all the King's Council at Law, and the Opinions of the Twelve Judges in Westminster Hall.

1. Jointly and extrajudicially, as the King's Council in Matters of Law, according to the modern Notion; or,

2. Severally and judiciously, in their respective Courts in *Westminster Hall*.

But to speak distinctly and fully of the constituent Parts, and ancient Authority of those different Councils, cannot here be properly done, but will require a particular Tract hereafter by itself. And therefore I shall now return to my former Subject, *viz.* an Award in Parliament, and proceed to

The Fifth PRECEDENT.

In a Parliament held in the 2^d Year of *Edward III.* *Robert de Isdle*, and the Tenants and Men of *Wberndale*, petitioned the King and his Council; setting forth, That whereas by Petition, which they sued at the last Parliament at *Westminster*, a Transcript whereof was affixed to their Petition, they shewed to the King and his Council, that King *John*, who was Lord of the Manor and Forest of *Knareborough*, had brought within the Forest the Country of *Wberndale*, which adjoined to the said Forest of *Knareborough*, which Country never was, nor is, of the Fee, nor of the Seigniorship of *Knareborough*, nor had ever before been in Forest or Free Chace, and had charged the said Country *de Pasture de Foresters*, and with diverse other Customs of the Forest.

Piacita Parl. fol. 636. Wberndale Tenants.

And that afterwards, at the Suite of the Tenants, and Men of the Country of *Wberndale*, the said King *John*, upon better Advice, disafforrested the said Country by his Charter, the Transcript whereof was also affixed to their Petition, whereby the said Country of *Wberndale* continued discharged, till the Time of one *William de Ireby*, Steward of *Richard* Earl of *Cornwall*, then Lord of the Manor and

Forest

Forest of *Knareborough* aforesaid; who by Extortion and Distress, of his own Wrong, charged the said Country of *Wberndale de Pasture de Foresters*, and other Charges and Customs, contrary to the Tenor of the Charter aforesaid. And they further set out, That afterwards the Officers of the then King, charged the said Country as aforesaid, and notwithstanding that the Petition of the said *Robert*, and the Tenants and Men aforesaid, which they sued to the last Parliament at *Westminster* was answered, and the said Charter there inspected and allowed, *per que agard feust*, that they should remain quit of any Charge, and that they should not be grieved contrary to the Tenor of the Charter; and the King's Officers aforesaid were commanded by Writ to forbear grieving them; and afterwards by other Writs, the Officers of Dame *Isabell, Queen of England*, (in whose Hands the Manor and Forest of *Knareborough* then was,) to surcease the said Grievances, for which Commandment they would not forbear, but grieved them as far as they could.

Wherefore the said *Robert*, and Tenants and Men of *Wberndale* prayed,

Que ceo est que autrefoitz lour feust agard & juge en Parlement qu'est le plus haut & le plus solempne judgment de ceste terre, lour soit allowe, & lieu teigne. i. e.

That what had been theretofore awarded them, and adjudged in Parliament, which was the most high and most solemn Judgment of this Land, might be allowed them, and might take Place.

Dorso Answer.

“ Forasmuch as this Matter has heretofore been, *assentu & agard en plein Parlement; qu'est si haut agard & fait en le plus haut place en Roialme*, i. e. Which is so high an Award, and made in the highest Place in the Realm, let Execution be done of the former Award, and let the Steward and others, as Occasion requires, be commanded to surcease, and to suffer the Tenants to make their Profits *solonc le primer agard*, and that they do nothing derogatory, or contrary to the said Award, upon Pain of being punished as such ought to be, who *contravene cy haut agard*, and if they do not obey, let speedy Process be made against the Disobedient.”

And now it is fit we apply this Case, to the Matter in Question.

We see the Ground and Foundation of it was an Award in Parliament; which, as to all other inferior Courts, was susceptible of no Alteration or Opposition, because that would have tended to diminish and overthrow the Rights and Preheminences of a *Plea in Parliament*.

The Sixth PRECEDENT.

We have before given the Award of Parliament touching the Archbishop of *York*, which was adjudged both solemnly and legally by the Chancellor, Treasurer, the Justices, and others of the King's Council; that it ought to be obeyed and revered by them all, and was not to be disputed by the Twelve Judges of *Westminster Hall*.

Now because one Branch of the Award was, that the Archbishop should be ready to answer the King, when and where he pleased; in *Michaelmas Term*, 5 *Edward III.* a Writ of *Quo Warranto* was brought in the Court of *Common Pleas* against the Archbishop, who, being demanded, appeared not. Whereupon

The Year Book,
Mich. Term,
5 Edw. III.
fol. 286. b.
pl. 113.
Quo Warranto.

Schardelow prayed for the King, "That the Franchise might be seized into the King's Hands for his Default; as was usually done before the Justices in Eyre."

Parning, "Process in Eyre, must not be made here; for this Place is for the holding of Common Pleas, for which Reason that Process ought not to be issued out, for this Writ is not grounded upon the Archbishop's Claim, as it is in Eyre."

Upon which the Court took time to advise, and thus stood the Case till *Hilary Term*, in the 6th Year of that King, and then it came on again.

Parning urged for the Archbishop, "That he ought not to answer there, for that King *Edward I.* had made a Statute, that Pleas of *Quo Warranto* should be held before Justices in Eyre, and in their proper Counties; and for that it was enacted by a Statute in that present King's Reign, that neither by Writ under the Great Seal, nor Privy Seal, the Common Law should be disturbed; but that all Men should have the Benefit thereof: Wherefore he conceived that against a Statute, which was Common Law to all Men, the Archbishop ought not to be put to answer."

Hilary Term,
6 Edw. III.
fol. 246. pl.
15.
Quo Warranto.

Schardelow, "When you sued by Petition to be restored to your Possession, it was delivered to you in this Manner, *viz. Que per Parliament agard fuist, que le Roi doit prendre son breif devers vous, ou Et quand luy plerret: Et agard du Parlement est la plus haut Ley que soit. i. e.* That it was awarded in Parliament that the King might take his Writ against you, when and where he pleased; and an Award in Parliament is the highest Law that is: And since you make no Answer, we pray that the Franchise may be seized into the King's Hands."

Claver said, "That the Archbishop's Assent could not enable the Court to hold Plea of that Cause, where their having *Conusance* of it is against Law."

L

Then

* Then *Herle*, Chief Justice, who gave the Rule, said thus, *viz.*
 “ You were restored to your Possession by an Award of Parliament, and
 “ by the same Award it was adjudged, That ye ought to answer the
 “ King when and where he pleased, and you would have the Benefit
 “ of this Award yourselves, and would oust the King of the Benefit of
 “ it; which cannot be done.”

And thereupon Serjeant *Parning* answered over.

“ From this Case we may observe, that the Judges esteemed an
 “ Award in Parliament equal to an Act of Parliament, as to the
 “ inferior Courts, and able to exempt a particular Case awarded out of
 “ a general Act of Parliament.”

Now whoever will impartially consider and compare this Case with
 the former Precedents, must confess, that, as it explains them, so it
 clearly proves my Proposition, *viz.*

That an Award in Parliament could not be changed or altered by
 any Interpretation of the Judges of *Westminster Hall*, because it was
 an Award in Parliament, which was a Judgment irreverfible by any in-
 ferior Court whatsoever.

The Seventh PRECEDENT.

Rot. Parliam.
 40 Edw. III.
 No. 13, 14, 15,
 16.

On *Monday*, being the 11th Day of *May*, in the 40th Year of the Reign
 of *Edward III.* it was shewn *devant les Grands & Communes en Par-*
lement, by *Monf. Thomas de Ludlow*, Chief Baron of the *Exchequer*,
 That one *William*, Son and Heir of *William de Septivans*, who held
 Lands of the King in Chief, as of his Crown, and who had sued Li-
 very out of the King's Hands by Writ of *Ætate Probandâ*, was then
 under Age, as appeared by an Inquest taken before him the said *Tho-*
mas de Ludlow and others, and returned into the *Chancery*; which
 Inquest, with the Record, Process, and Evidences concerning that
 Case, afterwards on *Monday*, in *Crastino Inventionis Sanctæ Crucis*,
 were shewn, read, and examined,

- Coram* 1. *Ipso Domine Rege*,
 2. *Prælatibus, Magnatibus*,
 3. *Et Communitate Regni Angliæ*,

in eodem Parlamento. And the said *William*, having before been in-
 spected by the Lords, and then again being present, *visum est toti Par-*
liamento, quod idem Willielmus filius Willielmi non erat plenæ ætatis,
sicut in probatione prædicta continetur, per quod consideratum est in
dicto Parlamento.

* The Precedent of the Archbishop's cannot be said to contravene a Statute, because it was a particu-
 lar Case, in which the Archbishop had agreed to answer the King, when and where he pleased, and was
 thereupon put into Possession; and the known Maxims of the Law are, *that Quilibet potest renunciare juri*
pro se introducto, and that Volenti non fit injuria.

I. That

I. That the first Office, founded upon the Writ *de Ætate Probandâ*, should be of no Force nor Effect.

II. That all the Lands and Tenements, with their Appurtenances, which had been his Father's, and which, by Reason of his Minority, had been seized into the King's Hands, and had been delivered to *William* the Son, as being supposed then of full Age, by Colour of a false Office formerly found, should be re-seized into the King's Hands.

III. That all Charters, Escripts, and Obligations, as well upon the Statute Merchant, and of the Staple, as others, and all Recognizances, made by the said *William* the Son, should be revoked, cassated, and annulled: And,

IV. That Procefs of *Scire Facias* should be awarded against all such as the said *William*, the Son, had aliened any Lands, or granted any Rents to, or contracted any Debts with, that they should shew Cause why the Lands, Tenements, and Rents so aliened, should not be re-seized into the King's Hands, and the Charters, Escripts, Statutes, Recognizances, Obligations, and other Dœds by him made, cassated and annulled, as void and erroneous; and further to do and receive, as to Justice should appertain in that Behalf.

I have added this Precedent to the former, as conceiving it pertinent to the Matter in Hand; for

1. It cannot properly be called an Act of Parliament; because it was not by Bill, nor had it the formal Proceedings which were requisite to make it an Act of Parliament as now understood.

2. Neither was there any Writ of Error before the Lords.

3. But it was a final Resolution of a particular original Case given in full Parliament, upon public Conference, and solemn Debate, and therefore could be no other than, according to my Definition, an Award in Parliament.

Which was, as I said before, of so high a Regard in Law, that it could not be altered by any Construction that could be made thereof by the Justices in *Westminster Hall*.

Because the positive and known Rule of the Law of *England* ever was (as we have shewed elsewhere)

That those Bas Courts and Places ought to be, and never were other than Executors, not Executioners, of the ancient Laws and Customs of the Realm, and Ordinances, and Establishments of Parliaments.

Rot. Parliam.
11 Rich. II.
pars 3. N^o. 14.

I

So

The Conclusion.

So that it is a mere Surmise and Fiction raised and spread abroad in this last Age, to assert,

That the Judges of the *King's Bench*, of the *Common Pleas*, and Barons of the *Exchequer*, being Judges of the Realm, the People were bound, lastly and finally, to submit themselves to their Judgments for Matters of Law.



C H A P.

C H A P. IV.

When any Doubts and Differences of Opinions arose amongst Lawyers, concerning what the Common Law was in Points of great and weighty Importance, such Doubts and Differences were by the ancient Course and Practice declared and settled, not by the Judges of Westminster Hall, but by the Law-making Power of the Kingdom.

I. **W**E read in the *Statute-Book*, That *anno Dom.* 1279. and in the 7th Year of *Edward I.* which is above four hundred Years since, that King sent a Writ to the Justices of his Bench, telling them, That whereas then of late, before certain Persons deputed to treat upon sundry Debates had between him and certain great Men of the Realm, amongst other Things, it was accorded, that in his next Parliament, after Provision should be made by him and the common Assent of the Prelates, Earls and Barons, that in all Parliaments, Treaties and other Assemblies, which should be made in the Realm of *England* for ever, That every Man should come without all Force and Armour, well and peaceably to the Honour of him, and the Peace of him and his Realm.

To all Parliaments and Treaties every Man shall come without Force and Arms.
Pulton's Stat. 7 Ed. I.

And that then in his next Parliament at *Westminster*, after the said Treaties,

1. The Prelates, Earls, Barons,
2. And the Commonalty of the Realm,

there assembled, to take Advice of that Business; said, That to him it belonged, and his Part was through his Royal Seigniorie, straitly to defend Force of Armour, and all other Force against his Peace, at all Times when it should please him; and to punish them which should do contrary, according to his Laws and Usages of his Realm: And that thereunto they were bound to aid him, as their Sovereign Lord, at all Seasons, when need should be:

Commanding the Justices, That they should cause those Things to be read before them in the said Bench, and there to be enrolled.

M

Upon

Notes upon the foregoing Statute.

Upon Perusal of this Statute, the Reader may note,

1. That the Parliament declared, whoever should offend against this Act, should be punished. But how? according to the *Laws and Usages of the Realm*.

2. And that thereunto they were bound to aid him, as their Sovereign Lord, at all Seasons, when need should be.

So that neither King nor People were to make their own Wills the Measures of Government; but both were to be regulated by the *Laws and Usages of the Kingdom*.

3. And lastly, The Judges, for any thing appears by the Statute, were no ways concerned in settling those Debates and Differences by their Votes; that was Work for a Parliament: The Justices were only commanded to read the Statute in Court, and then to cause it to be there enrolled.

Statutum de terris Templariorum, made ann. 17 Ed. II. annoque Dom. 1323.

Pulton's Stat. Upon the Dissolution of the Knights Templars, here a Doubt arose who should have their Lands.

The Judges of Westminster Hall no fit Judges to determine this Matter.

But by Consent of the King and Parliament those Lands were settled upon the Knights Hospitallers.

De termino Pasche, 3 Edw. III. Plac. 1. Quare impedit.

An. 14 Ed. III. it was ordained in Parliament, that the Realm of England and the People thereof should not be subject to the King or Kingdom of France.

II. Upon the Dissolution of the Military Order of the *Templars*, it was a Doubt, Who should have their Lands? Whereupon in a Parliament held in the 17th of *Edward II.* great Conference was had before the King himself, in the Presence of

1. The Prelates, Earls, Barons, Nobles,

2. And Great Men of the Realm, and others there present,

Whether the Lords of the Fees or others, which held those Lands, might retain them by the Law of the Realm, and with safe Conscience.

Whereupon the great Part of the King's Council, as well the Justices as other Lay Persons, being assembled together; the said Justices affirmed precisely, That the King and other Lords of the Fees might well and lawfully, by the Laws of the Realm retain the aforesaid Lands as their Escheats, in regard of the Ceasing and Dissolution of the Order aforesaid.

But because those Lands had been given to the Brethren of that Order, in Defence of *Christians* and the *Holy Land*, against *Pagans* and *Saracens*, and other Enemies of *Christ* and *Christians*, and the Universal Holy Church; those Lands were settled upon the Order of the Brethren of the Hospital of St. *John of Hierusalem*.

1. By Consent of the King, the Noblemen and others assembled in the said Parliament. Or, as it is expressed in the *Year Book of Edward III.*

2. *Per le Roy & per son Common Counsell: Or,*

3. *Per grant d'apostel de Roy, & de Common Counsell.*

III. In the 14th Year of King *Edward III.* there was a Doubt conceived by some People, Whether or no upon the Realm of *France* its being devolved to this King, as Heir of the same, the Realm of *England* might

Pulton's Stat. 14 Edw. III.

might not be put in Subjection to the King and Kingdom of *France* in Time to come?

Whereupon it was enacted by Parliament, That neither by the Cause or Colour of that, That the King was King of *France*; and that the said Realm pertained to him; or that he caused himself to be named King of *France* in his Style, or that he had changed his Seal, or his Arms; nor for the Commandments which he had made or should make as King of *France*, the Realm of *England*, nor the People of the same, should not in any Time to come be put in Subjection or Obeysance of the King, his Heirs or Successors, as Kings of *France*; but should be free and quit of all manner of Subjection and Obeysance aforesaid; as they were wont to be in the Time of the King's Progenitors, for ever.

This was a rare Case, and a Matter of great Import and Consequence; and therefore we see our wise Ancestors would not leave such dangerous Doubts in Law to be resolved by the Etymological Interpretations, Definitions, Descriptions, Distinctions, Differences, Divisions, Subdivisions, Allusion of Words, Extension of Words, Construction of Words, which might in After-Times be made by the Wit and Art of the Judges of *Westminster Hall*: No, but all those new and high Points were settled by Judgment of Parliament.

This rare Case of mighty Concern to the Kingdom, not left to the Decision of the Judges, but was settled by Judgment of Parliament.

Vid. Speech of the Lord Chancellor Ellesmere in the Exchequer Chamber, touching the Post-nati, p. 60.

IV. There was another great Doubt arose in the Reign of the said King *Edward*; viz. Whether by the Common Law, Children born in the Parts beyond the Sea, out of the Legiance of *England*, should be able to demand any Inheritance within the same Legiance, or not?

A Statute made ann. 25 Ed. III. of those that be born beyond Sea. Pulton's Stat.

This was a new Question of so extraordinary a Concern, that King *Edward* having called a Parliament in the 25th Year of his Reign, referred the Consideration thereof to the Prelates, Earls, Barons, and other Wise Men of his Council there assembled, He being willing that all Doubts and Ambiguities should be put away, and that the Law in that Case should be put in Certainty:

All which, having deliberated upon this Point, of one Assent said, That the Law of the Crown of *England* was, and always had been such, That the Children of the King of *England*, in whatsoever Parts they were born, in *England* or elsewhere, were able and ought to bear the Inheritance after the Death of their Ancestors.

Which Law,

1. The King,
2. The said Prelates, Earls, Barons, and other Great Men,
3. And all the Commons,

then assembled, did affirm, and approve for ever.

Here we see another great and new Doubt in Law resolved and settled only in Parliament.

After which, they proceed to declare the Law in Case of Subjects.

Thus

Thus we see the King durst not rely upon the *Arbitria Judicum*, but did *recurrere ad Parliamentum, & ad responsa Parliamenti*; to make a concluding and binding Judgment.

Ex libro Statu-
torum Gallice
editorum.
2 R. II. cap. 7.

*A great Doubt
arising who
should be ac-
knowledged to
be lawful Pope
here.*

V. Anno 2 Richard II. That King having understood by certain Letters then lately come from some Cardinals, Rebels against Holy Father *Urban*, then Pope, as otherwise by common Fame, that there was Division and Discord betwixt the said Holy Father and the said Cardinals, who endeavoured with all their Might to depose him from the Estate of Pope, and to excite and move by false Suggestions, Kings and Princes and Christian People against him, to the great Peril of their Souls, and to very evil Example; King *Richard* thereupon caused the said Letters to be shown to the Prelates, Lords, and other Great and Wise Men of his Kingdom, then present in Parliament. Which Letters being read and understood; and much Deliberation having been thereupon had, it was by the said Prelates pronounced and published, by many great and notable Reasons then shewn in full Parliament, as well by Matter contained in the said Letters as otherwise, that the said *Urban* was duly elected Pope, and that therefore he was, and ought to be the true Pope, and him as Pope and Head of Holy Church, Men ought to accept and obey, *et a ceo faire. s'accordent*

1. *Touts les Prelates, Seigniors,*
2. *Et Communes,*

in that Parliament.

*It was adjudged
in full Parlia-
ment, that Ur-
ban VI. was
duly elected
Pope, and that
none other but
he should be ac-
knowledged for
true and lawful
Pope here in
England.*

And it was also assented, That all the Benefices and other Possessions, which the said Cardinals Rebels, and all other their Coadjutors, Factors, Adherents, or any other Enemies of the King and of his Kingdom, had within the Dominion of the King, should be seized into the King's Hands; and he be answered the Issues and Profits of the said Benefices and Possessions, so long as they should remain in his Hands for the Cause aforesaid.

And it was moreover then ordained, That if any of the King's Leiges, or other within his Power, did purchase by Provision a Benefice or other Grace from any other as Pope, than of our Holy Father *Urban*, or should be obedient to any other Person as Pope, he should be put out of the Protection of the said King, and his Goods and Chattels seized as forfeited.

We see here,

De Electione
Papæ.

I. * That a Grand Doubt was risen touching the Legality of the Election of a Pope, which was then a Point of a very weighty Importance indeed.

* 8 Die mensis Aprilis, electio Urbani papæ VI. ann. Dom. 1378. — Eodem anno quidam de Cardinalibus prima indictione Urbanum papam reliquerunt, & abierunt Avinioniam, ibique erexerunt Robertum episcopum Cibbonensem in Summum Pontificem, quem vocaverunt Clementem papam, undè Schisma maxima orta est in Ecclesia Christi, quibusdam regibus & regnis uni adhzrentibus, quibusdam verò alteri. *Hen. de Knyghton de eventibus Anglia*, lib. 5. col. 2631 & 2632.

2. It is true the Prelates did inform the Parliament, that in their Opinions *Urban* was duly elected Pope, but that was only with Submission to the Judgment of King, Lords, and Commons, in full Parliament assembled.

3. We do not find here, that the Judges did any thing that tended to the Decision of this great Point; no, this was wholly left to the Determination of the great Council of the Kingdom, who settled, and declared by their full and absolute Authority, that *Urban*, and none other Anti-Pope, should be accepted, and obeyed in *England*, as Pope and Head of Holy Church.

4. Nor was that all, but we see they likewise made Provision, that all those who should dare to contravene this their solemn Declaration and Judgment, should be put out of the King's Protection, and should forfeit all their Goods and Chattels.

But it may be objected that this Precedent does not make good what it is brought to prove, for it may seem that this Election could not come to be made a Doubt of at the Common Law. OBJECTION.

To which I answer, that as the Law then stood, whoever was Pope had, *virtute Apostolatus sui*, several Profits, Rights, and Jurisdictions within the Realm: As for Instance, *Peter-pence*, Consecration of Bishops, receiving Appeals, and giving definitive Sentence thereupon, besides other Privileges allowed to the See of *Rome* by Usage: So that in these Respects it may properly be said, that the Validity or Invalidity, of the Election of a Pope, when there was a Schism in the Papacy, was a Doubt at the Common Law, and must be determined by the supreme Judicature of the Realm; namely, the *Parliament*. ANSWER.

But to proceed,

VI. *Henry V.* having considered the long Vacancy of the Apostolic See *pur le damnable Scisme*, which had then continued for a long Time in Holy Church, and then was not known how long it might still last. And that certain Cathedral Churches within the Kingdom, which were of the Foundation of his noble Progenitors, and belonged to his Patronage, had been for some Time, and then were, destitute of Pastoral Government, because the Persons that were elected into the same could not be confirmed in Parts beyond the Sea, for want of an Apostle, *Combien que nostre dit Seignieur le Roy sur ceo ait attroie son Roial Assent*, to the great Decrease of Divine Service in the said Churches, Substraction of Hospitality, great Peril of many Souls, Devastation and Destruction of the Lordships and Possessions belonging to the same, and the Impoverishment of such Bishops elect; for that by Possibility all the Cathedral Churches within this Realm might become void in like manner, and so be destitute of Government, and the King and his Realm, of Council, Comfort, and Aid, which they ought to have of the Prelacy. L'ordinance pur les Esclizas Evefchees durant la presente, voidance del See Papale. Rot. Parliam. 3 H.V. No. 11.

N

Considering

Considering also that in diverse foreign Parts since the Voidance of the said See, diverse Confirmations had been made, and were then daily made by the Metropolitans of the Places, as he was credibly informed, and willing for that Cause that he might oust the said Mischief, to provide such Remedy as it behoved.

A new Law made in Parliament, touching the Consecration and Confirmation of Bishops here in England, by their Metropolitans, during the Anti-Papacy at Rome.

He, *de plein & deliberate Advis & Assent*

1. *Des Seigniours,*

2. *Et Communes de son Roialme,*

present in a Parliament held at *Westminster, anno Regni sui 3,* willed and ordained,

“ That the Persons so chosen and to be chosen within his Kingdom, “ during the Vacancy of the said See Apostolic, should be confirmed “ by the Metropolitan of the Places, without Excuse or further Delay “ in that Behalf; and that the King’s Writs, if need required, should “ be directed to the Metropolitans, charging them to make the said “ Confirmations, and to perform all that to their Office belonged, as “ also to the Bishops elect, that they on their Part should effectually “ prosecute their said Confirmations, that through Default of such “ Metropolitans or Bishops elect, Damage or Prejudice might not en- “ sue to the King and to his Realm, and to the said Churches for “ the Causes aforesaid, *que Dieu ne voille.*”

All that I shall observe upon this Ordinance of Parliament shall be,

A general Observation.

That whereas by the Course of Antiquity it appears, even from the coming in of *Austin*, the Monk, that after the Bishops were elected, they were not look’d upon to be perfect Bishops, till they were consecrated by Authority derived from the Pope: Now in this present Case it is plain, that some Bishops had been elected, and it is as plain, that the King had given his Assent thereto; from whence the Doubt arose, whether or no those Bishops, for want of the usual Consecration, which at that Time could not be had, were (being then consecrated by the Metropolitan) legal Bishops? This being a difficult Question, we see it could not be settled by any less Jurisdiction or Power, than that of King, Lords, and Commons, assembled in Parliament, and by Authority thereof.

I go on :

Pulton’s Stat. 20 Hen. VI. cap. 9. The Order of Trial of Duchesses, Countesses, or Baronesses, being indicted of Treason or Felony. Magna Charta, cap. 29.

VII. In the Parliament held 20 *Henry VI.* a Statute was made concerning the Trials of Duchesses, Countesses, and Baronesses, upon Indictments of Treasons and Felonies. The Statute recites, that whereas it was contained in the great Charters, among other things, “ That no “ Freeman should be taken or imprisoned, or disseized of his Freehold, “ or his Liberties, or Free-Customs, or should be outlawed, or banished, “ or in any wise destroyed; nor would the King go upon him, nor send “ upon him, but by the lawful Judgment of his Peers, or by the Law “ of the Land;” in which Statute, is no mention made how Women,

Ladies

Ladies of great Estate in respect of their Husbands, Peers of the Land, married or sole; that is to say, Duchesses, Countesses, or Baronesses, should be put to answer, or before what Judges they should be judged upon Indictments of Treasons, or Felonies, by them committed or done, in regard whereof it was a Doubt in the Law of *England*, before whom and by whom, such Ladies so indicted should be put to answer, and be judged.

Whereupon the King, being willing to put out such Ambiguities and Doubts, did declare by Authority of Parliament, that such Ladies so indicted of any Treason or Felony by them done, or thereafter to be done, whether married or sole, that they thereof should be brought to answer, and put to answer, and adjudged before such Judges and Peers of the Realm, as Peers of the Realm should be, if they were indicted or impeached of such Treasons or Felonies done, or thereafter to be done, and in like Manner and Form, and in none otherwise.

It is true this Statute is grounded upon a Branch of the great Charter, or Statute of *Magna Charta*, and explains it, but the Statute of 20 *Henry VI. ne fuit forsque Declaration de la Common Ley*, as my Lord *Coke* affirms in the Countess of *Rutland's Case*. Coke, lib 6. fol. 52. b.

This Statute will admit of no Exception: For evident it is from thence, that the Opinions and Sentence of the learned Judges in *Westminster Hall*, were far from being thought of sufficient Authority to decide so great an Ambiguity and Doubt in a Point of the Common Law. And therefore we see it was settled by the Law-making Power of the Kingdom. This Statute of 20 Hen. VI. was but declarative of the Common Law. The Parliament only did settle this Doubt in Law.

But further,

VIII. In the 21st Year of *Henry VIII.* there was an Act made concerning taking of Mortuaries, and, as the Statute says it was, to settle for the future such Question, Ambiguity, and Doubt, as had chanced and risen upon the Order, Manner, and Form, of demanding, receiving, and claiming of Mortuaries, otherwise called *Corse-presents*. Raft. Stat. 21 Hen. VIII. cap. 6. The Uncertainty of taking of Mortuaries settled by Parliament.

IX. Nor did the Parliament of the 24th of *Henry VIII.* act by Humour, when upon a Question and Ambiguity which had then arose, whether if a Man should slay another who should attempt to rob or murder, or feloniously attempt to break any Dwelling House in the Night-time, he should forfeit his Goods and Chattels for the same, as any other Person should do that by Chance-Medly should happen to kill and slay any other Person in his, or their Defence? The Parliament did for the Declaration of that Ambiguity, and Doubt, enact, That they should not forfeit, but should be fully acquitted and discharged of the Death of any such evil disposed Person in such manner slain. Raft. Stat. 24 Hen. VIII. cap. 5. A Question in Law arising, Whether a Man, killing a Thief, should forfeit his Goods. The Parliament resolved he should not.

Again,

Again,

Rastal's Stat.
1 Edw. VI.
cap. 4.
*Doubts about
Tenures holden
in Capite, re-
solved in Par-
liament.*

X. In the 1st of *Edward VI.* an Act was made for the taking away Ambiguities, Questions, and Doubts which had been moved and stirred in divers and sundry the King's Courts of Record, concerning Lands coming into the King's Hands by Attainders, by Act of Parliament, by Verdict, Confession, Conviction, or Outlawry, &c.

Rastal's Stat.
1 Edw. VI.
cap. 8.
*Questions aris-
ing about the
Validity of the
King's Letters
Patents, deter-
mined only by
Authority of
Parliament.*

XI. Again in the same Year, another Act passed for confirming such Letters Patents, &c. as were made by him since 28th of *January* last, under the Great Seal, the Seal of the *Duchy of Lancaster*, and the Seal of the Court of Augmentations and the Revenues of his Crown, or any of them, of divers Honours, Castles, Manors, Lands, &c. to avoid and hinder sundry and many Ambiguities, Doubts, and Questions, which had or might thereafter happen to be moved, objected, alledged, invented, procured or stirred, as well for mis-naming, mis-recital or non-recital of any of the same Honours, &c.

To give one Instance more,

*The Parliament
declares, That
the regal Power
of this Realm
is as fully and
absolutely in a
Queen as in a
King, by the
Laws of Eng-
land.*

XII. In the second Parliament of *Queen Mary*, an Act was made, declaring, That the Regal Power of this Realm was in the Queen's Majesty, as fully and absolutely as ever it was in any of her most Noble Progenitors, Kings of this Realm.

I will give the Act *verbatim*, with some Notes upon it:

Rastal's Stat.
ann. 1 Mariz
Parl. secund.
cap. 1.

“ Forasmuch as the Imperial Crown of this Realm, with all Dignities, Honours, Prerogatives, Authorities, Jurisdictions, and Pre-eminences thereunto annexed, united and belonging, by the divine Providence of Almighty God is most lawfully, justly and rightfully descended and come unto the Queen's Highness that now is, being the very true and undoubted Heir and Inheritrix thereof, and invested in her most Royal Person, according unto the Laws of this Realm; and by Force and Virtue of the same, all Regal Power, Dignity, Honour, Authority, Prerogative, Pre-eminence, and Jurisdictions do appertain, and of Right ought to appertain and belong unto her Highness, as to the sovereign supreme Governour and Queen of this Realm, and the Dominions thereof, in as full large and ample Manner, as it hath done heretofore to any other her most Noble Progenitors Kings of this Realm.

“ Nevertheless, the most ancient Statutes of this Realm, being made by Kings then reigning, do not only attribute and refer all Prerogative, Pre-eminence, Power, and Jurisdiction Royal unto the Name of King; but also do give, assign, and appoint the Correction and Punishment of all Offenders, against the Regality and Dignity of the Crown and the Laws of this Realm, unto the King.

“ By

“ By Occasion whereof, the malicious and ignorant Persons may be
 “ hereafter induced and persuaded unto this Error and Folly, to think
 “ that her Highness could, ne should have, enjoy, and use such like Royal
 “ Authority, Power, Pre-eminence, Prerogative and Jurisdiction, nor
 “ do, nor execute and use all Things concerning the said Statutes, and
 “ take the Benefit and Privilege of the same, nor correct and punish
 “ Offenders against her most Royal Person, and Regalty and Dignity
 “ of the Crown of this Realm, and the Dominions thereof, as the
 “ Kings of this Realm her most noble Progenitors have heretofore done,
 “ enjoyed, used, and exercised.

“ For the avoiding and clear Extinguishment of which said Error or
 “ Doubt, and for a plain Declaration of the Laws of this Realm in
 “ that behalf;

“ Be it *Declared* and Enacted by the Authority of this present Par-
 “ liament, That the Laws of this Realm are, and ever have been, and
 “ ought to be understood, That the Kingly or Regal Office of the
 “ Realm, and all Dignities, Prerogative, Royal Power, Pre-eminences,
 “ Priviledges, Authorities and Jurisdictions thereunto annexed, united
 “ or belonging, being invested either in *Male* or *Female*, are and be,
 “ and ought to be as fully, wholly, absolutely, and entirely deem-
 “ ed, judged, accepted, invested, and taken in the one as in the other ;
 “ so that what or whensoever Statute or Law doth limit and appoint,
 “ that the King of this Realm may or shall have, execute and do any
 “ thing as King, or doth give any Profit or Commodity to the *King*,
 “ or doth limit or appoint any Pains or Punishment for the Correction
 “ of Offenders or Transgressors against the Regalty and Dignity of the
 “ *King* or of the Crown ; The same the *Queen* (being supreme Gover-
 “ ners, Possessor, and Inheritor to the Imperial Crown of this Realm,
 “ as our said Sovereign Lady the *Queen* most justly presently is) may
 “ by the same Authority and Power likewise have, exercise, execute,
 “ punish, correct and do, to all Intents, Constructions and Purposes,
 “ without Doubt, Ambiguity, Scruple or Question ; any Custom, Use
 “ or Scruple, or any other thing whatsoever to be made to the contrary
 “ notwithstanding.”

Now upon this memorable Statute, give me leave to note ;

1. First, That there was a Doubt, though it be said to be an erro-
 neous one, Whether the Regal Power was in *Queen Mary*, as fully
 and absolutely as it had been in the Kings of this Realm ? *Notes upon this Statute.*

2. And therefore for the plain Declaration of the *Laws* of the Realm
 in that behalf, it was Declared and Enacted by Authority of Parlia-
 ment, That the *Queen* was invested with the same Regal Power that
 the Kings of this Realm formerly had ; And that she might exercise
 the same without Doubt, Ambiguity, Scruple or Question ; any Cu-
 stom,

O

flom, Use or Scruple, or any other thing whatsoever to be made to the contrary notwithstanding.

Now can any sober Man think, that if that Queen and her Council had looked upon the extrajudicial Resolutions of the Judges in *Westminster Hall*, to have been of sufficient Force and Authority to have finally determined a Doubt of so great a Consequence, that it should ever have been brought into Parliament? And the Law therein to be declared by Authority of Parliament? No certainly, that would never have been done.

The Conclusion.

It is not difficult to produce Numbers of Statutes, whereby Questions, Ambiguities and Doubts, which happened to arise in Cases at the Common Law, were declared, determined, and settled by Parliament; and that too in Matters of more ordinary Concern to the Publick, being compared with the foregoing Precedents.

But I conceive these are full enough to convince any reasonable Man that my Assertion is true, *viz.*

That when any Doubts and Differences of Opinions arose amongst Lawyers, concerning what the Common Law was in Points of great and weighty Importance; such Doubts and Differences were by ancient Course and Practice, *Declared and Settled*, not by the Judges in *Westminster Hall*, but by the Law-making Power of the Kingdom.



C H A P.

CHAP. V.

Where former Statutes have seemed dark and dubious, and by the subtle and nice Wits of learned Lawyers, were made liable to several different Constructions; the Parliament, as being the Highest Court and Seat of Justice, and who best knew their own Sense and Meaning, wisely provided additional explanatory Acts, to direct and guide the Judges of Westminster Hall how they ought to expound such Statutes; and did not leave them to follow their own arbitrary Discretions, of interpreting those Laws contrary to the true Design and Intent of the Makers thereof.

MY last Chapter being upon several Doubts and Ambiguities what the Common Law was in Points of great Importance, which only could be declared and resolved by Authority of Parliament; This is to shew, that where any Doubts and Ambiguities did arise upon the Exposition of Statutes, that concerned the Publick Justice and Safety; those likewise were still settled and determined by other subsequent explanatory Statutes, and not by the Judges of *Westminster Hall*.

To begin,

I. In the Case of *William Butler*, ann. 20 *Edw. I.* in an Action of Waste brought in the *Common Pleas*, forasmuch as certain Justices did not agree in giving Judgment in that Case, the King himself brought the Case *in pleno Parlamento*; and there the Case was adjudged: And not only so, but

Stat. of Waste, made 20 Ed. I. The Judges differing in Opinion about a Point of Law, the Case was brought in pleno Parliam. and there settled Plac. Parliam. fol. 93.

1. The Justices of the *King's Bench* were likewise commanded *Quod in loquela prædicta, & in consimilibus, de cætero procedant; & secundum quod inveniri contigerit, Judicium reddant.*

With Directions what should be a Rule to them in Cases of the like Nature.

2. Et

2. *Et similiter præceptum est Justiciariis de Banco in pleno Parlamento, quod hoc idem coram eis de cætero faciant firmiter observari, &c.*

25 Edw. III.
cap. 2. concern-
ing Treasons.

II. The Statute of the 25th of *Edward III.* entitled, *A Declaration what Offences shall be adjudged Treason*, recites, That divers Opinions before that Time had been, in what Case Treason should be said, and in what not: And therefore the King, at the Request of the Lords and Commons, declared what Offences should be adjudged Treason.

The Parliament
only to be Judges
in doubtful Cases
what shall be
Treason.

After which it was enacted, That because many other Cases of Treason might happen in Time to come, which could not then be thought of or declared; if any such other Case should happen, the Justices should tarry 'till Cause were shewed before the King and his Parliament.

Rastal's Stat.
15 Rich. II.
cap. 5.
Religious
Mortmain.

III. *Anno 15 Richardi II.* a Statute was made, reciting, That whereas it was contained in the Statute *De Religiosis*, that no Religious, ne other whatsoever he be, should buy or sell, or under Colour of Gift, or Term, or any other manner of Title, receipt of any Man, or in any Manner by Craft or Engine, of any manner cause to be appropriate unto him, any Lands or Tenements, upon Pain of Forfeiture of the same; whereby the said Lands and Tenements in any manner might come to Mortmain.

And if any Religious or any other come against the same Statute, by Art or Engine in any manner, that it should be lawful to the King and other Lords in the said Lands and Tenements to enter, as in the said Statute did more fully appear.

And that then of late by subtle Imagination, and by Art and Engine, some religious Persons, Vicars, and other spiritual Persons, had entered in divers Lands and Tenements, which were adjoining to their Churches, and of the same Lands by Sufferance and Assent of the Tenants had made Church-yards, and by Bulls of the Bishop of *Rome* had dedicated and hallowed the same; and in them did make continually Parochial Burying, without Licence of the King or the Chief Lords:

Therefore it was Declared in this Parliament, That it was manifestly within the Compass of the said Statute.

And moreover it was agreed and assented,

That all they that were possessed by Feoffment, or in any other Way, to the Use of religious Persons, or other spiritual Persons, of Lands and Tenements, Fees, Advowson, or any other manner of Possessions, to the intent to amortise them, whereof the said religious or spiritual Persons did take the Profits; that between that and the Feast of *St. Michael* then next coming, they should cause them to be amortised, by the Licence of the King, and of the Lords; or else that they should
sell

sell them, and alien them to some other Use, between that and the said Feast, upon Pain to be forfeit to the King and to the Lords, according to the Form of the said *Statute of Religious*, as Lands purchased by Religious People; and that from thenceforth no such Purchase should be made, so that such Religious, or other Spiritual Persons, should take thereof the Profits, as afore is said, upon Pain aforesaid.

And it was farther declared, That the same Statute should extend and be kept of all Lands, Tenements, Fees, Advowsons, and other Possessions purchased or to be purchased, to the Use of Guilds or Fraternities.

And moreover, it was Assented, That forasmuch as the Mayors, Bailiffs, and Commons of Cities, Burroughs, and other Towns, that had a perpetual Commonalty; and others which had Offices perpetual, should be as perpetual as People of Religion; and that from thenceforth they should not purchase to them and to their Commons and Office, upon the Pein contained in the Statute *De Religiosis*: And also of That that others were possessed, or hereafter should purchase to their Use; and they thereof took the Profits, it should be done in like manner as afore is said of People of Religion.

*Perpetual
Commonalty.*

From whence we may note,

1. That there was Craft, Art and Engine, to elude the Force of the Statute *De Religiosis*, touching *Mortmain*.

*Notes upon the
foregoing Statute.*

2. That to meet with all subtle Imaginations, the Parliament, as being the Highest Court and Seat of Justice, and who best knew their own Sense and Meaning, wisely provided an additional explanatory Act, to direct and guide the Judges of *Westminster Hall*, How they ought to expound that Statute in time to come.

3. And lastly, the Parliament added a farther Explanation thereof, to corroborate and strengthen it for the future.

IV. At the Parliament of the 16th of *Richard II.* the Commons of the Realm shewed to the King, grievously complaining, That forasmuch as the King and all his leige People ought of Right, and of old time were wont to sue in the King's Court, to recover their Presentments to Churches, Prebends, and other Benefices of Holy Church, to the which they had Right to present; the Cognizance of Plea, of which Presentment belonged only to the King's Court of the old Right of his Crown used in the Time of his Progenitors, Kings of *England*.

*Rastal's Stat.
16 Rich. II.
cap. 5.
The Commons
grievous Com-
plaint against
the Usurpations
of the Pope both
upon the King
and Kingdom.*

And when Judgment should be given in the same Court upon such Plea and Presentment, the Archbishops, Bishops, and other spiritual Persons, which had Institution of such Benefices, within their Jurisdiction, were bound, and had made Execution of such Judgment by the King's Commandments of all the Time aforesaid, without Interruption (for that any other Lay Person might not make Execution,) and also were bound of Right to make Execution of many other of the

P

King's

King's Commandments, of which Right the Crown of *England* had been peaceably seized, as well in the Time of the said King, as in the Time of its Progenitors, 'till that Day.

But that then of late divers Processes were made by the Bishop of *Rome*, and Censures of Excommunication, upon certain Bishops of *England*; because that they had made Execution of such Commandments; to the open Disherison of the said Crown, and Destruction of the said King, his Law, and all his Realm, if Remedy should not be provided.

And the Commons farther tell the King, That it was said, and the common Clamour made, That the Bishop of *Rome* had ordained and purposed to translate some Prelates of the same Realm, and some out of the Realm, and some out of one Bishoprick into another within the same Realm, without the King's Assent and Knowledge, and without the Assent of the Prelates, which so should be translated; which Prelates were much profitable and necessary to the King, and to all his Realm: By which Translations (if they were suffered) the Commons said, That the Statutes should be defeated and destroyed, and his said Liege Persons of his Council, without his Assent and against his Will, withdrawn and gotten out of the Realm, and the Substance and Treasure of the Realm would be born away; and so the Realm would be destitute, as well of Council as of Substance, to the final Destruction of the Realm: And so the Crown of *England*, which had been so free at all Times, that it had been in Subjection to no Realm, but immediately subject to God, and to none other, in all Things touching the Regalty of the same Crown, should be submitted to the Bishop of *Rome*, and the Laws and Statutes of the Realm would be by him defeated and destroyed at his Will, in perpetual Destruction of the King, his Crown and his Regalty, and of all his Realm, which God defend.

And moreover, the Commons said, That the said Things so attempted, were clearly against the King's Crown and his Regalty, used and approved of in the Time of all his Progenitors: Wherefore they declared, That they and all the Liege Commons of the Realm would be with the King and his said Crown and his Regalty in the Cases aforesaid, and in all other Cases attempted against Him, his Crown, and his Regalty, in all Points to live and die.

And moreover they prayed the King, and him required by way of Justice, that he would examine all the Lords in the Parliament, as well Spiritual as Temporal severally, and all the States of the Parliament, how they thought of the Cases aforesaid, which were so openly against the King's Crown, and in Derogation of his Regalty; and how they would be in the same Case with the King, in upholding the Rights of his said Crown and Regalty.

Whereupon the Lords Temporal being so demanded, answered every one by Himself; That the Cases aforesaid were clearly in Derogation
of

of the King's Crown, and of his Regalty, as it was well known, and had been of a long Time known, and that they would be with the same Crown and Regalty, in those Cases especially, and in all other Cases which should be attempted against the same Crown and Regalty, in all Points, with all their Power.

And moreover it was demanded of the Lords Spiritual there being, and of the Procurators of others being absent, their Advice and Will in all those Cases: Which Lords, that is to say the Archbishops, Bishops, and other Prelates being in the Parliament severally examined, making Protections that it was not their Mind to deny nor affirm that the Bishop of *Rome* might not excommunicate Bishops, nor that he might make Translations of Prelates, after the Law of Holy Church, answered and said, That if any Executions of Processes made in the King's Court (as before) were made by any, and Censures of Excommunication were made against any Bishop of *England*, or any other of the King's leige People, for that they had made Execution of such Commandments, and that if any Execution of such Translations were made of any Prelates of the same Realm, which Prelates were very profitable and necessary to the King and to his said Realm, or that the sage People of his Council, without his Assent, and against his Will, will be withdrawn and eloynd out of the Realm, so that the Substance and Treasure of the Realm might be destroyed, that the same was against the King and his Crown, as it is contained in the Petition aforesaid.

And likewise the same Procurators, every one by himself being examined upon the same Matters, answered, and said in Name and for their Lords, as the said Bishops had said and answered, and that the said Lords Spiritual would, and ought to be, with the King, in these Cases lawfully in maintaining of his Crown and his Regalty, as they be bound in their Ligeance.

Whereupon the King, by the Assent aforesaid, and at the Prayer of his said Commons, ordained and established,

“ That if any should purchase or pursue, or cause to be purchased
 “ or pursued, in the Court of *Rome*, or elsewhere, any such Transla-
 “ tions, Processes and Sentences of Excommunications, Bulls, Instru-
 “ ments, or any other Things which touch the King, against him, his
 “ Crown, and his Regalty, or his Realm, as is aforesaid: And they
 “ which should bring within the Realm, or them receive, or make
 “ thereof Notification, or any other Execution within the same Realm,
 “ or without, that they, their Notaries, Procurators, Maintainers,
 “ Abettors, Fautors and Counsellors, should be put out of the King's
 “ Protection, and their Lands and Tenements, Goods and Chattels,
 “ forfeited to the King, and that they should be attached by their Bo-
 “ dies, if they might be found, and brought before the King and his
 “ Council, there to answer to the Cases aforesaid, or that Process be
 “ made against them by *Premunire facias*, in Manner as it was or-
 “ dained

“ dained in other Statutes of Provisors, and other which did sue in
 “ any other Court, in Derogation of the Regalty of the King.”

*Inferences from
 this Statute of
 Premunne.*

Now if the Force of this Statute be well weighed by the judicious
 Reader, he must, unless he be a virulent and ill-designing Man,

First in general observe, that it hath a double Aspect; for,

It is a most memorable Declaration what the ancient Prerogative of
 the King was ;

And likewise what the Rights of the Kingdom were in old Times.

Secondly, in particular, he must also confess,

1. That the Laws and Statutes of the Realm ought not to be de-
 feated, and avoided at Will, to the Destruction of the King and King-
 dom ; they being absolutely necessary for the Support of the Govern-
 ment, and the Safety of every Man's Life and Interest.

2. That after the Commons had solemnly debated, and seriously
 considered the many Mischiefs of the Papal Usurpations, and had de-
 livered their Judgments upon them in Point of Law, they then prayed
 the King, and him required by way of Justice, that he would examine
 all the Lords in the Parliament, as well Spiritual as Temporal, and
 all the Estates of the Parliament severally, how they thought of the
 Cases aforesaid.

And that being done,

3. The Lords Temporal unanimously concurred in Judgment with
 the Commons, that those Matters were thereby against the King's
 Crown, and his Regalty, used and approved of in the Time of all his
 Progenitors.

4. But the Lords Spiritual, and the Procurators of those Prelates who
 were then absent from Parliament, answered cautiously, Yet notwith-
 standing, the Petition or Remonstrance of the Commons past into a
 farther Law, against Provisions from *Rome*.

*Pulton's Stat.
 3 Hen. V.
 cap. 6.
 The Statute of
 25 Edw. III.
 concerning
 Treasons ex-
 plained by this
 Parliament.*

V. In a Parliament held 3 *Henry V.* because before that Time great
 Doubt and Ambiguity had been, whether that clipping, washing, or
 filing of Money of the Land, ought to have been judged Treason or
 not ; forasmuch as no mention thereof was made, in the Declaration
 of the Articles of Treason made in the Parliament holden the 25th Year
 of *Edward III.* King *Henry* being willing to decide such Doubt, and
 to put the same in Certainty, did by the Advice and Assent,

*And by them
 adjudged, that
 clipping, wash-
 ing, and filing,
 shall be High
 Treason.*

1. Of the Lords Spiritual and Temporal. And

2. At the Request of the Commons declare, that such clipping,
 washing, and filing, should be adjudged for Treason, and they which
 should so clip, wash, and file the Money of the Land, should be ad-
 judged Traytors to the King, and to the Realm, and should incur
 the Pain of Treason.

*Observations
 thereupon.*

This shews the Wisdom and Care of our Ancestors, that Doubts and
 Ambiguities in Matters of Treason, should not be left to the arbitrary
 Interpretations

Interpretations of the Judges of *Westminster Hall*, but should be * declared in Parliament.

For they were not ignorant, that resolving Doubts in Matters of Treason was a Concern of so high a Nature, that it ought never to be intrusted in the Hands of Judges, chosen and paid by the Crown, which was to have the Forfeitures of such Treasons; nor wanted they sufficient Evidence to prove, that Judges had been awed and influenced by great Men, corrupted by Bribes, intoxicated with the Love of Power, Vassals to their Passions and Revenge, and some groaning under the Temptation of Poverty:

VI. In the Parliament 8 *Henry V.* the Commons prayed, That whereas *Edward III.* late King of *England*, Great-Grand-Father of our Lord the King that now is, at his Parliament held at *Westminster* on *Wednesday* next after *Mid-Lent*, in the 14th Year of his Reign over *England*, and his 1st over *France*; reciting, That some People apprehending, that whereas the Kingdom of *France* was devolved to him, as right Heir thereof, and that forasmuch as he was King of *France*, the Kingdom might, in Time to come, be brought into Subjection to the King and Kingdom of *France*, the said late King having regard to the State of his said Kingdom of *England*, and particularly that it never was, nor ought to be in Subjection and Obedience to the Kings of *France*, that had then been, nor to the Kingdom of *France*, desiring to provide an entire Security for the said Kingdom of *England*, and of his Leiges of the same, willed, granted, and established, for himself, his Heirs, and Successors,

Royaulm de Angleterre n'estre Subject au Roy de France. Rot. Parliam. 8 Hen. V. No. 25. The Parliament declared that the Kingdom of England should not be in Subjection or Obedience to Henry V. or his Heirs, as Kings of France, being an Explanation and Enforcement of the 14th Edw. III. beforementioned.

Per Assent

1. *Des Prelatz, Countes, Barons,*
2. *Et Communes,*

de son dit Roialm d'Engleterre en son dit Parlement,

That by Reason or Colour of his being King of *France*, and that the Kingdom of *France* belonged to him, as aforesaid, or of his styling himself King of *France*, or of his having changed his Seal, or his Arms, nor for any Command which he had issued or should issue in Time to come as King of *France*, his said Kingdom of *England*, nor the People thereof, of what Estate or Condition soever they were, should not, in Time to come, be brought into Subjection or Obedience to Him, his Heirs, and Successors, as King of *France*; nor to Him, his Heirs, and Successors, as Kings of *France* as aforesaid, should be

* John Imperial, who was Ambassador from the State of Genoa to Richard II. being murdered by John Kerby and John Algore, two Citizens of London, Quel Casé examiné & disputé inter

1. Les Seigniors,
2. Et Communes,

Et puis monstre

3. Al Roy

en Pleine Parlement, it was there declared, determined, and assented, that it was Treason. Rot. Parl. 3 Rich. II. No. 18.

Q

subject

subject or obedient; but should be free and quit of all manner of Subjection and Obedience aforesaid, as they have used to be in the Time of his Progenitors, Kings of *England*, at all Times.

And whereas it was then come to pass, that *Henry V.* by the Grace and mighty Aid of God, and by his Knight-like, diligent, and painful Labour, was at that present Heir and * Regent of the said Kingdom of *France*, and that after the Death of *Charles* King of *France*, *Henry V.* and his Heirs, were to be Kings of *France* for ever, thanks be to God for the same,

The Commons prayed, that it might please the most noble and most mighty Prince, the Duke of *Gloucester*, then Guardian of *England*, to ordain and establish, by Authority of this Parliament, that the said Grant and Establishment of the said late King *Edward*, as aforesaid, might be confirmed and kept in all Points:

And moreover to ordain, by Authority aforesaid, that by reason of King *Henry's* being Heir and Regent of the Kingdom of *France*, and that He and his Heirs, after the Death of the said *Charles* King of *France*, would be Kings of *France*, *que per mandement que nostre Seignour le Roy ad fait*, or that He, his Heirs, or Successors, should have Issue in Time to come, as Heir and Regent of the Realm of *France*, or as King of *France*, that the said Kingdom of *England*, nor the People thereof, of what Estate or Condition soever they were, should not in any Time to come be brought into Subjection nor Obedience to Him, his Heirs, and Successors, as Heir Regent or King of *France*; nor to Him, his Heirs, and Successors, as Heir Regent or King of *France*, be subject or obedient; but that they should be free and quit of all manner of Subjection and Obedience aforesaid at all Times.

RESPONS. *Soit l'Estatute ent fait tenuz & gardez.*

Inferences from
this Statute.

Stat. 43 Eliz.
cap. 18.

This is a great Instance of the mighty Prudence of an ancient *English* Parliament, who after they had by their Council, Blood, and Treasure, enforced the three Estates of *France* to recognize *Henry V.* to be Heir and Regent of *France*, yet we see the Care of their own Safety, and their Posterity made them to consult timely, and provide effectually for all such Means, as then were or might be necessary, to preserve both themselves and the Kingdom from future Dangers, whereunto the State might fall through lack of so much Care and Providence, as agreed with the Rules of Nature and common Reason. For what

* Probatio pacis inter regna Angliæ & Franciæ nuper conclusæ
Per tres Status utriusque Regni, viz.

1. Prælatorum & Cleri,
2. Necnon Procerum & Nobilium,
3. Ac etiam Civium & Burgensium Civitatum, Vilarum, & communitatum prædictorum
ignorum :

Qui omnes eandem Pacem & omnia & singula contenta in eadem approbarunt, laudarunt, acceptarunt, roboraverunt, & autorizarunt. *Res. Parl. 9 Hen. V. pars 1. No. 14.*

could

could have been more fatal to the *English*, than after so many memorable Victories, which they had obtained over the *French*, at last to be made their perpetual Vassals and Slaves, and that too by Colour of Law to be declared by an usurped Legislative Power of future Judges?

I shall purposely pass by several Instances that might be given in succeeding Kings Reigns to justify my general Assertion, because I would not swell this Chapter too big; and therefore will now come to the Time of *Hen. VIII.*

VII. The Statute of 4 *Hen. VIII. cap. 3.* touching Jurors in *London*, was expounded and interpreted by the Statute of 5 *Hen. VIII. cap 5.*

Pulton's Stat.
4 Hen. VIII.
cap. 3.
Id. 5 Hen. VIII.
cap. 5.

VIII. Again, says another Act, Whereas divers Statutes Penal had been made against Strangers Artificers, for exercising of Handicrafts within this Realm, and for keeping of Houses, Apprentices and Servants Strangers: And whereas sithence the making thereof, Beer-Brewers and Bakers, which were Common Victuallers, and also Surgeons and Scriveners, being Strangers, inhabiting and dwelling within this Realm, had been put to Trouble and great Vexation, by occasion of Informations brought against them upon the said Statutes, supposing that Strangers using Baking, Brewing, Surgery or Writing, should be Handy-crafts Men: Upon the which Information, great Doubts and Ambiguities had risen,

Rastal's Stat.
22 Hen. VIII.
cap. 13.

Whether Strangers using any of the said Mysteries or Sciences, should be understood such Hand-Crafts Men, as were intended by any the said Statutes.

Doubts arising whether Brewers, Bakers, Surgeons and Scriveners, being Strangers, should be expounded Handy-crafts Men, according to the Intent of former Statutes, explained and settled in this Parliament.

For plain Declaration thereof, it was *ann. 22 Hen. VIII.* enacted,

1. By the King,
2. And the Lords Spiritual and Temporal,
3. And the Commons,

in Parliament assembled, and by the Authority of the same, That no Person or Persons, Strangers, being a common Baker, Brewer, Surgeon, or Scrivener, should be interpreted or expounded Handy-crafts Men, in, for, or by reason of using any of the said Mysteries or Sciences of Baking or Brewing, Surgery or Writing: And that all Informations, Suits, Actions and Process, which then had been taken, or thereafter to be taken upon any of the said Statutes against any such Stranger or Strangers, being Bakers, Brewers, Surgeons or Scriveners, should be by Authority of that Act void and of none Effect. Further,

IX. In the 31st of *Hen. VIII.* an Act of Parliament was made, That such as were Religious Persons might purchase, sue and be sued, in all manner of Actions: But forasmuch as divers Ambiguities and Doubts did arise upon that Act; to avoid for the future those Ambiguities and

Rastal's Stat.
31 Hen. VIII.
cap. 6.
Persons Religious to purchase, sue and be sued in all manner of Actions.

Doubts,

Raftal's Stat.
33 Hen. VIII.
cap. 29.

Doubts, another Act was made *ann.* 33. of the same King's Reign, explanatory of the former. Again,

*The Statutes
concerning
Wills.*

32 Hen. VIII.
cap. 1.

X. Divers Doubts, Questions, and Ambiguities, having risen and been moved, and grown by Diversity of Opinions taken in and upon the Exposition of the Letter of the Statute 32 *Hen. VIII. cap. 1.* shewing in what Cases a Man might dispose of his Lands by his last Will in Writing, &c. For a plain Declaration and Explanation thereof, it

Pulton's Stat.
34 & 35 Hen.
VIII. cap. 5.

was enacted by the Statute 34 and 35 *Hen. VIII.* that the Meaning of the Letter of the same Statute, concerning such Matters thereafter rehearsed, should be by Authority of that Parliament enacted, taken, and expounded, judged, declared, and explained, in Manner and Form following, &c.

4 Hen. VII.
cap. 14.
32 Hen. VIII.
cap. 36.

XI. Divers Doubts, Questions and Ambiguities having risen upon the Diversity of Interpretations and Expoundings of the Statutes of 4 *Hen. VII. cap. 14.* and 32 *Hen. VIII. cap. 36.* concerning Fines, &c.

Pulton's Stat.
34 & 35 Hen.
VIII. cap. 22.
*explaining the
two former Sta-
tutes of Fines.*

In the Parliament 34 and 35 *Hen. VIII. cap. 22.* a farther Explanation was made thereof,

1. By the King,
2. The Lords Spiritual and Temporal,
3. And Commons,

in that Parliament assembled, and by Authority of the same.

Raftal's Stat.
5 & 6 Ed. VI.
cap. 13.
*recising the Sta-
tute of 31 Hen.
VIII. cap. 6.*

XII. And lastly, By an Act of Parliament made the 5th and 6th of *Edw. VI.* reciting the Statute of the 31st of *Hen. VIII. viz.* " For " and concerning the Enablement of Professed and Religious Persons to " purchase to them and to their Heirs in Fee Simple, Fee Tale, for " Term of Life, for Years or at Will, Manors, Lands, Tenements, " Rents, Annuities, and other Hereditaments and Things whatsoever : " And that they and every of them should or might from thenceforth use " and exercise, receive, take, have and enjoy, all and every lawful Thing " and Things to be grown, fallen or happened to them or any of them, " after the same Deraignment or Departing out of Religion : In which " Act there is a Proviso contained, *viz.* That none of the same Reli- " gious Persons should or might at any Time after the making of the " said Act, be taken, deemed or adjudged for, or as Heir, or Heirs, or " inheritable to any Person or Persons, to any Purpose, Respect, Con- " struction or Intent in the Law.

" But forasmuch as, sith the Time of the making of the said Act, " there had been certain Ambiguities and Doubts grown and arisen, " and hereafter are like to grow and arise upon the Exposition of the " said Act, Whether the said then late Religious and professed Persons " could

“ could or might be adjudged able to inherit, or to be inheritable as
 “ Heir or Heirs, to any of his or their Ancestor or Ancestors, and to
 “ have and enjoy all and every Thing and Things descended, grown,
 “ fallen, or happened to them or any of them, after the said Deraign-
 “ ment or Departing out of Religion, Yea or No :

*Ambiguities
 and Doubts aris-
 sing upon a Pro-
 viso in a Sta-
 tute 31 Hen.
 VIII. cap. 6.
 Whether religi-
 ous and professed
 Persons should
 be adjudged in-
 heritable to their
 Ancestors, from
 the Time of De-
 raignment, or
 no ?*

“ Therefore for the full and plain Declaration thereof, it was Enact-
 “ ed, Declared, and Expounded,

“ By the Authority of this Parliament held *ann. 5 & 6 Edw. VI.*

“ That all and every of the same late Religious and Professed Person
 “ or Persons, should and might by Authority of an Act then made, be
 “ enabled to all Intents, Constructions and Purposes, at all Time and
 “ Times, thereafter to be taken, deemed and adjudged as Heir or
 “ Heirs, and inheritable to all and every their Ancestor or Ancestors;
 “ and to have, challenge or enjoy, receive and take, all Manors,
 “ Lands, Tenements and Hereditaments, and every other Thing or
 “ Things, to them or any of them then fallen; come, grown, or descended
 “ from any of their Ancestors, by any manner of Ways, since the Time
 “ of their several Deraignments or Departing out of their Religion, in
 “ as ample and large Manner and Form and Condition, as if they ne-
 “ ver had been professed nor entered into Religion.

*That Statute
 was explained
 by this of 5 and
 6 Ed. VI. and
 adjudged that
 they were inhe-
 ritable to their
 Ancestors only
 from the Time of
 their several
 Deraignments.*

“ The same Profession or Religion, any Law, Custom, or Use with-
 “ in this Realm, to the contrary thereof in any wise notwithstanding.

“ Provided alway, and it was further enacted by the Authority afore-
 “ said, That none of the said Religious Persons should, or might, by
 “ Virtue of that Act, at any Time thereafter be taken, deemed or
 “ judged for Heir or Heirs, or inheritable to any Person or Persons, to
 “ any Construction or Intents in the Law, by reason of any former Right,
 “ Title, Interest, Matter or Cause had; made, done, descended or
 “ grown to any Respect or Purpose, before their said several Deraign-
 “ ments, or Departing out of their Religion; any thing before in this
 “ Act, or in the said former Act contained, to the contrary thereof
 “ notwithstanding.”

And in *Butler and Baker's Case*, in *Coke's 3^d Report*, it is declared Coke's 3^d Rep. fol. 31. a.
 for Law, That a Statute for Explanation shall not be construed but
 according to the Letter: And the Reason thereof is given, “ * because
 “ if any Exposition should be made against the direct Letter of an Ex-
 “ position made by the Parliament, there would be no End of Ex-
 “ pounding.”

But now after all these Instances, though Multitudes more (did the
 Cause require it) might easily be quoted, if the Reader should ask me
 this cross Question :

* Car-si aucun exposition sera fait encounter le direct letter del Exposition fait per Parlement, ne
 neques sera fine de exposition.

R

What

What was the General Reason why our Parliaments were so extraordinarily watchful over the Judges, to limit and restrain them in Expounding Laws?

To this I answer, by giving him the Lord Chancellor *Ellesmere's* Rule laid down for Construction of Words, in that Grand Case of the *Post-nati* of Scotland in King *James* the First's time.

The Rule is this:

The Speech of the Lord Chancellor Ellesmere in the Exchequer Chamber before all the Judges of England, in the Case of the Post-nati, P. 49.

Words are taken and construed, saith he,

1. Sometimes by Extension;
2. Sometimes by Restriction;
3. Sometimes by Implication;
4. Sometimes a Disjunctive for a Copulative;
5. A Copulative for a Disjunctive;
6. The Present Tense for the Future;
7. The Future for the Present;
8. Sometimes by Equity, out of the Reach of the Words;
9. Sometimes Words taken in a contrary Sense;
10. Sometimes Figuratively, as *Continens pro Contento*;
11. And many other like.

And of all these, he says, Examples be infinite, as well in the Civil Law, as Common Law.

Now any one that reads this, will easily judge, what the Scope and Consequence of the Chancellor's Rule may be; and he may as easily discern how far it is capable of improving, to baffle and elude any Law whatsoever, and wrest it from its genuine and native Sense to what you please: And then he cannot marvel that our ancient Parliaments took such extraordinary Care in framing and preserving the Body of their Laws, to secure themselves and their Posterities from Slavery and Oppression, and to maintain their native Rights, *viz.* To be subject only to the Laws made by their own Consents, or to such other, as by long Custom of Time they had taken and used at their own Free Will and Liberty.

Videis Stat. de anno 25 Hen. VIII. cap. 21.

But that ancient Fence they very well knew, would never be kept up, if they left it to the arbitrary Discretions and Dictates of the Judges of *Westminster Hall*: And therefore, according to their Duty and Office, as being the Supreme Expounders, Declarers, Explainers, Interpreters, and Judges both of the Common and Statute Law, they in all Ages provided,

A Sophistical Argument in late Times. The Royalists Defence, the Consensus, c. 4.

Nequid absurdum, nequid illusorium, nequid perniciosum Reipublicæ admittatur.

Away then with that apparently sophistical Argument, which in late Times made so great a Noise and Bustle in the World; namely, That the

the King, the Lords House, and the Commons House concurring, had not an unlimited Power to make Laws, it being in the Breast of the Judges of the Realm to determine which Acts of Parliament were binding, and which void; and to expound the Meaning of every Act [of Parliament.]

And that by referring this unto the Judges of the Realm, the People were better secured from an Arbitrary Power, than by attributing it to the Parliament :

A Notion which hath been artificially spread abroad and industriously improved : A Notion which is equally pernicious and injurious to all Kings and Parliaments, whose inherent Right it ever was by joint Consent to alter, amend, explain, and interpret their own Statutes as they saw Cause, and according to publick Convenience.

But how could any thing of all that be done, if the Judges had ever been invested with such a Power inseparably united and annexed to their Persons, *quatenus* Judges, to invalidate, disannul, and declare but one Act of Parliament to be void ? Since by the same Authority they might have declared Another to be so too ; and by like Logick, All, without ever adjourning any Case *ad proximum Parliamentum propter Difficultatem*. And thus we see, *Uno absurdo dato infinita sequuntur*.



C H A P. VI.

Several Statutes of Jeoffailes and Amendments were anciently made, as the Parliaments in their great Wisdoms saw Cause, to enable and authorize the Judges of Westminster Hall to correct and amend several Errors and Defects in Records and Proceſs of Law, which before could not be done by any Judiciary Power veſted in them.

Pulton's Stat.
14 Edw. III.
cap. 6.

I. **T**HE Statute of 14 *Edw. III.* authorizes the Judges haſtily to amend the Miſpriſions of Clerks, by miſtaking in Writing one Syllable or one Letter too much or too little.

Id. 9 Hen. V.
cap. 4.

II. The Statute of 9 *Hen. V.* taking notice that there were Diverſity of Opinions upon the Statute of 14 *Edw. III.* therefore to put the Thing in more open Knowledge, it was declared and ordained,
By Authority of Parliament,

That the Juſtices before whom Default ſhould be found in any Records or Proceſs might amend them before Judgment.

Id. 4 Hen. VI.
cap. 3.

III. The Statute of 4 *Hen. VI.* having recited both the ſaid Statutes, enacts,

That they ſhould hold Strength, Force, and Effect in every Record and Proceſs, as well after Judgment given upon a Verdict paſſ'd, as upon a Matter in Law pleaded, as Statutes available and effectual in the Law, to endure for ever.

Id. 8 Hen. VI.
cap. 12.

IV. In the 8th Year of *Hen. VI.* the King ordained and eſta-
bliſhed,

By Authority of Parliament,

*No Judgment
nor Record ſhall
be reverſed nor
avoided for any
Writ, Return,
Proceſs, &c.
raſed or inter-
lined.*

That for Error aſſigned, or to be aſſigned, in any Record, Proceſs, or Warrant of Attorney, original Writ, or Judicial, Pannel, or Return in any Places of the ſame raſed or interlined, or in any Addition, Subtraction, or Diminution of Words, Letters, Titles, or Parcel
of

of Letters found in any such Record, Proceſs, Warrant of Attorney, Writ, Pannel, or Return; which Raſings, Interlinings, Addition, Subſtraction, or Diminution, at the Diſcretion of the King's Judges of the Courts and Places in which the ſaid Records or Proceſs by Writ of Error or otherwiſe be certified, do appear ſuſpected; no Judgment, nor Record, ſhould be reverſed nor annulled.

And that the King's Judges of the Courts and Places, in which any Record, Proceſs, Word, Plea, Warrant of Attorney, Writ, Pannel, or Return, which for the time ſhould be, ſhould have Power to examine,

The Judges unable by this Statute to reform all Defects in Records by the Miſpriſion of the Clerk.

1. Such Records, Proceſs, Words, Pleas, Warrants of Attorney, Writs, Pannels, or Returns, by them and their Clerks.

2. And to reform and amend (in Affirmance of the Judgments of ſuch Records and Proceſſes) all that which to them in their Diſcretion ſhould ſeem to be Miſpriſions of the Clerks in ſuch Records, Proceſſes, Word, Plea, Warrant of Attorney, Writ, Pannel and Return.

3. Except Appeals, Indictments of Treason and of Felonies, and the Outlawries of the ſame.

Defects in Proceſſes Criminal the Judges are not to amend.

And the Subſtance of the proper Names, Sur-names, and Additions, left out in original Writs, and Writs of Exigent, according to the Statute another time made, viz. the Firſt Year of King Henry V. and in other Writs containing Proclamation; ſo that by ſuch Miſpriſion of the Clerk, no Judgment ſhould be reverſed nor annulled.

4. And if any Record, Proceſs, Writ, Warrant of Attorney, Return or Pannel, ſhould be certified defective, otherwiſe than according to the Writing which thereof ſhould remain in the Treasury, Courts or Places from whence they are certified, the Parties in Affirmance of the Judgments of ſuch Records and Proceſs, ſhould have Advantage to alledge that the ſame Writing was variant from the ſaid Certificate, and that being found and certified, the ſame Variance was to be by the ſaid Judges reformed and amended, according to the firſt Writing.

Variance alledged between a Record and the Certificate thereof, the Judges had Power to amend by Authority of this Act.

V. And in the ſame Parliament, another Act was made, whereby it was likewiſe ordained and eſtabliſhed, That the King's Juſtices before whom any Miſpriſion or Default ſhould be found, whether in any Records and Proceſſes, which then were or ſhould be depending before them, as well by way of Error as otherwiſe, or in the Returns of the ſame then made, or to be made by Sheriffs, Coroners, Bailiffs of Franchiſes, or any other, by Miſpriſion of the Clerks, or any of the ſaid Courts of the King, or by Miſpriſion of the Sheriffs, Under-Sheriffs, Coroners, their Clerks, or other Officers Clerks, or other Miniſters whatſoever, in writing one Letter or one Syllable too much or too little, ſhould have Power to amend ſuch Defaults and Miſpriſions,

Pulton's Stat. 8 Hen. VI. cap. 15. The Juſtices of Weſtminſter Hall enabled in certain Caſes to amend Defaults in Records and Proceſſes.

sions, according to their Discretion ; and by Examination thereof by the said Justices to be taken, where they should think needful.

*Records and Pro-
cesses in Wales
excepted out of
this Act.*

Provided that That Statute should not extend to Records and Pro-
cesses in the Parts of *Wales*, nor to the Processes and Records of Felo-
nies and Treasons, and the Dependencies thereof.

*Rastal's Stat.
32 Hen. VIII.
cap. 30.*

VI. And in a Parliament held in 32 *Hen. VIII.* a farther Act was made, which says, Forasmuch as the Party Plaintiffs and Demandants in all manner of Actions and Suits, as well Real as Personal, at the Common Law of this Realm, before that Time had been greatly de-
layed and hindered in their Suits and Demands, by reason of the crafty, subtle and negligent Pleadings of the Plaintiffs or Demandants, Defendants or Tenants, where any Action or Demand had been sued, had or made, as well in ministring of their Declarations and Bars, as also in their Replications, Rejoinders, Rebutters, Joining of Issues, and other Pleadings ; to the great Hurt, Delay and Hinderance of the said Plaintiffs or Demandants, or to the Vexation of the Defendants or Tenants.

*The Parliament
takes notice of
the several In-
conveniencies
which had hap-
pened by Delays
in Suits.*

Infomuch that when the Issues joined in the same Actions between the Parties to the same, had been tried and found by the Verdict of Twelve or more indifferent Persons, for the said Plaintiffs or Deman-
dants, or for the Tenants or Defendants, and the Justices ready to give Judgment for the said Parties, for whom the said Issue was found : The same Parties had been compelled, by the Course and Order of the Common Law of this Realm afore that Time, to re-plead, and the said Verdicts so given as is afore rehearsed, to be taken as void and of none effect :

*The Course of
the Common
Law not to be
altered but by
Parliament.*

1. Sometimes because the Issues had been misjoined and jeofaile.
2. And sometimes by taking Advantage of the Party's own Mispleading.
3. Or in the pursuing, misconveying, or discontinuing of Procefs of any of the Parties.
4. And for divers other Causes, the which is thought as well a great Slander to the said Common Law of this Realm, and to the Ministers of the same ; as also a plain Delay and Hinderance unto the said Parties, in that they should not have their Judgments when the Issue had been found and tried, as is afore said, to their great Costs and Charges :

*The constituent
Parts of the Le-
gislative Power.*

It was therefore enacted,

1. By the King,
2. By the Lords Spiritual and Temporal,
3. And the Commons,

in that Parliament assembled, and by the Authority of the same, That from thenceforth, if any Issue should be tried by the Oath of Twelve or
more

more indifferent Men, for the Party, Plaintiff or Demandant; or for the Party, Tenant, or Defendant, in any manner of Action or Suit at the Common Law of this Realm, in any of the King's Courts of Records, then the Justice and Justices, by whom Judgment thereof ought to be given, shall proceed and give Judgment in the same, any Mispleading, lack of Colour, insufficient Pleading or Jeofaile, any Miscontinuance or Discontinuance, or misconveying of Process, misjoining of the Issue, lack of Warrant of Attorney of the Party against whom the same Issue should happen to be tried, or any other Default or Negligence of any of the Parties, their Counsellor, or Attorneys, had or made to the contrary notwithstanding.

Ordered by Parliament, that after Issue tried, Judgment should be given, notwithstanding any Jeofaile, or Mispleading.

And the said Judgments thereof, so to be had and given, should stand in full Strength and Force to all Intents and Purposes, according to the said Verdict, without any Reversal or Undoing of the same, by Writ of Error, or of false Judgment, in like Form, as though no such Default of Negligence had never been had or committed.

This Act was to endure till the last Day of the next Parliament.

But in another Parliament held 2^d and 3^d Edward VI. it was enacted and established,

Pulton's Stat. 2 & 3 Ed. VI. cap. 32.

By the King, the Lords Spiritual and Temporal, and Commons,

That this Statute, and the Statutes of 32 Henry VIII. cap. 30. concerning Jeofails, and 35 Henry VIII. cap. 6. directing what kind of Jurors should appear upon a *Nisi Prius*, and for granting *Tales de Circumstantibus* between Party and Party, should be perpetual.

The Parliament makes Statutes for a certain Time, to be perpetual.

But to go on.

VII. In the Parliament of the 18th of Queen Elizabeth, it was enacted,

Pulton's Stat. 18 Eliz. cap. 13.

1. By the Queen,
2. The Lords Spiritual and Temporal,
3. And the Commons,

The Parliament adjudges in what Cases Judgment after Verdict shall not be stayed.

That after Verdict given in any Court of Record, there should be no Stay of Judgment, or reversing thereof, by reason of any Default in Form, or lack of Form, touching false *Latin*, or Variance from the Register, or other Defaults in Form, in any Writ original or judicial, Count, Declaration, Plaint, Bill, Suite, or Demand, or by reason of any imperfect or insufficient Return of any Sheriff or other Officer, or for want of any Warrant of Attorney, or by Reason of any manner of Default in Process, upon or after any Aid, Prier, or Voucher, nor any such Recorder or Judgment, after Verdict to be given thereafter, should be reversed for any Defects or Causes aforesaid, any Law, Statute, or Usage to the contrary notwithstanding.

NonObstantes properly belonging to Parliaments.

Provided always, and it was further enacted,

By Authority aforesaid,

That

To what Things
the Parliament
provides that
this Statute
shall not ex-
tend.

That that Act, or any thing therein contained, should not extend to any Writ, Declaration, or Suit of Appeal of Felony, nor to any Indictment or Presentment of Felony, Murder, Treason, or other Matter, nor to any Process upon any of them, nor to any Writ, Bill, Action, or Information, upon any popular or penal Statute, any thing aforesaid to the contrary notwithstanding.

Pulton's Stat.
21 James I.
cap. 13.

An Act for the
farther Refor-
mation of Jeo-
failes.

Defects in for-
mer Statutes re-
medied, and

Proceeding: in
the Courts of
Westminster
Hall in Point of
Practice, re-
formed by Par-
liament.

VIII. But although these were good and profitable Acts, yet there fell out many things which were not provided for, or remedied by these Laws; and therefore another Act was made *anno 21 James I.* for reformation of the Defects of the Statutes of 32 *Henry VIII.* and 18 *Elizabeth*, wherein it was enacted,

By Authority of Parliament,

That after Verdict given in any Court of Record, the Judgment thereupon should not be stayed or reversed, for any Variance in Form only between the original Writ, or Bill, and the Declaration, Plaint, or Demand; or for lack of an Averment of the Party's Life, or Lives, so as it were proved he, or they, were in Life; or for that the *Venire Facias*, *Habeas Corpus*, or *Distringas*, was awarded to a wrong Officer upon any sufficient Suggestion; or that the *Vifne* was in some Part misawarded, or sued out of more or fewer Places than it ought to be, so as some one Place be right named; or for misnaming any of the Jurors, either in the Surname or Addition, in any of the Writs or Returns thereof, so as *Constat de Persona*; or for Want of a Return of any of the said Writs, so as a Pannel was returned, and annexed thereunto; or for that the Officer's Name was not set to the Return, so as it appeared by Proof, that the Writ was returned by him; or by reason that the Plaintiff in an *Ejectione firmæ*, or in any personal Action, being under Age, did appear by Attorney, and the Verdict pass for him.

Stat. 16 & 17
Car. II. c. 8.

An Act to pre-
vent Arrests of
Judgment,
and superseding
Executions.

IX. And lastly, by the Statute of 16 and 17 *Charles II.* * it was enacted, that after a Verdict, Judgment should not be stayed nor reversed in the King's Courts of Record at *Westminster*, Courts of Record in the Counties Palatine of *Lancaster*, *Chester*, or *Durham*, or of the great Sessions in any of the Twelve Shires of *Wales*, for want of Form, or for want of Pledges; for not producing any Deed or Letters of Administration, for want of *Vi & Armis*, or *Contra Pacem*, or for mi-

* This Act so lately made doth plainly shew, that the Judges did not think it safe or legal, without the Authority of this Law, to give Judgment after Verdict in such Proceedings, where the Omissions or Mistakes were that are mentioned in this Statute, though most of the Precedents and Forms of Declarations and Judgments as to *Vi & Armis contra pacem misericordia capiatur*, and alledging the bringing into Court any Bond, Bill, Indenture, or any other Deed, Letters Testamentary, or Letters of Administration, are so plain, that the Omissions, Neglects, and Misallegations in such Proceedings, were looked upon and suggested to be only the Faults of the Clerk that was concerned in the drawing, copying, or entering thereof.

stating

staking the Christian Name, or Surname, of either Party, Sum of Mo-
ney, Day, Month, or Year, being rightly named in any Record, whereto
the Defendant might have demurred, nor for want of *hoc paratus est*
verificare, or *hoc paratus est verificare per Recordum*, or *prout patet*
per Recordum, so the Cause were tried by a Jury of the County or
Place where the Action was laid.

Nor should any Judgment after Verdict, Confession, by *Cognovit*
Actionem, or *Relicta Verificatione*, be reserved for want of a *Misre-*
cordia, or a *Capiature*, or because one is put for the other; nor for
that *ideo concessum est per Curiam*, is entered for *ideo consideratum est*;
nor for that the Increase of Costs after a Verdict in an Action, or upon
a *non fuit in Replevin*, were not entred to be at the Request of the
Party, for whom the Judgment was given, nor by reason that the
Costs in any Judgment were not entered to be by Consent of the Plain-
tiff; but that all such Omissions, Variances, and all other Matters of
like Nature, not being against the Rights of the Matter of the Suit,
nor whereby the Issue of Tryal should be altered, should be amended
by the Justices or other Judges of the Courts where such Judgments
were or should be given.

Which Act was to continue for three Years, and to the End of the
next Session of Parliament after the Expiration of the said three Years,
and no longer; but by an Act of the 22^d and 23^d of that King, it was
made perpetual.

Stat. 22 & 23
Car. II. c. 4.
The aforesaid
Statute was
made perpetual.

Before we come to make our Observables upon what hath been said,
I will commend to the Reader's Consideration

A general REMARK, *viz.*

That there are very many Statutes, which have from Age to Age
been made, whereby new Powers have been given to the Judges in
Matters of Judicature, and also old ones enlarged; so that in these Re-
spects the Judges may, without any Derogation or Diminution to their
Office, be called *Judices Parliamentarii*; because they could only ex-
ercise and execute such Powers by Authority of Parliament, and not by
any Authority given them at the Common Law; which clearly proves
this Proposition;

The Power of
Judges from
Time to Time
restrained or en-
larged, accord-
ing to the Wis-
dom of Parlia-
ments.

That the Judges were not to be directed or governed by their own
Wills and Discretions, but by the known Laws and Statutes of the
Realm, which were at all Times strictly and closely to be observed by
them all.

PROPOSITION.

But to digress no further:

These Statutes of Jeofailes, being rightly understood, do clearly
evince to all Mankind, that will hearken to Truth, and be governed
by it,

Several Conclu-
sions from the
whole which
hath been said
in this Chapter.

T

I. That

I. That Parliaments were never bound up by any Proceedings, Opinions, or Resolutions of the Judges, because they corrected, redressed, and remedied, by their own superior Authority, the several Mischiefs which happened by reason of crafty, subtil, and negligent Pleadings, which were a great Slander to the Common Law, and a great Hurt, Delay, Hinderance, Trouble, and Vexation to the Subjects of the Realm.

II. That Parliaments did, as they in their great Wisdom saw Cause, from Time to Time enable and authorize the Judges to examine, reform, and amend Errors, Defects, and Defaults in Omissions, Additions, Substractions or Diminutions,

1. Of Words,
2. Syllables,
3. Titles,
4. Letters, or
5. Parcel of Letters

in Records, and Procefs of Law, according to the Discretion of the Judges, which before could not be done by any judiciary Power invested in them; and in short, I suppose I shall not be thought over hafty if I say, that there cannot well be produced a more noble, concluding, yea invincible Argument, to prove the ancient Jurisdiction of the most High Court of Parliament, over the inferior Courts of *Westminster Hall*, than may be brought and maintained, from the several Statutes of Jeofailes and Amendments, continued down even till this present Age.

The ancient Jurisdiction of the High Court of Parliament over all the inferior Courts in the Kingdom, in Matters both of Fact and Law, declared and proved by these foregoing Statutes.

And lastly, it may be much wondered at, that this Argument should not long ago have been taken Notice of, and publicly asserted by some Body, to confute and confound those Swarms of insolent, scandalous, seditious, and malicious Pamphlets, and Parasitical Opinions, which of late have made the established Laws of the Land precarious, and the Pillars of our famous *English* Government by King, Lords, and Commons, terribly to shake and totter, by subjecting Parliaments to the Judges in *Westminster Hall*.

C H A P. VII.

Of the Original of Non Obstantes, and how they came into the Courts of Justice: And that the Reverend Judges of Westminster Hall did not in former Times imagine, that by Virtue of their expounding Power, they could invest such a Prerogative in the Crown, as that the King, by a Non Obstante put into his Grants, might suspend General Statutes, and dispence with an Act of Parliament, against the manifest Sense and Words thereof, expressly declaring, That all Non Obstantes in that particular Case should be void, and of no Value.

NOW that I may be the better enabled to clear the Matter both of Fact and Law, laid down in this general Proposition, I shall consider,

SECT. I. When *Non Obstantes* came first into *England*, and from whence they were brought.

SECT. II. About what Time they were introduced into our Courts of Justice; and the Manner of their Introduction.

SECT. III. Whether the Judges in former Ages took the Law to be, that the King had such an inherent Power vested in him, as that by a *Non Obstante* put into his Grants, he might suspend and dispence with general Acts of Parliament, made *pro Bono Publico*?

SECT. IV. More particularly whether the King by his Prerogative could dispence with the Statute of the 23^d of *Henry VI.* which enacted,

enacted, That no Man should continue Sheriff, or Under-Sheriff, longer than for a Year, and that all Patents which should be after made of these Offices should be void, any Clause or Word of *Non Obstantes*, in any wise put, or to be put into such Patents notwithstanding. And then,

SECT. V. I shall consider the Case in the *Year Book*, ann. 2 Hen. VII. touching that Matter; and endeavour to prove by several Arguments and Reasons, that that Case, as represented and understood in later Times, could never be good Law.

And now I will begin.

S E C T. I.

When Non Obstantes came first into England, and from whence they were brought.

Mat. Par. fol. 698. l. 40.
Annales Monast. Burton, fol. 306.
Complaints in Parliament, 29 Hen. III. against Non Obstantes.

ANNO Domini 1245, which was in the 29th Year of Henry III. a Parliament being called at *Westminster*, fresh Complaints were made therein against the insatiable Avarice, the injurious Encroachments, and unlawful Rapines made by the Court of *Rome* upon both Church and State.

Whereupon it was agreed by them, that for the Reverence due to the Apostolic See, they should again supplicate the Pope, by Letters, to remove the intolerable Grievances, and importable Yoke, under which the whole Kingdom then miserably groaned.

And this they did by the following Letter;

Literæ Universitatis Angliæ ad Papam.
Idem fol. 700. lib. 51.
Annales Monast. Burton, fol. 309.
The Parliament's Remonstrance to the Pope.

Sanctissimo, &c. Devoti filii sui Comes Cornubiæ, Richardus Simon de Monte Forti Comes Legrecestriæ, W. de Ferrariis Comes Derbeia, H. de Boun Comes Hertfordiæ & Essexiæ, R. le Bigod Comes Northfolkiæ, R. Comes Gloverniæ & Herefordiæ, R. Comes Wintoniæ, W. Comes Albemariæ, H. Comes Oxoniensis, & alii totius Regni Angliæ,

1. *Barones, Proceres,*
2. *Magnates, & Nobiles Portuum Maris, Habitatores, nec non*
3. *Clerus & Populus universus,*

salutem, & debitam tanto Pontifici in omnibus Reverentiam.

“ The Mother-Church ought so to cherish her Sons, gathering them
“ under her Wings, that her Sons do not degenerate from their Duty
“ to their Mother, but that if Need be, they may betake themselves

“ to

“ to Force on her Behalf, and putting on Armour and a Shield, may
 “ expose themselves to all Dangers for her Defence, out of whose Breasts
 “ they suck the Milk of Comfort, and upon whose Duggs of Piety they
 “ hang.

“ For a Mother ought to remember the Sons of her Womb, lest, if
 “ she do otherwise, withdrawing the Food of her Milk, she might seem
 “ to play the Step-Mother.

“ A Father, in like manner, if he withdraw his fatherly Love from
 “ his Children, deserves no longer the Name of a Father, but of a
 “ Step-Father; for that he accounts his own Children no otherwise
 “ than Bastards, or Step-Children.

“ Wherefore, Reverend Father, the Chariot of *Israel*, and the
 “ Horseman thereof, we have Recourse with Confidence to the Sanctu-
 “ ary of your Piety, crying after you, imploring likewise humbly and
 “ devoutly, that in hope of a Reward from God, you will vouchsafe
 “ mercifully to hear our Voices that cry after you, and that you will
 “ apply a healing Remedy to the Grievances, Injuries, and Oppressi-
 “ ons, in many-fold-wise done to, and laid upon the Realm of *Eng-*
 “ *land*, and our Lord the King.

“ Otherwise Scandals will unavoidably come, through the insuffer-
 “ able Clamour of the People, both to the King, and to your Holi-
 “ nefs. For unless the King and Kingdom be speedily freed from the
 “ Grievances inflicted upon them and it, it will behoove us to oppose
 “ ourselves (as a Wall) for the King’s House, and the Kingdom’s Li-
 “ berty, which indeed we have hitherto forborn to do, out of Reverence
 “ to the Apostolic See, nor after the Return of our Messengers, which for
 “ this Cause we have dispatched to the Apostolic See, can we dissemble
 “ any longer, but must relieve both the Clergy and the People of the
 “ Kingdom of *England*, who will in no Sort endure such Things;
 “ which unless they are speedily amended by your Holiness, know
 “ for certain, that there is just Cause of Fear, lest such a Mischief
 “ befall both the Church of *Rome*, and our Lord the King, as cannot
 “ easily be redress’d; which God forbid.”

Now one of the Articles of the Grievances was this,

Item gravatur Regnum Angliæ ex multiplici adventu illius infamis
Nuncii, [illud] Non Obstante, per quod

1. *Juramenti Religio,*
2. *Consuetudines antiquæ,*
3. *Scripturarum Vigor,*
4. *Concessionum Authoritas,*
5. *Statuta, Jura, & Privilegia,*
debilitantur, & evanescent.

*One particular
 Article of the
 Parliament’s
 Remonstrance of
 Grievances,
 was this of
 Non Obstan-
 tes.*

U

Per

Per quod infiniti de Regno Angliæ oppressi sunt graviter, & afflicti: Nec se dominus Papa versus Regnum Angliæ, in plenitudine potestatis suæ revocanda, ita curialiter vel moderate se gerit, prout procuratoribus Regni ore tenus dederat in promissis.

Ep. Grosted's
Judgments
concerning
Non Obstan-
tes, in his Let-
ter to the Pope.

Besides Robert Grosted, the most pious and famous Bishop of Lincoln, in a Letter that he sent to the Pope in the Year 1253, which was in the 37th of Henry III. complains bitterly of *Non Obstantes*. I pray hear him.

Epistola missa
Papæ Inno-
cen. IV. ab
Episcopo Lin-
coln.
Matt. Paris,
fol. 870, 871.

Non est igitur prædictæ Literæ tenor Apostolicæ Sanctitati consonus, sed absonus plurimum & discors.

Primo, quia de illius Literæ, & ei consimilium longe lateque dispersarum, super accumulato Non Obstante, nec ex legis naturalis observandæ necessitate induceto, scætet catechysmus inconstantia, audaciæ, & procacitatis, inverecundiæ, mentiendi, fallendi, diffidenter alicui credendi vel fidem adhibendi; & ex his consequentium vitiorum, quorum non est numerus, Christianæ Religionis puritatem & socialis conversationis hominum tranquillitatem commovens & perturbans.

Præterea, post peccatum Luciferi, quod idem erit in fine temporum ipsius filii perditionis Antichristi, quem interficiet Dominus spiritu oris sui, non est, nec esse potest alterum genus peccati tam adversum & contrarium Apostolorum doctrinæ & Evangelicæ, & ipsi Domino Jesu Christo tam odibile, detestabile, & tam abominabile, quam animas Curæ pastoralis officii & ministerii defraudatione mortificare & perdere, i. e.

“ The Tenor of the said Letter is not consonant to the Sanctity of
“ the Apostolic See, but very dissonant from, and disagreeing there-
“ with.

“ *First*, Because by the accumulated *Non Obstantes*, in that Letter,
“ and in others dispersed far and wide, which *Non Obstantes* are not
“ introduced through any Necessity of keeping the Law of Nature,
“ there abounds a Deluge of Inconstancy, Impudence, Sauciness, Im-
“ modesty, Lying, Cheating, a diffident Belief of every Thing, and
“ innumerable Vices pursuant to these, which corrupt the Purity of
“ the Christian Religion, and disturb the Peace of Human Society.

“ Besides, next to the Sin of *Lucifer*, which will be recommitted
“ in the End of Time by *Antichrist*, that Son of Perdition, whom the
“ Lord shall slay with the Spirit of his Mouth, there neither is nor can
“ be any other Sort of Sin, so contrary and repugnant to the Evange-
“ lical Doctrine of the Apostles, nor so odious, detestable, and abomi-
“ nable in the Eyes of our Lord *Jesus Christ* himself, as to murder
“ and destroy Mens Souls by defrauding them of the Care of the Pa-
“ storial Office and Ministry.”

From

From the Remonstrance therefore of the Parliament to the Pope, it is visible to the World,

Deductions from the Parliament's Remonstrance to the Pope.

1. That both the Parliament and the whole Kingdom were much aggrieved with that infamous Messenger *Non Obstante*.

2. That the solemn Judgment of the Parliament was, that thereby the Sacredness of an Oath, ancient Customs, the Force and Effect of all Writings, the Authority of Concessions, Statutes, Laws, and Privileges, became invalid, and vanish'd into Smoak.

3. And lastly, for a full Answer to that Part of the Question, *viz.* when *Non Obstantes* came first into *England*? it is evident it was not long before the Time of this Parliament held *ann. 29 Henry III.* And for the other Part of the Question, *viz.* From whence were they brought? it is as evident they came from the Court of *Rome*, and from thence only, having no Foundation at all in the ancient Laws of *England*.

S E C T. II.

About what Time were Non Obstantes introduced into our Courts of Justice, and the Manner of their Introduction?

*M*attbew Paris, *ad annum 1250*, which was in the 34th and 35th of Henry III. tells us,

Concedit Rex [H. III.] novas Chartas Abbatibus Westm. Matt. Paris, fol. 783. l. 20. The first Instance of the Time when Non Obstantes were introduced into the Courts of Justice.

That the King granted a Charter to the Abbot of *Westminster*, contrary to the Charters of his Ancestors, and those who had reigned in *England* before the Conquest, *in laesionem fidei suæ, & juramenti primitivi*, to the Damage and manifest Injury of the Church of *St. Alban's*, in a very ancient Town, called for its Antiquity *Aldenham*, whence it might seem probable, *he says*, that the said Town was granted to *Alban*, the most ancient Proto-martyr of the *English*, though all Evidences had been silent in the Matter.

Moreover, that King granted by another Charter to a certain Tenant, by Knight-Service holding *in Capite* of the Church of *St. Alban's*, by Name *Jeffry*, who had married the Sister of *John Mansell*, the King's Chaplain, free Warren in the Grounds of *St. Alban's*, and near the Town, *contra antiquas Ecclesiæ illius Libertates, & Chartas obtentas à piis pristinis Regibus & continue usitatas*; nay and contrary to a Charter granted by King *Henry* himself.

Now when *Matthew Paris* argued this Matter with the King, undauntedly the King answered, *Nonne Papa facit similiter, subjungens in Literis suis manifeste, Non Obstante aliquo privilegio vel indulgentia?*

The

The Second Instance.

The same Historian gives us a second Account touching *Non Obstantes*:

Detestabilis ad-
jectio, *Non Ob-*
stante, in curias
laicorum deri-
vatur.
Mat. Par. fol.
810. lib. 48.

In those Days, says he, *viz. ad annum 1251.* when a Suit at Law was commenced betwixt *Silvester* Bishop of *Carlisle*, and a certain Baron, for a Manor which the Baron had sold to *Walter* the Bishop's Predecessor, and would have resumed it again; *Silvester* the Bishop answered prudently for himself, for his Adversary (though his Procurators were present) was at that time beyond Sea.

The Bishop therefore obtained the King's Letters of Protection, during the Absence of the Baron, and so returned Home joyfully.

But the adverse Party, though keeping silence then, yet when the Bishop was afar off, obtained other Letters from the King, That *Non Obstante* the former Letters of Protection, the Barons Cause should go on, *Quod factum fuisse non creditur sine muneris opitulatione.* And he farther tells us, That such Letters or Writs were frequently issued out, *in quibus inserta est hæc detestabilis adjectio, Non Obstante* priore mandato, or, *Non Obstante antiqua libertate, procedat negotium.*

Besides this, there crept in *snistra interpretatio in chartis facta*: for Example, If the Words ran thus, "We grant this or that Liberty to such Religious House," and the House was expressly named, and then followed, "and to all the Manors thereunto belonging;" If the Manors themselves were not distinctly specified, That Clause was construed to be of none effect.

But the Monk saith, That such Construction was manifestly dissonant to Reason and all Justice; nay, and contrary to the Rule of Logick, the infallible Searcher out of Truth.

Quod cum comperisset quidam vir discretus tunc Justiciarius, scilicet Rogerus de Turkeby, ab alto ducens suspiria, de prædictæ adjectionis appositione dixit, Heu! heu! nos ut quid dies expectavimus! Ecce jam civilis curia exemplo ecclesiasticæ coinquinatur, & à sulphureo fonte rivulus intoxicatur.

The Third Instance.

Give me leave to add a third Instance, touching the same Subject:

Mat. Par. fol.
854. lib. 10.

Anno 1252. and in the 37th Year of *Henry III.* the Master of the Hospital of *St. John of Jerusalem* in *Clerkenwell*, waiting patiently for a proper Opportunity of speaking with that King, concerning a notorious Injury done to him, opened his Complaint, and shewed some Charters of Protection granted by former Kings, and by the King himself: To whom the King with a loud Voice replied in Anger with a great Oath, "You, and the *Templers*, have so many Liberties and Charters, that your superfluous Possessions make you proud, and your Pride makes ye mad: Those Things therefore ought prudently

“ to be revoked which were imprudently granted, and advisedly to be resumed which were unadvisedly squandered away.”

And added,

Nonne dominus Papa quandoque, imo multoties factum suum revocat? Nonne appposito hoc repagulo, Non Obstante, chartas cassat præconcessas? Sic & ego infringam banc, & alias chartas, quas prædecessores mei & ego temere concessimus. i. e.

“ Does not your Lord the Pope sometimes, yea often revoke his own Acts? Does he not, by inserting this Barrier of a *Non Obstante*, make void his former Grants? So will I infringe this and other Charters, which my Predecessors and my self have rashly granted.”

The Master of the Hospital, whom they call Prior, answered briskly with an erected Countenance: “ What is that that you say, my Liege? God forbid that so unseemly and absurd a Word should come out of your Mouth: *Quamdiu justiciam observas, Rex esse poteris; & quam cito banc infregeris, Rex esse defines.*” *Ad quod Rex minus incircumspecte respondit, “ Ha! what do you mean by that? Vos Anglici, vultis ne me, sicut quodnam patrem meum, a regno præcipitare, atque necare præcipitatum.*

Verba Magist. Hosp. Hierosol. Rege (H. III.) habita. Mat. Par. fol. 854.

These three Instances do fully resolve the foregoing Question: for they prove,

Deductions from the foregoing Instances.

1. That the Time, when *Non Obstantes* were introduced into our Courts of Justice, was towards the latter End of *Henry* the Third's Reign, and not before.

2. They discover the Manner how *Non Obstantes* were introduced into those Courts.

3. And evince that the Use of *Non obstantes* was only in such Cases, wherein the particular Charters of the King were concerned; and not upon Statutes and publick Acts of Parliament.

4. And for the Close of all, my Authorities clearly prove, beyond all Contradiction, that *Non Obstantes* were not at the Common Law, nor can they pretend to be warranted by Prescription, unless it can be made out, that *Henry III.* was before *Richard I.* his Uncle:

Since no Common Lawyer can deny without betraying a gross Ignorance in his Profession, That the Time of General Prescription must be from before the first Year of *Richard I.* Brother to King *John*, who was Father to *Henry III.*

See Rolls Abridgment, viz. Prescription. fol. 268, 267. Que sera bon prescription en respect del temps.

To conclude;

How then is it possible to make out, That the dispensing Power by *Non Obstantes* was an ancient Remain of the Sovereign Power and Prerogative of the Kings of *England*, which never yet was taken from them, nor can be.

Conclusion.

S E C T. III.

Whether the Judges in former Ages took the Law to be, That the King had such an inherent Power invested in him, as by a Non Obstante put into his Grants, to suspend general Acts of Parliament.

IN the handling of this Question, I would give the World a vast Collection of Authorities, which even to Demonstration prove, That the Judges in former Ages, neither did nor could suppose that there ever had been any such Prerogative Law exercised in *England*: But that would tempt the Patience of the Reader, and therefore I will avoid such a Hazard, and confine myself to certain Parliamentary Proceedings touching *Provisions* from *Rome*; and from thence draw some natural Inferences and Conclusions, to determinate the whole Matter.

And because the Authorities I advance are most of them in old *French*, I have for the greater Ease, as well as better Understanding of the Reader, rendered them in *English*, and that too at length to prevent all Cavillation.

The First Authority.

Rot. Parliam.
17 Edw. III.
N^o 59. inter
Petitiones
Communitat.

In a Parliament held in the 17th Year of *Edward* III. the Commons remonstrate to him, “ That forasmuch as the Aliens do hold so many
“ Benefices in this Land, whereby the Alms are withdrawn, which
“ ought to be made, and the Treasure of this Land is much carried
“ away in Maintainance of your Enemies, and the Secrets of this Land
“ are discovered, and your Liege Clerks otherwise sufficient are not ad-
“ vanced by reason of such :

“ And for that many Cardinals are of late made, whereof the *Pope*
“ by his Bulls hath granted to two of them Benefices in this Land, to
“ the Value of six thousand Marks, and Tax, in so general and covert
“ a Manner, that the Sum will exceed ten thousand Marks before the
“ Gift be accepted, if the Thing accepted be so suffered.

“ And the Commons have understood, that one of the two aforesaid
“ Cardinals, that is to say, Cardinal *de Peragorfs*, is the fiercest Ene-
“ my that is in the Court, and most contrary to the Affairs of our
“ Lord the King :

“ And so from one Year to another, in the Length of Time, by such
“ Grants the Land will be full of Aliens, which may be to the great
“ Peril of the Land :

“ And scarce any Clerk by that means, being the Son of a great
“ Lord, nor other, will find any Benefices to be promoted to: And
“ that

“ that to the great Damage of the King and of the Commons, by rea-
 “ son of such Reservations and Provisions:

“ Whereof the Commons pray Remedy.

“ For the said Commons, *Ne le poit ne le voet plus endurer, i. e.*
 “ Neither will nor can any longer endure it; because that all the Foun-
 “ dations and the Advowsons of Archbishopricks, Bishopricks, Abbeys,
 “ Priories, Parochial Churches, and all the Spiritual Rents of the Land,
 “ are of the Foundations of Kings, Earls, Barons, and of the Com-
 “ mons.

“ Therefore may it please our Lord the King, to write to the *Pope*,
 “ under the Great Seal, and under the Seals of the Peers and Great
 “ Men of the Land; and to send to the Pope, that he will surcease
 “ this Charge, and to repeal what is done.

“ And if any of the Peers and Great Men will not seal it, the Com-
 “ mons will look upon him or them as such that are not desirous of
 “ the Profit of the King, nor of the Commons.

“ And in case the Pope will not grant it in Manner abovesaid, the
 “ Commons pray our Lord the King, that he will be in Aid and
 “ Maintenance of them, to defeat this Charge, and to put such out of
 “ his Protection.

“ And the Commons pray our Lord the King, that he will com-
 “ mand all the Peers and Great Men of the Land, that remain in Peace
 “ at this present Parliament ’till these Things be perfected and sealed as
 “ is abovesaid.

“ And for the great Damage that may happen in the mean Time,
 “ may it please our Lord the King to grant his Prohibitions as Execu-
 “ tors *des Graces Evêques & Procurors*, that they meddle not in this
 “ Matter, until the Pope hath back his Will.

“ To this the King answered,

“ The King is advised of this Mischiefe, and wills the Great Men and
 “ the Commons to ordain Remedy and Amendment, and he will agree
 “ to it.

“ And also the King wills, and it is assented, That good Letters should
 “ be made to the Pope upon this Matter, as well from the King and
 “ Great Men, as from the Commons.

“ And after our Lord the King was praised in this Parliament,

“ 1. *Per Countes, Barons,*

“ 2. *Et autres Nobles, & tout le Communalte du Royalme,*

“ for eschewing and ousting the Damages, Grievances and Oppressions
 “ of the *People*, and of the holy Church of *England*, which are made
 “ in the Realm of *England* by Provisions and Reservations in the Court
 “ of *Rome*, as well of Benefices as of First Fruits, and by Imposition
 “ of Tythes and other Charges, in Disherison as well of our Lord the
 “ King and of his Crown, as of the said Earls, Barons, and other
 “ Noblemen, and the aneantising of the Rights of the Crown, our
 “ Lord

Idem, N° 60.
 dorfo.

“ Lord the King would cause to be kept the Petitions thereof delivered,

“ 1. *Per Countes, Barons,*

“ 2. *Et Communes*

“ of the Realm of *England*, in the Time of the most Noble King *Edward*, Grandfather of our Lord the King that now is, whom God affoile, in his Parliament held at *Carlisle* in the 35th Year of his Reign; and also the Assent, and Accord, and Judgment thereupon made in the same Parliament.

“ And our Lord the King granting that Request, commanded the Rolls and Remembrances of the said Parliament of his said Grandfather to be searched and looked into; which being seen and perused, amongst other Things it was found, That at the shewing of the

“ 1. *Countes, Barons,*

“ 2. *Et Communes*

“ of the said Parliament of *Carlisle*, by their said Petitions amongst other Things containing, That as Holy Church in the State of Prelacy in the said Kingdom was founded, by the Grandfather of our Lord the King, and his Progenitors Earls and Barons, and their Ancestors, to have Information of the Holy Faith, and to make Prayers and Alms and Hospitalities in the Places where the Churches were founded for the Souls of their Founders and their Heirs, and of all Christians; and that certain Possessions as well Fee and Lands, as in Advowsons, amounting to a very great Sum, were assigned for Archbishops, Bishops, Abbots, Priors, and other Houses of Religion, by the said Grandfather and his Progenitors, and the Earls, Barons, and other Great Men of the Kingdom and their Ancestors: And that the said Grandfather of our Lord the King, and the Earls, Barons, and other Nobles of the Realm, as Lords and Avowees, had and ought to have in the Time of the Vacancies of such Prelacies and Houses, Presentments and Collations of all manner of Benefices being of the Avoury of such Prelates, and to give them to the Denizens that held great Place under the said Grandfather of our Lord the King, and the Great Men abovesaid, for their Wisdom and Counsel, when they should have occasion.

“ And that the Pope that then was, appropriating to himself the Advowsons of such Possessions and Benefices by his Provisions and Reservations, and given and granted Dignities, Provendries and Churches to such as never had resided in the Kingdom of *England*, and to Cardinals and others, as well Aliens as Denizens, who could not reside here, as if he had been the true Patron; and that of right as he was not.

“ By which Things, if they were suffered, scarce any Benefices would remain in the Gift of such Prelates, which would not be put in the
“ Hands

“ Hands of Aliens and Denizens, against the good liking and will of
 “ the Founders of them: And so the *Elections of such Archbishops,
 “ Bishops, and other Religious Persons, would want Orisons, Hospi-
 “ talities and Alms, which ought to be made in the said Places, would
 “ be withdrawn; and the said Grandfathers and others Lay Patrons in
 “ the Time of such Vacancies would lose their Presentments and Col-
 “ lations, and the said Council would be destroyed, and Goods in great
 “ Plenty should be carried out of the Realm, to the amentizing of the
 “ State of the Holy Church of *England*, and in Disherison of the said
 “ Grandfather and of his Crown, and of the other Nobles of the said
 “ Realm; and in Offence and to the Destruction of the Laws and
 “ Rights of the said Realm, and very great Damage and Depression of
 “ the said People, and Subversion of the State of the whole Realm
 “ aforesaid, and against the Wills and Ordinances of the first Founders,
 “ Which Errors and Damages aforesaid being seriously [considered] in
 “ the said Parliament of *Carlisle*; it was, *d’assent*

“ 1. *Des Countes, Barons, & Nobles,*

“ 2. *Et de la dite Communaltee,*

“ Provided, accorded, adjudged, ordained and considered, that the be-
 “ fore-named Grievances, Oppressions, and other Damages and Errors
 “ aforesaid, from thenceforth should not be suffered to be done in the
 “ said Realm, in any Manner.

“ And thereupon it was prohibited by the said Grandfather, by his
 “ Writs to all to whom it then belonged, that they should not attempt,
 “ or cause in any manner to be attempted, any thing that might turn to
 “ the blemishing or impairing of his Royal Dignity, or to the Preju-
 “ dice of the Nobles or his People. And thereupon all the Sheriffs of
 “ the said Realm were by certain Writs commanded, That, if by Inquest
 “ thereof taken, any could be found doing to the contrary; Then they
 “ should apprehend them, and should bring them safely and securely
 “ before the said Grandfather, to answer him; as also to others that
 “ would complain of them, and to do moreover and receive what the
 “ said Court should award in such Case.

“ Wherefore our Lord the King, in this present Parliament, at the
 “ Suit of the said Communalty of his Realm, suggesting by their Pe-
 “ tition given to our said Lord the King and his Council, many Er-
 “ rors, Damages and Grievances, which had often happened by such
 “ Provisions and Reservations, as well by those Benefices as of First
 “ Fruits and others whatsoever, and of Impositions of Tenths and other
 “ Charges, made by the Pope now lastly, to the Slander, Dishonour,
 “ and Oppression of the whole Church of *England*, and to the Dishe-
 “ rison of our said Lord the King and his Crown, and of the other

* Et usini les Elections des lieux Ercevesques, Evcsques, & autres religieux seroient oraisons, hospitalities, & aumoignes.

“ Nobles of the said Realm, and in Offence and to the Destruction of
 “ the Laws and Rights of the same Realm, and to the grievous Da-
 “ mages of the People, and Subversion of the Estate of the whole
 “ Realm aforesaid, and against the Will of God, and the good Dispo-
 “ sition of the Founders of the same Benefices, and against the Purvey-
 “ ance, Ordinance, Accord and Decree, and the Consideration afore-
 “ said made by the said Grandfather and his Council: And praying
 “ our said Lord the King, that he would please to have regard to the
 “ said Church of *England*, and to the Indemnity and Disinherison of
 “ him, *Et*

“ 1. *Des ditz Countes, Barons, & Nobles,*

“ 2. *Et de la Communaltee,*

“ in this behalf; and to put convenient Remedy thereto, by the As-
 “ sent,

“ 1. Of the Earls, Barons, and Nobles,

“ 2. And of the Commualty

“ of the Kingdom, hath provided, ordained, decreed and adjudged and
 “ considered, that as well within the Franchise of the *Cinque Ports*, as
 “ elsewhere by the Sea Coasts of all the Realm of *England*, and through
 “ all the Counties of the said Realm, as well within Franchise as with-
 “ out, should be openly proclaimed, and by our said Sovereign Lord
 “ the King straitly forbidden, That none, of what State or Condition
 “ soever he be, be he Alien or Denisen, should from henceforth bring
 “ or cause to be brought within the Realm of *England*, upon a grie-
 “ vous Forfeiture to the King, Letters, Bulls, Proseses, Reservations,
 “ Instruments, or any other Things prejudicial to the King or his Peo-
 “ ple, to deliver them to Archbishops, Bishops, Abbots, Priors, Earls,
 “ Barons, or any others within the said Realm:

“ And that none by virtue of such Provisions or Reservations receive
 “ Benefices of Holy Church:

“ And that none upon the aforesaid Forfeiture receive or take such
 “ Letters, Proseses, nor Instruments touching such Provisions or Reser-
 “ vations:

“ Nor by virtue of them make Institution, or Induction, or other
 “ manner of Execution of them:

“ And that none do or suffer to be done, any other Thing that may
 “ turn to the Prejudice of the King, and of his People, to the embel-
 “ lishing of the Rights of his Crown, and of the Provisions, Ordi-
 “ nances, Accords, Decrees, and Considerations aforesaid.

“ And also it is accorded, That moreover diligent Search be made
 “ in such Places, as shall be thought requisite within the said Realm,
 “ as well within Franchise as elsewhere, upon all and every one
 “ coming into the Realm of *England*: And that all those that shall be
 “ found by such Search, or by Inquest thereof to be taken by Informa-
 “ tion,

“ tion, bringing Letters, Bulls, Proceſs, Refervations, or Inſtruments,
 “ or other Things prejudicial to the King or his People, and all thoſe
 “ who by virtue thereof receive any Benefices, or put themſelves into
 “ them, or be received into the ſame Benefices; and alſo thoſe who by
 “ Authority of Letters, Bulls, Proceſs, Refervations or Inſtruments,
 “ ſhall or do make Appeal, Actions or Proceſs, againſt the Patrons of
 “ the ſaid Benefices, their Preſentees, or others whatſoever; or proſe-
 “ cute them, or procure them to be proſecuted in any Court whatſo-
 “ ever; or procure any thing to be done, *En prejudice*

“ 1. *Du Roy,*

“ 2. *Ou des Countes, Barons, Nobles,*

“ 3. *Et de la Communaltee ſujdite,*

“ or the emblemizing or defeating of the ſaid Proviſions, Ordinances,
 “ Accords, Decrees, and Conſiderations, and againſt the Proclamation
 “ and Inhibition aforeſaid, to be taken and arreſted by their Bodies, and
 “ the Letters, Bulls, Proceſs, and Inſtruments upon ſuch Proviſions and
 “ Refervations to be taken from them, *ou des autres quen port qils ſoient*
 “ *trovez & envoyes,* before the King's Council, together with their Bo-
 “ dies who ſhall have brought them within the ſaid Realm of *England,*
 “ *Wales, Ireland,* or within the County of *Cheſter,* or put them at all
 “ in Execution, together with the Bodies of all others that ſhall be taken
 “ and arreſted for the Cauſe aforeſaid, to take and receive what the Court
 “ ſhall award.

“ And that thereupon Writs and Letters be made, ſo many and ſuch
 “ as ſhall be neceſſary, and ſent throughout all the Realm.

Purſuant to all which, a Letter was ſent to the Pope in *French,* a
 Copy whereof, when I was concerned in the City of *London's* Char-
 ter, I met with entered in one of the Books at that Time, and is thus
 tranſlated by Mr. *Fox.*

“ To the moſt Holy Father in God, Lord *Clement* by the Grace of
 “ God, of the Holy Church of *Rome,* and of the Universal Church,
 “ Chief and High Biſhop, his humble and devout Children,

*Fox's Acts and
 Monuments,
 vol. 1. fol. 436.
 printed in the
 Year 1674.*

“ 1. The Princes, Dukes, Earls, Barons,

“ 2. Knights, Citizens, Burgeſſes, and all the Communalty of the
 “ Realm of *England,*

“ aſſembled at the Parliament holden at *Westminster* the fifteenth Day
 “ of *May* laſt paſt, devout Kiſſings of his holy Feet, with all humble
 “ Reverence and Humility.

“ *Moſt Holy Father,*

“ The holy Diſcretion, Government, and Equity, which appeareth
 “ to be in you, and ought of Duty to be, (being ſo High and Holy a
 “ Prelate, and Head of the Holy Church, by whom the Holy Universal
 “ Church

“ Church and People of God ought to be as the Sun-Beams enlightned,
 “ give us good Hopes and Likelyhood that the just Petitions (to the
 “ Honour of *Jefus Chrift* and Holy Church, and your Highnefs alfo)
 “ by us declared, fhall be of you graciously heard and confidered.

“ And that all Errors and other Iniquities fhould be quite taken
 “ away and removed, inftead whereof faithful Exploits and neceffary
 “ Remedies (by the Grace of the Holy Spirit, which you in fo high
 “ an Eftate have received) may be by you likewise graciously ordained
 “ and difpofed.

“ Wherefore, *Moft Holy Father*, All we,

“ 1. Upon great Deliberation,

“ 2. And common Affent,

“ come unto your Holinefs, fhewing and declaring,

“ 1. That the Noble Kings of *England* our Progenitors, our Ance-
 “ ftors, and we (according to the Grace of the Holy Spirit to them and
 “ us given, every one according to his Devotion,) have eftablifhed,
 “ founded and endowed within the Realm of *England* Churches, Ca-
 “ thedrals, Colleges, Abbeys, Priories, and other divers Houfes of Re-
 “ ligion in the fame ordained :

“ 2. And to the Prelates and Governours of the fame Places, have
 “ given Lands, Poffeffions, Patrimonies, Franchifes, Advowfons and
 “ Patronages, Dignities, Revenues, Offices, Churches, with many and
 “ divers other Benefices unto them given.

“ 3. Whereby the Service of God and Faith of *Chrift* might have
 “ been honoured and had in reverence, that the Hofpitals and Alms-
 “ houfes that are made with all the Churches and Edifices, might be
 “ honeftly kept and maintained; and that devout Prayers might in
 “ thofe Places be made for the Founders, and the poor Parifhioners
 “ aided and comforted: And fuch only ought to have Cure thereof,
 “ as are able to hear Confeffions, and in their own natural Tongue are
 “ otherwife meet to inform and teach their Parifhioners.

“ 4. And forasmuch as, *Moft Holy Father*, you cannot well come
 “ to the Notice of divers fuch Errors and Defaults, neither yet under-
 “ ftand the Condition of the Places, being fo far off, unlefs your Ho-
 “ linefs be informed and advertifed; we having the perfect Intelligence
 “ and Understanding of the faid Errors and Defaults of the Places a-
 “ bovefaid, within the Realm, have thought meet to fignify the fame
 “ unto your Holinefs.

“ 5. That divers Refervations, Provisions and Collations, by your
 “ Predeceffors Apoftolick of *Rome*, and by you, *Moft Holy Father*, in
 “ your Time have been granted, (and that more largely than they have
 “ been accuftomed to be) unto divers Perfons, as well Strangers and
 “ of fundry Nations, as unto fome fuch as are our Enemies, having
 “ no Understanding at all of the Tongue and Conditions of them, of
 “ whom they have the Government and Cure.

5 Whereby

“ Whereby a great Number of Souls are in Peril, a great many of
 “ the Parishioners in Danger, the Service of God destroyed, the Alms
 “ and Devotion of all Men diminished, the Hospitals perished, the
 “ Churches with their Appurtenances decayed, Charity withdrawn, the
 “ good and honest Persons of our Realm advanced, the Charge and
 “ Government of Souls not regarded, the Devotion of the People re-
 “ strained, many poor Scholars unpreferred, and the Treasure of the
 “ Rich carried out against the Minds and Intents of the Founders.

“ 6. All which Errors, Defaults and Slanders, Most Holy Father,
 “ we neither can nor ought to suffer or endure.

“ 7. We therefore most humbly require your Holiness, that the
 “ Slanders, Errors and Defaults, which we have declared unto you,
 “ may be through your great Discretion considered; And that it may
 “ please you, that such Reservations, Provisions and Collections may
 “ be utterly repelled, that from henceforth the same be no more a-
 “ mongst us used; and to take such Order and Remedy therein, that
 “ the said Benefices, Edifices, Rights with their Appurtenances may
 “ be to the Honour of God, our own Countrymen cured, defended
 “ and governed.

“ 8. And that it may farther please your Holiness, by your Letters
 “ to signify unto us without Delay and other Protract of Time, what
 “ your Pleasure is touching this our lawful Request and Demand;
 “ That we may do our Endeavour with Diligence therein, for the Re-
 “ medy, Correction and Amendment of those Enormities above spē-
 “ cified.

“ In Witness whereof, unto these our Letters Patents we have set
 “ our Seals.

“ Given in the full Parliament at *Westminster*, the 18th Day of
 “ *May*, Anno 1343.

I have nothing to infer from all this, but to wonder at the stupen-
 dous Prerogatives which the Pope had by little and little usurped over
 both the Crown and Kingdom; and to commend the Courage of the
 House of Commons, who seeing the whole Contexture of the Govern-
 ment ready to be disjointed, They, as being the vital Breath which
 so many thousands drew in, stoutly protest they neither could nor would
 any longer endure those Papal Usurpations.

And for Conclusion, let the Reader now fairly determine,

Whether the Judges of those Times could possibly take it for
 Law, That the King had such inherent Power vested in him,
 as by a *Non Obstante* put into his Grants, to suspend the general
 Statutes of Provisors from *Rome*?

Z

But

But notwithstanding this Letter, the Course of the Parliamentary Story shews us, that the Pope would not abate an Inch of that absolute Sovereignty, lest he should seem to be dispirited, or do any thing to the Disinheritance of the Triple Crown. And this will appear by

The Second Authority.

Rot. Parliam.
25 Edw. III.
No 13.

In the Parliament held *ann. 25. Edw. III.* the Commons pray, "That our Lord the King and Peers of the Land will be pleased to look and have regard to a novel very great Mischief and Destruction, which apparently threatens the Kingdom of *England* now of late; to wit,

"That although the Pope used not heretofore to make Reservations of any Benefices of Holy Church, unless of Benefices belonging to his Chaplains, or such Clerks as were sworn in the Court of *Rome*; yet now of late, out of Covetousness to have the First Fruits and other Profits thereunto belonging, hath reserved and doth daily reserve to his Collation generally and especially, as well Abbeyes and Priories as all the other great Benefices of *England*, which are of Spiritual Patronage.

"And generally he hath now reserved of late all the Dignities of *England*, and Provendries in Cathedral Churches, and given them as well to Aliens as Denizens, by which means the Pope gets all the First Fruits of those Benefices.

"And besides all this, they that purchase such Benefices, pay the double or the treble *en Brocage*; and so the Treasure of the Realm is destroyed and carried away yearly, to so great a Value, that the Kingdom can by no means bear it without being undone, if speedy Remedy be not had.

"For it may be easily demonstrated, that this Thing tends more to the Destruction of the Realm, than our Lord the King's Wars; for that this Money goes yearly to the Court of *Rome*, without ever returning, and amounts to more yearly than the King carries out of the Realm.

"And it is commonly said, That this our Treasure redounds to the Profit of our Enemies, to enable them to a War against ourselves; and so consequently it appears clearly, that the said Reservations are compassed subtly and by evil Artifice, to the Ruin of the King and of all the Kingdom, and to the Aid and Comfort of Enemies.

"And on the other hand, many times by suspicious and feigned Reservations supposed to be privily made, many sufficient Clerks of the Kingdom, who have for a long time continued in the Possession of their Benefices by good Title, *ensont oustex & debetex*, by such Brokers against God and Right, and can obtain no Recovery thereof.

"Whereof

“ Whereof may it please our said Sovereign Lord the King, and his
 “ Council, to ordain Remedy for the said Mischiefs, now in this Par-
 “ liament: for the longer the Thing be suffered, the harder it will be
 “ to be redressed.

“ ANSWER.

“ It is agreed, That the Answer to the Petition be made a Sta-
 “ tute.

And so it was:

Which recites, “ That the Commons grievously complaining that
 “ the Statute made in the 25th Year of *Edw. I.* against Provisions
 “ from *Rome* had not been kept and observed, as it ought to have
 “ been. Rastal's Stat.
25 Edw. III.
The Statute of
Provisors of Be-
nefices.

And therefore the Commons prayed the King,

“ That sith the Right of the Crown of *England*, and the Law of the
 “ said Realm was such, That upon the Mischiefs and Damages which
 “ happened to this Realm, he ought and was bound by his Oath with
 “ the Accord of his People in Parliament, thereof to make Remedy and
 “ Law, and in removing the Mischiefs and Damages which thereof
 “ might ensue; he would thereupon ordain Remedy.”

To all which the King answered,

- “ 1. That he seeing the Mischiefs and Damages before mentioned:
- “ 2. And having a Regard to the said Statute made in the Time of
 “ his said Grandfather, and to the Causes contained in the same.
- “ 3. Which Statute had always held its Force, and was never de-
 “ feated, repealed, nor annulled in any Point.
- “ 4. And by so much as he was bounden by his Oath to cause the
 “ same to be kept, as the Law of his Realm, though by Sufferance
 “ and Negligence it had been sithence accounted to the contrary.
- “ 5. Also he, having regard to the grievous Complaints made to him
 “ by his People in divers his Parliaments holden heretofore:
- “ 6. And being willing to ordain Remedy for the great Damages and
 “ Mischiefs which had happened and daily did happen to the Church
 “ of *England* by the said Cause.

“ The King therefore, by the Assent

- “ 1. Of the Great Men,
- “ 2. And the Communalty
 “ of the said Realm, to the Honour of God, and Profit of the said
 “ Church of *England* and of all his Realm, made a farther Law a-
 “ gainst Provisors of Benefices from *Rome*.”

The General Inference which I shall draw from hence shall be, That
 this Statute in some Particulars was only declaratory of the ancient
 Law of *England*. For,

I. It

1. It proves, That Parliaments were instituted for the Safety and Benefit, and to prevent the Prejudice and Danger, both of King and Kingdom.

2. That the Right of the Crown and the Realm was such, that our Kings were bound by their Oaths to make Remedy and Law for removing of Mischiefs and Damages, which might happen. But how was that to be done? Not by the Judges in *Westminster Hall*; No, but by Accord of their People in Parliament.

3. It likewise proves, That Statutes did always hold their Force, 'till they were repealed by the same Authority that made them.

4. And lastly, That though by Sufferance and Negligence it might be attempted to the contrary, yet that the King was bound by his Oath to cause the same to be kept, as Part of the Laws of the Realm.

It being ever of the Essence of an *English* King to govern according to Law.

From which I conclude,

That the *Jus Regium Coronæ*, or the King's Supreme Power in dispensing with General Statutes, could not be confirmed by the common and Statute Laws of this Kingdom before the Reign of *Edward III.*

In a Word, it is very observable, that this Statute was made by the valiant and victorious Prince *Edward III.* who had at one time sitting with him at his Table, *David* King of *Scots*, and *John* the *French* King, as his Captives.

The Third Authority.

In the opening of a Parliament held at *Westminster*, in the 15th Year of *Richard II.* the Archbishop of *York* being then Lord Chancellor of *England*, by the King's Appointment declared the Cause of summoning the Parliament.

The Third Cause was touching the Statute of *Provisions*; to ordain and see how Holy Father the Pope might have that which appertained to him, and the King what belonged to him and his Crown, according to that divine Rule, *Reddite quæ sunt Cæsaris Cæsari, & quæ sunt Dei Deo.*

Rot. Parliam.
15 Rich. II.
N^o 8.

After which, in the Parliament Roll it is entered concerning the Statute of *Provisions*, " That the Commons, for the great Affiance which they have in the Person of our Lord the King, and in his most excellent Wisdom; and in the great Tenderneſſes which they have for the Crown and the Rights thereof; and also in the noble and great Discretions of the Lords, have assented,

" *En plein Parlement,*

" That our said Lord the King, *per* Advice and Assent of the said Lords, may make such Toleration touching the said Statute, as he shall think reasonable and profitable, 'till the next Parliament: So

" as

4

“ as the said Statute be not repealed in any Article thereof; and so
 “ as they who have any Benefices by virtue of the said Statute, before
 “ this present Parliament; and also all such as any Aid, Ease, or Ad-
 “ vantage is accrued to, by virtue of the said Statute, and of the Bene-
 “ fices of Holy Church, of which they were then in possession, as well
 “ by Presentation or Collation of our Lord the King, as of the Ordi-
 “ naries, or any other Religious Persons, or by any other Ways or
 “ Means, may freely have and enjoy the same, and peaceably continue
 “ their Possessions thereof, without being ousted thereof, or any ways
 “ challenged or impeached, molested, inquieted or grieved, by any
 “ Provisions, or otherwise, contrary to the Form and Effect of the
 “ said Statute, by reason of any such Sufferance in time to come.

“ And farther, That the Commons may disagree at the next Par-
 “ liament to such Tolerations, and fully resort to the said Statute, if
 “ they shall think good :

“ With Protestation, that this their Assent, *qu'est une* *Et nad*
 “ *my estre faite devant c'est heures ne soit trahit en ensample, n'en con-*
 “ *sequence en temps avenir.*

“ And they pray our Lord the King, that this their Protestation may
 “ be entered upon Record in the Parliament Roll : Whereto the King
 “ agreed, and commanded it to be done.”

Our great Lawyers from this Authority may learn what the Anti-
 quity of the King's Suspending or Dispensing Power was, more cer-
 tainly than from all the Books in their Studies.

Nothing can be more plain and exprefs, than that the Statute of
Provisors was a Penal Law. But if the Trust and Power of suspend-
 ing Penal Statutes were so inseparably united unto the Royal Persons
 of our Kings, and so inherent in the Crown, as our modern Judges
 have unanimously resolved they were; Let them tell me,

1. How came it to pass, that the Lord Chancellor of *England* should
en plein Parliament declare, by the King's Command, that one of the
 Causes of summoning that Parliament was to gratify the Poor with a
 Relaxation of the Statute of *Provisors*?

2. What, I pray, had the Commons to do to grant that King an
 Authority, with the Advice and Assent of the Lords, to make a Suf-
 ferance or Dispensation of that Penal Law?

3. And that too, but 'till the next Parliament; and then to disagree
 to such Sufferance, if the Commons thought good?

4. Besides, which speaks loudly both to the Right and Practice of
 that and preceding Times, they solemnly protested, in full Parliament,
 That what they had then done was a Novelty, had not been done be-
 fore, and was not to be drawn into Example nor Consequence in time
 to come.

A a

5. And

5. And lastly, to sum up the whole, Their Protestation was by Agreement and Command of the King entered upon the Parliament Roll or perpetual Record, to prove,

That the Trust and Power of suspending General Statutes could never be understood by the Judges of those Times, to be inseparably united to and inherent in the Crown. For it was a Grant by this Parliament, and that too only for a Time, and by reason of the great Affiance they had in the Person of that very King, and in his most excellent Wisdom; and not for ever to all his Successors that should then after happen to be.

And for a farther Justification of this Conclusion, we will descend to

The Fourth Authority.

Rot. Parliam.
16 Rich. II.
N^o 8.

In the Parliament of the 16th of *Richard II.* it is entered concerning the Statute of *Provisors*, “ That the Commons, for the great Affiance, “ Affection, and Assurance, which they have in the Noble Person of “ our Lord the King, and in his most excellent Wisdom and Discre- “ tion; and also in the great Tenderness which he hath for his “ Crown, and his Country, and the Rights thereof, have agreed and “ assented,

“ *En plein Parlement,*

“ That our said Lord the King, by good Deliberation and Assent *des* “ *Seigneurs de son sage Counsell*, taking the whole Matter to them, shall “ have full Power and Authority *de modifier* the said Statute, and to “ ordain, by Deliberation and Assent aforesaid, as he shall think most “ conducing to the Honour of God, and of Holy Church, and the Pre- “ servation of the Rights of his Crown, and the Estate and Profit of “ his Realm; and to put in execution whatever shall be so or- “ dained.

“ And that at the next Parliament all the aforesaid Things shall be “ fully shown to the said Commons, to the end that they may then “ by good Advice agree thereunto, if it shall please God.”

Now to make this Authority farther advantageous to the Point in Dispute, we may observe,

1. That whereas by the last Authority Power was given to the King to make Dispensations with the Statute of *Provisors*, by the Advice and Assent of the Lords; now by this he had Authority granted to modify the Statute, by the Advice and Assent of the Lords of his sage Council.

2. But still those Modifications were to be subject to the Assent or Dissent of the Commons, at the next Parliament.

The

The Fifth Authority.

It farther appears by the Parliament Roll of the 20th of *Richard II.* Rot. Parliam. 20 Rich. II. N^o 21. concerning the Statute made about *Provisions* from the Court of *Rome*, in the 16th Year of his Reign, “ That the Commons of his Kingdom
“ of *England*, being in Parliament, for the great Affiance which they
“ had in the Person of the King, and in his most excellent Wisdom and
“ Discretion; and in the great Tendernefs and dear Love which he had
“ above all others to his Crown, and the Rights thereof, and to the Pre-
“ fervation of his Royal Estate, Assented voluntarily on their Part,
“ *En plein Parlement,*

“ That the King, *per assent & advice de Tieux Sages & Dignes Per-
“ sones* as he should please to call to counsel him thereupon, might
“ make *tielx Soeffrance, Ordenance,* and Moderation concerning the
“ said Statute, as he should think most reasonable, and most to the
“ Pleasure of God, and the Safety of Holy Church; according to his
“ high Discretion, saving the Rights of his Crown and his Royal
“ Estate :

“ So as at the next Parliament such Sufferance, Ordinance and Mo-
“ deration should be heard and examined; and thereupon affirmed, or
“ corrected and amended, or altered, according as should then seem by
“ Advice of his Council in the said Parliament; most for the Honour
“ of God, the Safety of Holy Church, and the Benefit of his Realm
“ and People.”

Now if the Suspending Power was ever an Essential of the Govern-
ment lodged in the common Repository of all the Ensigns of Majesty,
as being incorporated with the first Principles of our Government; and
so to be exerted from time to time; at the Will and Pleasure of the
King, as some of our late Writers have affirmed;

Let them tell me, without pretending to a particular Revelation,
what was the *English* of this Authority.

But to proceed,

“ *Item,* Presently after the Proceedings of the Commons, the Arch- Rot. Parliam. 20 Rich. II. N^o 22.
“ bishops of *Canterbury* and of *York*, on the behalf of themselves and
“ the other Prelates of their Provinces; spake openly to the King in
“ Parliament, protesting, That they had made Profession and were
“ sworn to the Holy Father the Pope; and the Court of *Rome*. And
“ therefore, in case any Ordinance or other Thing should be done or
“ assented to, by the King, or Lords Temporal, by their Power and
“ Authority in Parliament, touching *Provisions* from the Court of *Rome*,
“ which might be in opposition to the Power of the Apostle, or in
“ derogation of the Liberty of Holy Church, in any manner they would
“ not be bound by them :

“ But

JUS PARLIAMENTARIUM.

“ But did on their Part contravene and difassent, for so much as concerned them.

“ Saving always their Estate with respect to the Royal Person of the King, to which they have done Fealty by Oath for their Temporalities, which they intended duly to keep as they were held :

“ Saving the Liberty of Holy Church, and their Profession to Holy Father, as aforesaid.

“ And they prayed the King, That this their Protestation might be entered on the Parliament Roll, which the King agreed to and commanded to be done.”

But it may be objected, That in this and the foregoing Authorities, sometimes the Lords are left out, and sometimes the Commons.

To this I answer, in the Words of the Learned *Selden* :

“ *Certissimum est* (says he) that according to Custom, no Answer was given, either by the King, or in the King's Name, to any Parliamentary Bills, before that the Bill, whether it was brought in first by the Lords or by the Commons, had passed both Houses ; as it is known to all that are versed in the Affairs and Records of Parliament.

“ And when the Name of either of them is left out in the Draught of the Bill (as the Lords were in the Case there alledged) it was wont to be supplied, as it is also at this Day, by the brief Form of Assent, which is added by that House, to whom the Bill is sent and transmitted.

“ For that House which prefers it, transmits it to the other, who either gives an Assent, or rejects it,

“ And when both Houses have so given their Assent, then after a while, either the King gives his Assent (whereby it becomes an Act or Law) or else he lays it aside, and (as Mr. *Selden* had there shewn) takes Time to advise ; neither of which was ever done by the King, according to the Course of Parliament, 'till both Lords and Commons had given their Assent.”

This I have thought fit to note here, that so Truth may have room to gather Breath, and not be stifled by false Inferences from mistaken and misapplied Premises, confirmed by the Ignorance of the Nature and Method of Parliamentary Proceedings in former Times ; and which have been of late published to the World for good and warrantable Law.

And in particular, that the King and his Council only made Laws ; because there are some Statutes and Acts of Parliament to be met with in our Statute Books, wherein there is no mention made either of the Lords or Commons.

I know there are weak Men of all Professions, for whom no body can answer : But it is an Astonishment that ever such a Notion should obtain

obtain with Men of any Share of Sense and Knowledge in the Law of *England*, as of late Years it hath, unless it were out of a mercenary Design; which if so, must make them guilty of a high Violation of our ancient Constitution of Parliaments, and of an unpardonable Injury, not only to all true *English-Men* now living, but to Ages that shall follow, in asserting and tempting the World to believe it.

The Sixth Authority.

The Parliament Roll in the 1st of *Henry IV.* tells us:

“ *Item*, Whereas divers Statutes and Ordinances have heretofore been made, as well in the Time of *Richard* late King of *England*, as in the Time of other Progenitors of our Lord the King, concerning *Provisors* in the Court of *Rome*; the Commons of the Realm of *England*, in Parliament, for the great Affiance, which they have in the Person of our Lord the King, and in his most excellent Wisdom and Discretion; and in the great Tenderness and Dearness, which he has above all others for the Crown and the Rights thereof, and for the Reservation of his Royal Estate; have on their Part voluntarily assented,

Rot. Parliam.
1 Hen. IV.
No 85.
Moderation de
l'estatute des
Provisors.

“ *En plein Parlement*,

“ That our said Lord the King, by Assent and Advice of such wise and worthy Persons as he shall please to call to counsel him thereupon, may make such Sufferance, Ordinance, and Moderation, touching the said Statute, as to him shall seem most reasonable, and most to the Pleasure of God, and the Safety of Holy Church.

“ And the same Statute may casse, repeal, and make void, and annull, according to his Highness's Discretion, and according as he shall think conducing to the Honour of God, and most expedient and necessary for the Honour and Profit of his Royal Estate, and of his Realm and People.

This is such an Authority as ought to be considered in its highest Extent, since the grand Question from hence will receive a more easy and fuller Resolution: For we see the Commons assent in full Parliament,

I. That the King, by Advice and Assent of those wise and worthy Persons, whom he should please to call to Council, may not only make such Sufferance, Ordinance, and Moderation, concerning the Statute of *Provisors*, as he should think reasonable.

II. But a Trust was intrusted personally to cassate, repeal, make void, and annull the Statute itself at his high Discretion.

1. For the Honour of God.

2. As should be most expedient and necessary for the Honour and Profit of his Royal Estate.

3. And of the Realm and People.

But that which is the main Point of all, is,

III. That the Commons reserved no Power in themselves to assent or dissent to such Sufferance, Ordinance, and Moderation, at the next Parliament, as they had done in the former Authorities.

So that whatever our modern Laws, Books, and some Divines are pleased to say, Men must be greatly imposed on to imagine that before this Statute of 1 Hen. IV. the Power of suspending of general Penal Laws was such a Prerogative as was always at Common Law, innate and incident, solely and inseparably, unto the Royal Persons of our Kings: or was such a Right as was involved in the very Notion or formal Conception of Imperial Sovereignty.

The Seventh Authority.

Rot. Parliam.
2 Hen. IV.
N^o 26.
Moderation
de l'estatute
de Provisors.

“ *Item*, Upon *Wednesday* the 2^d Day of *March*, ann. 3. of the same
“ *Henry IV.* the Commons came before the King, and the Lords
“ in Parliament, and there shewed, That whereas in the last Parlia-
“ ment a certain Sufferance, Ordinance, and Moderation of the Statute
“ of *Provisors*, was left to the Ordinance and Disposition of our most
“ dread Lord the King; as by the Record thereof made in the Par-
“ liament Roll, may appear:

“ The same Commons, entirely confiding in the high Wisdom and
“ Discretion of our said Lord the King, for the Preservation of him
“ and his Honour, and of the Estates of his Kingdom, do agree to the
“ said Sufferance, Ordinance, and Moderation, according as is contained
“ in the said Roll of the last Parliament.

“ Praying our Lord the King, that no Sufferance, Ordinance, or
“ Moderation, may be anywise made or hold Place for Cardinals or
“ other Aliens to hold Benefices within the Realm.

Id. 2 Hen. IV.
N^o 45.
Affirmance del
moderation de
l'estatute des
Provisors.

“ *Item*, On *Thursday* the 10th Day of *March*, the Commons shewed
“ to our Lord the King, That whereas on *Wednesday* last past, to wit,
“ the 9th Day of *March*, the said Commons had shewn in particular,
“ That the Article touching the Moderation made at the last Parlia-
“ ment held in the first Year of his Reign, upon the Statute of *Provi-*
“ *sors*, was otherwise enacted and entered in the Parliament Roll.

“ And thereupon the said Commons prayed our said Lord the King,
“ That the Matter might be examined by the Lords Spiritual and Tem-
“ poral in Parliament.

“ Which Prayer our said Lord the King granted, and with a Pro-
“ testation, That his Will was not that any such Examination should
“ be in Time to come of any such Record made in Parliament; nor
“ that

“ that the same in every sort should be drawn into Example or Consequence in any Time to come.

“ Upon which Matter the Lords Spiritual and Temporal, and the Justices and other Counsellors of our Lord the King, being severally examined,

“ *En plein Parlement,*

“ In the King’s Presence, the said Commons attested, That the said Moderation was duly and justly entered and enacted in the Parliament Roll, in Manner as it shall be spoken and agreed to,

“ 1. *Per les Seigneurs,*

“ 2. *Et les Communes suisdits,*

“ Which Entry and Enacting so made, the King remembered to have been well and justly made, in Manner as it was agreed to in the last Parliament.”

As the Truth of Matter of Fact, which we find in this important Authority, is above vain Cavils of any Man whatsoever ;

So it leads us to a clear different Way of Reasoning and Argument, from what of late hath been used by our modern Lawyers, and with all becoming Reverence to their Opinions.

It demonstratively proves, that their Resolutions were not governed by Law, but by the Excesses of Government.

For none but those who acknowledge no other Rule of Law, but such as either agrees with their Passion or Interest, can at this time of the Day fancy that

1. Because the Kings of *England* were Sovereign Princes,
2. And the Laws were the King’s Laws ;
3. Therefore it was one of the *Regalia Suprema*, or Essential Rights of their Sovereignty, to suspend and dispense with general Statutes, upon necessary Reasons ; the Kings were sole Judges.

Certainly, if such a Perfection and Fullness of Imperial Power had ever been inseparably annexed to the Crown, then it must likewise be unalterable.

And I would ask them, When and how it could be lost, since it cannot be denied to be a just Animadversion ?

If, I say, that

1. Neither the King himself,
2. Nor the Justices and King’s Counsellors,
3. Nor the Lords,
4. Nor the Commons,

knew any thing at all of the new advanced Doctrine, that there was such a Prerogative or Pre-eminency of Power and Absoluteness lodged in the *English* Monarchy.

And therefore this one Authority may be a compleat Standard for the Resolution of the main Question, touching the King’s Right of Dispen-

Dispensation with general Statutes, as well in Matters Ecclesiastical as Temporal.

In the next place, we are to examine the King's Exercise of his Dispensing Power concerning the Statute of *Provisors* granted to him by the said Statute of the second Year of his Reign.

First, In the 7th Year of *Henry IV.* we meet with the following Statute.

Pulton's Stat.
7 Hen. IV.
cap. 8.

“ *Item,* To eschew many Diffensions, Disorders, and Debates, and divers other Mischiefs very like to rise and grow, because of many Provisions made and to be made by the Pope;

“ And also in respect of Licences granted upon the same by the King our Sovereign Lord;

“ It is ordained and established, That no Licence or Pardon so granted before this Time, nor to be granted in Time to come, shall be available to any Benefice full of any Incumbent, at the Day of the Date of such Licence or Pardon granted.”

By this Statute we see the Prerogative which had been granted to that King in the first Year of his Reign by Authority of Parliament, was restrained and limited in granting Licences or Pardons in particular Cases.

The Eighth Authority.

The Commons, in a Parliament held in the 8th Year of *Henry IV.* pray,

“ That whereas You our Sovereign Lord have made, or You and your Heirs in Time to come may make several Collations or Presentations to divers of the Lineage of *England*, of Dignities, Offices, Prebends, and other Benefices of Holy Church; as also other Patrons have, or may make to Benefices of their Advowson; and several Provisors, by Authority from the Pope, have accepted, do at present, or purpose in Time to come, to annex such Dignities, Offices, Prebends or Benefices; although such Provisors, their Procurators, Notaries or Friends, many Times are arrested and compelled by Authority of your Laws, to find Surety in your Courts, that they will never attempt any thing in the Court of *Rome*, that shall be contrary to your Regality and Laws, or to the Execution or Effect of your said Collations or Presentments.

“ Yet such Provisors make divers Processes against the said Presentees or Incumbents being in possession by virtue of such Collations or Presentments, their Procurators, Notaries, and other Persons of their in this Court of *Rome*, as well in Person as by their Agents, Proctors, and others their Friends to

“ answer

W. R. O. U.

“ answer the Titles of the said Benefices: As also to
 “ answer concerning Sureties found by such Provisors, their Notaries
 “ or Procurators in your Courts, sometimes on pain of being deprived
 “ of all their Benefices obtained or to be obtained; and of the incapaci-
 “ tating of their Persons: And sometimes on pain of Excommunication;
 “ mentioning therein the Penalty of a Thousand Pounds, or more or
 “ less at their Pleasure: The one Moiety thereof to the Party, and the
 “ other Moiety thereof to be applied to the Chamber of our Holy Fa-
 “ ther the Pope, in derogation of your Regality, and contrary to the
 “ Laws of your Realm; and to the unsupportable Damage of such
 “ Presentees and Incumbents.

“ May it please You, of your Royal Majesty, considering the said
 “ Mischiefs, to ordain and declare in this Parliament, by Assent of the
 “ Lords Spiritual and Temporal therein, for the saving of your Re-
 “ galty, and the Quiet of your Lieges;

“ That if any Provisors, or any other Person whatsoever, pursue or
 “ cause to be pursued, or procure in the Court of *Rome*, or suffer to be
 “ made in his Cause, any such Process, contrary to the Laws of your
 “ Crown and of your Kingdom, and particularly contrary to the Form
 “ of the Statutes heretofore made against Provisors:

“ And that this be duly provided, that then such Provisors, his No-
 “ taries, Procurators, Agents, Fautors, Maintainers and Receivers,
 “ whether within your Realm of *England* or elsewhere, may incur the
 “ Pains contained in the Statutes made against Provisors, in the Reign
 “ of the late King *Richard*, at his Parliament held at *Westminster* the
 “ 14th Year of his Reign, in all Points.

“ And if such Provisors, his Notaries, Procurators, Agents, Fautors,
 “ Maintainers and Receivers, shall be beyond the Sea; and that it be
 “ affirmed, for you or your Heirs, or for him that shall find himself
 “ aggrieved in your *Chancery*, or in that of your Heirs, by Instrument
 “ or by Testimony of two credible Witnesses, that he hath attempted
 “ such Processes in the Court of *Rome*, That then such Instrument and
 “ Testimony be there entered, and Proclamation thereupon made, as
 “ well in your *Chancery* as at the Benefice concerning which the De-
 “ bate shall be, to appear personally within half a Year next ensuing
 “ within the same *Chancery*, as well themselves as their Procurators,
 “ Notaries, Fautors, Agents, Maintainers and Receivers, to answer and
 “ be tried for their said Offences in some of your Courts, or the Courts
 “ of your Heirs, or at the Suit of the Party grieved:

“ To the End that, if they come not within half a Year, as aforesaid,
 “ to be justified, then such Provisors, their Procurators, Agents, Nota-
 “ ries, Maintainers and Receivers, be accounted as convict, and in-
 “ cur the Pains contained in the Statutes aforesaid.

“ And that no Letters of Licence by You or your Heirs granted or
 “ to be granted to any such Person, to make such Prosecutions or any

“ Charter of Pardon, be granted to such Provisors, their Procurators,
 “ Agents, Notaries, Fautors, Maintainers and Receivers : And that such
 “ Letters of Licence or of Pardon be not available or allowable to them
 “ or any of them, ’till such Time as they make full Satisfaction and
 “ Restitution to the Parties grieved, and to every of them, of their
 “ Losses in all respects.

“ And moreover, That You and your Heirs may have for the Lives
 “ of such Provisors, their Agents, Notaries, Procurators, Fautors and
 “ Receivers so convicted, the Profits and Fruits of all their other Be-
 “ nefices and Possessions for their Lives, to be amounted to for the
 “ same by your Escheators in the Counties where their Benefices and
 “ Possessions are.

“ And moreover, That they find sufficient Surety that they will not
 “ in Time to come attempt in any Court beyond the Sea contrary to
 “ this Ordinance.

“ And lastly, That this Ordinance may extend as well to the Time
 “ past as to come.

“ RESPONSIO.

“ *Soient les Statutes ent faitz tenuez & gardez.*

“ Saving always to our Lord the King his Prerogative and Li-
 “ berty ;

“ And also the Moderation to him reserved in such Case by Par-
 “ liament.

Hitherto out of the Entry made in the Parliament Roll.

To which I will add another Petition of the Commons made in the
 Parliament held 9 *Hen. IV.*

“ *Item*, Whereas by divers Ways and Means the Money of the King-
 “ dom of *England* had been drawn out of the same in the Court of
 “ *Rome* in Exchange, by Provisors, to purchase Provisions from the
 “ Pope, and Translations and Bishopricks, to the great Impoverish-
 “ ment of the said Kingdom : Causing also very great Rancour
 “ and divers Debates in all Parts of the said Kingdom, about
 “ such Provisions executed, sometimes by Licence granted by the King’s
 “ Letters Patents, and sometimes by Pardons granted after Sub-provi-
 “ sions obtained, by ousting them that were Incumbents of such Bene-
 “ fices by ordinary Titles, *viz.* by Presentments and Collations of the
 “ very Patrons ; to the utter Disherison of such Patrons, and great
 “ Peril of the Souls of such Provisors.

“ And that it was shrewdly to be suspected, that their Provisions
 “ were most commonly made by Simony rather than graciously.

“ The

“ The Commons therefore prayed the King to ordain and finally
 “ establish in that Parliament, by Assent of the Lords Spiritual and
 “ Temporal,

“ That all the Statutes made against Provisors from the Court of
 “ Rome, Translations of Archbishopricks and Bishopricks, their Agents,
 “ Procurators, Notaries, Fautors, Maintainers, and Receivers, as well
 “ in the Time of *Edward* his Grandfather late King of *England*, as in
 “ the Time of the late King *Richard*, as in his own Time, with all
 “ the Penalties and Clauses therein, might from that Time forward be
 “ firmly kept and held in all Points.

“ *La Moderation de Statutes a vant ditz avous avant ces heurs*
 “ *grantez non obstantz ; i. e.* The Moderation of the said Statutes to
 “ him theretofore granted notwithstanding.

“ Pardoning also by Authority of Parliament all them that purchased
 “ Provisions, and had purchased and executed Translations of Arch-
 “ bishopricks or Bishopricks, before the then 1st Day of *December*, all
 “ manner of Trespasses, Contempts, Forfeitures and Misprisions, and
 “ whatever to him appertained in that behalf ; and to all their Procu-
 “ rators, Notaries, Fautors, and Executors.

“ And moreover, to ordain in that Parliament, That all Elections of
 “ Archbishopricks, Bishopricks, Abbacies, Deanaries, Priories, and o-
 “ ther Dignities Elective whatsoever, might for the Time to come be
 “ free, without being in any manner disturbed by the Pope, or the
 “ King’s own Command.

“ To which the King answered,

“ *Le Roy le voet.*

“ Saving always, That our said Lord the King have as freely his Li-
 “ berty and Prerogative as any of his noble Progenitors have had here-
 “ tofore, or as himself had at that Time before the making of this
 “ Statute.”

Having thus given these two Acts, I come to apply them to the
 grand Cause.

And by the First Act it appears,

1. That the Commons declare, That all Provisors, by Authority of
 the Pope, and all Procefs and Proceedings thereupon, were contrary
 to the Laws of the Crown and of the Kingdom.

2. They pray, That no Letters of Licence nor *Non Obstantes*, which
 had been or should be granted by the King or his Heirs, do make any
 such Prosecutions.

3. Nor that they should be available or allowable, ’till full Satis-
 faction and Restitution were made in all respects to the Parties ag-
 grieved.

But

But if the King's Prerogative was ever known to be such, that no Act of Parliament could (to use the Words of the Sages of the Law) restrain him *in Thesi* or *Hypothesi*, but he might dispense with it;

How, I pray, came it to pass, that the Commons should trouble themselves, the Lords, and the King, with so idle and vain a Petition?

By the Second Act it farther appears,

1. That the Commons pray a Reviver of all Statutes against Provisors from the Court of *Rome*:

2. Notwithstanding the Moderation of the said Statutes, which had been granted to that King before.

3. And lastly, They desire that all Offenders against those Statutes may be pardoned. But how? By Authority of Parliament.

And by the Parliament it likewise appears,

1. That to the First Petition the King answered,

“ *Soient les Estatutes ent faitz tenuz & gardez.* ”

2. And to the Second Petition,

“ *Le Roy le voet.* ”

But here I must answer an Objection, which I see will with great Warmth be urged against me; *viz.*

That I have not here given the Reader,

1. The Saving of the King's Prerogative and Liberty, and also the Moderation reserved to him by Parliament to the First Petition:

2. Nor the Saving, that he should have as freely his Liberty and Prerogative, as any of his Progenitors had, or than himself had before the making of the last Act.

And therefore I am partial.

To all which I answer,

That the Reason why I divided the King's Answer, was to enquire into the ancient Form of penning and publishing of Statutes.

It must be acknowledged, that the Way of several Parliamentary Proceedings was in old Times not so regular and formal as in after Times.

For, * before the 2^d Year of King *Henry IV.* the Course was,

1. When the Commons were Suiters for a Law, either the Speaker of their House, by Word of Mouth from them, the Lords House joining with them,

2. Or by some Bill in Writing, which was usually called their Petition, moved the King to ordain Laws for the Redress of such Mischiefs or Inconveniencies as were found grievous unto the People.

3. To these Petitions the King made Answer,

Sometimes to Part,

Sometimes to the Whole,

* See *Rushworth's Collections*, vol. 1. fol. 568, 574. *Mr. Glanville's Speech in a full Committee of both Houses of Parliament*, May 23, 1627. *in the Painted Chamber at Westminster.*

Sometimes

Sometimes by Denial,
 Sometimes by Assent,
 Sometimes absolutely,
 And sometimes by Qualifications.

4. Upon these Motions and Petitions, and the King's Answer to them, was the Law drawn up and ingrossed in the Statute Roll, to bind the Kingdom.

5. But this Inconvenience was found in this Course, that oftentimes the Statutes thus framed were against the Sense and Meaning of the Commons, at whose Desires they were ordained. And therefore,

6. *Anno 2. Hen. V.* the Commons having found by sad Experience, that the Course tended to the Violation of their Liberty and Freedom, whose Right it was and ever had been, That no Law should be made without their Assent: They then exhibited a Petition to the King, declaring their Right in this Particular, praying, That from thenceforth no Law might be made or ingrossed as Statutes, by Additions or Diminutions to their Motions or Petitions, that should change their Sense or Intent, without their Assent.

7. Which was accordingly established by Act of Parliament.

8. And ever since then the Use hath been, as the Right was before, that the King takes the whole or leaveth the whole of all Bills or Petitions exhibited for the obtaining of Laws.

But it may be asked, Where is that Act of Parliament to be found, since it is not to be met with in our printed Statute Books?

To this I answer,

That there are Numbers of publick Acts of Parliament, which concern the ancient Government of the Kingdom, that no where appear either in our Statute Books or other Books of Law; and yet are very necessary to be known, to detect and confute the many gross Fallacies and dangerous Errors, which have been so artificially and with so great Boldness imposed upon this latter Age, by corrupt Lawyers, Divines, and Physicians the worst of Seducers.

And the Reader will find that Act of Parliament entered upon the Parliament Roll. And thus it follows:

*“ Item, Fait a remembrer que les Comens baillerent a Roy nostre
 “ Seigneur tressouveraigne en c'est Parlement un petition, dont le tenure
 “ ensuit de mote en mote.*

“ Our Soverain Lord,

“ Your humble and true Lieges, that been come for the Comens of
 “ your Land, besechen unto your ritz Wiseness,

“ That soo as hit hath ever be thair Libertie and Freedom, that there
 “ should noe Statute, nor Law be made of lasse than thay yaf thereto

D d

“ their

“ thair Assent ; considering that the Comens of your Lond, the which
 “ that is and ever hath be a Member of your Parliament, been as
 “ well

“ 1. Assentirs,

“ 2. As Petitioners,

“ That from this Time foreward, by Compleint of the Comens of
 “ any Mischiefe as being Remedy, by Mouth of thair Speker for the
 “ Comens, other else by Petition witten that there never be noe Law
 “ made thereupon and ingrossed as Statute and Law, neither by Addi-
 “ tions neither by Diminutions, by noe manner of Terme ne Termes,
 “ the which shuld change the Sentence of the Intent asked by the Spe-
 “ ker Mouth, or the Petition by foresaid geven up in Wryting by the
 “ manner foresaid, without Assent of the foresaid Comens.

“ Considering our foresaid Lord that is not in ne will the Entent of
 “ your Comens, yif it be se that they axke you by speking or by wry-
 “ tying too Things or three, or as many as them list ; but that ever
 “ it stout in the Freedome of your high Regalie, to grant which of the
 “ too you lust, and to wecune the remanent.

“ A N S W E R .

“ The King of his Grace especially granteth, that fro thence forth
 “ nothing be enacted to the Petition of his Comens that be contrary
 “ of his axking what by they should be bound without thair Assent.

“ Saving alway to our Liege Lord his real Prerogatif to grant and
 “ deny what him lust of your Petitions and Axking aforesaid.”

By this Act the old Course of making Laws was altered and changed,
 and that too much for the better.

For before, many Inconveniencies happened to the Subject, occasi-
 oned by the Artifice of the King’s Counsel, who in those Days were
 intrusted with the penning and publishing of the Statutes after the Par-
 liament ended. For,

1. Sometimes no Statute was made, although it had been generally
 agreed in Parliament.

2. Several Particulars assented to by the King, were left out and
 omitted.

3. Many Things were added in the drawing up of the Law, which
 were not in the Petition of the Commons.

4. A pretended Statute was published, whereunto the Commons ne-
 ver gave their Consent.

5. And lastly, another pretended Statute was made, which neither
 the Lords nor Commons assented to.

It

It would be too great a Digression to enter into a long Discourse upon these particular Heads in this Place, and therefore I will reserve it for another Tract.

All that I shall insist upon for the present is in brief this :

That it is no concluding Argument to say, that because we read of Saving of the King's Prerogative in Acts of Parliament before the 2^d of Henry V.

That therefore those Savings were in the Petitions which produced those Laws, and consequently were so many Recognitions made in Parliament of his Prerogative in those Cases, of which the Statutes speak.

But it is a good Argument to say, that the King's learned Council were strongly of Opinion, that, if they had not added such Savings, the Prerogative Royal had been absolutely bound ; and that no *Obstantes*, then in Use and Practice, could dispense with it : For otherwise, what could a Saving signify ?

The Conclusion of my Answer to the foresaid Objection must then be,

That the King's Answer, viz. "*Soient les Estatutes ent faitz tenuz & gardez,*" given to the first Petition ; and "*Le Roy le voet,*" given to the Second Petition, were the original Answers given by the King, with the Assent of the Lords in Parliament.

And that the Saving of the King's Prerogative and Liberty, and also of the Moderation reserved to him by Parliament, was afterwards added by the King's Council, when the Statute was drawn up, and an Entry made in the Parliament Roll.

And to enforce this Conclusion, the Parliament Roll, 8 *Hen. IV.* proves, " That it was enacted, at the Request of Sir *John Tibitot*, then Speaker, in the Name of the Commons, That certain of the House of Lords and of the Commons House should be *a l'enactement & l'engrossement du Roll de Parlement.*"

Rot. Parliam.
8 Hen. 4.
N^o 65.
Seigneurs &
Communes
assignes pur
l'engrossement
de Roll du Par-
lement.

But our Task is not yet done ; for there remains another Petition to the Commons behind, which cannot well be passed by.

It was in the Parliament held 3 *Hen. V.* in these Words :

" *Item*, Whereas in the Time of King *Henry IV.* Father to our Sovereign Lord, whom God forgive, the 7th Year of his Reign, to eschew many Diffensions, Discords, and Debates, and divers other Mischiefs, which were likely to arise and happen because of many Provisions then made, or to be made to the Pope ; and also because of many Licences thereupon [granted] by the said late King ; amongst other Things it was ordained and established, That no such Licence

Rot. Parliam.
3 Hen. V.
P. 1. N^o 35.

" or

“ or Pardon so granted before the said Parliament, nor after to be
 “ granted, should be available to any Benefice full of any Incumbent,
 “ at the Day of the Date of such Licence or Pardon granted.

“ Nevertheless so it is, most Liege Lord, That contrary to the good
 “ Intention of the making of the said Ordinance and Estatute, and di-
 “ vers other Ordinances and Statutes heretofore made against *Provisors*,
 “ divers Persons having Provisions of the Pope of divers Benefices in
 “ *England* and elsewhere, and Licence Royal to execute the said Pro-
 “ visions, have by Colour of the same Provisions, Licences, and Ac-
 “ ceptations of the said Benefices, subtly excluded divers Persons of
 “ their Benefices, in which they have been Incumbents, by a long Sea-
 “ son of the Collations of the very Patrons spiritual to them daily made
 “ to their Intent.

“ May it please,

“ By Advice and Assent of the Lords Spiritual and Temporal,

“ To ordain by Statute, That all Incumbents of whatsoever Bene-
 “ fices of Holy Church, of the Patronage, Collation, or Presentation of
 “ Spiritual Persons, may peaceably and quietly enjoy and shall enjoy
 “ their said Benefices, without being inquieted, molested, or in any way
 “ grieved by any Persons, by Colour of such Provisions or Licences
 “ and Acceptations whatsoever.

“ And that all the Licences and Pardons upon and by such Provi-
 “ sions made in any manner, shall be void and of no Value.

“ And if any feel himself grieved, molested or inquieted in any wise
 “ from henceforth, by any Person or Persons, by Colour of such Pro-
 “ visions, Licences, Pardons and Acceptations, that the same Molesters,
 “ Grievers and Inquieters, and every of them, shall suffer and incur
 “ the Pain and Punishment contained in the Statute of *Provisors* before
 “ this Time made and contained; and that by Process of *Premunire*
 “ *facias* formed upon the Case.

“ And lastly, That the Party, which shall sue by the same Writ,
 “ shall recover his treble Damages in the Defendants Names in the
 “ same Writ, if any of them be convict in that behalf.

RESPONSIO.

“ *Le Roy le voet.*

Now he that will consider this Law with Caution and Observation,
 must confess, that it wholly alters the Case with relation to the King's
 dispensing Power touching the Statute of *Provisors*. For,

1. As it explains the Statute of 7 *Hen. IV.* it proves, That the Sa-
 ving of the King's Prerogative mentioned therein was plainly an Ad-
 dition made by the King's Council, and no Part of that King's An-
 swer, because there is not the least mention made thereof in this Act,
 in the Recital of the former.

2. All

2. All the former Savings and Moderations are here left out; *Hen. V.* gives a full and clear Answer to this, *viz. Le Roy le voet.*

3. So as now all Colour of the King's Power of granting Licences and Pardons touching Provisions from *Rome*, being absolutely taken away by this Statute, the Statute of 16 *Richard II.* after so many Years Interruption, was revived and restored to its full Force and Virtue.

And lastly, from the of what Authorities I have but as yet given against *Non Obstantes*,

I conceive it will be very evident to all unbyassed and impartial Readers,

That the first Invention of *Non Obstantes* is no Part of the wise and ancient Constitutions of this Nation, nor any natural Branch of the Common Laws, but an Excrecence grown up by Time and ill Conduct, which hath not only brought Deformity, but Danger, to the Laws of the Kingdom;

Let our modern Report Books tell us what they please.

The Ninth Authority.

A Question was presented to the King in the Parliament to *Hen. VI.* Rot. Parliam; 10 Hen. VI. No. 16. Pro Dom. Cardinal. Angli
per Communitates Regni Angliæ, on the Behalf of *Henry* Bishop of *Winchester*, Cardinal of *England*, the King's Uncle, in Form as followeth:

Item, "The Commons pray, That it may please your most gracious Seignory, considering the very great and notable Services and Offices of so near a Relation, heretofore due and performed, as well to yourself as your most noble Father, whom God assoile, by the most reverend Father in God, *Henry Beaufort*, Priest Cardinal, with the Title of *St. Eusebie*, Bishop of *Winchester*, to ordain and grant;
 " *Per assent des Seigneurs Spirituelx & Temporelx*,
 " in this your present Parliament, and by Authority of the said Parliament;

1. " That neither the said *Henry*, Cardinal, by what Name soever he the said *Henry* be called, nor any other Person, be prosecuted; vexed, impleaded; or grieved, by You, your Heirs, or Successors; Kings of *England*, nor by any other Person, by reason of any Provision; or other Offence or Misprision done by the said *Henry*, contrary to a Statute of *Provisions*:

2. " Or by reason of any Exemption, Receipt, Acceptance, Admission; or Execution of any Papal Bulls, to him in any wise made.

3. " But that the said *Henry*, Cardinal, and all other Persons, may by the same Authority be quit and utterly discharged against You, your Heirs, and Successors, of all such Actions, Prosecutions, Im-

E c

" peachments,

“peachments and Vexations, and of all Offences against your Laws upon this Account, for the Cause aforesaid.

4. “And of all other Actions and Prosecutions, whereby any Punishment like to that contained in the Statutes of *Provisions* might come and arise, and of every of them.

“And that all Suits, Actions, and Prosecutions against the said *Henry*, Cardinal, and all other Persons, for the Causes aforesaid, be extinguished, quashed, made null, and void.

“And that You, your Heirs, and Successors, may by the same Authority be for ever foreclosed and excluded from having or prosecuting any manner of Interest, or any manner of Actions for the Cause aforesaid, against the said *Henry*, Cardinal, or any other Person, any Statute or Ordinance to the contrary thereof made notwithstanding.”

Which Petition having been read, heard, and fully understood in the said Parliament, and mature Deliberation being thereupon had, was thus answered :

De avisamento & assensu Dominorum Spiritualium & Temporalium then and there present ;

Fiat, prout petitur, quantum ad prædictum Cardinalem & omnes alios qui occasiones ipsius Cardinalis impeti poterunt vel implacitari.

Now he that considereth all the Circumstances of this Authority, and the several Consequences that may easily be drawn from it, cannot well suppose that the Judges in *Westminster Hall* had in those Times discovered such a Secret in Law, that it was *inter Jura Majestatis*, to dispense with publick Statutes, or to suspend in general the Execution thereof.

The Tenth Authority.

Dr. Burnet's
History of the
Reformation
of the Church
of England,
in his Collecti-
on of Re-
cords, Book 2.
fol. 98, 99,
101. part 1.

“Pope *Martin*, in the 10th Year of his Pontificate, by a Bull sent to the then Bishop of *Canterbury*, in the Reign of King *Henry VI.* taking notice of the Statute of *Provisors*, as a Statute *quod Statuta Dei & Ecclesie destruit*, and that *per illud execrabile Statutum ita Rex Angliæ de Ecclesia cum Provisionibus & Administrationibus disponit, quasi Vicarium suum Christus eum instituisset* : As a Statute made *super Ecclesias, Beneficia, & Clericos & Ecclesiasticum Statum*, — *quasi Rex Ecclesie claves in manibus haberet, & non Petro, sed sibi hujusmodi cura commissa foret* : As a Law inflicting *vipereas contra Clericos pœnas, viz. Executores Litterarum Apostolicarum, Procuratores, Notarios, & quoscunque alios censuram seu processum ab Apostolica sede in regnum mittentes aut deferentes*, enjoins him upon his Canonical Obedience, and upon Pain of Excommunication, to resort to the King's Council, and there to persuade and admonish them all, the Ecclesiasticks as well as the Laicks, to procure a Repeal of the said Statute in the next Parliament, as a Statute that
“ was

“ was contrary *divinæ & humanæ rationi, veteris & novi Testamenti, Conciliorum, sanctorum Patrum, summorum Pontificum decretis, ipsius denique universalis Ecclesiæ observantiæ*; and a Statute, that *non sine interitu salutis æternæ quovis modo servari potest.*

“ By the same Bull he recommended the Archbishop to use the like Instances with all that had Votes in Parliament, when a Parliament should be called.

“ He commanded him further to enjoin all Priests to instruct their Auditors concerning the Premises.

“ Two Months before this Bull bears Date, there was a Letter sent from the Pope to the King, and another to the Parliament, to the same End and Purpose.

“ In the Letter to the King the Pope tells him, That after many other Messengers sent to his Highness for that Purpose, at last he had sent *Magistrum Julianum, causarum Curie Camera Apostolicæ auditorem*, for the same Cause, by whom the King had formerly returned this Answer: That as soon as conveniently he could he would call a Parliament, *sine quo idem nequit aboleri Statutum*; and in that Parliament would do all he could to fulfil his (the Pope's) Request; and then urges him to keep his Word for the Salvation of his own Soul, and those of many others, offering Expedients to prevent any Mischiefs that might arise to the Kingdom by the taking away of the said Statute.

“ In his Letter to the Parliament he tells them, That by many Messengers and frequent Exhortations, according to the Duty of his Pastoral Office, he had admonished them and the whole Kingdom, for the Salvation of their Souls, and the Honour of the Realm, to abolish that detestable Law, which could not be kept without eternal Damnation.

“ And that because it could not be taken away without a Parliament, as the King had written to him, and because the King had promised to call one with all convenient Speed, and do what was possible for him to do, towards the fulfilling of his (the Pope's) Request;

“ And since he was given to understand that the Sessions of Parliament was approaching, he exhorted, admonished, and besought them, that having an unanimous Regard to the Salvation of their Souls, and the Purity of their Consciences, before all other things, they would take away, and for ever abolish, that *Statutum abominabile.*

“ And if any Man, whether Secular or Ecclesiastical, should persuade them to the contrary, not to hear him, but to look upon him as an Enemy to their Souls, and to their Honour; nor to account him a Catholick, that should presume to attempt any thing against the Authority of the Church of *Rome*, and the Rights and Privileges granted by God to the Apostolick See, which their King himself had publicly protested that he would derogate nothing from: Further admonishing them not to be withdrawn from this Catholick Doctrine upon Pre-
“ tence

“ tence of any temporal Damage that might ensue, and offering an
 “ Equivalent in these Words: *viz. Ecce nos promptos paratosque of-*
 “ *ferimus omnibus causis, propter quas dictum Statutum conditum esse*
 “ *prætenditur, salubriter providere, ita ut nec regno nec cuiquam pri-*
 “ *vatae personæ præjudicium aliquod ex ipsius Statuti abolitione possit*
 “ *accidere.*

“ The Archbishop of *Canterbury*, pursuant to the Pope’s Command,
 “ having applied himself vigorously both to the King and the Lords, to
 “ induce them to repeal the Statute of *Provisors*;

“ He, together with the Archbishop of *York*, and several other Bi-
 “ shops, and several other Prelates, went down to the House of Com-
 “ mons, where being received, the Archbishop made a Speech to the
 “ House.

“ He first protested, That neither he nor his Brethren intended; *Do-*
 “ *mino Regi Angliæ aut Coronæ suæ, vel Communitati suæ in aliquo*
 “ *derogare.*

“ And then taking this Theme; *Reddite quæ sunt Cæsaris Cæsari,*
 “ *& quæ sunt Dei Deo,*

“ He proceedeth to declare at length, what Things belonged to the
 “ Ecclesiastical Jurisdiction, and what to the Temporal; persuading the
 “ House by several Arguments taken from *Jura nonnulla & sacræ*
 “ *Scripturæ auctoritate convenientes*, to abolish the said Statute of
 “ *Provisors.*

“ And also representing to them the great Pains and Costs that the
 “ Pope had been at in sending Ambassadors and Messengers, *ad prose-*
 “ *quendum jus suum & Ecclesiæ libertatem,*

“ He besought the House in his own Name, and in the Name of
 “ all the Prelates of Parliament, both present and absent, That they
 “ the Commons, for the Salvation of their Souls, and the Prosperity
 “ and the Peace of the whole Kingdom, would consider of the Pre-
 “ misses, and take such Course therein, as might appease the Pope;
 “ and as he might have cause to commend the King’s Zeal and the
 “ Kingdom’s Devotion in that behalf.

“ Adding farther with Tears, the Dangers that would accrue to the
 “ King and Kingdom by Ecclesiastical Censures, and the Thunder of
 “ Interdict, in case the Parliament should not return the Pope a satis-
 “ factory Answer.

“ Besides, he declared to them, That the Pope in divers Bulls had
 “ promised that himself and the Apostolick See would provide Reme-
 “ dies to answer the Causes and Occasions of making the said Statute,
 “ and wholly remove and take away all the Grievances that had in-
 “ duced the Parliament to make such a Law.

“ All which being said, the Archbishop and the rest of the Prelates
 “ departed out of the House of Commons, and left them to deliberate
 “ the Matter,

From

From what has been said, it may be observed,

1. That the Statute of *Provisors* was in the Judgment of the Pope and all the Clergy of *England*, a Penal Law concerning Ecclesiastical Matters. OBSERVATIONS.

2. That the Pope had prevailed with the King to give his Consent for repeal of the said Statute beforehand.

3. That the King wrote to the Pope, that the Statute could not be abolished but in Parliament; and therefore promised to call a Parliament, and do his utmost to gratify the Pope therein.

From whence I infer, That if the King could then by his Prerogative Royal have suspended that general Law, no doubt but he would have done it; and that would have served the Pope's Turn, so as he needed not to have been at so much Trouble and Charge to prove the Repeal of it in a Parliament.

The Eleventh Authority.

In the Parliament 25 *Henry VIII.* a Statute was made, That no Imposition should be paid to the Bishop of *Rome*, wherein it is declared thus as followeth, *viz.* Pulton's Stat. 25 Hen. VIII. cap. 21.

“ That where the Subjects of this your Realm, and of other Countries and Dominions being under Obedience by many Years past, have been and yet be greatly decayed and impoverished by intolerable Exactions of great Sums of Money as have been claimed and taken, and continually be claimed to be taken out of this your Realm and other your said Countries and Dominions, by the Bishop of *Rome* called the Pope, and the See of *Rome*; as well in Censures, Peter-pences, Procurations, Fruits, Suits for Provisions and Expeditions of Bulls for Archbishopsricks and Bishopsricks, and for Delegacies and Rescripts in Cases of Contentions and Appeals, Jurisdictions Legative; and also for his Dispensations, Licences, Faculties, Grants, Relaxations, Writs called *perinde valere*, Rehabilitations, Abolitions, and other infinite Sorts of Bulls, Briefs, and Instruments of sundry Natures, Names and Kinds, in great Numbers heretofore practised and obtained, otherwise than by the Laws, laudable Uses and Customs of this Realm, should be permitted; the Specialities whereof be ever long, large in Number, and tedious here particularly to be inserted; wherein the Bishop of *Rome* aforesaid hath not been not only to be blamed for his Usurpation in the Premises, but also for his abusing and beguiling your Subjects, pretending and persuading them, *That he has Power to dispense with all human Laws, Uses and Customs of all Realms, in all Causes which be called Spiritual.*

F f

“ Which

“ Which Matter has been usurped and practised by him and his Predecessors by many Years ; in great Derogation of your Imperial Crown and Authority Royal, contrary to Right and Conscience.

“ For where this your Grace's Realm, recognizing no Superior under God but only your Grace, hath been and is free from Subjection to any Man's Laws, but only such as have been advised, made, and obtained within this Realm, for the Wealth of the same, or to such other as by Sufferance of your Grace and your Progenitors, the People of this your Realm have taken at their free Liberty, by their own Consent, to be used amongst them ; and have bound themselves by long Use and Custom to the Observance of the same.

“ Not as to the Observance of the Laws of any Foreign Prince, Potentate, or Prelate :

“ But as to the customed and ancient Laws of this Realm, originally established as Laws of the same by the said Sufferance, Consents and Custom, and none otherwise.

“ It standeth therefore with natural Equity and good Reason, that all and every such Laws human made within this Realm, or induced into this Realm, by the said Sufferance, Consents and Custom ;

“ 1. Your Royal Majesty,

“ 2. And your Lords Spiritual and Temporal,

“ 3. And Commons,

“ representing the whole State of your Realm, in this your Most High Court of Parliament, have full Power and Authority not only to dispense, but also to authorize some elect Person or Persons, to dispense with those and all other human Laws of this your Realm, and with every of them, as the Quality of the Persons and Matter shall require.

“ And also the said Laws and every of them to abrogate, annul, and amplify or diminish, as it shall be seen,

“ 1. Unto your Majesty,

“ 2. And the Nobles,

“ 3. And Commons of your Realm,

“ present in your Parliament, mete and convenient for the Wealth of your Realm :

“ As by divers good and wholesome Acts of Parliaments, made and established as well in your Time as in the Time of your most Noble Progenitors, it may plainly and evidently appear.

This solemn Declaration of the antient and famous Government of *England*, is grounded upon such a sure and solid Ground as commands Relief, and forbids us to question the Truth of it.

Besides, it proves that the Practice of former Times, and the Judgments of Parliaments, were directly against the New Doctrine of the Suspending Prerogative.

For

For we see where the full Power and Authority of dispensing with the Laws of the Realm, as the Publick Good and Safety of the People or emergent Necessity required, were lodged and intrusted, Not in the Resolutions of any or all the Judges of *Westminster Hall*: But,

1. In his Royal Majesty;
2. The Lords Spiritual and Temporal;
3. And Commons,

representing the whole State of the Realm in the High Court of Parliament.

It therefore is a mere Fallacy to affirm, as some of our modern Lawyers have done, That to place that Power in any other than in the King alone, so as to make some others to be Sharers in that Power; was to make those others to be Sharers in the highest Act of Sovereignty, and consequently to share in the Crown:

The Twelfth Authority.

There was another Act made in the 28th of *Henry VIII.* for the Release of such as had obtained pretended Licences and Dispensations from the See of *Rome*. Wherein among other Things it was enacted,

“ That all Archbishops and Bishops of this Realm, or of any the King’s Dominions consecrated, and at that time taken and reputed for Archbishops and Bishops, should

“ By Authority of that Parliament,

“ And not by virtue of any Provision or other foreign Authority, Licence, Faculty or Dispensation, keep, enjoy and retain their Archbishopricks and Bishopricks, in as large and ample manner as if they had been promoted, elected, confirmed and consecrated, according to the due Course of the Laws of this Realm.

“ And that every Archbishop and Bishop of this Realm, and of other the King’s Dominions, should minister, use and exercise, all and every Thing and Things pertaining to the Office or Order of an Archbishop and Bishop, with all Tokens, Ensigns and Ceremonies thereunto lawfully belonging.

“ And that all Ecclesiastical Persons of the King’s Realms and Dominions, which at that Time were taken, had and reputed for Abbots, Priors, Abbesses, Prioresses, and other Heads of Religion, which then were not, neither should be, excluded from their Dignities by the late Act of Suppression; and the Religious Persons then living under their Obedience, and all Persons then taken and reputed as Masters, Presidents, Provosts, and Wardens of Cathedral Churches and Colleges, with the Companies and Fellowships of the same; all Priests and Clerks which had received any the Ecclesiastical
“ Orders,

“ Orders, all Archdeacons and Deans, and other having Offices, Cures
 “ and Dignities Spiritual, might,

“ By Authority of this Act,

“ And not by the Virtue of any foreign Power or Authority, admi-
 “ nister, use, and exercise all things pertaining to their Dignities, Offi-
 “ ces, Orders, Cures, Religions and Fellowships, and might lawfully
 “ thereafter use all Tokens, Ensigns, and Ceremonies, which they had
 “ been accustomed to use in Times past.

“ So it were not expressly against the Law of God and this Realm,
 “ any Thing or Things, contained in any Act or Acts, made sithence
 “ the Beginning of that Parliament, to the contrary of any the Pre-
 “ misses in any wise notwithstanding.”

After which the Statute goes on thus :

“ And where divers and many of the King’s Subjects had purchased
 “ and obtained many Dispensations, Bulls, Breves, and Faculties of the
 “ Bishop of *Rome* for the Time being, or by the Authority of the
 “ See of *Rome*, as Pluralities, Unions, Trialities, Appropriations, Com-
 “ mendams, Exemptions, and other Bulls, Breves, and Faculties, for
 “ divers Causes and Matters, other than before expressed, which were
 “ of no Strength or Virtue.

“ It was enacted,

“ By the Authority aforesaid,

“ That all and every the said Subjects, during the Time of one
 “ one whole Year next after the Feast of *St. Michael the Archangel*
 “ next coming, might enjoy, use, and have,

“ By Authority of that Act,

“ And not by Virtue of the said Bulls, Breves, and Faculties, all and
 “ every the Effects contained and specified in such Bulls, Breves, and
 “ Faculties, in all such Cases only as might be dispensed with by the
 “ Archbishop of *Canterbury*, by Authority of the Laws and Statutes
 “ of this Realm.

“ And it was further enacted,

“ That all and every the King’s said Subjects, bringing, rendring,
 “ and delivering to such Persons of his Council, or of the Masters of
 “ his Chancery as the King’s Highness shall name and appoint, any
 “ Bulls, Breves, or any other Faculties concerning any the Premises :

“ That then if it should appear to such Persons as the King’s High-
 “ ness should so name and appoint to receive such Bulls, Faculties,
 “ and Breves, after due Examination thereof made, that the Effects
 “ contained and specified in such Bulls, Faculties, and Breves, or any
 “ Part thereof, might be lawfully granted by the said Archbishop of
 “ *Canterbury*,

“ By Authority of the Laws and Statutes of this Realme :

“ That then and in every such Case, the King’s said Subjects making
 “ humble Suit to have Effects contained in the said Bulls, Breves, and
 “ Faculties,

“ Faculties, so to be granted to them, should have, receive, and obtain of the Chancellor of *England*, or Keeper of his Great Seal for the Time being, by sufficient Writing in due Form to be made, and so to be sealed under the King’s Great Seal, all and every such Effects contained and specified in such Bulls, Breves, and Faculties, as might be lawfully granted by the said Archbishop of *Canterbury*,

“ By Authority of the Laws and Statutes of this Realm,

“ Paying only for the sealing of every such Writing 20 s. 4 d.

“ And over that for the reasonable Costs for Pains of the writing thereof 3 s. 4 d. and not above.

“ And for the Pains taken for due Examination of every such Bulls, Breves, and Faculties, 3 s. 4 d. and not above.

“ And also it was ordained, that that Act should be a sufficient and immediate Warrant to the Chancellor, or Keeper of the Great Seal, for the Insealing and Delivery of such Licences, Faculties, Dispensations, and other Writings which should be made, granted, and sealed under the King’s Great Seal,

“ By Virtue and Authority of that Act.

“ And lastly it was enacted,

“ By Authority aforesaid,

“ That all and every such Licence, Dispensation, Faculty, Confirmation, or other Writing hereafter to be had, made, or granted under the King’s Great Seal out of the said Court of *Chancery*

“ By Authority of that Act,

“ In Form as is above rehearsed, should be good and effectual to the said Parties suing for the same, according to the Tenor and Effect thereof; and shall be admitted, accepted, and allowed in all Courts and Places of this Realm, and in all other the King’s Dominions.

“ Any Usage, Prescription, foreign Laws, Customs, or Ordinances to the contrary thereof notwithstanding.”

Now as this Act is a publick Declaration of the unlimited Authority and Jurisdiction of the Supreme Court of the Kingdom, the Parliament, as well in spiritual as temporal Affairs, so it is inconsistent with the modern Opinions touching the King’s absolute dispensing Power;

And that upon these Reasons following.

The First Reason, as previous to the other, shall be this :

That by the Statute of 25 *Henry VIII.* the Archbishop of *Canterbury*, for the Time being, had Power and Authority given him to grant to the King, his Heirs, and Successors, all such Licences and Dispensations as had before that Time been used to be obtained at *Rome*, and also full Power and Authority by himself or his Commissary, to grant to any of the King’s Subjects all manner of Licences and Dispensations that had formerly been used to be obtained at *Rome*.

Pulton’s Stat.
25 Hen. VIII.
cap. 21.

This was an enabling Law, and fixed in the Archbishop a dispensing Power, which he had not before.

The Second Reason is,

Raft. Stat.
28 Her. VIII.
cap. 16.

That by the Act of 28 *Henry VIII.* such of the King's Subjects as had purchased Dispensations from *Rome*, were enabled, by Virtue of that Act, to enjoy, during one Year, the Effects thereof, in such Cases only as might be dispensed with by the Archbishop of *Canterbury*, by the Laws and Statutes of the Realm, and were allowed to obtain Dispensations from the Chancellor of *England* for such Matter contained in their foreign Bulls, and as might be lawfully granted by the Archbishop, by the Authority of the Laws and Statutes of the Realm.

So that the Makers of the Laws, whereby all the pretended Authority of the Pope in granting Dispensation was abrogated, did not in the least conceive (for what appeareth to me) that the King alone had any such personal Power of dispensing, even in Ecclesiastical Matters, originally inherent in him.

For if they had known any such things, it must have appeared very strange in them to presume to direct, appoint, and methodize the exercising of such Prerogatives, and to concern themselves so highly contrary to their Duty in the Application of it to particular Persons and Occasions as we see they did.

The Third and Last Reason shall be taken from the Style and Penning of this Law.

It is very obvious, that in every particular Paragraph thereof, all the Powers and Authorities thereby granted or mentioned to be granted,

1. By Authority of Parliament,
2. By Authority of that Act,
3. By Authority aforesaid,
4. By Virtue and Authority of that Act.

And good Reason, since the Act concerned no less than Religion, the King, the People, their Laws and Liberties, and the most excellent Constitution in the World.

Yet after all, I deny not but that *Henry VIII.* himself made bold with the Statute of Provisors.

For he made *Laurence Compegius*, the Pope's Legate, Bishop of *Salisbury*, and one *Ferome*, another *Italian*, Bishop of *Worcester*.

Dr. Burnet's
History of the
Reformation,
in his Collecti-
on of Records,
Book 2. fol.
121. part 1.

But in the Act for depriving them of their Bishopricks, made in the 25th Year of his Reign, it is declared,

“ That the King,
“ Having no Knowledge, or other due Information or Instruction
“ of the wholesome Laws, Statutes, and Provisions of the Realm,
“ Had nominated, preferred, and promoted them, being Strangers,
“ born out of the King's said Realm and Dominions, to the said Secs.

“ And

“ And therefore, and for some other Causes, it was enacted by Authority of Parliament,

“ That the said two several Sees and Bishopricks of *Salisbury* and *Worcester*, and either of them, henceforth should be taken, reputed, and accounted in the Law to be utterly void, vacant, and utterly destitute of an Incumbent or Prelate.”

So that it is no false, virulent, and groundless Calumny to say that we have here a solemn Confession, even of *Henry VIII.* himself, that he had done against the wholesome Laws, Statutes, and Provisions of the Realm; but indeed it was because he had no Knowledge, or other due Information or Instruction thereof; a signal Instance that though the King of *England* was a Sovereign Prince, yet he had not the Laws of *England* so in his Power, as that by Virtue of a despotical Prerogative said to be inherent in his Person, he could enervate, change, amend, or suspend them all at his mere Will and Pleasure, notwithstanding that our late Libellers of the ancient *English* Government have confidently affirmed he might.

And this brings me to

The Thirteenth and Last Authority.

In the second Parliament held in the 1st Year of *Queen Mary*, the Articles of her Marriage with *Philip* Prince of *Spain*, were confirmed as followeth:

“ *An Act touching the Articles of the Queen’s Highness’s most noble Marriage.*

Reft. Stat. Parliam. secund. Anno Mariæ 10. cap. 2.

“ Whereas most instant Suit hath been made to your excellent Majesty on the Behalf of the most noble and most victorious Prince *Charles*, the Emperor of *Rome*, &c. and for Marriage to be had between your Highness and his only Son and Heir, the noble Prince *Philip* of *Spain*, &c.

“ And whereupon to the Pleasure of Almighty God, and to the Comfort of your most noble Person, and to the great and singular Honour, Wealth, Benefit and Commodity of this your Realm of *England*, and of all us your most humble and obedient Subjects of the same,

“ There hath passed and been concluded in two sundry Treatises, certain Pacts and Covenants touching the said Marriage, with Dependances and Circumstances of the same.

“ And in the one Treatise these Articles:

“ First, it is covenanted and agreed, That as soon as conveniently may be, true and perfect Marriage, by Words of the Time
“ present,

“ present, shall be contracted, solemnized, and consummated in *England*
 “ between the said most noble Prince, and the said most virtuous Lady
 “ the Queen.

“ By Force of which Marriage so celebrated and consummate,

“ The said most noble Prince *Philip* shall, during the said Mar-
 “ riage, have and enjoy jointly, together with the said most graci-
 “ ous Queen his Wife, the Style, Honour, and kingly Name of
 “ the Realms and Dominions unto the said most noble Queen apper-
 “ taining.

“ And shall aid her Highness, being his Wife, in the happy Admi-
 “ nistration of her Grace's Realms and Dominions, the Rights, Laws,
 “ Privileges and Customs of the same Realms and Dominions, being
 “ nevertheless preserved and maintained.

“ And especially it is provided and covenanted,

“ That the said most noble Prince shall permit and suffer the said
 “ most gracious Queen his Wife to have the whole Disposition of all
 “ the Benefices and Offices, Lands, Revenues, and Fruits of the said
 “ Realms and Dominions.

“ And that they shall be bestowed upon such as be naturally born in
 “ the same.

“ And that all the Matters of the said Realms and Dominions shall
 “ be treated and named in the same Tongues, wherein of old they
 “ have been wont to be treated, and by the natural born of the same
 “ Realms.

“ It is also covenanted that the same most noble Queen, by Virtue of
 “ the foresaid Matrimony, shall be admitted in the Society of the
 “ Realms and Dominions of the said noble Prince, as well such as
 “ he hath now presently, as such other also as during the same Ma-
 “ trimony may come hereafter unto him, and for her Dower, in case
 “ that her Highness overlive the said most noble Prince her Husband,
 “ she shall yearly receive threescore thousand Pounds, after the Value
 “ of forty Groats *Flemish* Money the Pound ;

“ The same to be allotted and appointed upon all the Realms, Lands,
 “ and patrimonial Dominions of the said most victorious Lord, the
 “ Emperor his Father, in Manner and in Form following :

“ That is to say, forty thousand Pounds shall be assigned upon the
 “ Realms of *Spain*, *Castile*, and *Arragon*, and Appurtenances in their
 “ best manner that may be, and according to the Fashion, Usage, and
 “ Custom of the said Realms ; so as if the said noble Prince do die
 “ before her Highness, and by reason thereof the said Dower come
 “ in Ure and take Effect,

“ The said most gracious Queen shall, and may freely, without any
 “ Impediment, have, use, and enjoy the said forty thousand Pounds,
 “ as is aforesaid.

“ The

“ The other twenty thousand Pounds shall be appointed unto her Highness upon the Dukedoms, Earldoms, and Dominions of *Brabant, Flanders, Heinoold, Holland*, and other the primonial Lands and Inheritance of the said Lord the Emperor in the *Lower Germany*, in like manner as the Lady *Margaret of England*, sometime Wife and Widow of Lord *Charles*, of laudable Memory, Duke of *Burgundy*, had and received upon the same.

“ So that the said most noble Queen surviving her said Husband, shall immediately, after his Death, use, enjoy, and possess her said Dower, so far forth as no Part thereof be alienated or obliged to others. And in Case any Part thereof be found alienated or bound to others, other Lands or Revenues of like Value lying near to the Residue of the said Dower, shall be in due Form assigned in lieu thereof within the Space of three Months, which her Highness shall use and enjoy in like Manner and Form as the said Lady *Margaret of England* before used and enjoyed.

“ And least that amongst their Children there might arise some Strife for the Succession, and thereby disturb the Fruit of perpetual Concord that is hoped shall ensue of this Matrimony between the Realms and Dominions of either Party, the said Succession shall be ordered in Manner and Form following :

“ First, That as touching the Right of the Mother's Inheritance in the Realm of *England*, and the other Realms and Dominions depending of the same, the Children, as well Males as Females, that shall be born of this Matrimony, shall succeed in them according to the Laws, Statutes, and Customs of the same.

“ And as touching the Lands that the said most noble Prince shall leave behind him :

“ First, There shall be reserved unto his eldest Son, the Lord *Charles of Austring*, Infant of *Spain*, and to the Children and Heirs of him descending, as well Females as Males, all and singular their Rights, which to the said Prince do either now, or hereafter shall belong, and shall at any Time, by the Death either of the noble Queen his Grandame, or the most victorious Emperor *Charles V.* his Father (which God long defer) be devolved unto him in the Realms of *Spain*, of both the *Sicilies*, with all their Appurtenances in the Dukedom of *Milain*, and other Lands and Dominions in *Lombardy* and *Italy*, whatsoever Name and Title they have, which nevertheless shall be burthened and charged with the foresaid Dower of forty thousand Pounds.

“ In which Realms, Lands, and Dominions, the Children of this present Matrimony shall pretend nothing, so long as the said Lord *Charles*, the Infant, or any Issue of his Body lawfully begotten do live.

H h

“ But

“ But if it fortune the said Lord *Charles* to die, and the Issue of
“ his Body to fail,

“ Then, and in that Case, the eldest Son of this Matrimony shall
“ be admitted unto the said Right; and according to the Nature, Laws,
“ and Customs of the said Realms and Dominions, shall succeed. The
“ same eldest Son, shall also succeed in all the Dukedoms, Earldoms,
“ Dominions, and primonial Lands belonging unto the said Lord the
“ Emperour, as well in *Burgundy* as in the *Lower Germany*; that is
“ to say, in the Dukedoms of *Brabant*, *Luxembergh*, *Gelders*, *Zut-*
“ *phane*, *Burgundy*, *Freisland* in the Counties of *Flanders*, *Artois*,
“ *Holland*, *Zeland*, *Namures*, the Land beyond the Isles, and in all
“ other whatsoever thereunto belonging, or in any ways appertaining,
“ with all their Rights and Demands.

“ But if the said Lord *Charles*, or they that shall come of him,
“ shall remain alive, and that there be by this Matrimony any Male
“ Child, in that Case the said Lord *Charles*, or his Descendants, shall
“ be and remain excluded from the said Lands and primonial Do-
“ minions of the *Lower Germany*, and of *Burgundy*, and the same
“ with all their Right, shall descend to the eldest Son to be born of
“ this Matrimony:

“ And to the other Children which shall be born of the said Matri-
“ mony, as well Males as Females, a convenient Portion and Dower
“ shall be allotted in the Realm of *England*, and Dominions depend-
“ ing of the same, and in the said Lands and primonial Dominions
“ of the *Lower Germany*:

“ And neither the eldest Son of this Matrimony, nor the other Sons
“ begotten in the same, shall pretend any Right in the Realm of
“ *Spain*, or other Dominions depending of the same, and reserved
“ to the said Lord *Charles* the Infant, otherwise than by their Father’s
“ or Grandfather’s Disposition shall be given or left unto them.

“ Moreover, if it fortune no Male Child to be born of this Matri-
“ mony, but only Females,

“ In that Case the eldest Female shall with full Right succeed in the
“ said Lands and Dominions of the *Lower Germany*; so as neverthe-
“ less she being minded to chuse to Husband any Man not born in
“ *England*, or the *Lower Germany*, she do contract the same Matri-
“ mony by the Counsel and Consent of the said Lord *Charles* the In-
“ fant, her Brother;

“ Or else if she take any Man to Husband that is not born in *Eng-*
“ *land*, or in the *Lower Germany*, neglecting the Counsel and Con-
“ sent of the said Lord *Charles*,

“ In that Case the Right of Succession shall be and remain to the
“ said Lord *Charles*, the Infant, in the said Dominions of *Lower*
“ *Germany*, *Burgundy*, and their Apurtenances, which in the Case
“ aforesaid shall revert to him or his Issue, as well Males as Females.

“ And

“ And yet nevertheless in that Case both she and the other Daughters also descending of this Matrimony (no Male Children remaining) shall be endowed of her Father's Lands and Possessions, as well of *Spain* as of *Lower Germany*, competently and according to the Customs of the said Realms and Dominions.

“ And for want also of the said Lord *Charles*, and the Issue of him, and none other Children remaining of this Matrimony, but Women; in that Case the eldest Daughter to be born of this Matrimony shall succeed, not only in the said Dominions of *Lower Germany* and *Burgundy*, but also in the other Realms of *Spain*, *England*, and the rest, after the Nature, Laws and Customs of the same.

“ Provided nevertheless and expressly reserved in all and singular the above declared Cases of Succession, That whatsoever he or she be that shall succeed in them, they shall leave to every of the said Realms, Lands and Dominions, whole and entire their Privileges, Rights, and Customs: And the same Realms and Dominions shall administer and cause to be administered by the natural born of the same Realms, Dominions and Lands; and in all Things faithfully procure their Utility and Quiet; and shall rule and nourish them in good Justice and Peace, according to their Statutes and Customs.

“ Finally, That between the said Emperor, the Prince, and his Successors, their Realms and Dominions whatsoever, and the said most gracious Queen, her Realms and Dominions, there shall be from henceforth an entire and sincere Fraternity, Unity, and most strait Confederacy for ever (God willing) happily to endure,

“ So as they shall mutually one of them aid another in all Things which to themselves and their Honour, and to the Conservation of their Heirs and Successors, shall be most agreeable, according to the Strength, Form and Effect of the latter Treaty of a strait Amity, bearing Date at *Westminster*, the Year of our Lord God 1542,

“ The Declaration of which Treaty bears Date at *Utrecht* the sixteenth Day of *February*, in the Year of our Lord God 1540.

“ And in another Treatise, these Articles following:

“ *First*, That the said most noble Prince shall not promote, admit or receive to any Office, Administration or Benefit in the said Realm of *England*, and Dominions thereunto belonging, any Stranger or Persons not born under the Dominion and Subjection of the said most noble Queen of *England*.

“ That the said most noble Prince shall receive and admit into the Service of his Household and Court, Gentlemen and Yeomen of the said Realm of *England*, in a convenient Number, and shall esteem, entertain and nourish them as his proper Subjects,

“ And

“ And shall bring none in his Retinue, nor have none with him
 “ that will do any Displeasure or Wrong to the Subjects of the said
 “ Realm.

“ And if they do, he shall take order to correct them with condign
 “ Punishment, and see them expelled his Court.

“ That the said most noble Prince shall do nothing whereby any
 “ thing be innovated in the State and Right either publick or private,
 “ or in the Laws and Customs of the said Realm of *England*, or the
 “ Dominions thereunto belonging: But shall contrarywise confirm and
 “ keep to all Estates and Orders, their Rights and Privileges.

“ That the said Lord Prince shall not lead away the foresaid most
 “ noble Lady the Queen out of the Borders of her Highness's Realm,
 “ unless she herself desire it, nor carry the Children that shall be born of
 “ his Matrimony out of the same Realm of *England*; but to the Hope
 “ of Succession to come, shall there suffer them to be nourished and
 “ brought up; unless it shall be otherwise thought good by the Consent
 “ and Agreement of the Nobility of *England*.

“ And in case that no Children being left, the said most noble Queen
 “ do die before him, the said Lord Prince shall not challenge any Right
 “ at all in the said Kingdom, but without any Impediment shall per-
 “ mit the Succession thereof to come unto them to whom it shall be-
 “ long and appertain by the Right and Laws of the said Realm.

“ *Item*, That the said most noble Prince shall not bear or carry
 “ over out of the foresaid Realm, the Jewels and precious Things of
 “ Estimation, neither shall he alienate or do away any whit of the
 “ Appurtenances of the said Realm of *England*, or suffer any part of
 “ them to be usurped by his Subjects or any other,

“ But shall see that all and singular the Places of the Realm, and
 “ especially the Forts and Frontiers of the same, be faithfully kept
 “ and preserved, to the Use and Profit of the said Realm, and by the
 “ natural born of the same.

“ He shall not suffer any Ship, Guns, or Ordnances whatsoever of
 “ War, of Defence, to be removed or conveyed out of the said Realm;
 “ but shall contrarywise cause them diligently to be kept and renewed
 “ when Need requireth: And shall so provide, that the same may
 “ be always ready in their Strength and Force, for the Defence of the
 “ Realm.

“ *Item*, That the Realm of *England*, by occasion of this Matrimo-
 “ ny, shall not directly nor indirectly be entangled with the War that
 “ is between the most victorious Lord the Emperor, Father unto the
 “ said Lord Prince, and *Henry the French King*,

“ But He the said Lord *Philip*, as much as shall lye in him, on the
 “ behalf of the said Realm of *England*, shall see the Peace between the
 “ said Realms of *France* and *England* observed: And shall give no
 “ Cause of any Breach.

“ By which Covenant the latter Treatise of a straighter Amity shall
 “ not be in any Point derogated,

“ But the same shall still remain in his Vigour and Force;

“ Saving also, that in the behalf of his Father's other Realms and
 “ Dominions, the said Prince shall have free Power to aid and assist
 “ his most noble Father, as he shall think best, in the Defence of his
 “ Lands, and the Revenge of the Injuries he hath received.

“ Forasmuch as we your most humble and obedient Subjects the
 “ Lords Spiritual and Temporal, and the Commons in this present
 “ Parliament assembled, have naturally, sincerely and deliberately con-
 “ sidered and weighed all and singular the said Covenants, Grants,
 “ Pacts, Treatises and Agreements, concerning the said most honoura-
 “ ble and fortunate Marriage between your Highness and the said most
 “ noble Prince of *Spain*, and the Dependance thereof,

“ And do thereupon think, deem and judge the same to be both ho-
 “ nourable unto your Highness, and commodious unto the Common-
 “ wealth of this your Realm :

“ Therefore we your said humble and obedient Subjects, most hum-
 “ bly pray and beseech your Majesty, That like as it hath pleased
 “ your Highness, upon your free and natural Zeal and Good-will that
 “ you have and bear unto this your Realm, and to your loving Sub-
 “ jects of the same, to condescend and agree that all and singular the
 “ said Grants, Articles, Pacts and Agreements, concerning the said Mar-
 “ riage, shall be revealed, opened and declared unto us your said lo-
 “ ving Subjects, in this your High Court of Parliament :

“ So it may please your Majesty, for the more perfect Corroboration
 “ and Strength of the said Articles, Grants, Pacts and Agreements ;
 “ and to the Intent that the same may be the more inviolably observed
 “ and kept ;

“ That it may be enacted,

“ By the Authority of this present Parliament,

“ That all and singular the said Articles, Covenants, Grants, Treatises,
 “ Pacts and Agreements, had, made and concluded for and concerning the
 “ said Marriage between your Highness and the said Prince of *Spain*,
 “ and all and singular the Dependencies thereof before rehearsed ; shall
 “ immediately after the said Marriage had and solemnized, stand, re-
 “ main, and abide in perfect Force and Efficacy, according to the Effect,
 “ Sense and true Meaning of the said Treatises.

“ And where amongst other the Articles above remember'd, it is agreed,
 “ That the said most noble Prince shall during the said Marriage have
 “ and enjoy, jointly together with your Majesty, the Stile, Honour,
 “ and Kingly Name of the said Realms and Dominions to your High-
 “ ness appertaining ; and shall also aid your Highness being his Wife
 “ in the happy Administration of your Realms and Dominions,

“ The right Laws, Privileges and Customs of the said Realms and
 “ Dominions being nevertheless reserved and maintained.

“ And where also it is provided, covenanted, and agreed, amongst
 “ other the said Articles in the said Treatises, by and on the behalf of
 “ the said most noble Prince, That the said most noble Prince shall per-
 “ mit and suffer your most excellent Majesty to have the whole Disposi-
 “ tion of all the Benefices and Offices, Lands, Revenues, and Fruits of
 “ the said Realms and Dominions: And that the said most noble Prince
 “ shall not do any thing whereby the State and Right either publick or
 “ private, or the Laws and Customs of the said Realm of *England*, or
 “ the Dominions thereunto belonging, be innovated.

“ For the more exprefs Explanation and Declaration of the Premisses,
 “ We your faithful, loving and obedient Subjects, do most humbly be-
 “ seech your Highness,

“ That it may be provided, enacted and established,

“ By the Authority of this present Parliament,
 “ That your Majesty, as our only Queen, shall and may solely and as
 “ a sole Queen, use, have, and enjoy the Crown and Sovereignty of, and
 “ over your Realms, Dominions and Subjects, with all the Pre-
 “ eminences, Prerogatives, Dignities, Authorities, Jurisdictions, Ho-
 “ nours, Castles, Manors, Lands, Tenements, and Hereditaments, be-
 “ longing to the same, in such sole and only State, and in as large and
 “ ample Manner and Form, in all Degrees, Acts, Exercises, and Con-
 “ ditions, from and after the Solemnization of the said Marriage, and
 “ at all Times during the same (which God grant long to continue and
 “ endure) as your Highness now hath, useth, exerciseth, and enjoyeth
 “ the same; and as your Grace hath had, used, exercised, and enjoyed,
 “ or might have had, used or enjoyed the same, before the Solemni-
 “ zation of the said Marriage; without any Right, Title, Estate,
 “ Claim, or Demand to be given, come or grown unto the said most no-
 “ ble Prince, as Tenant by the Courtesy of this Realm; or in or by any
 “ other Mean, by Force of the said Marriage, of, in, and to your said
 “ Imperial Crown, Sovereignty, Realms, Dominions, Subjects, Pre-
 “ eminencies, Prerogatives, Dignities, Authorities, Jurisdictions, Ho-
 “ nours, Castles, Manors, Lands, Tenements and Hereditaments, be-
 “ longing to the same, by any Laws, Usage or Custom whatso-
 “ ever:

“ The said Marriage, or any Statute, Custom, Prescription or other
 “ thing to the contrary in any wise notwithstanding.

“ And yet nevertheless, That it may be enacted, ordained, and esta-
 “ blished,

“ By the Authority of this present Parliament,
 “ That all and singular Gifts, Grants, Letters Patents, Exchanges,
 “ Confirmations, Leafes, and other Writings, which after the said Mar-
 “ riage

“riage and during the same shall pass and be made of the said Benefices, Offices, Lands, Revenues, and Fruits, or of any of them, shall be intituled, set forth and made in the Names of the said most noble Prince, and of your most excellent Majesty; whether the said most noble Prince shall be present within the said Realms and Dominions, or within any of them, or absent: And the same Gifts, Grants, Letters Patents, Exchanges, Confirmations, Leases and other Writings, so set forth and made, shall be signed and confirmed with the Sign Manual of your Highness; and the same so signed and sealed with the Great Seal of this Realm, or with such Seal as hath been accustomed, shall be

“By Authority of this present Parliament, deemed, adjudged, declared, and pronounced to be as good, perfect, and of like Force, Strength, and Effect in the Law, to all Intents, Constructions, and Purposes, against the said most noble Prince, and against your Highness, your Heirs and Successors, as if your excellent Majesty had been at the Time of the making thereof sole and unmarried.

“And that all Gifts, Grants, Letters Patents, Exchanges, Confirmations, Leases and other Writings, which after the said Marriage and during the Time of the same, shall pass and be made of the said Benefices, Offices, Lands, Revenues and Fruits, or of any of them, whereunto the Sign Manual of your Highness shall not be set, made or put, shall be

“By the Authority of this present Parliament, from Time to Time, deemed, adjudged, accepted, taken and decreed, to be of no Force nor Effect, but utterly frustrate and void in the Law to all Intents, Constructions and Purposes:

“The said Marriage, or any Law, Usage or Custom to the contrary in anywise notwithstanding.

“And that it may be also farther enacted, ordained, and established,

“By the Authority aforesaid, That all Commissions, Instructions, Pardons, Writs of Summons, Prorogations or Dissolutions of Parliaments, Royal Assents, Adjournments of Terms, Original Writs, and other Processess, Instruments, Licences, Judicial Acts, and all manner of Writings other than the said Gifts, Grants, Letters Patents, Exchanges, Confirmations, Leases, and other Writings concerning or in any wise touching the said Benefices, Offices, Lands, Revenues, and Fruits, or any of them, after the said Marriage, and during the Time of the same, whether the said noble Prince shall be present within the said Realms and Dominions, or within any of them, or absent, after the Signing by your Majesty of the Warrants or Writings of them heretofore used to be signed, shall pass, be set forth, and made from Time to Time, in the Names of the said most noble Prince and your most excellent
“High-

“ Highness, by such Officers and Ministers, and in such Manner,
 “ Form and Order, as hath been used and accustomed to pass, be
 “ set forth and made in the Time or Times of your Grace’s most no-
 “ ble Progenitors, or any of them; and shall be,

“ By the Authority of this present Parliament,
 “ of the same and like Force, Strength and Effect, in the Law, to all
 “ Intents, Constructions and Purposes, as if your most excellent Ma-
 “ jesty were then sole and not married :

“ The said Marriage, or any Law, Usage, or Custom to the contrary
 “ in any wise notwithstanding.

“ Provided always, and that it may be enacted,

“ By the Authority aforesaid,
 “ That notwithstanding this Act, or any thing therein contained, it shall
 “ be lawful to the Lord Chancellor, Lord Treasurer, Lord Privy Seal,
 “ Lord Steward of the Household, Lord Admiral, Justices of either
 “ Bench, and all other Judges, Officers and Ministers of the Court of
 “ *Chancery*, the *Exchequer*, the *Marshalsea*, Wards and Liveries; the
 “ *Dutchy of Lancaster*, the *Admiralty*, the Presidents of the Council,
 “ the Justices of Forests, and all other Judges, Officers and Ministers
 “ of this your said Realm and Dominions of the same for the Time be-
 “ ing; as well to make Leases and Grants in the Names of the said noble
 “ Prince and of your Highness, of all such your Majesty’s Lands, Te-
 “ nements and Hereditaments, not being entire Lordships or Manors,
 “ and all other Things within their Order, Rule and Survey, in such
 “ like Manner and Form as they or any of them have used, or might
 “ do before the making of this Act, by Virtue of their said several
 “ Offices and Rooms. So that upon all and every such Leases the old
 “ accustomed Rents, Farms or yearly Profits thereof be reserved and
 “ payable yearly during such Leases; and so that the same Leases ex-
 “ ceed not the Number and Term of One and twenty Years: And also
 “ to do, use and exercise by themselves or their Deputies in the said
 “ Offices and Rooms, all and every other Act and Things which they
 “ or any of them, did or might lawfully have done, used or exercised
 “ by Force or Virtue of the said Offices or Rooms, before the making
 “ of this Act, as though this Act had never been had or made.”

To which I will subjoin another Act in the 1st and 2^d Years of King
Philip and Queen *Mary*, late Queen of *England*; and whereby certain
 Offences were made Treason, and also for the Government of the
 King and Queen’s Issue.

“ It was ordained and enacted,

“ 1. By the King and Queen’s Majesties,

“ 2. With the Assent of the Lords Spiritual and Temporal,

“ 3. And of the Commons,

“ in that Parliament assembled; and by Authority of the same;

“ 1. That

“ 1. That if any Person or Persons, after the first Day of *February*
 “ then next to come, during the Marriage between the King and
 “ Queen’s Majesties, do compass or imagine to deprive the King’s Ma-
 “ jesty that now is, from the having and enjoying jointly together
 “ with the Queen’s Highness, the Stile, Honour, and Kingly Name of
 “ the Realms and Dominions, unto the Queen’s Highness appertaining,
 “ or to destroy the King during the said Matrimony, or to destroy the
 “ Queen or the Heirs of her Body begotten, being Kings or Queens of
 “ this Realm; or to levy War within this Realm of *England*, or with-
 “ in any of the Marches of the same, against King *Philip*, during the
 “ said Marriage, or against Queen *Mary* or any of her said Heirs, being
 “ Kings or Queens of the said Realm; or to depose the Queen or
 “ the Heirs of her Body begotten, being Kings or Queens of this
 “ Realm, from the Imperial Crown of the Realm and Dominions a-
 “ bovesaid: And the same Compasses or Imaginations, or any of them,
 “ maliciously, advisedly and directly should or did utter by open Preach-
 “ ing, expresse Words or Sayings: Or if any Person or Persons, after
 “ the said first Day of *February*, by Preaching, expresse Words, or
 “ Sayings, should maliciously, advisedly and directly say, publish, de-
 “ clare, maintain or hold Opinion, that King *Philip*, during the said
 “ Matrimony, ought not to have or enjoy jointly together with the
 “ Queen,

“ The Stile, Honour, and Kingly Name of this Realm:

“ Or that any Person or Persons, being neither the King or the
 “ Queen’s Majesty that then were, during the said Matrimony be-
 “ tween them, ought to have had or enjoyed the Stile, Honour and
 “ Kingly Name of this Realm; or that the said Queen *Mary*, during
 “ her Life, was not or of Right ought not to be Queen of this Realm;
 “ or after her Death, that the Heirs of her Highness’s Body, being
 “ Kings or Queens of this Realm, of Right ought not to be Kings
 “ or Queens of this Realm, or to have had or enjoyed the same;
 “ or that any Person or Persons other than Queen *Mary*, during her
 “ Life, ought to be Queen of this Realm, or after her Death, other
 “ than the Heirs of her Body, being Kings or Queens of this Realm,
 “ as long as one of her said Heirs of her Body begotten, should be in
 “ Life, of Right ought to have, or to have had the Imperial Crown of
 “ this Realm:

“ 1. That then every such Offender being thereof duly convicted
 “ or attainted by the Laws of this Realm, their Abettors, Procurors,
 “ and Counsellors, and all and every their Comforters, knowing the
 “ said Offences or any of them to be done: And being thereof con-
 “ victed or attainted, as is abovesaid, for his or their such Offence,
 “ should forfeit and lose to the Queen’s Highness, her Heirs and Suc-
 “ cessors, all his and their Goods and Chattels, and the whole Issues
 “ and Profits of his and their Lands, Tenements, and other Heredita-

K k

“ ments,

“ ments, for term of the Life of every such Offender or Offenders:
 “ And also should have and suffer during his or their Lives perpetual
 “ Imprisonment.

“ 2. Provided always, and it was enacted,

“ By the Authority aforesaid,

“ That all and every Ecclesiastical Person, being convicted or attainted
 “ in Form aforesaid for every such Offence, should be deprived by
 “ the Ordinary from his Promotion Spiritual or Ecclesiastical, in such
 “ like Manner and Form, that it should be lawful for every Patron,
 “ Founder, or Giver thereof, to present after such Deprivation then
 “ had, some one or other to the same, as though the said Offender or
 “ Offenders were deceased.

“ And if any Person or Persons thereafter convicted or attainted of
 “ any the said Offences in Form aforesaid committed, should after his
 “ or their Conviction or Attainder, afterwards commit or perpetrate any
 “ of the said Offences in Form aforesaid, That then every such se-
 “ cond Offence or Offences should be deemed and adjudged High
 “ Treason: And the Offender or Offenders therein, their Abettors,
 “ Procurers and Counsellors, and all and every their Aiders and Com-
 “ fortors, knowing the said Offences or any of them to have been
 “ done; being thereof convicted or attainted according to the Laws
 “ and Statutes of this Realm, should be judged and deemed high Trai-
 “ tors, and should suffer Pains of Death, and lose and forfeit all their
 “ Goods and Chattels, Lands and Tenements, to the Queen’s Ma-
 “ jesty, her Heirs and Successors, as in Cases of High Treason, by
 “ the Laws of this Realm at that Day ought to be lost and forfeited.

“ 3. And it was farther enacted,

“ By the said Authority,

“ That if any Person or Persons, at any Time after the said first Day
 “ of *February* then next to come, during the said Marriage should
 “ compass or imagine the Death of King *Philip*; and the same mali-
 “ ciously, advisedly and directly, should utter and attempt by any Wri-
 “ ting, Printing, Overt Deed or Act: Or if any Person or Persons, at any
 “ Time after the said first Day of *February* then next coming, should ma-
 “ liciously, advisedly, and directly by Writing, Printing, Overt Deed or
 “ Act, affirm, That King *Philip*, during the said Matrimony, ought
 “ not to have had, or enjoyed jointly together with Queen *Mary*,

“ The Stile, Honour and Kingly Name of this Realm;

“ Or that any Person or Persons, being neither the King nor Queen’s
 “ Majesty, during the said Matrimony between them, ought to have
 “ had, and enjoyed the Stile, Honour and Kingly Name of this Realm:
 “ Or if any Person or Persons, after the said Day, by any Writing,
 “ Printing, Overt Deed or Act, maliciously, advisedly and directly af-
 “ firm, That Queen *Mary*, during her Life, then was not or ought
 “ not to have been Queen of this Realm; or after her Death, that the

“ Heirs

“ Heirs of her Highness’s Body, being Kings or Queens of this Realm,
 “ of Right ought not to have and enjoy the Imperial Crown of this
 “ Realm.

“ Or that any Person or Persons, other than Queen *Mary*, during
 “ her Life, or after her Death, other than the Heirs of her Body be-
 “ gotten being Kings or Queens of this Realm, as long as any of her
 “ said Heirs of her Body should be in Life, of Right ought to have
 “ had, and enjoyed the Imperial Crown of this Realm:

“ That then every such Offence and Offences shall be adjudged High
 “ Treason; and the Offender and Offenders therein, their Abettors,
 “ Procurers, and Counsellors, and all and every their Aiders and Com-
 “ forters, knowing the said Offences, or any of them, to have been
 “ done, being thereof convicted or attainted by the Laws and Statutes
 “ of this Realm, should be deemed and adjudged High Traitors, and
 “ should suffer Pains of Death, and lose and forfeit all their Goods
 “ and Chattels, Lands, and Tenements, to the Queen’s Majesty, her
 “ Heirs and Successors, as in Cases of High Treason as is aforesaid.

“ 4. And albeit the Lords Spiritual and Temporal, and the Com-
 “ mons in that Parliament assembled, had firm Hope and Confidence
 “ in the Goodness of Almighty God, that like as hitherto he had mi-
 “ raculously preserved the Queen’s Majesty from many great and im-
 “ minent Perils and Dangers, even so he would of his infinite Good-
 “ ness give her Highness Strength, the rather by their continual Prayers
 “ to pass well the Danger of Deliverance of Child, wherewith it was
 “ pleased him (to all our great Comforts) to bless her.

“ Yet forasmuch as all Things in this World were uncertain, and
 “ having before their Eyes the dolorous Experience of the unconstant
 “ Government during the Time of the Reign of the late King *Ed-
 “ ward VI.*

“ They plainly saw the many Inconveniencies, great Dangers and
 “ Perils that might ensue to this whole Realm, if Foresight was not
 “ used to prevent evil Chances if they should happen.

“ For the eschewing whereof

“ 1. The Lords Spiritual and Temporal,

“ 2. And the Commons,

“ in that Parliament assembled, for, and in Consideration of, a most
 “ special Trust and Confidence that they had and reposed in King
 “ *Philip*, for and concerning the good and politick Government, Or-
 “ der, and Administration of this Realm, in the Time of the young
 “ Years of the Issue or Issues of her Majesty’s Body to be born, if it
 “ should please God to call the Queen’s Highness out of this Life,
 “ during the tender Years of such Issue or Issues (which God forbid)
 “ according to such Order and Manner as thereafter, in that Act, his
 “ Highness’s most gracious Pleasure was, should have been declared
 “ and set forth, had made their most humble Suit,

“ By

“ By the Assent of the Queen’s Highness, that his Majesty would
 “ vouchsafe to accept and take upon him the Rule, Order, Education,
 “ and Government of the said Issue or Issues to be born, as is aforesaid,
 “ upon which their Suit being of his Majesty most graciously accepted,
 “ It pleased his Highness not only to declare, That like as for
 “ the first Part his Majesty verily trusted that almighty God, who had
 “ hitherto preserved the Queen’s Majesty, to give this Realm so good an
 “ Hope of certain Succession in the Blood Royal of the same Realm,
 “ would assist her Highness with his Graces and Benedictions, to see
 “ the fruit of her Body well brought forth, live, and able to govern;
 “ whereof neither all this Realm, ne all the World besides, should or
 “ could receive more Comfort than his Majesty should and would.

“ Yet if such Chance should happen, his Majesty, at their humble
 “ Desire, was pleased and contented not only to accept and take upon
 “ him the Care and Charge of the Education, Rule, Order, and
 “ Government of such Issues, as of that most happy Marriage should
 “ be born between the Queen’s Highness and him,

“ But also, during the Time of such Government, would by all
 “ Ways and Means, study, travel, and employ himself to advance the
 “ Weale both Publick and Private of this Realm, and Dominion
 “ thereunto belonging, according to the said Trust in his Majesty re-
 “ posed, with no less Good-will and Affection, than if his Highness
 “ had been naturally born among them.

“ 5. In Consideration whereof

“ It was enacted,

“ By the King and Queen’s most excellent Majesties,

“ By the Assent of the Lords Spiritual and Temporal,

“ And of the Commons,

“ of that Parliament assembled, and by the Authority of the same,
 “ that if it should so please God to call the Queen’s Majesty out of
 “ this present Life (which God forbid) before the Issue of her Body
 “ inheritable to the Crown of this Realm; if it be Male, should ac-
 “ complish the Age of Eighteen Years,

“ Or if it be Female, before it should be of the Age of Fifteen
 “ Years, and not married after the Age of Consent, and before the said
 “ Age of Fifteen Years; that then, and immediately after, and from the
 “ decease of the Queen, King *Philip* should have the Rule, Order, Edu-
 “ cation, and Government of the Person of such Issue or Issues, and the
 “ Rule, Order, and Government (under such Issue or Issues) of this
 “ Realm, and the Dominions to the same belonging, until the said
 “ Issue or Issues, inheritable to the Imperial Crown of this Realm,
 “ if it should be Male, should accomplish the full Age of Eighteen
 “ Years.

“ And if it should be Female, until such Issue Female should ac-
 “ complish the Age of Fifteen Years, and be married after the Age
 “ of

“ of Consent, and before the said Age of Fifteen Years, if the said
 “ Issue or Issues, and King *Philip*, should so long live together.

“ And that during, and by all the Time of such Government, all
 “ and every the Pacts, Covenants, Articles and Agreements, men-
 “ tioned and comprised in the Treatises and Act of Parliament, and
 “ every of them made and concluded, for and concerning the honour-
 “ able Marriage had and consummate between the King and Queen’s
 “ Majesty, which on the Behalf of his Majesty being to be observed,
 “ performed, and kept, shall, after the Decease of the Queen’s Ma-
 “ jesty, during the Time of the said Government, remain, con-
 “ tinue, and be in as good and full Force, Strength, and Effect, to
 “ all Intents and Purposes, as they were at any Time during the said
 “ Marriage, or then had been, as if they had then been by apt Words,
 “ Terms, and Sentences, inserted and rehearsed in that present Act,
 “ and made and enacted to stand, remain, continue, and to be
 “ observed and kept during the Time of the said Government, and
 “ should be by his Majesty, during the said Time, inviolably observed,
 “ performed, maintained, and upholden, in such Sort, and in as full,
 “ large, and ample Manner to all Respects, as they should and ought
 “ to have been during the Time of the said Marriage, or after.

“ And his Highness, and the Queen’s most excellent Majesty, were
 “ pleased and contented that it should be enacted,

“ By that Parliament,

“ That nothing should be done, permitted, or assented unto by his
 “ Majesty to the contrary.

“ 6. And it was further enacted,

“ By the Authority aforesaid,

“ That if any Person or Persons, during the Time that King *Phi-*
 “ *lip* should and ought to have the Order, Rule, Education, and Go-
 “ vernment of such Issue or Issues, being King or Queen of this Realm,
 “ according to the Order and Provision aforesaid, maliciously, advised-
 “ ly, and directly, by Writing, Printing, Overt Deed, or Act, should
 “ compass, attempt, and go about to destroy his Person, or should
 “ deprive or remove his said Highness from the Order, Rule, Edu-
 “ cation, and Government of the same Issue or Issues, being King or
 “ Queen of this Realm, contrary to the Tenor, Intent, and true
 “ Meaning of that Act,

“ That then every such Person or Persons so offending, their Pro-
 “ curers and Abettors being thereof lawfully convicted or attainted by
 “ the Laws of this Realm, should be deemed and adjudged High Trai-
 “ tors; and that all and every such Offence and Offences, should be
 “ deemed and adjudged High Treason. And the Offender and Offen-
 “ ders therein, their Procurers, Counsellors, and Abettors, should incur
 “ the Dangers, Forfeitures, and Penalties of High Treason.

“ 7. And it was further enacted,
 “ By the Authority aforesaid,
 “ That all Tryals thereafter to be had, awarded, or made for any
 “ Treason, should be had and used according to the due Order and
 “ Course of the Common Laws of this Realm, and not otherwise ;
 “ Saving to every Person and Persons, Bodies Politick and Corporate,
 “ their Heirs and Successors (other than the Offenders and their Heirs,
 “ and such Person or Persons as should claim to any of their Uses) all
 “ such Rights, Titles, Interests, Possessions, Leases, Rents, Reversions,
 “ Offices, and other Profits, which they or any of them should have at
 “ the Day of committing such Treasons, or at any Time afore, in as
 “ large and ample Manner as if that Act had never been had or made.
 “ Provided always, and it was declared and enacted,
 “ By the Authority aforesaid,
 “ That Concealment or keeping Secret of any High Treason, should
 “ be deemed and taken only Misprision of Treason : And the Of-
 “ fender therein to forfeit and suffer, as in Case of Misprision of Trea-
 “ son heretofore, had been used, any thing above-mentioned to the
 “ contrary notwithstanding.”

I am very sensible of the Tedioufness of these long Recitals ; but if the Reader desires to know the whole Matter of Fact, and so to make a true Judgment touching those memorable Transactions, he will pardon me, and observe,

First, That the Articles of Marriage between Queen *Mary* and *Philip*, Prince of *Spain*, wherein it was particularly agreed that *Philip* should be aiding to her in the happy Administration of her Realms and Dominions, were confirmed in Parliament.

Secondly, *Philip* was created King, by giving him the Style, Honour, and kingly Name of those Realms and Dominions thereunto appertaining, by Authority of Parliament.

Thirdly, The Succession of the Crown was settled by the same Authority.

Fourthly, It was made High Treason for any to compass, or imagine to deprive him from having and enjoying jointly, together with the Queen, the Style, Honour, and kingly Name of the Realms and Dominions thereunto belonging.

Fifthly, Or to destroy him during the said Matrimony, or to levy War against him, or to declare or maintain, That he ought not to have and enjoy jointly, together with the Queen, the said Style, Honour, and kingly Name of the Realm ; and all this done by the High Court of Parliament.

Sixthly, It was farther enacted, That if the Queen should die before King *Philip*, leaving Issue under a certain Age, he was to have the Rule, Order, Education, and Government of such Issue or Issues.

If

If a Male, till Eighteen Years: If a Female, till Fifteen Years, and be married after the Age of Consent.

Seventbly, It was enacted by Authority aforesaid, That if any should compass, attempt, or go about to destroy the Person of King *Philip*, or to deprive or remove him from the Order, Rule, Education, or Government of the same Issue or Issues, being King or Queen of this Realm,

Every such Person or Persons should, being lawfully convicted of such Offences, be deemed and adjudged High Traitors, and undergo the Penalties of High Treason.

Eighbly and *Lastly*, King *Philip* was to have the Co-legislative Power with the Queen in giving Royal Assents to Bills in Parliament, and that too by Authority aforesaid.

Several of which Bills have been signed with *le Roy & la Royné lez veulent*, and were then remaining in the Custody of the Clerk of the House of Lords.

1. *An Act repealing the Attainder of the Lord Cardinal Poole*, Ann. 1 & 2 Phil. & Mar. N^o. 18.

2. *An Act for the Foundation of the Hospital of Stokerpudges, in the County of Bucks, by the Lord Hastings of Loughburrrough*, Ann. 4 & 5 Phil. & Mar. N^o. 14.

Now whoever considers all this, and compares it with the modern Principles of incommunicable Prerogatives; must grant that most of these Particulars were peculiar Rights to the Queen herself, called by some *Sanctimonia Summæ Potestatis*, and which were sacred and individual.

Give me leave then to ask these two General Questions.

I. What, if either for Reasons known only to her Royal Breast, or upon Pretence of the Publick Good, and the Welfare and Safety of the People, with which God had intrusted her Highness alone, and of all which she was the sole Judge upon Earth: I say, what if her Highness had by her *Non Obstante* controlled and dispensed with those two Acts of Parliament? Or,

II. What if she had directed the Judges of *Westminster Hall* to have repealed them totally, by adjudging them void, as being plainly contrary to the Queen's Sovereign Authority, absolute Power, and Prerogative Royal, and which restrained her in the Exercise of the Fullness and Plenitude of her Imperial Dignity?

I say what would these Questions resolve themselves into?

Why, Truly these would be the melancholy Reflections upon them:

First,

b

First, The Style, Honour, and kingly Name of *Philip*, were gone with a Blast.

Secondly, His Parliamentary Right of Guardianship was absolutely lost.

And I pray then let me ask,

Thirdly, What would have become of King *Philip* himself?

But that yet we may see through these Pretences more clearly,

Let us observe,

That the Queen did not know that she had such Fullness and Plenitude of Prerogative inseparably annexed to her Person.

Yet, as our Lawyers say,

Præsumitur Rex habere omnia Jura in Scrinio pectoris sui.

Nor did the Lords Spiritual nor Temporal, nor Commons, nor King *Philip's* learned Counsel, who we may believe, were such as whose Judgments might have been relied upon in Cases of the greatest Consequence,

Nay, to come still closer to the Point, I must add,

That the Judges and others of Queen *Mary's* learned Counsel knew nothing of these Prerogatives.

And the Reason of my Belief of this last Particular is,

Because all, or most of them, consulted and advised upon the penning and drawing up of these two Acts of Parliament; which I thus make out, even beyond an Answer to the contrary.

1. It is plain that those Acts were Court Acts; and the Judges, being of the Queen's learned Counsel, were obliged, *ratione Officii*, to give their mature Deliberation in forming of such Bills.

2. The second Parliament, in which the Act (touching the Articles of the Queen's Marriage) pass'd into a Law, was dissolved the 4th of *May*.

An Order was made at *St. James's*,

By the Privy Council,

Wherein Sir *Edward Peckham* was ordered to deliver to the Chancellor, which was by him to be delivered over by way of the Queen's Highness's Reward to the Persons ensuing, for the Travail and Pains, in the two last Parliaments, in Manner and Form following, *viz.*

Out of a Transcript of the Acts of the Privy Council in the Reign of Queen Mary, lent me by my dear, honoured and learned Friend, Sir John Maynard, the King's Serjeant at Law.

	l.	s.	d.
1. To the Lord Chief Justice (Sir <i>Tbo. Bromley</i>) —	80	00	00
2. To the Chief Justice of the <i>Common Pleas</i> (Sir } <i>Richard Morgan</i>) - - - - - }	60	00	00
3. To the Chief Baron (Sir <i>David Brooke</i>) —	40	00	00
4. To Sir <i>William Portman</i> (one of the Judges of } the <i>Queen's Bench</i>) - - - - - }	36	06	08

5. To

	l.	s.	d.
5. To Sir <i>Humphrey Browne</i> (one of the Judges of the <i>Common Pleas</i>) - - - - -	36	06	08
6. To Justice <i>Saunders</i> (a Judge of the same Court) -	36	06	08
7. To Serjeant <i>Dyer</i> (the Queen's Serjeant at Law) -	26	13	04
8. To Serjeant <i>Stamford</i> (the Queen's Serjeant also) -	26	13	04
9. To the Queen's Attorney (<i>Edward Griffin</i> , who had been Attorney-General to <i>Edward VI.</i>)	40	00	00
10. To the Queen's Sollicitor (<i>Sir William Cordell</i> , afterwards Master of the <i>Rolls</i>) - - -	40	00	00

From hence then there can be little Doubt but all these were deeply concerned in Counsel and Advice, in penning and drawing up these two Acts.

Now to say that the Queen, by her Imperial Sovereignty, could, *Non Obstante* these Acts, *ad libitum*,

Or the Judges, by Virtue of their expounding Power, could, as it were, in a Moment declare them void,

Will be a very heavy Charge upon these ten Sages of the Law, and amounts to thus much :

That they all either wilfully depraved, or grossly misconstrued the Law of Prerogative in these two grand Points.

And if that be admitted, then on the other hand, by the same Reason, the like Charge may be urged against other Judges, and that may be *in infinitum*.

This is the strongest Argument to prove that there is an inevitable Necessity of one of these two Things :

1. That we must either stop at the *Dernier Refort*, *viz.* the Parliament. Or,

2. The innumerable Disputes, which may rise from the Judges Resolutions and Opinions in Points of Law, will be endless.

Which the Government would by no Means ever yet allow.

For if it should,

That would be to disarm its own Power, by making it so defective, as not to be able to provide either for its own Support, or the Subjects Peace and Happiness.

But 'tis high Time to set Boundaries to this Section. And therefore I shall leave it to be considered by the judicious and sober Reader,

Whether the Judges in former Ages took the Law to be, that the King had such an inherent Power vested in him, as, by a *Non Obstante* put into his Grants, to suspend general Acts of Parliament.

S E C T. IV.

Whether the King, by his Prerogative, could dispense with the Statute of the 23 of Henry VI. which enacted, "That no Man should continue Sheriff, or Under-Sheriff, longer than a Year. And that all Patents, which should after be made of these Offices, should be void, any Clause or Word of Non Obstantes, in any wise put or to be put into such Patents, notwithstanding.

AS introductory to the main Point, we are to take notice, *First*, That *Edward I.* in a Parliament held at *Westminster* in the 28th year of his Reign, did grant unto his People,

Pulton's Stat. Articuli sup. Cartas, made Ann. 28 Ed. I. cap. 8.

"That they should have Elections of their Sheriffs in every County (where the Chivalry was not of Fee) if they list."

Coke's 2^d Inst. fol. 558.

Upon which Statute the Lord *Coke* has made this Comment, *viz.*

Vide inter Leges Sancti Edw. Lamb. fol. 136. Hoveden Anal. cap. 35. f. N. B. 163. K.

"Of ancient Time, *saith he*, before the making of this Act, such Officers or Ministers as were instituted either for Preservation of the Peace of the County, or for Execution of Justice, because it concerned all the Subjects of that County, and they had a great Interest in just and due Exercises of their several Places, where by Force of the King's Writ, in every several County chosen in full or open County, by the Freeholders of that County; as before the Institution of Justices of Peace, there were *Conservatores Pacis* in every County, whose Office, according to their Names, was to conserve the King's Peace, and to protect the obedient and innocent Subjects from Force and Violence."

Rbt. Parliam. 5 Edw. I.

Those Conservators, by the ancient Common Law, were, by Force of the King's Writ, chosen in full open County *de Probioribus & Potentioribus Comitatus*, by the Freeholders of the County.

After which Election so made and returned, then, in that Case, the King directed a Writ to the Party so elected.

Edwardus Dei Gratia, Rex Angliæ, Dominus Hiberniæ & Dux Aquitaniæ, dilecto & fideli Johanni Bretun, salutem.

This Bretun was Lord of the Manor of Wickingham in Norff.

Cum Vicecomes noster Norff. & Comunitas ejusdem Comitatus elegerunt vos in Custodem Pacis nostræ ibidem, vobis mandamus quod ad hoc diligenter intendatis, prout idem Vicecomes vobis scribi fecerit ex parte nostra, donec aliud inde præceperimus.

In cujus rei &c. Apud Cestr' 2^o die Septembris Anno Regni nostri.

And

And it was then, and yet is, of Coroners to be chosen in full and open County, by the Freeholders of the County, by Force of the King's Writ, *de assensu Comitatus*; and of the other, *per Communitatem ejusdem Comitatus*.

Regist. 177.
f. N. B. 163.
K. 4 Edw. IV.

And by this Act the Election ought to be by the Freeholders of the County; and so it was then, and yet is, of the Knights of the Shire for the Parliament, and of the Verderers of a Forest.

44. f. N. B.
164. C. Re-
gist.

And likewise he says it was of ancient Time of the Sheriff of the County, and restored by this Act to the Freeholders of the County.

Secondly, But by the Statute of 9 Edward II. it was ordained and established, "That the Sheriff should from thenceforth be assigned by the Chancellor, Treasurer, Barons of the *Exchequer*, and by the Justices; and in the Absence of the Chancellor, by the Treasurer and Barons, and Justices: And that none should be Sheriff, except he had sufficient Land within the same Shire, where he should be Sheriff, to answer the King and his People."

Pulton's Stat.
the Statute of
Sheriffs made
at Lincoln,
Ann. 9 Ed. II.

Thirdly, In the last Parliament, 8 Edward III. the Commons prayed, "That Sheriffs might continue but one Year, according to the Statutes of *Lincoln* and *Woodstock*."

Cotton's A-
bridgment of
the Parliament
Records, fol.
15.

To which was answered,

"The Statutes thereof made should stand; and the Chancellor and others, who are appointed to make Choice of Sheriffs, shall name able Men, who shall continue one Year or longer; according to their Demeanour."

This was an evasive Answer; and therefore,

Fourthly, By the Statute of 14 Edward III. it was assented and established, "That no Sheriff should tarry in his Bayliwick above one Year; and then another convenient should be ordained in his Place, that had Land sufficient in his Bayliwick."

Pulton's Stat.
14 Edw. III.
cap. 7.

But by whom was the Sheriff to be ordained?

Not by the King.

But by the Chancellor, Treasurer, and Chief Barons of the *Exchequer*, taking to them the Chief Justices of the one Bench, and of the other if they be present:

Vide 1, S.
Rot. Parliam.
17 Edw. III.
No. 32, 54.
where the Sher-
riffs are said by
the King's An-
swer to be made
per Chancel-
lor & Tresor-
Justices & Ba-
rons de le Es-
chequer solone
la teneur de
le Statute.

And that should be done Yearly; on the Morrow of *All Souls*, at the *Exchequer*.

By the Law one would think it was fully settled, that Sheriffs should continue in their Office no longer than for a Year.

Yet we find that the Statute was not so firmly kept as it ought to have been. For,

Fifthly, In a Parliament held 21 Edward III. the Commons complained that the Statute was not observed, *A grant damage de nostre Seigneur le Roy, & de son Peuple*.

Rot. Parl. 8.
21 Edw. III.
No. 30.

And

And then prayed that it might please the King *le dite ordinance tenir & establir defornavant.*

To this it was answered,

“ That it pleased the King, *que le Statute soit garde*; but in case a good Sheriff should be found, then his Commission shall be renewed, and he sworn anew.”

This Answer, as it was no doubt of the penning of the King’s learned Counsel, so it directly proves that the Invention of *non obstanting* that Statute, was not then found out by them.

But this evasive Answer gave little Satisfaction to the Commons; and therefore,

Pulton’s Stat.
28 Edw. III.
cap. 7.

Sixthly, In the 28th Parliament of that King’s Reign, it was, upon the Complaint of the Commons, ordained and established, “ That not only the Sheriffs of the Counties should be removed every Year out of their Office, but that no Sheriff that had been in his Office by a Year, should abide in the same Office the next Year following. Ay, and that no Commission should be made to him thereof, or renewed for the same Year following.”

By which Act it appears, that the Renewals of the Sheriff’s Commission for the Year following, was clearly against Law.

And to go on in Order of Time,

Rot. Parliam.
45 Edw. III.
No. 39.

Seventhly, In the Parliament of 14 Edward III. the Commons prayed that it might be ordained, “ That no Sheriff nor Escheator should continue in his Office longer than one Year, as it had therefore been ordained in Parliament by Statute; and if it should be done otherwise, that a Writ be granted to remove them. And that Sheriffs and Escheators should be Owners of Land of Twenty Pounds a Year of Inheritance at least, in the same County where they are chosen into Office.”

To which Petition it was thus answered:

“ Let the Statute thereupon made stand. And the King wills that it be put in Execution, according to the Purport thereof.”

Rot. Parliam.
50 Edw. III.
No. 14.

Eighthly, The Commons in the Parliament 50 Edward III. prayed the King, “ That he would from thenceforth grant the Offices of Sheriffs to none for Term of Life, or in Fee, but by Commission from Year to Year. And that the Deputies of such as were Sheriffs for Term of Life, or in Fee, might be removed Yearly, as well as the Sheriffs made by the King’s Commission.”

ANSWER.

“ Let the Statutes thereupon made, be held and kept in all Points.”

Ninthly, In the Parliament 7 Richard II. the Commons pray, that since it was ordained by Statute “ That no Sheriff, Under-Sheriff, nor Escheator, were to continue in his Office above a Year, it might please the King that the said Statute be firmly held from thenceforth, without doing contrary thereunto, for the great Ease and

“ Quiet

“ Quiet of all the Realm. And if any Commission had been made contrary to it, that it should be repealed.”

ANSWER.

“ *Le Roy voet*, That the Statutes thereupon made be held and kept; and if any Patent or Commission be made or granted to the contrary, that it be repealed.

“ Saving always to our Lord the King, the Prerogative and Regality in this, and in all other Cases.”

This *saving* was certainly added by the King’s Counsel learned, after the King had given a full Answer to the Petition; a Clause specious in shew, but in Effect and Consequence most dangerous, as we have elsewhere shewn; because it has an Operation upon the whole Petition, and upon every Part thereof, for it admitted a Prerogative in the King, above the Laws and Statutes of the Kingdom.

But however it was,

Tenthly, In the next Parliament, which was held the same Year, the Commons again prayed, “ That since it was ordered by Statute that no Sheriff, Under-Sheriff, or Escheator, should continue in his Office above a Year, it might please the King that the said Statute should firmly be held from thenceforth, without doing contrary thereunto, for the great Ease and Quiet of the whole Realm. And if any Commission had been made to the contrary, that it should be repealed.”

Rot. Parliam.
7 Rich. II.
p. 2. No. 23.

To which the King gave the following Answer :

Diverses Estatutes soient faits en ce case devant c’est heure les queux le Roy voet que soient tenuz & gardez.

Many Statutes have heretofore been made in this Case, which the King will that they be held and kept.

And well had it proved for that unhappy Prince had he never changed that Will; but alas! he being seduced by ill Court Favourites, and overstraining at too absolute a Prerogative for an *English* King, he fatally came to be charged, among several others, with the following Articles, in order to his Deposition. For,

Eleventhly, It was objected against him, Article XIII.

Item, Non Obstante quod statutum erat, quod singulis annis officarii Regis cum justiciariis & aliis de concilio Regis Vicecomites per omnes Comitatus Regni eligant & nominent Domino Regi, secundum quod eorum discretionis & conscientie pro bono & utilitate Regni videbitur expedire,

Rot. Parliam.
1 Hen. IV.
Les recent &
proces dit re-
nunciation du
Roy Richard
le second.

Idem Rex non nominatos aut electos bujusmodi, sed alios pro suo libitu voluntatis, quandoque suos familiares, quandoque tales quos novit nolle resistere voluntati suæ in Vicecomites fieri mandaverit pro suo & aliorum commodo singulari, ad magnum gravamen Populi sui, & contra leges Regni sui perjurium notorie incurrendo.

N n

This

This shews that the Parliament did not think that the Kings of *England* were invested with any such Original Prerogatives, as to nominate or elect Sheriffs at their Wills and Pleasures, contrary to the Form of Election enacted and established by the Statute of 9 *Edward II.* beforementioned.

But to come to Article XVIII.

Licet statutum fuit & ordinatum, quod nullus Vicecomes officium suum occuparet continue ultra annum unum, sed triennium laborctur antequam ad officium illud admitteretur de novo,

Idem Rex Richardus quandoque pro suo commodo singulari & quandoque ad prosecutionem aliorum pro eorum commodo & utilitate quosdam Vicecomites stare & remanere permisit & fecit in eorum officiis continue aliquoties per biennium, & aliquoties per triennium, contra tenorem & effectum Statuti prædicti perjurium incurrendo; & hoc est notorium publicum & famosum.

This is a good Evidence, though in a bad Cause:

For it plainly proves, that in those, and preceding Times, it was not taken to be so sure a Principle that the Kings of *England* had ever such a Right inseparably annexed and inherent in their Royal Persons, by the Law of Nature and natural Liegance, as to command the Service of every individual Subject at their Pleasure, and to employ them when, where, and how, they thought fit in their Princely Wifdoms, *Non Obstante* any Act of Parliament to the contrary.

However it has been of late declared by our modern Judges, for Reasons best known to themselves, to be by the Constitution of our Laws, the known and standing Rule of the Prerogative.

But that there was ever such standing Rule in the Laws of *England*, seems to me to be a great Mistake.

For it is plain it had its Rise and Ground either

1. For the Byass of Mens Affections. Or,
2. For the Want of the Knowledge of Parliamentary Records. Or,
3. Of a due Consideration of the *Veteres Scriptorum Angliæ.*

All which being compared together, gives us the best and most impartial Account what our ancient Constitution was.

And therefore let us a little further enquire into the Truth of the Matter of Fact, by the Inspection of another Act of Parliament, and so,

Raft. Stat.
9 Hen. V.
cap. 5.

Twelfthly, By a Statute made 9 *Henry V.* it will appear, “ That
“ whereas by the Statute at *Westminster* in the 14th Year of K. *Edw. III.*
“ it was ordained and established, That no Sheriff should abide in
“ in his Bayliwick above one Year; and that then another convenient
“ should be set in his Place, which should have Lands sufficient with-
“ in his Bayliwick; and that no Escheator should tarry in his Of-
“ fice above a Year.

“ And

“ And whereas also at the Time of the making of the said Statute,
 “ divers valiant and sufficient Persons were in every County of *Eng-*
 “ *land* to occupy and govern the same Offices well towards the King,
 “ and all his liege People;

“ Forasmuch that as well by divers Pestilences within the Realm of
 “ *England*, as by the Wars without the Realm, there was not then
 “ sufficiency:

“ It was ordained and established, that King *Henry V*,

“ By Authority of Parliament,

“ Might make the Sheriffs and Escheators through the Realm at his
 “ Will, until the End of four Years (except in the Counties where
 “ certain Persons were inheritable in such manner of Offices) the said
 “ Term to begin at the then next Election of such Offices, notwith-
 “ standing the said Statute made the said fourteenth Year, or any
 “ other Statute or Ordinance made to the contrary.

“ And that the same Officers were Persons sufficient, and of good
 “ Fame.

“ And that the Sheriffs had due Allowance from Year to Year,
 “ during the said Term, in their Accounts; and also Pardons, that is
 “ to say, such as need to have such Pardons;

“ And that by the Advice of the King’s Counsel, and as Reason and
 “ Conscience required.”

It is plain, from the Reasons mentioned in this Statute,

1. That it was made in the Case of Necessity, and for publick
 Good.

2. But if the King was then sole Judge thereof, and had a Right to
 dispense with all Acts of Nature, it was then,

3. The highest Defect imaginable in the Judges of *Westminster Hall*
 that they did not tell him, that in Affairs of State, Necessity, and
 publick Good, he could not so bind himself, but that he might *Non*
Obstante any Act of Parliament whatsoever.

And therefore,

4. *And lastly*, He stood in need of no such Power to be granted him
 to make Sheriffs for four Years,

By Authority of Parliament;

Since that was a Prerogative which must be always left to the King’s
 Pleasure, and could not be under the Check of any Parliament, if the
 novel Notions of our modern Lawyers in that Particular were not false
 and absurd.

But most evident it is from these introductory Authorities, that the
 Disease of *Non Obstante* Law was not anciently so epidemically to the
 Kingdom, as in after Ages.

And this brings me to the main Question again; namely,

Whether the King by his Prerogative could dispense with the Statute
 of the 23^d of *Henry VI*.

Which

Which enacted, That no Man should continue Sheriff, or Under-Sheriff, longer than for a Year;

And that all Patents which should after be made of these Offices, should be void, any Clause or Word of *Non Obstante* in any wise put or to be put into such Patents notwithstanding.

A full Account of this Statute is of that Importance, in order to the resolving of this Question, as we must of Necessity give it at Length, which next follows:

Raft. Stat.
23 Hen. VI.
cap. 8.

No Man shall be Sheriff, or Under-Sheriff, above a Year.

“ *Item*, Whereas King *Edward III.* for divers and special Causes, “ in his Parliament holden at *Westminster* the *Wednesday* next after “ *Midlent*, the 14th Year of his Reign,

“ For that several Sheriffs in divers Counties in *England*, then be- “ ing, had their Offices, some for Terms of Years of the King’s Grant, “ and some trusting of longer Continuance in their Offices by Procure- “ ment, &c. were greatly encouraged, and did take upon them to do “ many and divers Oppressions to the King’s liege People unduly and “ evilly, and falsely to serve the King and his People,

“ Did ordain and establish,

“ That no Sheriff should tarry and abide in his Office above a “ Year,

“ And that then another mete and sufficient Man should be or- “ dained in his Place, by the Chancellor and Treasurer of *England*, “ and the Chief Baron of the *Exchequer*, and other, every Year, in “ the Morrow after *All Souls*, as it appeared in the Statute.

“ And after the said Statute so made, by another Statute made at “ *Westminster* in the Parliament of the said King, holden the first Day “ of *May*, in the forty second Year of his Reign,

“ He ordained and made, That no Sheriff, nor Under-Sheriff, nor “ Under-Sheriff’s Clerk, should abide and tarry in his Office over one “ Year, as it was ordained by other Statutes made before that Time; “ as it appeared more plainly by the said Statute of the forty second “ Year.

“ And moreover by another Statute made at *Westminster* the fifteenth “ of *St. Michael*, the first Year of the Reign of King *Richard II.*

“ It was ordained and made,

“ That no Man which hath been Sheriff of any County by one whole “ Year, shall be another Time chosen, or put into the said Office “ within five Years then next ensuing, except that there be none “ sufficient within the said County, as it appeared more plainly by the “ said Statute of King *Richard* :

“ And whereas in divers Counties in *England*, after making of the “ said Statutes, many and several Sheriffs had been made, and had oc- “ cupied within the said Counties, some ten Years and some twelve “ Years and more, to the great Damage of the King that then was, “ his

“ his Progenitors, and their People within the said Counties, contrary
 “ to the said Statutes, and all other good Rules.

“ And which was very like, in Time to come, to be to their im-
 “ portable Damage, and open disherison and upholding of Manslaughter,
 “ Perjury, and great Oppression to many of the King's liege People,

“ Considering the then great Consanguinity, Alliance, and Familiars
 “ of the Sheriffs, as well of them as have been before that Time, as
 “ of them which then were in the said Counties.

King *Henry VI.* considering the Premises,
 Did ordain,

By Authority of Parliament,

“ That the Statutes before recited, and every of them, should be duly
 “ observed in every County of *England*, the Under-Sheriffs, and all
 “ other Officers within the City of *London* which then were, or should
 “ be at all Times excepted; and such Counties only excepted, in which
 “ divers of the King's People were inheritable to the Office of Sheriffs
 “ at that Day, and also such Persons as had Estate of Freehold in the
 “ Office of Sheriff at that Day; and except the Letters Patents made
 “ to them of the Office of Sheriff, and their Under-Sheriff and
 “ Clerks.

“ And if any Sheriff or Under-Sheriff, or Sheriff's Clerk, contrary
 “ to any of the Statutes aforesaid, or against the Effect or Intent of any
 “ of them, (except before excepted) that then he which doth so occupy
 “ shall forfeit the Sum of 200 *l.* yearly, as long as he occupieth con-
 “ trary to the Effect of the said Statutes.

“ And that every Pardon hereafter to be made for such Offence or
 “ Occupation, or Forfeiture of Sums before recited, shall be void, and
 “ not available.

“ And all Patents then made, or to be made, of any of the said Of-
 “ fices for Term of Years, for Term of Life, or Fee Simple, or in Fee
 “ Tail, to any of the King's liege People (except before excepted)
 “ shall be void and of no Value

“ By the same Authority,

“ Any Clause or Word of *Non Obstante*, in any wise put or to be put
 “ in such Patents to be made notwithstanding.

And moreover it was farther enacted,

“ That whosoever should take upon him or them to have or occupy
 “ the said Office of Sheriff, by Virtue of such Grants or Patents to
 “ be thereafter made for Term of Years, for Term of Life, Fee Simple,
 “ or Fee Tail, to stand for ever, and at all Times, disabled to be or
 “ bear the Office of Sheriff within any County in *England*

“ By the same Authority.

“ And that every liege Man which will sue for the said Sum for-
 “ feit against him or them, which in such manner do forfeit, shall
 “ be received and admitted to sue an Action of Debt in his own

O o

“ Name,

“ Name, the King to have the one half of all that shall happen by the
 “ same Action to be recovered by such Suit, and he or they that so
 “ pursued, to have the other half.”

From this Statute it may be observed,

1. That the former Part of it was but a Revival, or rather a Confirmation of the Statutes of 14 *Edward III.* 42 *Edward III.* 1 *Richard II.* And that for the future these Statutes should be duly observed and kept in every County of *England.*

2. That in the latter Part of this Statute it was enacted, that if any Sheriff should execute the Office of a Sheriff contrary to any of the aforesaid Statutes, or against the Effect or Intent of any of them, he should forfeit 2 *l.* yearly.

Now if we reflect a little upon these two Observations, it will clearly appear, that whatever Dispensations had been made before Times of those Statutes, they were all expressly against Law. And therefore a further Penalty was hereby added, That no such illegal Suspensions should, for the Time to come, be made use of. But,

3. It was also ordained, That all Pardons of such Offences or Forfeitures, should be from thenceforth void and not available.

And that,

By Authority of Parliament,

4. And all Patents which had before that Time been made, or should hereafter be made of the said Offices of Sheriffs for Years, Life, Fee Simple, or Fee taile, should be likewise void and of no Value, by the same Authority.

Any Clause or Word of *Non Obstante* in any wise put or to be put in such Patents notwithstanding.

And Lastly, If any Man should take upon him to execute the Office of a Sheriff, by Virtue of any such Grants or Patents, he should stand for ever disabled to bear that Office within any County of *England* by the same Authority.

Now in the next Place we are to enquire how this Law was interpreted and expounded in succeeding Ages; and that I shall do by producing the solemn Resolution and Judgments of Five Parliaments.

The first solemn Resolution and Judgment was in the 28th Year of *Henry VI.*

Which take from the Parliament Roll in that Year.

Rot. Parliam.
28 Hen. VI.
No. 58.

“ Prayen and mekelle besechen the King's trew liege Men, Shirreffs
 “ of his noble Roialme that were for the Yere last past, that it like you
 “ of your grete Wisdome to pray the King our Sovereigne Lord, that
 “ it please his noble Grace to ordeyn and grant, by the Assent of his
 “ Lord's Spirituall and Temporall assembled in this present Parlia-
 “ ment,

“ And

“ And by Authority of the same,
 “ That your seide Befechers, and their Under Shirreffs and Clerks,
 “ and everich of them, be quite and discharged against our said Sove-
 “ raine Lord, and all his liege People, of the Penalties and Forfeitures
 “ of 200 *l.* that they or any of them might fall or renue in by Force
 “ of a Statute made the 24th Yere of the Reigne of our said Soverain
 “ Lord as for occupying and exercising of the said Office of Shirreff
 “ longer then a Yere, by as moche from the Morrow next after *All*
 “ *Sowles* Day, in the Yere of the Reign of our seide Soveraine that now
 “ is xxvii, to the Fest of the *Purification of our Lady* then following,
 “ in the Yere of our Soveraigne Lord xxviii.

“ Provided alwey, that by this present Act they or none of them
 “ be excused or discharged of any other Offence or Thing done for
 “ them, or any of them, in their seide Office.

“ Alwey forseynd that no Man be amerced for any Suit begann by
 “ him agenst any Person, to recover the said Penalty for Occupation
 “ longer then a Yere, by as moche as from the Morrow after the said
 “ *All Soules* Daie, unto the Fest of the *Annunciation of our Lady* last
 “ past.”

To this Petition of all the Sheriffs of *England* delivered first to the
 Commons, the King gave his

Le Roy le Voet.

Upon Consideration had of this solemn Resolution of the Parlia-
 ment of 28 *Henry VI.* we may from thence infer,

1. In general, That it is not true that the Kings of *England* had
 always that Right to make use of the Services of such of their Subjects
 as they themselves thought fit; that is to say, by putting in or con-
 tinuing of Sheriffs, Under-Sheriffs, or Sheriffs Clerks in their Offices,
 longer than a Year.

2. And in particular it was then unknown that the Crown had any
 such Prerogative contrary to the publick Laws and Statutes of the King-
 dom, as these were in the Case before us. For,

Contra generale Statutum Ecclesie Papa non potest dispensare.

From all which it must follow, That the Kings of *England*, as well
 as their Subjects, were obliged to observe all such general Laws which
 had been ordained by common Consent and Authority of Parliament,
 till they were dispensed with or repealed by the same Authority.

The second solemn Resolution or Judgment of Parliament, was
 that of the Parliament held *Anno 8 Edward IV.*

Which is thus transcribed out of *Rastall's Statutes.*

“ *Item*, Whereas in the Fourteenth Year of the Reign of King Rast. Stat.
 “ *Edward III.* Progenitor of our Sovereign Lord the King that now 8 Edw. IV.
 “ is, cap. 4.

“ It was ordained, that no Sheriff should abide in his Office over a
 “ Year; and in the Forty second Year of the Reign of the same King
 “ *Edward*

“ *Edward III.* it was ordained, That no Sheriff, nor Under-Sheriff,
 “ nor Under-Sheriff’s Clerk, should abide in his Office above a Year.

“ Which Ordinance, amongst others, in the Twenty third Year of
 “ the Reign of the late pretended King, in Deed, and not in Right,
 “ *Henry VI.* in full Parliament were rehearsed,

“ And by Authority of the same

“ It was ordained, That if any Sheriff, Under-Sheriff, or Sheriff’s
 “ Clerk, other than in the same Ordinances were excepted, should oc-
 “ cupy the Office of Sheriff, Under-Sheriff, or Sheriff’s Clerk, con-
 “ trary to any of the said Ordinances,

“ That then he that should so occupy, should forfeit the Sum of
 “ 200*l.* And that every Pardon from thenceforth to be made of such
 “ Forfeiture of the said Sum should be void, and not available.

“ And that every liege Man, that would sue for the same Sum for-
 “ feit against him or them, which so should forfeit, should be re-
 “ ceived and admitted to sue an Action of Debt in his own Name :
 “ The King to have the one Half of that that should be recovered by
 “ the said Action, and he or they that would sue to have the other
 “ Half thereof, as in the said Ordinance made the said Twenty third
 “ Year, doth more fully appear.

“ Contrary to which Ordinances, divers Sheriffs, Under-Sheriffs, and
 “ Sheriff’s Clerks of divers Counties of this Realm, in the first, second,
 “ and third Year of *Edward IV.* there being in this Realm great
 “ Trouble, and Peace not then fully stablished, did occupy over a Year,
 “ some of them by a greater Space over a Year, and some by a less,
 “ caused in divers Parts of this Realm by the said Trouble, and in
 “ some Parts, because that none other Sheriff was ordained by long
 “ Space after the Year past.”

Wherefore the King,

1. By the Advice of the Lords Spiritual and Temporal,

2. And at the Request of the Commons,

In the said Parliament assembled,

And by Authority of the same,

Did ordain and establish,

“ That no manner of Person being Sheriff, Under-Sheriff, or Sheriff’s
 “ Clerk of any County of this Realm, the first, second, or third Year
 “ of his Reign, or any Time or Space within the same, for the Oc-
 “ cupation of the Office of Sheriff, Under-Sheriff, or Sheriff’s Clerk,
 “ in the three Years, or any Part or Space within the same, or of the
 “ same, or any of the same above a Year, although their Occupation
 “ were against the Ordinances before recited, nor none of them be
 “ damnified, nor in any wise hurt by any Action, Pain, or For-
 “ feiture in the same Ordinances, or in any of them comprised, at his
 “ Suit, nor at the Suit of any of his liege People.

“ But

“ But that the same Sheriffs, Under-Sheriffs, and Sheriffs Clerk, and every of them, of and for every Pain, Action, and Forfeiture pursued and to be pursued, levied, or forfeited of them, or any of them, by the King, or any of his liege People, for their occupying of the said three Years, or any Space or Time within the same, be quit and discharged for ever by this Act.

“ The said Ordinances, or any of them made before that Time notwithstanding.”

Now whoever will lay aside all Prejudices and partial Affections, and calmly and steadily consider this Statute, will certainly never venture their Reputation to affirm,

1. That there were not extraordinary Occasions for continuing Sheriffs in their Offices above a Year.

2. That the reverend Judges of those Times had not so much Learning and Reason to know what the immutable Rights of the Crown were, as any that followed them; and had not as great an Occasion to discover what they knew of those immutable Rights, and in particular concerning the dispensing Power.

3. But that the dispensing Power was the same then as now, and known and acknowledged by the Sages of the Law in those Days to be a Prerogative in the Crown, inseparable as the Beams in the Sun, as we have been told by late Prints; and therefore I would fain have any clear-headed understanding Man (if he be at leisure and is able) to give me a tolerable Reason,

1. Why this Statute was made? And then,

2. What was the Force and Availableness of it, after it was made?

And if he can produce me one that he will not be ashamed of, upon a second Reading, I will then confess he is a great Man indeed; for he will shew himself more profoundly skilled in the Senates of the Law of Prerogatives, than any of our ancient Kings, Lords, or Commons, nay than the most learned Judges that ever studied highest for the Service of the Crown in those Ages.

And now I come to

The third solemn Resolution and Judgment of Parliament, which was declared *Anno 12 Edward IV.*

And is also taken out of *Rastall's Statutes.*

“ First, Whereas by a Statute made at *Westminster* in the Twenty Raft. Stat. 12 Edw. IV. cap. 1. third Year of the Reign of King *Henry*, late in Deed, and not of Right, King of *England*, called King *Henry VI.*

“ It was ordained, That no Sheriff should occupy his Office of Sheriff above a Year upon Pain of 200*l.* except certain Persons in the said Statute excepted, as in the same is more plainly specified, divers and many of the King's liege People have been grievously damaged, and greatly delayed of their Suits and Processes every Year, in the Term called *Michaelmas Term*, as for their Actions, Writs, and Precepts, to

P p

“ be

“ be returned within the same Term after the sixth Day of the Month
“ of *November*.

“ And though it so be that the new Sheriffs were yearly chosen
“ the Morrow after the Feast of *All Souls*, of which new Sheriffs so
“ chosen and appointed, divers of them did refuse, and divers of them
“ had not their Patents, nor taken their Oath till long Time after the
“ End of the said *Michaelmas Term*; by reason whereof divers of the
“ King’s liege People and Subjects were greatly endamaged, and delayed
“ of their Suits, Proccesses, and Precepts, which were to be returnable
“ in the King’s Courts, at the Days of the Return within the same Term
“ after the sixth Day of *November*; that is to say, at the Days of the
“ Return called *Craftino Martini*, *Ostabis Martini*, and *Quindena*
“ *Martini*, because that the old Sheriffs durst not, nor would not, take
“ upon them to return any Writ or Precept after the Year that this
“ Patent did bear Date, for Dread of the Pain contained in the afore-
“ said Statute, to the great Loss as well to the King of that that should
“ grow to him by reason of the said Proccess, as to his liege People
“ by Delays which they thereby had,

“ It was ordained

“ By Authority of the aforesaid Parliament,

“ That if any Sheriff of any County did execute any Writ, Precept,
“ or Warrant, in any of the said Courts of the King, within the said
“ Term called *Michaelmas Term*, after the said sixth Day of *November*,
“ and before any Writ of Discharge delivered to him for his occupying
“ of Sheriffwick, he should not be damnified by Force of the said
“ Statute, nor charged of the Pain aforesaid, although that he had oc-
“ cupied the Office of Sheriff before any of the said Days of Return,
“ called *Craftino Martini*, *Ostabis Martini*, or *Quindena Martini*.”

To this I will subjoin

The fourth solemn Resolution and Judgment of Parliament, which
was that *de Anno 17 Edward IV*.

Pulton’s Stat.
17 Edw. IV.
cap. 6.

“ *Item*, Whereas by a Statute in the last Parliament holden at *West-*
“ *minster*,

“ It was ordained, That the old Sheriff of every County might exe-
“ cute and return every Writ, Precept, or Warrant in any of the
“ King’s Courts within the Time called *Michaelmas Term*, after the
“ sixth Day of *November*, and before any Writ of Discharge to him
“ delivered of his occupying of Sheriff without Grief, Damage,
“ or Pain, by the same Statute remembred, as in the same doth
“ more plainly appear: And because that the Words of the Authority
“ given by the said Act, to the said old Sheriff, be very especial, and
“ not general enough for the Commonwealth, purposed or intended
“ by the same Act.

“ It

“ It is therefore ordained,

“ By Authority of this Parliament,

“ That every old Sheriff of every County remembred in the said last
 “ Parliament, from the sixth Day of *November* next to come, shall
 “ have full Authority and Power, as well lawfully to execute and re-
 “ turn every Writ, Precept, or Warrant, in every of the said Courts of the
 “ King, delivered to him as to do and execute every other thing, which
 “ to the Office of Sheriff lawfully appertaineth at all Times, during
 “ the said Terms of *St. Michael* and *St. Hillary*, unless he be before
 “ the same Time lawfully discharged of his Occupation of Sheriff,
 “ without sustaining any Damage, Forfeiture, or Pain, by Cause there-
 “ of, any Act, Ordinance, or Provision before made to the contrary
 “ notwithstanding.”

I will not tire the Reader with a Multitude of Inferences which might easily be drawn from so many surprizing Circumstances and new Notices to this present Age, as are to be found in these two publick Statutes.

I shall only observe,

1. That it could not be thought in these Times to be any Encroachment upon the Imperial Crown, to say that it was stopped from *non obstanting* the Statute of 23 *Henry VI*.

2. And that the Judges of *Westminster Hall* had not then made it by Virtue of their expounding Power, to be a Prerogative inseparably annexed in the Person of the King.

And this I shall further prove by

The Fifth and last solemn Protestation and Judgment in Parliament, held *Anno 6 Henry VIII*.

Which thus follows :

“ Where at a Parliament holden at *Westminster* the thirteenth Year of the Reign of King *Edward III*. amongst other Things

Raft. Parliam.
6 Hen. VIII.
cap. 8.

“ It was ordained, established, and enacted, That no Sheriff, Under-Sheriff, nor Clerk of Sheriff, should continue or abide in his Office above one Year ; as by the said Statute more at length it doth appear.

“ Which Statute, in a Parliament holden at *Westminster* the twenty fifth Day of *February*, in the twenty third Year of King *Henry VI*, among other was rehearsed, and by Authority of the same Parliament then was ordained, That the said Statute, among others, should be duly observed in every Shire of *England*; the Under-Sheriffs and all other Officers within the City of *London*, that then were, or after that should be, always excepted, and such Counties only excepted in which divers of the liege People of the said King, in or to the Office of Sheriffwick at that Day were inheritable.

“ And also such Persons as at that Time had Estate of Freehold in the Office of any Sheriffwick, and Letters Patent to them made of

“ the Office of Sheriffwick, and their Under-Sheriffs and Clerks excepted.

“ And over that by the same Statute of *Henry VI.*

“ It was ordained and enacted, That if any Sheriff, Under-Sheriff, or Clerk of Sheriffs, occupy the Offices of Sheriff, Under-Sheriff, or Clerk of Sheriff, contrary to the Statute before recited, or against the Effect or Intent of the same (except before excepted) that then he that should so occupy, should forfeit the Sum of 200 *l.* yearly, as long as he occupied contrary to the Effects of the said Statutes.

“ And that every Pardon in Time to come, to be made for such Offence or Occupation of Forfeiture of Sums, should be void and not available; and all Patents made and to be made of any of the said Offices for Term of Years, Term of Life, in Fee Simple, or Fee Tail, to any of the King's liege People (except before excepted) should be void and of no Value by the same Authority, any Clause or Word (*de Non Obstante*) to be put into such Patents to be made, notwithstanding.

“ And that every of the King's liege People that will sue for the Sum forfeited against him or them that in such manner shall forfeit, shall be received and admitted to sue an Action of Debt in his own Name; and the King to have the one Moiety of all that, that by that Action should be recovered; and he that so should sue shall have the other Moiety, as by the Statutes, among other Things, more plainly it did appear.

It was therefore enacted, established, and ordained,

1. By King *Henry VIII.*

2. By the Assent of the Lords Spiritual and Temporal,

3. And the Commons,

“ In Parliament assembled, and by Authority of the same, That it should be lawful for the Sheriffs, or Under-Sheriffs, and all other Officers of Sheriffs, that then was, or thereafter should be, within the Shire of the Town of *Bristol*, from thenceforth to continue and occupy their said Offices, and every of them, from Year to Year, in like Manner and Form as the Under-Sheriffs, and other Officers of Sheriffs within the City of *London*, then did and might do, without any Penalty or Forfeiture for the same.

“ The said Act or Acts before expressed, or any other Act or Acts before that Time had, or made to the contrary, notwithstanding.”

Now if all this be true, as most certain it is, what then shall we say?

First, In the Negative, I will not say that four of these five solemn Resolutions and Judgments of Parliament have been designedly concealed from the general Knowledge of the World, because they, as likewise the Act of 9 *Henry V.* before set forth, (which authorized that King to make Sheriffs for four Years) are all to be met with in

Rassall's Statute Books, which though few Lawyers have by them, yet fewer I believe have read; and that is the Reason why I have given these Acts at large. But,

Secondly, In the Affirmative I will say this, that in all the Book Cases of the Law, which have been brought and insisted on by the Maintainers and Justifiers of the Legality of *Non Obstantes*, there is not the least mention made of these five publick Statutes; and was that fair Practice?

Nor can it be any Plea in Excuse for Lawyers, but especially for Judges, to say that some of those Statutes are expired; and therefore they are not bound to take Notice of them, since above all that yet hath been assured, there are many convincing Arguments to be drawn from temporary and reputed Statutes, to discover how the Law was then taken to be in several weighty Points, which concerned the whole Nation.

But to hasten to a Conclusion;

If we consider the Matter of this Section seriously and impartially, it will seem like a mockery to tell us that twelve Judges in *Westminster Hall* could in any Age, by the Operation of their expounding Power, invest the Crown with such a Prerogative, as to suspend and dispense with general Acts of Parliament made for the publick Good, and that but upon these following Grounds:

First, It had been a high Violation of the ancient legal Rights, both of King and Kingdom:

Because by such an assumed Power the Judges would have usurped a despotical Jurisdiction over the whole Government.

Secondly, It had plainly outfaced, baffled, and insulted over the Legislative Power, which till of late had ever been acknowledged, to reside only in King, Lords, and Commons in Parliament.

Thirdly, and Lastly, Upon this Hypothesis the very next Day after that that supreme Court had solemnly ordained and established publick Laws, the Judges, by Pretext of their expository Resolutions, might have rendered any, nay all those just and useful Laws so made altogether impotent and ineffectual by *Non Obstantes*, or might have, upon such powerful Reasons (which their human Frailties were not able to resist) declared them absolutely void.

And therefore,

Let the judicious and ingenious Reader now freely judge,

Whether the King, by his Prerogative, could dispense with the Statute of 23 *Henry VI.* which enacted, That no Man should continue Sheriff, or Under-Sheriff, longer than for a Year.

And that all Patents which should after be made of those Offices should be void, any Clause or Word of *Non Obstante* in any wise put or to be put into such Patents, notwithstanding.

. S E C T. V.

The Case in the Year Book Anno 2 Henry VII. touching that Matter, considered and proved by several Arguments, that, as represented and understood in latter Times, it could never be good Law.

Coke, lib. 12.
fol. 18.

SIR Edward Coke, in his Twelfth Report, makes a Diversity when the King shall be bound by an Act of Parliament, so that he cannot dispense with it by any Clause of *Non Obstante*.

“ No Act, *he says*, can bind the King from any Prerogative, which is sole and inseparable to his Person, but that he may dispense with it by a *Non Obstante*, as a sovereign Power to command any of his Subjects to serve him for the publick Weal, and this solely and inseparably (he proceeds) is annexed to his Person :

“ And this Royal Power cannot be restrained by any Act of Parliament, neither in *Theft* nor *Hypothesi* :

“ But that the King, by his Royal Prerogative, may dispense with it.”

And his Reason is, because upon Commandment of the King, and Obedience of the Subject, his Government consists, as it is proved by the Statute of 23 *Henry VI. cap. 8*,

“ That all Patents made or to be made of any Office of a Sheriff, and for Term of Years, for Life, in Fee Simple, or in Fee Tail, are void or of no effect, any Clause or Parole, *de Non Obstante*, put or to be put into such Patents to be made, notwithstanding.”

And further adds, “ Whosoever shall take upon him or them to accept or occupy such Office of Sheriff, by Virtue of such Grants or Patents, shall stand perpetually disabled to be or bear the Office of Sheriff within any County of *England*, by the same Authority.”

And notwithstanding by this Act

1. The Patent is made void.
2. The King is restrained to grant *Non Obstantes*.
3. The Grantee is disabled to take the Office, “ yet the King may, *he tells us*, by his Royal Sovereign Power of Commanding, command by his Patent for such Causes as he in Wisdom doth think meet and profitable for Himself and the Commonwealth, of which he himself is solely Judge, to secure him and the publick Weal, as Sheriff of such County, for Year or for Life.

“ And so it was resolved by all the Justices of *England* in the *Exchequer Chamber*, 2 *Henry VIII.*”

Thus

Thus far out of Sir *Edward's Report Books*.

And next follows the Case of 2 *Henry VII.* translated out of *French*.

“ *Michaelmas Term, 2 Henry VII.*

The Year Book
2 Hen. VII.
fol. 6. placito
20. Impref.
1597.

“ In the *Exchequer Chamber* before all the Justices, it was shewn
“ for the King, how that King *Edward IV.* by his Letters Patents had
“ ordained the Earl of *N---* Sheriff of the same County, and granted
“ the Office of Sheriff of the County aforesaid to the said Earl for
“ Term of his Life, with all the other Offices belonging to it; render-
“ ing for it to the King, in his Exchequer, the yearly Sum of 100 *l.*
“ without any Account, or any other Thing to be paid for it.

“ And the Question was, whether this Patent was good, and like-
“ wise how this Patent was to be construed.

“ And as to the first Point the Justices held the Patents to be good,
“ for it was such a thing as might very well be granted for Term of
“ Life, or Inheritance, as divers Earls had Sheriffwicks by Inheritance,
“ and that began by the King's Grant.

“ Then was shewn a Resumption, and also a Proviso, for *Henry*
“ Earl of *N---*, so that the Patent remained in its Force.”

Radcliff shewed the Statute of *Annis 28 Edward III. cap. 7.* and
42 Edward III. cap. 5.

“ That no Sheriff should continue above a Year; and though he
“ had a *Non Obstante*, and this notwithstanding that the King had al-
“ ways his Prerogative, as well as of the Value and Certainty of the
“ Lands and other Things granted by the King, and of Woods trans-
“ ported, and of Charters of Murthers, and many other Cases where
“ the Statutes are, that Patents which favour these Things shall be
“ void, yet the King's Patents are good with a *Non Obstante*; but
“ without *Non Obstante* the Patents are void, by reason of the Sta-
“ tutes.

“ So here the Patent is without a *Non Obstante*.

“ But as to the second Point, several of the Justices held that by
“ that Word *Officium Comitatus*, with that Word in making him Sheriff
“ of the County, that *eo ipso* he is Sheriff.

“ He is intitled to collect and gather the Profits of the County;
“ and when the Patent goes further, *reddendo ad Scaccarium annuatim*
“ 100 *l. sine aliquo alio inde reddendo*, that this tantamounts that he has
“ all the County for his Farm, without rendering any Account thereof.

“ *Brian* and *Catesby* said, That this Word *reddendo* was only for the
“ Office, and not to the Profits, *quod nota;*”

“ For *Catesby* said, That if the King grant Lands or Tenements for
“ Term of Life, and doth not say without *aliquo inde reddendo*, that
“ he shall answer for the Issue to the King.

“ The same Law of a Ward, to which it was said, That when the
“ King by his Letters Patents grants Lands, or Tenements, in Fee
“ Tail,

“ Tail, or for Term of Life or Years, without any Thing more,
 “ that he is not to account for his Farm, nor for any thing else.

“ But it is otherwise of a Ward, for there he grants or commits
 “ the Ward to the Defendant, in which Case he is obliged to answer
 “ to the King.

“ So it is with a Sheriff of a County, for he is but the Commitéé
 “ of the King.

“ So in these Cases he ought of Necessity to have those Words &
 “ *Tenendo*, and without rendring any Account or other Thing thereof.

“ But we ought to see what Things appertain to the Office of
 “ a Sheriff.

“ *Brian Radcliff* said, That the Sheriff, as soon as he is made
 “ Sheriff, is accountable to the King for all Farms, Rents, Issues, and
 “ Profits of the County, which run in Account *sub nomine Vicecomitis*;
 “ but of the Streets of *Greenwall*, and such others, the Sheriff is not
 “ chargeable as Sheriff at first, or any Time after, unless the Sum-
 “ mons come to him out of the *Exchequer*; and then when he has
 “ them, he is chargeable and accountable as a Sheriff is.

“ Then all the Judges, except *Brian* and *Catesby*, held that the Earl
 “ by those Letters Patents of all those Things which belong to the Office
 “ of Sheriff is at the first discharged of any Account; but of Green Wax
 “ and other Things he shall account, notwithstanding his Patent.

“ For *Huffey* said, That this is special Matter which came for the
 “ Land, and the Grant of the King shall be taken strictly against him,
 “ of common Intendment, and those that full appears; as if the
 “ King grants to one all the Issues and Amerciaments of all his Te-
 “ nants within such a Seignory, yet if this Tenant hold of the King,
 “ and also of another Lord, so that he is not the entire Tenant of the
 “ King, the Grant of the Issues and Fines he shall not have.

“ And if his Tenant be royally amerced, the King shall have them,
 “ and yet they are Amerciaments; but they are such Amerciaments.

“ *Brian, Justice*, demanded of *Brian R----*, what is a Royal Amer-
 “ ciament?

“ Who said, That when a Sheriff Coroner, or other great Officer
 “ of the King, be amerced by the Justices for their Misdemeanour in
 “ their Office; that was called Royal Amerciament.”

“ *Fineux* and *Huffey*, Those the Grantee shall not have by the Name
 “ of the Amerciaments, so in such Cases the Grant shall inure to
 “ the Grantee for common Things and Intendements; and the King
 “ shall have the Specialties *ut supra*.

“ *Mes pur ceo que le fuit le primer temps les Justices & Serjeants*
 “ *& l'Attorney le Roy agre que ils student bien pur le matter, & ils*
 “ *ferra oies, & ceo que ils dient fuit pur nient car ils voile este a lour*
 “ *libertie a dire que ils voile, & pens pur riens que ils ussent a ore*
 “ *dit.*”

This Case, as it is given us in Print, is dark and confusedly reported, and has far more confounded Mens Judgments than rectified them.

For upon this Case Sir *Edward Coke*, and his Transcribers, have founded several Prerogative Principles, which, for any thing I can find, are not to be met with in our ancient Law Books. As

First, That the Kings of *England* had Sovereign Power, sole and inseparable, annexed unto their Persons, to command any of their Subjects to serve them for the Publick Weal, of which they themselves are solely Judges; because upon Commandment of the King, and Obedience of the Subject, their Government consisted.

Secondly, That this was proved by the Statute of 23 *Henry VI.* in the Case of Sheriffs. And

Thirdly, By the Resolution of all the Judges in *England*, Anno 2 *Henry VII.* in the *Exchequer Chamber*.

Now whether all this was good Law or not, comes next to be considered.

As for the first Principle,

That the Kings of *England* had a Sovereign Power solely and inseparably annexed to their Persons to command any of their Subjects to serve them for the Publick Weal, of which they themselves were solely Judges; because upon Commandment of the King, and Obedience of the Subject, their Government consisted.

I hold that as it hath been understood in later Times, it could never be good Law.

And to maintain my Opinion, I shall rely upon these for the Authorities and Reasons following:

I. Sir *Edward Coke* himself, in his *Second Institutes*, tells us, "That he could not let pass a Resolution of all the Judges of *England* in the 34th of *Henry VI.* which grew upon this Occasion."

Art. sup.
Chart. c. viii.

Upon a Reference by the King's Privy Council to Sir *John Fortescue*, and Sir *John Prisat*, Chief Justices, and to the rest of the Justices, concerning a Sheriff constituted by the King himself, it is thus entred in the *Council Book* recorded 3^o *Martii Anno 34 Henry VI.* as followeth in these Words:

"Upon a Demand that my Lord Chancellor made to the Chief Judges, and to the Remnant of the Judges,

"How that the King's Laws, neither Justice might not be executed in *Lincolnsbire*, because there was no Sheriff there; and that the King, by his Letters Patents under his Great Seal, had deputed certain Men for to have been Sheriffs there, what them seemed should be done in this Behalf, so that the King's Laws and Justice might be executed in that Shire, as it is executed in other Shires of *England*.

R r

" The

“ The two Chief Justices the same Day came unto my Lords of the
 “ King’s Council in the *Star Chamber*, and upon the abovesaid Demand
 “ said, That them seemed, and so it seemed to the Remnant of
 “ the Judges, That the King did an Error when that he made another
 “ Person Sheriff of *Lincolnshire*, than was chosen and presented unto
 “ his Highness, after the Effect of the Statute in such Behalf made.

“ And though that he that so was made Sheriff would not take it
 “ upon him, ought not to be so punished, and to make also a great
 “ Fine for his Disobeyance, as that if he had been one of the three
 “ Persons that were chosen to be Sheriffs after the Tenor of the Sta-
 “ tute.

“ And furthermore them seemed, That the King should have re-
 “ course to the three Persons that were chosen after the Tenor of the
 “ Statute, and make one of them Sheriffs by Letters Patents, bearing
 “ Date either at the Day of the Election of them, or else at *Michael-*
 “ *mas*.

“ And though that sithence the said Election any of them have got
 “ him an Exemption that he should not be made Sheriff, yet them
 “ seemeth that he should be charged to take the said Office upon
 “ him.

“ And furthermore them seemeth, That if none of the said three
 “ Persons chosen be made, that then some other thrifty Man dwelling
 “ in some foreign Shire, be entreated to occupy the said Office for
 “ this Year and the next Year, that in eschewing of such Inconveni-
 “ encies, that the Order of the Statute in such Behalf made be observed
 “ and kept.

“ To the King our Sovereign Lord, and to the Lords Spiritual and
 “ Temporal of his most noble Council.

“ Beseecheth meekly your humble liege Man *John Tempest*, Knight,
 “ to grant your Letters Patents under your Privy Seal to be made in
 “ Form following, and he shall pray to God for your most noble
 “ Estate.

“ *HENRY*, &c. to the Treasurer and Barons of our *Exchequer*.

“ Forasmuch as our trusty and well-beloved *John Tempest*, Knight,
 “ by us ordained and deputed to be Sheriff of *Lincolnshire* for this
 “ Year, hath, for certain Causes for him alledged, utterly refused to
 “ take upon him the Charge of the said Office, without that it like
 “ us to purvey for him, that he take no Loss in the said Office, like
 “ as we had done now in late Years for others that have been Sheriffs
 “ of the said Shire,

“ We considering the Hurts and manifold Inconveniencies that should
 “ ensue not only to us, but also to our Subjects, namely, in letting of their
 “ Suits at Common Law, if the said Shire should long stand destitute
 “ of a Sheriff, will, and by the Advice of our Council have granted to
 “ the

“ the said *John*, that he should occupy the said Office by Approvement,
 “ and so account for this Year.

“ And therefore we charge you, that in his Accounts that he shall
 “ be to yield unto Us because of his said Office, ye charge him not
 “ with the whole Extent of the said Shire, that is to say, of these two
 “ Farms called *de Reman. firmæ Com. post terras dat.* and *firma Com. nu-*
 “ *mero*, and also of these particular Profits called *de Firmis Ballivorum;*
 “ *auxilium Vicecom. Francipleg. Certi fines*, Issues, Profits, nor none
 “ other things to be by him raised by Virtue of the Summons of the
 “ Pipe, or of the Green-wax in the said Shire, save only of such Par-
 “ cels as he with his true Diligence shall arrere and gather.

“ And that of all the Remnant that shall come and grow unto
 “ Us of the said Shire, ye utterly and clearly discharge and acquit the
 “ said *John Tempest*, Knight, Sheriff, by his Oath, or by the Oath of
 “ his Deputy, sufficient accounting for him, without any Issue, Tryal,
 “ or Averment, betwixt Us and him to be had therein. Given
 “ at, &c.

T. Cant.

R. Salisbury.

W. Ebor.

R. York.

R. Sancti Jobannis.

T. London.

Stourton.

J. Lincoln.

W. Faucomberge.

“ XIX^{mo} Die Anno 34 apud Westmonasterium in Camera Stellata INDORS-
MENT.
 “ Rex de avisamento Consilii voluit & mandavit, quod Custos Privati
 “ Sigelli sui Literas sub eodem Sigillo fieri faceret, secundum tenorem
 “ infra scriptum, dominis se subscribentibus, ut patet, attent. ut Hen-
 “ ricus Ratford, qui fuit Vicecomes anno præterito ejusdem Comitatus,
 “ & nonnulli alii Vicecomes retroactis temporibus eodem modo habue-
 “ runt & occupaverunt.

T. KENT.

“ Which abovesaid unanimous Opinion being the advised Resolu-
 “ tion of two such famous Justices, and of all the Judges of Eng-
 “ land, and finding it in the Council Book,”

Sir *Edward Coke* tells us, he thought it fit to be published in such
 Words as it is here set down, as a sure and just Exposition of the
 Statutes concerning the making of Sheriffs.

Now if this unanimous Opinion and advised Resolution of two
 such famous Chief Justices as Sir *John Fortescue* and Sir *John Pres-*
cott, and of all the Judges of *England*, delivered in the 34th of *Hen. VI.*
 was good Law,

1. That the King had done an Error when he made another
 Person Sheriff, than was chosen and presented to him after the Effect
 of the Statute 9 *Edward III.*

3

2. That

2. That if he that was so made Sheriff by the King, and would not take it upon him, was not to be punished for his Disobedience,

Then was the King's Prerogative bound by that Statute, and from thence it will follow, that he had not such a Sovereign Power sole and inseparable annexed to his Person, as to command any Man to serve him in the Office of a Sheriff (though for the Publick Weal) that has not legally been chosen according to the Form of the Statute made for the annual Election of Sheriffs by the Chancellor, Treasurer, Barons of the *Exchequer*, and by the Justices.

And then the Conclusion must be, that Sir *Edward Coke's* Principle was far from being current Law in those Days, and that too upon his own shewing. But,

Sir Brian Stapleton's Case touching his being made Sheriff of Lincolnshire, Anno 27 Hen. VIII.

II. My next Authority is the Case of Sir *Brian Stapleton*, who refused to be Sheriff of *Lincolnshire*, but upon certain Conditions; the Case fell out to be in the 27th Year of *Henry VIII.* and was as follows :

Henricus Dei Gratia Rex Angliæ & Franciæ & Dominus Hiberniæ, omnibus, ad quos præsentēs Literæ pervenerint, salutem.

Inspeximus tenorem cujusdem Acti Consilii nostri inter cætera memorandum in officio Privati nostri Sigilli remanente in hæc verba.

“ Forasmuch as of old Time it has been used and accustomed thro’ this Land, that every Year at such Times that the Sheriffs shall be changed, and other new ordained and made, three Persons be named and presented unto the King’s Highness, whereof it shall please him to chuse and ordain one to be and occupy the Office of Sheriff of such County, for which he is presented and named.

“ And it is so that *Brian Stapleton*, named this Year to be Sheriff of the County of *Lincoln*, hath refused to take the Charge upon him for certain great Causes by him alledged in that Part, so that without other Provision the said County was like to stand destitute of a Sheriff, unto great Hurt as well of the King for default of return of his Writs, gathering up of the Issues of the said County, as other Executions of his Law in that Behalf, as unto the Commons of the said Shire in their Suits, and otherwise.

“ Wherefore to eschew all the Perils, Hurts, and Inconveniencies that might follow thereof, to redress, reform, correct, and amend all such Defaults as were like to ensue thereof, and to the Intent that the Execution of Law may be had and kept in all Points as it ought, and of old Time has been accustomed.

“ The King, by the Advice of the Lords Spiritual and Temporal at *Westminster*, in the *Council Chamber*, in Time of Parliament, the twenty fifth Day of *February*, in the Year 1527, considering specially that a great Part of this Year is passed,

“ Hath

“ Hath intreated the said *Brian Stapleton*, named for Sheriff of the
 “ said County, as above is specified, to occupy the said Office of
 “ Sheriff for this Year, to the which he hath agreed him; and to do
 “ all his Devoir and Diligence for to arrere and gadder, as well as such
 “ Duties and Profits coming of the said County, that is to say, *Auxi-*
 “ *lium Vicecomitis, Franci plegii Fines*, and all other Duties pertaining
 “ unto the King from the Beginning of the Year, hitherto not gathered
 “ nor raised, as from thenceforth unto the End of this Year, and to
 “ do and execute truly all that belong to the said Office.

“ So always that the said *Brian* may have a competent Reward for
 “ his Labour, and a Warrant sufficient to have his Fee allowed upon
 “ his Account of the Issues and Revenues by him reered of the said
 “ County.

“ And also that the said *Brian* have a sufficient Warrant to the
 “ Treasurer and Barons of the King's *Exchequer*, that what Time the
 “ said *Brian* shall account for his said Office, that they charge him
 “ not with the whole Extent of the said Shire; that is to say, of
 “ these two Farmes called *de Rem. Firm. Comitatus post terras dat*
 “ *form. Com. numero*, and also of these particular Profits called *de Firm.*
 “ *Ballivorum auxilium Vic. Franci plegii, Certi fines*, Amerciaments,
 “ Issues, and Profits, nor none other Things by him to be raised by
 “ Virtue of Summons of the Pipe or of Greenwax in the said Shire, save
 “ only of such Parcels as he with his true Diligence may arrere and gad-
 “ der, and of all the Remnant to discharge him, utterly and clearly by his
 “ Oath; and by the Oath of his sufficient Deputy for him, account-
 “ ing upon his said Account without Issue, Tryal, or Averment, to
 “ be taken between the King and him.

“ And also that the said *Brian* be not vexed, grieved, nor troubled
 “ by any State or Person, for any Annuity or Charge granted by the
 “ King, to be received of the Issues and Profits of the said Sheriffwick
 “ during the Time that the said *Brian* shall account for the Issues and
 “ Profits of the said County.

“ And that there may be a Warrant under the King's Privy Seal
 “ to the Treasurer and Chamberlains of the King's *Exchequer*, com-
 “ manding them that there be new Assignments made to be received
 “ of the said Sheriffwick, during the Time that the said *Brian*, his
 “ Heirs, and Executors, be discharged and acquitted against the King,
 “ his Heirs, and Executors in his said *Exchequer*, for evermore after
 “ his Account made.

“ *Nos autem tenorem prædictum ad omnem effectum, qui exinde sequi*
 “ *poterit per has literas nostras, nostro sub privato sigillo patentes duxi-*
 “ *mus exemplificandum. Dat. in Palatio nostro Westmin. vicesimo sexto*
 “ *die Februarii Anno Regni nostri vicesimo octavo.*”

This again I take to be to the Purpose. For,

1. Although Sir *Brian Stapleton* was one of the three that was named and presented to the King to be Sheriff of *Lincolnshire*, and was chosen by him, yet it is evident that Sir *Brian Stapleton* refused to take the Charge upon him.

2. And that gave Occasion to the King, a Parliament then sitting, to advise with no less a Council than the Lords Spiritual and Temporal about that Matter; upon which Deliberation,

3. Sir *Brian Stapleton* being entreated by the King to occupy the said Office, he at last agreed thereto,

4. Yet under certain extraordinary Conditions.

But if the Royal Sovereign Power was such as before hath been laid down by Sir *Edward Coke's* Principle,

How then, I pray, come these so solemn Proceedings to be made in this Case?

Was it not by that Principle manifest and notorious that the King was sole Judge who was fit to serve the Crown? and was it not then the indispensable Duty of Sir *Brian*, as a Subject, to pay his Service to it?

His Refusal therefore to be Sheriff was a high Disobedience.

And his offering to make a Bargain with the King a very great Presumption, for which he ought to have been immediately prosecuted upon an Information in *Westminster Hall*, and soundly fined for such his bold Misdemeanor.

But can any Footsteps be shewn of such Prosecutions?

No certainly.

And the Reason is plain, because Informations of that Nature were not brought into Practice by Mr. Attorney General in those Days, there being indeed no Colour of Law to warrant them.

But it will be objected from Sir *Edward*, that

The King was sole Judge of the Service of his Subjects, because upon Commandment of the King, and the Obedience of the Subject, the Government consisted.

To this I answer,

That the Term *Commandment* is too general, and therefore the Reason which is grounded upon it cannot be concluded; for the Word *lawful* is left out, which ought not to have been done, and that upon these few Reasons:

The First Reason is

Bagshaw's
Rights of the
Crown of
England, as it
is established
by Law, dedi-
cated to King
Charles II.
p. 101.

From the general Constitution of our *English* Monarchy, which is a Government according to the Law of the Land; not by the Law of Lust, but by the Laws of the Land.

By legal, not Arbitrary, Power.

And this makes the King of *England* the greatest and most compleat Monarch in the World,

That

That the Crown of *England* is incorporated and interwoven with the Laws of the Land.

For it is the gross Ignorance of those Men, that make Monarchy to consist in Exemption from Laws.

Such a Monarchy is rather to be called dissolute than absolute, impotent than powerful, tyrannical than regal.

The second Reason is

From the ancient Coronation Oath which Kings have always been obliged to take, wherein they solemnly swear to observe and keep *Justas Leges & Consuetudines Regni Angliæ.*

Sacramentum Regum Angliæ die Coronationis sive præstitum.

The third Reason is

From the Rule of Law given us by *Bracton*, who saith, *Nil aliud potest Rex Angliæ in terris, cum sit minister Dei & ejus vicarius, nisi id solum quod de jure potest.*

Bracton, lib. 3. cap. 9. fol. 107.

The Fourth Reason is

From the Statute of 7 *Edward I.*

Pulton's Stat. 7 Edw. I.

Which enacts, That every Man should come to Parliament without Force of Armour, and those that did contrary should be punished, but here according to the Laws and Usages of the Realm.

And hereunto the Statute says all were bound to serve the King their Sovereign Lord, at all Seasons when Need should.

The Fifth Reason is

From the Statute of the 15th of *Edward III.* which hath these Words, *viz.*

Rastall's Stat. 15 Edw. III. cap. 1.

“ We command all our Justices, that they shall from henceforth do even Law and Execution of Right to all our Subjects, rich and poor, without having Regard to any Person, and without letting to do Right for any Letters or Commandments which may come to them from us, or from any other, or by any other Cause.

“ And if that any Letters, Writs, or Commandments come to the Justices, or to other deputed to do Law and Right to the Parties, the Justices, and others aforesaid, shall proceed to hold their Courts and Proccesses where the Pleas and Matters be depending before them, as if no such Letters, Writs, or Commandments were come to them.”

Which Law is a solemn Confirmation of this Maxim, that *Præceptum Legis est præceptum Regis.*

The Sixth Reason is

Because the King of *England* could neither speak, nor act, nor judge, nor execute, but by their Writs, or by their Laws, by their Judges and Ministers, who were all sworn to judge aright.

Bagshaw's Rights of the Crown, pag. 105.

For these Kings could do nothing in their own Persons (*Judicialiter.*)

If they sat in Judgment, as they might do in any of their Courts in *Westminster Hall*, as King *Richard II.* *Edward IV.* and other Kings did,

Coke, lib. 12. fol. 64. did, yet they never pretended to pronounce Judgment themselves, but the Court did it.

And therefore it was always said,

Ideo consideratum est per Curiam,

That being the proper Office of the Judges, who were to make the Law the Rule and Measure of all their Proceedings.

The Year Book,
39 Hen. VI.
fol. 14.

For it would be ridiculous to say that the King was bound to do Law and Right to all his Subjects, and yet that his Ministers and Judges should be exempted from the like Obligation.

No, we all know the old Maxim,

Lex Angliæ non patitur absurdum,

And therefore no Prerogative ought to hold in such a Case; for that would make all Judges and Ministers to be above the King. Again,

The King of *England* cannot arrest any.

Fitz Herb.
Abridg. fit
monstrance
de faits 182
prim. 16 Hen.
VI.
2 Term. Mich.
1 Hen. VII.
placit. 5.

Huffey Chief
Justice de soit
que Sir John
Marsham de-
soit al Roy
Edw. le IV.
que il ne poet
arestre un
home sur sus-
pition de trea-
son, ou felo-
ny, suome af-
suns de son
Lieges puis-
sent pur ces
que fit fare
tort le partie
ne poet lanes
action.

* Pult. Stat.
4 Hen. VII.
cap. 12.

And the Reason which our Law Books give is, because, if the Subject should be wrongfully imprisoned, no Action of false Imprisonment lay against the King; and so by Consequence the King would be made a wrong Doer, which the Law of *England* would never allow.

And therefore it is one of the highest Prerogatives of the Crown that the King can do no Wrong, but his Ministers may, and be punishable for it, as hath been observed before.

The Seventh and Last Reason

Shall be grounded upon a Statute * made *Anno 4 Henry VII.* intituled, *All Justices of Peace shall execute their Commission, redress Injuries, and maintain the Laws.*

The Purport whereof is as follows:

1. It tells us, " That the King having considered that by the Negligence, misdemeanor Favour, and other inordinate Causes of Justices of the Peace, the Laws and Ordinances made for the Politick Weal, Peace and good Rule of the same, and for the Profit, Surety, and restful Living of his Subjects of the same, were not duly executed according to the Tenour and Effect that they were made and ordained for.

" Wherefore his Subjects had been grievously hurt, and out of Surety of their Bodies and Goods to their great Displeasure.

" 2. Because to him nothing was more joyous than to know his Subjects lived peaceably under his Laws, and to increase in Wealth and Prosperity.

3. It also tells us, " That the King would not let for any Favour, Affection, Cost, Charge, nor none other Cause, but he would see the Laws have plain and true Execution, and his Subjects live in Surety of their Lands, Bodies, and Goods, according to the Laws.

" 4. Because

“ 4. Because that a great Part of the Wealch and Prosperity of this Land stood in that, that the Subjects might live in Surety under the King’s Peace in their Bodies and Goods, which was to be had by the due Execution of the said Laws and Ordinances.

5. *And lastly*, “ So as thereby all Mischiefs might be avoided, his Subjects might increase in Wealth and Prosperity to the Pleasure of God.”

This Act of Parliament, as it is quoted by Sir *Edward Coke* in his *second Institutes*, so it being added to the foregoing Reasons, leaves no Room at all to question this Conclusion. Coke’s 2d Institute, f. 170.

That the Word *lawful* ought to have been inserted before the Term Commandment by Sir *Edward*, and then I do agree that

Upon the lawful Commandment of the King, and the Obedience of the Subject, the Government of *England* did ever consist.

And then the Consequence will be, that the King himself was not sole Judge of the Service of his Subjects, which was contrary to the Laws and Ordinances made for the Publick Peace and good Rule of the Kingdom, and the Profit, Surety, and restful Living of the Subject.

All which is no more than what was declared Law of the Land near four hundred Years ago.

For by another Statute made *Anno 34 Edward I*, son to *Henry III*, it was granted to Clerks and Lay-men, “ That they should have their Laws, Liberties, and free Customs, as they had used to have the same at any Time when they had them best. Pulton’s Stat. 34 Edw. I. cap. 4. All Laws, Liberties, and Customs, confirmed to the Subject.

“ And that if any Statutes had been made, or any Customs brought in by that King or his Ancestors to the contrary, they should be void and frustrate for evermore.”

In the next Place we are to consider Sir *Edward Coke*’s second Principle, *viz.*

That the Sovereign Power is solely and inseparably annexed unto the Person of the King, to command any of his Subjects to serve him for the Publick Weal, of which he himself was sole Judge, was proved by the Statute of 23 Henry VI. in the Case of Sheriffs.

It is but too certain and obvious to any sober thinking Man that in this last Century, both Divines and Lawyers, have garnished their Writings with a vast Medley of abstruse and affected Expressions touching the Prerogative Royal, which were not known, much less made use of, in former Times. An Abuse of Law.

From which one may very well conclude that these Authors were either ashamed of the puny Conceptions of those who wrote before them, or else they thought them very deficient in expressing their Loyalty to the Crown, because it was not declared, as it has been since, without Reserve.

T t

By

By means whereof these Authors have pestered the World with new Forms and Modes of Speaking, which neither are comprehensible or intelligible to themselves or their Readers here in *England*.

As for the Instance,

Our Chronicles say that *Henry VI.* was but nine Months old at the Time when his Father *Henry V.* died, and when he himself was proclaimed King.

Can any Man comprehend how *Henry VI.* could himself be sole Judge? Or can any Man understand how the Sovereign Power, sole and inseparable, could, according to Sir *Edward Coke's* Principles, be annexed unto the Person of that Royal Babe, not ten Months old?

The like Case may be put of a lunatical King, whenever such a one shall happen here, as it hath fallen out in other Kingdoms.

Several other Cases might easily be mentioned, which absolutely overthrow and confute many of those extravagant Notions which of late Years have been advanced touching an unhoopable Prerogative of an imperial personal Sovereignty.

But, I think, these are enough of all Conscience to prove Sir *Edward's* Position to be an unintelligible and an incomprehensible Principle.

But not to digress too much.

The Year Book,
2 Hen. VII.

As for the Case of Sheriffs, it was shewed for the King, before all the Justices in the *Exchequer Chamber*, how King *Edward IV.*, by his Letters Patents, had ordained the Earl of *Northumberland* to be Sheriff of that County for his Life, with all the other Offices belonging to it, rendering to the King in his *Exchequer* 100 *l.* yearly, without any other Account.

Now the Questions were,

First, Whether the Patent was good?

And *Secondly*, How it was to be construed?

And as to the *First* Point, the Justices held the Patents good, for that the Office of a Sheriff was such a Thing as might be granted by the King for Term of Life or Inheritance.

And they grounded their Opinions upon three Reasons, *viz.*

Because divers Earls had Sheriffwicks by Inheritance, which begun by the King's Grant.

Secondly, Upon shewing of an Act of Resumption, wherein there was a Proviso for the Earl of *Northumberland* of his Patent.

And *Radcliff* shewed the Statutes of 28 *Edward III.*, *cap. 7.*, and 42 *Edward III.*, *cap. 5.* That no Sheriff should continue above a Year, although he had a *Non Obstante*.

And this, notwithstanding, the King should have his Prerogative.

This is the Substance of what either the Justices or *Radcliff* said, with reference to *Non Obstantes*.

So

So that in that Case there were three Points worthy Consideration.

First, The Time when the Case happened.
 The *Second*, The Opinion of the Justices.
 And the *Third*, What *Radcliff* shewed.

First, To the Time when this Case happened.
 It was the 2^d of *Henry VII*.

His Mother was then living, as also his Wife, the Daughter of *Edward IV*, so that he could have no Colour of Title to the Crown but by Power.

It is no Wonder therefore if his *quamdiu placuerit* Judges, to strengthen his Hands, stretched a Point of Law, and invested him with a Prerogative that had no Foundation before, either in Sense, Reason, or Law.

For *Fortescue*, who was Chief Justice of the *King's Bench*, Anno 20 *Henry VI*, and so continued for many Years, and died in *Edward* the Fourth's Reign, tells his Prince,

Præterea in quolibet Comitatu est Officiarius quidem unus Legis, Vicecomes appellatus, qui inter cætera sui officii ministeria omnium mandata & judicia Curiarum Regis in Comitatu suo exequendo exequitur.

Cujus officium annuale est, quod ei post annum in eodem ministrare non licet; nec duobus tunc sequentibus annis ad idem officium reassumetur.

Now if a Negative Argument will hold in any Case, why not in this?

It cannot be denied but that *Fortescue*, as well as the rest of the Judges of *Westminster Hall*, must have been Assistants in the House of Lords in the Parliament of 23 *Henry VI*, and attending on the Committee for the Bill; and therefore it will be idle to say that these Justices could be ignorant of the Debates and Reasons of that House, in the passing of Statutes concerning Sheriffs.

And then by consequence they must know that it was the solemn Judgment of the King, Lords, and Commons, that that Statute was not to be suspended and invaded by Pretence of any *Non Obstantes* in that Particular to be void.

And where the Law is known and clear, though it were unequal and inconvenient, yet the Judges must determine as the Law is, without regarding the Unequitableness or Inconvenience of it.

Secondly, For the second Point the Opinions of the Justices, 2 *Henry VII*.

It is very true what Judge *Hutton* said, That sudden Opinions, when Judges hear no Arguments, are of no such Force as to bind them to continue the same Opinion; but that when they shall have heard Arguments, and be better informed, they may alter and change, which

The Year Book,
 2 *Hen. VII.*

John Fortescue constitutus Capital Justic. B. R. apud Westm. 21 Jan. Rot. Parliam. 20 Hen. VI. pars 1. memb. 10.

Ld. Vaughan's Reports, f. 37.

which hath usually happened ; let me add in common Cafes, but rarely, if ever, in any prerogative Point.

But let that be how it will, the Book plainly fhews that the Juftices Opinions, *viz.* that the Office of a Sheriff was fuch a thing that might very well be granted 2 *Hen.* VII. for Term of Life or Inheritance, were fudden Opinions, there having been no Arguments had in the Cafe.

And therefore were not to be looked upon to be of fuch Force as our modern Lawyers have made it in their Speculations about Sovereign Power, there being nothing more evident than that fuch an Opinion was directly contrary to feveral pofitive and exprefs Laws herein before produced, which ought to determine us in this Matter.

I deny not but that our Kings did anciently grant to feveral of their liege People, as to Earls, Barons, and likewise to *London* and *York*, Sheriffwicks of Inheritance.

Coke's 2^d Inf.
fol. 588.

And this appeareth by the Statute 28 *Edward* I, whereby that King granted *a fon* People, that they fhould have the Election of their Sheriffs in every County, *ou* *Viscount ne est my de fee, i. e.* where Sheriffwicks was not of Fee.

Here is no Exception of any Grants made by the King for Term of Life or Years, which induceth me to believe that before the making of this Statute, no fuch Grants had been made by the Crown.

Raft. Stat.
23 Hen. VI.
cap. 8. in the
Preamble.

But indeed by a Parliament held 14 *Edward* III, "because that
" divers Sheriffs in divers Counties of *England* then being, had their
" Offices, fome for Term of Years of the King's Grant, and fome
" trufting of longer Continuance in their Offices by Procurement, &c.
" were greatly encouraged, and did take upon them to do many and
" divers Oppreffions to the King's liege People unduly, and evilly and
" falſely did ſerve the King and his People,"

Therefore it was ordained, " That no Sheriff ſhould abide or tarry
" in his Office over a Year."

Here we may obſerve a Defect, for if that after the Words *by Procurement* had been left out, and a Particular of theſe Procurements had been given us, this Inſtance muſt have been much ſtronger to our Purpoſe than it is ; but we are left in the Dark as to that.

Rot. Parliam.
50 Edw. III.
No. 14.

However in the 50th of *Edward* III. the Commons prayed the King, " That he would from thenceforth grant the Office of Sheriff
" to none for Term of Life, or Fee, but by Commiſſion from Year to
" Year.

To which the King answered,

" Let the Statutes thereupon made be kept and held in all Parts."

Raftal's Stat.
9 Hen. V.
cap. 5.

And in the Statute 9 *Henry* V. wherein that King is enabled to make Sheriffs at his Will for four Years, we read, " Except in the
" Counties where certain Perſons were inheritable in ſuch manner of
" Office."

Thus

Thus stood the established Law of the Land touching Sheriffs; till the Statute of 23 *Henry VI*, which tells us,

“ I. That in divers Counties of *England*, after the making of several Statutes therein mentioned, many and several Sheriffs had been made; and had occupied within the said Counties, some ten Years, and some twelve Years and more,

“ 1. To the great Damage of the Kings that then were;

“ 2. And their People,

“ 3. And contrary to the said Statutes, to their importable Damage and open Disherison, and upholding of Manslaughter, Perjury, and great Oppressions.

“ II. Which being considered;

“ It was ordained,

“ By Authority of Parliament;

“ That those Statutes, and every of them; should be duly observed in every County of *England*.

III. Except in such Cases as are mentioned in the Statute, which I have given at large before.

And a little after the Statute tells us,

“ 4. All Patents then made, or to be made, of any of the said Offices for Term of Life, or in Fee Simple, or in Fee Tail, to any of the King's liege People, except before excepted, were declared to be void and of no Value by the same Authority.”

So that here is not only *clausula prohibens*, viz. that the Office of a Sheriff should not be granted in Time to come for Years, Life; in Fee Simple, or in Fee Tail; but also *clausula cassans*, that is; if any Patent should be made to the contrary, they should be void and of no Value.

For when the Legislative Power had added a *clausula cassans* in their Law, and therein plainly declared, that the King's Act done contrary to that Law should be void and of no Value;

In such Case, I conceive, the old Law ever was, that no Patent with a *Non Obstante* drawn by Mr. Attorney, or Mr. Solicitor General, and sealed by the Chancellor, could legitimate any of the King's Acts done according to that Law, without overturning the Foundation of all Parliamentary Establishments.

There can be no fairer Way of dealing with our Opponents than by confuting them from their own Confession; give me leave therefore to put a Case.

“ King *Henry VIII*, says Sir *Edward Coke*, though standing as much upon his Prerogative as any of his Progenitors, yet finding how vexatious it was to himself, and how distasteful to his ancient Nobility to have new-raised Degrees to have Precedency of them, and finding that this Kind of Controversy for Precedency was of that Nature that it had many Partakers, spent long Time, and hindered the arduous, ur-

Coke's 4th Instit. f. 361.

U u

“ gent,

Pulton's Stat.
31 Hen. VIII.
cap. 10. *how*
Lords in Par-
liament should
be placed.

Coke's 4th
Inst. fol. 372.

gent. and weighty Affairs of the Parliament, was content to bind and limit his Prerogative by Act of Parliament, concerning the Precedency of his great Officers; and of his Nobility; and amongst other things it was enacted,

“ By Authority of his Most High Court of Parliament,
“ That if any Person being Lord Chancellor, Lord Keeper, Lord Treasurer, Lord President, Lord Privy Seal, or Chief Secretary, should be under the Degree of a Baron of Parliament, they should sit in the uppermost Part of the Sacks in the midst of the Parliament Chamber.

“ But in the *Star Chamber*, and all other Assemblies and Conferences of Council, they should sit and be placed as it is rehearsed in the Act, and in no other Place.”

Well, since the Law is so, I will ask this Question, *viz.*

Why then might not the King, who is by his Prerogative the Fountain of Honour, dispense with this Statute?

Sir *Edward Coke's* Answer is,

He cannot.

And the Reason he gives for it is, “ Because the Words Negative were added to avoid all Scruple, that the Order of Precedency set down in that Parliament, should not be altered by any *Non Obstante.*”

Now I cannot, I confess, well understand how these negative Words in the Act of 31 *Henry VIII.* *viz.* in no other Place, could not be altered by any *Non Obstante*; and yet the affirmative Words in the Statute of 23 *Henry VI.* *viz.* that all Patents of the Offices of Sheriffs, which should from thenceforth be made for Term of Years, Life, in Fee Simple, or Fee Tail, should be void and of no Value, could be altered or suspended by a *Non Obstante.*

Since I take both these to be of equal Force, and that if one, then both Clauses must be utterly insignificant, and could never, when attacked, defend themselves against the dispensing Power by *Non Obstantes.*

It is easily granted that several Sheriffs had, before the making of the Statute 23 *Henry VI.* occupied that Office

Some for ten Years,

Some for twelve Years,

and some trusting of longer Continuance; which last Words, I conceive, do mean Sheriffs in Fee.

But yet all this was but *de facto* done, and not *de jure*, because that Statute solemnly adjudged all Occupations to have been *contra bonum publicum*, and it is expressed,

Rastal's Stat.
23 Hen. VI.
cap. 8.

“ 1. To the great Damage of the King and People. And,
“ 2. Contrary to many ancient and former Statutes.
“ And consequently such Grants were highly illegal.”

Besides

Besides the Statute further declares, and we have no reason to doubt of the Evidence of it, that “by the Procurement of such Offices there had happened both to the King and People importable Damage, open Disinheritance, upholding of Manslaughter, Perjury, and Oppression.”

But if the Office of a Sheriff was looked upon 2 Henry VII. to be such a Thing as might well be granted for Term of Life or Inheritance, according to the sudden Opinion of those Judges; and if that must pass for good Authority in Law, *Non Obstante* the Statute 23 Henry VI. the Conclusion then well may be, that the same Judges might by a like sudden Opinion have as well frustrated and annulled all the other Acts in the Statute Book, which had been made *pro bono publico*, contrary to the express Intent thereof.

When as according to that ancient Principle of Law, which we have more than once cited before,

(For Truth loseth nothing of its Force by being several Times repeated.)

The inferior Courts of *Westminster Hall* were never other than Executors, not Executioners, *d'ancien Leyes & Customs du Royaume & Ordinances & Establishments du Parlement.*

But it will be objected that in the Case of 2 Henry VII. there is mention made of an Act of Resumption, and therein of a Proviso for H. Earl of N's Patent, whereby Henry IV. had granted the Office of Sheriffwick of the said County for Life.

And what can be said to that?

I shall endeavour to solve this Objection thus:

First, That Act of Resumption was made 10 Henry VII.

To which the King gave this Answer:

“As touching this Bill of Resumption, the King's Highness hath well conceived and understood the same.

“Hath therefore, by the Advice of his Lords Spiritual and Temporal, and Commons, being in this present Parliament, and by Authority of the same, it accepted and agreed.

“So always such Provisions and Exceptions, as by his Highness be or shall be made and agreed during the Time of this present Parliament, put in Writing, to or upon the Premises be good and effectual, the said Bill or Act, or any other the Premises notwithstanding, for the Equity and rightwise Reward that the King intendeth to do to every of his Subjects for his Merits, which shall be to the Pleasure of God, and Honour of his Highness, and the Weal of all his Land and People.”

The Tenors of which Provisions hereafter ensue

SOLUTION.

Secunda pars Rotul. Parl. tent. apud Westm. 7 die Novem. ann. 1 Hen. VII. in quo continentur Actus Resumptionis cum Provisionibus & Exemptionibus in Capella Rotul. reman.

Secondly,

Secondly, Pursuant to his Answer the following Proviso, among many others, was added.

“ Provided always that this Act of Resumption, or any other Act made or to be made in this present Parliament, extend not, nor in any Case be prejudicial or hurtful to the several Grants and Letters Patents of King *Edward IV.* made to *Henry Earl of Northumberland*, of the Office of Justice of all the King’s Forests from *Trent North*, of the Office of Constable, Steward, and Master Forester of the Castle, Lordship, and Forest of *Knareborough*, within the County of *York*;

“ Of the Office of Constable and Porter of *Newcastle*, Sheriff of the County of *Northumberland*, and Constable of the Castle of *Dunstaineburgh* and *Damburgh*, in the County of *Northumberland*;

“ Nor also to our Grant and Letters Patents made under our Great Seal, made to the said Earl of the Office of Bailiff of *Tyndale* within our said Connty;

“ But that as well our said Grant, as the Grant of the said King, and all things in them contained, after and according to the Tenor of the same, be unto him effectual and available; the said Act or Acts in any wise notwithstanding.”

So that we see that the Proviso was added to the Act of Resumption by Virtue of the Reservation mentioned in the King’s Answer.

And it is also plain it was never read, much less particularly allowed by either House of Parliament.

And therefore it is a great Mistake in those who have raised an Argument from this Act and Proviso, as if both Lords and Commons had clearly admitted that Patent to be legal and good.

But it is true, the Proviso being made and agreed during the Time of that Parliament, and put in Writing by the King, bound him; such being the Usage of those Times in Cases of Acts of Resumption, as may be seen in several Parliament Rolls.

All which being duly weighed, fully proves, as I conceive, that no good Argument can be fetched from the Proviso added to the Act of Resumption made 1 *Henry VII.*

And therefore,

Thirdly, As for the third Point what *Radcliffe* shewed, viz. the Statutes of 28 *Edward III*, cap. 7. and 42 *Edward III*, cap. 5, That no Sheriff should continue in his Office above a Year, although he had a *Non Obstante*, and yet notwithstanding the King should have his Prerogative :

In these two Things may be considered,

First, Who this *Radcliffe* must be ?

Secondly,

Secondly, What the Force of his Opinion was for the first,
It appears from the *Exchequer Rolls* 1 *Edward IV*,

That *Brian Roucliffe* was constituted *Tertius Baro de Scaccario* quamdiu Regi placuerit, percipiendo in officio illo feodum consuetum. In cujus rei testimonium, &c. teste Rege octavo die Aprilis.

And in *Michaelmas Term*, 1 *Henry VII*, his Letters Patents are enrolled, whereby *Brianus Roucliffe* is constituted *Secundarius Baro de Scaccario* quamdiu Regi placuerit.

Ad habendum & percipiendum omnimoda vadia feoda, regarda & commoditates eidem officio debita sive pertinentia ad Scaccarium nostrum seu ad receptum Scaccarii nostri vel heredum nostrorum per manus *Tbesaurarii* & *Camerarii* ejusdem pro tempore existentium ad terminos ibidem consuetos.

Eo quod expressa mentio de vero valore annuo officii prædicti ac ceterorum præmissorum aut alicujus inde proveniunt, in præsentibus minime fact. existit, aut aliquo statuto, actu, ordinatione, concessione, restrictione, sive provisione in contrarium factis editis sive ordinatis, Non Obstante.

In cujus rei testimonium has Literas nostras fieri fecimus patentes, teste meipso apud *Westm.* 24 die Septembr. anno Regni nostri primo.

Quarum quidem literarum patentium prætextu prædictus *Brianus Roucliffe* 16 die Octobris hoc termino admissus est, ad officium prædictum debite exequendum & præstitit Sacramentum de se bene & fideliter habend. in eodem quamdiu, &c.

Consimiles literæ patentes factæ, viz. *Edwardo Golderburgh* de officio tertii Baronis de Scaccario nostro, &c. Ibid.

Johanni Holgrave de officio quarti Baronis de Scaccario nostro, &c. Ibid.

Humfrido Starki de officio capitalis Baronis de Scaccario Domini Regis nostri, &c. Ibid.

From all which it will follow, that *Brian Roucliff*, alias *Rowclyff*, quoted by the Reporter in the *Year Book*, 2 *Henry VII*, must be una & eadem persona & non alia, neque diversa.

And now we are to consider what the Force of *Radcliff's* Opinion was.

He shewed, says the Book of the Statute 28 *Edward III*, cap. 7, and 42 *Edward III*, cap. 5, for cap. 9. that no Sheriff should continue in his Office above a Year, although he had a *Non Obstante*, and yet notwithstanding the King should have his Prerogative, when as

1. Neither of those Statutes which I have already given the Reader at large, speaks one Tittle of *Non Obstantes*. Nor,

2. Is there a Word of the Statute of 23 *Henry VI*. to be found in the Report, though indeed it is enacted by that Statute, that a *Non Obstante* put into any Patent against that Law, should be void and of no Force.

Literæ Regis patentes *Briano Roucliffe* de officio tertii Baronis de Scaccario. Inter Communia de Terminis Paschæ anno Regni Regis Edw. IV. post Conquestum 1^o. Rot. 1^o.

Literæ Regis patentes factæ *Briano Roucliffe* de officio secundarii Baronis de Scaccario Domini Regis irrotulata. Inter Communia de Terminis Sancti Michaelis 1 Hen. VII. Recorda Rotul. 1. in dorso.

Year Book, 2 Hen. VII.

So that here was at least a great Mistake in Baron *Radcliff* of one Statute for another, which, without doing him any Wrong, evidently shews,

1. That what he then said, was said in the sudden.
2. That he wanted Time rightly to inform him of the Matter.
3. That the Reporter caught his Words from him.
4. And lastly, That it was no other at the best than a random Opinion.

It would therefore certainly be a high Indignity to the Laws of *England* to suppose that such a rash, extrajudicial, and inconsiderate Opinion, should create a Maxim in the Law for future Judges to ground their Resolutions upon, and that too in so mighty a Point.

OBJECTION.

But it will be objected that this Case of 2 *Henry VII.* hath been cited as adjudged in several Books of great Authority. As

1. By *Fitz Herbert* in his Abridgment of this Case, *tit. Grants* 33.
2. By *Brook*, *tit. Grants* 33.
3. By *Plowden*, in his *Commentaries*, *fol. 502.*
4. And lastly, by Sir *Edward Coke*, in his 12th Report, *fol. 18.*

ANSWER.

To which I answer,

First, That the Abridgments of Two, no nor ten more to make up a Dozen, are sufficient to make any Case Law, which was not so in the first resolving of it.

Brook and *Fitz Herbert* indeed tell us what was said in the Case, but their Abridgments can give no greater Force to make any Case more or less Law, than it had at that very Time when the Judges declared their Opinions; and to think otherwise would be a great Fal-lacy in Law.

Secondly, *Brook* differs from *Fitz Herbert*, for in *Fitz Herbert's* Pa-tents, *placito* 45, he saith nothing at all to the first Point, *viz.* the Validi-ty of the Patent, but afterwards, *placito* 109, he saith, *Et fuit in Clause de Non Obstante pur dispencer ou les estatutes de annis 28 Edw. III, cap. 7, of 42 Edw. III, cap. 9, que voit que nulla ferra Viscount ul-tra un an*, and that a *Non Obstante* might dispense with those prohi-bitory Statutes; but there is no mention made at all of the Statute

Robert Brook
Miles constitu-
tus Capitalis
Justic B. R.
apud Westm.
E. T. Pat. 1 &
2 Phil. & Mar.
p. 2.

23 *Henry VI*, either in the Book at large, or in *Brooke's* Abridg-ment.

And we are further to observe that *Brooke* was an eminent Lawyer, and no less than Chief Justice of the *Common Pleas* in the Reign of *Queen Mary*, and could not easily be mistaken what the Sense of the *Year Book* of 2 *Henry VII.* was, considering the small Distance of Time.

Thirdly,

Thirdly, If it should be granted that *Plowden* cited both the *Year Book*, and *Fitz Herbert's Abridgment*, in the Case between *Grendon* and the Bishop of *London*, which was in *Michaelmas Term*, in the 18th and 19th of *Elizabeth*, yet it may be said that it was *arguendò* for his Client, and shall that be taken for good Law?

Plowden
Com. f. 502.

Nay if he had been retained on the other Side, who can tell but that he could have told the Court that That Case was never resolved for Law by these Judges, or that it was only an extrajudicial Opinion?

And therefore no more than the *Prolata* or Suings of those who gave it, unless every thing spoken at Pleasure must pass for a Resolution of all the Judges in *England*.

Fourthly and lastly, as to what *Sir Edward Coke* says in his 12th Report,

I think I have given it a full Answer already, and there remains now only that we here consider

His third Principle, *viz.*

That the Book Case 2 *Henry VII.* was the Resolution of all the Judges of *England*.

And to this I say

That the *Year Book* in the Close of the Case tells us, that because that was the first Time, and the Justices and Serjeants, and the King's Attorney agreed,

1. That they should study well the Matter, and should be heard.
2. That what they said should pass for nothing.
3. And lastly, That they would be at their Liberty to say and think what they pleased, notwithstanding any thing they had then said, &c.

How then, I pray you, can *Sir Edward's* Principles be true, that the Book Case 2 *Henry VII.* was resolved by all the Judges of *England*?

But besides all this it will further be objected, that here is another Case 21 *Henry VII.* which ought to be considered, and therefore that it may be better understood, I have rendered it into *English* thus.

OBJECTION.

There is a Diversity between *malum prohibitum*, and *malum in se*, says the Book.

Malum prohibitum is where a Statute inhibits that a Man shall not coin Money, and if he does that, he shall be hanged.

The Year Book,
Mich. Term.
11 Hen. VII.
fol. 12.

This is *Malum prohibitum*, for before the said Statute it was a lawful Act to coin Money.

But now it is not, &c.

And with this Evil the King can dispense, &c.

So if a Man ships Wool at another Place than at *Calis*, this is *malum prohibitum*, for it is prohibited by Statute.

And therefore the King may dispense with this *malum*.

So the King may dispense with a Priest to have two Benefices, and that a Ras— shall be a Priest, and this is *malum prohibitum*, and in like Cases.

But *malum in se*, the King, nor no other, can dispense with; as if the King would pardon one to kill another, or give him leave to erect a Nufance in the High-way.

This is void, and yet when they are done, the King can pardon them.

So if a Man be bound in a Recognizance in Chancery to the King to keep the Peace at the Suit of another, the King cannot release this Duty, because of the Prejudice which may happen to another Person; and yet when it is forfeited he may release it, and not before.

And so neither the King, nor any Bishop, nor Priest, can give a Man Licence to commit *lechery*, *quia est malum in se*, by the Law of Nature.

But where it is committed they cannot affoil, *quod nota per Fineux Chief Justice.*

This being the Case, I shall give these Reasons to it.

First, That this Diversity between *malum prohibitum*, and *malum in se*, is no where, as appears to me, to be found in any of our Law Books till this very Case.

And therefore this seems to be an original Notion.

Secondly, It seems to be but the Opinion of one single Judge, *viz. Fineux*, and that too *non judicialiter, sed gratis dictum.*

Thirdly, This would make a King as omnipotent as Almighty God, who is *Rex Regum*, and *Dominus Dominantium*, for he himself cannot dispense with that which is originally *malum in se* by the Law of Nature.

The Law of Nature is that which God at the Time of the Creation of the Nature of Man, infused into his Heart for his Preservation and Direction; and this is Lex æterna, Coke, lib. 7. fol. 12. Calvin's Case.

For *Lex naturalis est vera & propria Lex divina, cujus Legislatores est Deus, nec mutari potest per seipsum, nec in particulari, nec in universali.*

Fourthly, If the Kings of England might of Right, and by our Law, suspend and dispense with *malum prohibitum* in all Statutes, as according to the Latitude of this Case,

Then it had been in vain for Parliaments to have partaken with him in the Legislature.

Because the Authority of Parliament would have been but a mere Name, a Shadow, a Phantasm, a Chimera, and no more; for the King in his Judges would have been the absolute Master, since he alone by them could without a Parliament, *viz. Jure deposito*, have rendered

rendered useleſs all or any of thoſe Laws, which had been ſo ſolemnly eſtabliſhed by joint Conſent of all in Parliament.

And all theſe wonderful Operations were to be wrought by the expounding Power of the Judges in *Westminster Hall*.

But that it was to act *extra ſphæram activitatis Judicium*, I will prove from a ſolemn Recognition made by all the Judges of *England* in a Parliament held *anno 31 Henry VI. Thorp's Caſe*.

Which was this.

Thomas Thorp being Speaker of the Houſe of Commons *31 Hen. VI*, was in Time of Prorogation arreſted and imprifoned at the Suit of *Richard Duke of York*, upon a Judgment obtained in the *Exchequer*.

The Commons, at the re-aſſembling of that Parliament, wanting their Speaker, ſent up ſome of their Members to make Complaint thereof to the King and Lords, and to deſire their Speaker's Releaſe.

Upon this the Duke gives the Lords an Account of the whole Matter.

“Whereupon, ſaith the Parliament Roll, the Lords Spiritual and Temporal, not intending to impeach or hurt the Liberties and Privileges of them that were common for the Commons of this Land to this preſent Parliament, but equally after the Courſe of Law to miniſter Juſtice, and to have Knowledge what the Law will ſay in that Behalf:”

Opened and declared to the Juſtices the Premiſſes, and aſked of them whether the ſaid *Thomas* ſhould be delivered from Priſon by Force and Virtue of the Privileges in Parliament or no.

To the which Queſtion the Chief Juſtice in the Name of all the Juſtices, after ſad Communication and mature Deliberations had among them, answered and ſaid, That they ought not to answer to that Queſtion.

And then follows

The Judges Recognition.

1. For it hath not been uſed before Time that the Juſtices ſhould in any wiſe determine the Privilege of this High Court of Parliament.

2. For it is ſo high and mighty in its Nature,

3. That it may make Law:

4. And the Determination and Knowledge of that Privilege belongeth to the Lords of the Parliament, and not to the Juſtices.

Theſe ſeveral Cognitions ſo materially weighty in themſelves, being publiſhed and declared by all the Judges of *England*, and that before the Parliament as a fixed and ſtanding Rule of Law, and as a Memorial to all Poſterities enrolled among the Records of the ſaid High Court of Parliament for ever to endure;

Rot. Parliam.
3 Hen. VI.
No. 26.
Declaratio facta ex parte ducis Eborum contra Declarationem Thomæ Thorp prolocutoris Domus Communis.

Most of the prerogative Notions, which Lawyers have framed to themselves, and upon which our late Judges so fatally grounded their Resolutions touching the King's dispensing Power with general Acts of Parliament by Colour of an interpreting Power radically fixed to the Office and the Function of a Judge, who is only *dum Regi placuerit*, must of necessity fall to the Ground, and come to nothing.

I confess there is another Objection that I cannot pass over without making some Reflections upon it;

It is a very late one indeed;

The Distinction is as pretty and surprizing as new.

OBJECTION.

In short, it is that of Mr. Attorney General's Power in the Case of Sir *Edward Hales*.

I must, says he,

The Case of Sir Edw. Hales lately printed, fol. 8.

Distinguish between those Acts of Parliament which concern Property, and those which concern Government.

Acts of Parliament which concern Property, the King cannot dispense with.

But those which concern Government he may.

And this for the great Inconveniencies which may happen, or Urgencies of State which may force him to it; and those unforeseen at the Time of making the Law.

For it may happen by a Vicissitude of Time, those Laws that were made for the Preservation of Government should turn to the Destruction of it, if the King could not dispense with them.

ANSWER.

To which I give this short Answer:

Coram Domino Rege apud Westm. de termino Sanctæ Trinitatis Anno Regni Regis Edw. filii Regis Edw. 17.

First, The Statute 17 *Edward II.* proyes that *les Choses que seront a establer par l'estate*

1. *De nostre Seigneur le Roy & de ses heirs,*
2. *Et par l'estate du Royalme & du Peuple,*

were to be treated of in Parliament.

1. By the King, and by the Assent
2. *Des Prelates, Countes & Barons,*
3. *Et la Communalte du Royalme.*

Fortescue de laudibus Legum Angl. cap. 18. fol. 39. C.

Secondly, And as for Statutes in general, the Lord Chief Justice *Fortescue* hath fully resolved the main Point in Question, as we shall hear presently.

His Words are these:

Statuta tunc Anglorum bona sint, necne, solum restat explorandum.

Non

Non enim emanant illa a Principis solum voluntate: Ut leges in Regnis quæ tantum Regaliter gubernantur, ubi quandoque Statuta ita Constituentis procurant Commodum singulare, quod in ejus subditorum ipsa redundant dispendium & jacturam.

Quandoque etiam inadvertentiâ Principum hujusmodi, & sibi consulentiâ inertia ipsa tam inconsulte eduntur, quod Corruptelarum nomina potius quam Legum illa merentur.

Sed non sic Angliæ Statuta oriri possunt, dum ne dum Principis voluntate, sed & potius Regni assensu ipsa conduntur, quo populo læsura illa efficere nequeunt,

Vel non eorum commodum procurare.

Prudentiâ etiam & sapientiâ necessario ipsa esse referta putandum est, dum non unius, aut centum solum consultorum virorum prudentia, sed plusquam trescentorum electorum hominum, quali numero olim Senatus Romanorum regebatur.

And then a little after,

Et si Statuta hæc tanta solemnitate & prudentia edita efficacitæ tantæ, quantæ conditorum cupiebat intentio, non esse contingunt,

What then follows?

And what is then to be done?

Why?

Quam cito reformari ipsa possunt:

But how?

Non sine Communitatis & Procerum Regni illius assensu, quali ipsa primitus emanarunt,

This is enough, and we need no Man to answer Mr. Attorney's Distinction between the King's Disability of dispensing with Acts of Parliament which concern Property, and yet his Ability to dispense with Acts of Parliament which concern Government.

Since no such great Inconveniencies could possibly happen from any Acts of Parliament, that might by a Vicissitude of Times be destructive of the Government, unless the King be cloathed with his mighty Power of dispensing.

Because *Fortescue* tells us that all such Acts, *Quam cito reformari possunt*, which in plain *English* is, the King may, *semel in anno*, nay upon Urgencies of State within eleven Days call a Parliament, to repeal or reform any of those unforeseen Mischiefs at the Time of the making of those Acts, and so no need of such *Non Obstantes*.

We are told, and that truly, that Parliaments are not so frequently held as in former Times they were; but can Mr. Attorney make it out by any Distinction,

That that is a good Reason in Law to justify the Judges supplying the Want of Parliaments, and giving their own Resolutions the Force, the Strength, and Energy of Acts of Parliament?

This

This would be to prove, that one Error or Inconveniency ought to be an Argument and Ground, nay a Warrant and Support for another, and a greater and more mischievous.

And this would be a ready Way indeed to bring irreparable Miseries and Calamities upon us by the Destruction of our Religion, Rights, Laws, Liberties, and Properties, and of the Peace of the Nation.

Or can Mr. Attorney shew the Laws for frequent Parliaments were ever yet abrogated by Parliament.

If they were not?

Where lyes the Fault, that those Laws have not been better observed, and who ought to be prejudiced thereby?

Not the Subject sure.

However that be, yet I conceive the Commissions of our modern Judges were not larger than those of their Predecessors.

And if so, Prescription, long Usage, and Custom, ought to have informed them what their Obligations were by the Duty of their Places.

From whence then should they derive, or how should they come to claim the Exercise of such vast and boundless Powers and Jurisdictions, which are not any where to be read of amongst the Acts of their as learned, though not so presuming Predecessors.

OBJECTION.

But there is still an Objection more behind, which is that some have alledged that Sir *Edward Coke*, in his 7th Report in *Calvin's Case*,

Saith, That it was resolved by all the Judges of *England* in the *Exchequer* in these Words:

Coke, lib. 7.
fol. 14.

“ Every Subject is bound by his natural Allegiance to serve and obey his Sovereign, &c.

“ It is enacted by the Parliament of 23 *Henry VI*, That no Man shall serve the King as a Sheriff of any County above one Year. And that notwithstanding any Clause of *Non Obstante* to the contrary, that is to say, notwithstanding that the King should expressly dispense with the said Act.

“ Howbeit it is agreed, 2 *Henry VII*, that against the express Purview of that Act, the King may, by a special *Non Obstante*, dispense with that Act.

“ For that the Act could not bar the King of the Service of the Subject which the Law of Nature did give unto him.”

Thus far the Objection.

ANSWER.

To which I give these Answers:

First, That *Calvin's Case* is but a late Case, adjudged in King *James* the First's Time.

Secondly,

Secondly, That that Book doth not at all warrant that the Case of 2 *Henry VII.* was resolved by all the Judges of *England* for good Law.

For 1. this Case is but *obiter* mentioned by my Lord *Coke*, and that too for the Proof of a Particular Point in *Calvin's Case* about the Extent of natural Allegiance due to Princes.

2. And my Lord *Coke* (how faithful a Reporter soever he might be) says not one Word of its being resolved by all the Judges of *England*, nor any thing like it.

Indeed he says it was agreed to in 2 *Henry VII.*

But by whom *non constat*.

And we have already, I hope, sufficiently proved that there never was any Resolution at all given in that Case, as appears by the Book.

Wherefore I appeal to all Mankind whether this Objection raised out of *Calvin's Case* be not fully answered.

Thirdly and lastly, That succeeding Ages may no longer be deceived by those pernicious Opinions that have been made from 2 *Henry VII.*, and no longer be drawn in to believe it as the Sense of all the Judges in *England*.

I desire them to look back and review the IVth *Section* of this *Chapter*, and in particular to consider therein the solemn Resolutions and Judgments:

1. Of the Parliament 28 *Henry VIII.*
2. Of the Parliament 8
3. Of the Parliament 12 } *Edward IV.*
4. Of the Parliament 17 }
5. And lastly, Of the Parliament 6 *Henry VIII.*

Expresly in Points concerning Sheriffs.

And then let them, and all others of the honourable Profession of the Law, impartially determine whether the Arguments and Reasons which I have given them upon the whole Matter, do not sufficiently evince and prove the Proposition which at first I laid down, *viz.*

That the Case in the *Year Book* 2 *Henry VII.*, as represented and understood in later Times, could never be good in Law.

* C H A P. VII.

The Proceedings in the Parliament of the 10th of Richard II. against Michael de la Pole, Earl of Suffolk, late Lord Chancellor of England, upon several Articles of grievous Offences, whereof the Commons impeached him.

Rot. Parl.
10 Richard II.
No. 6.

*The Commons
Charge against
the said Earl of
Suffolk.*

EN y cest Parlement touz les Communes dun Accord & unement Assëblez viendrent devant

1. Le Roy
2. Prelatz & Seigneurs,

en la Chambre de Parlement, compleignantz griefment de *Michael de la Pole*, Count de *Suff.* darrein Chancellor d'*Engleterre* lors esteant present, & lui Accuserent per Demonstrance de Bouche en manere ensuant, cestassavoir.

A R T. I.

Purchase Lands. PRIMEREMENT, Qe le dit Count esteant Chancellor, & Jurrez de faire le Profit du Roi Purchasea de nostre Seigneur le Roi, Terres, Tenemenz, & Rents à Grant Value come piert per Record & Rolls de la Chancellerie encontre son Serement la ou il ne lavoit tout desferui considerez grant Necessite du Roy & du Roialme & outre ce a Cause que le dit Count feust Chancellor en temps dit purchase fait & les ditz Terres & Tenemenz feurent extenduz a meindre value quilz ne vailent per an per grant some en deceit du Roy.

A R T. II.

*A Committee of
Lords appointed
by Parliament
to examine the
State of the
King and King-
dom.*

ITEM, La ou 9 Seigneurs feurent assignez en darrein Parlement pur veer & examiner lestat du Roy & du Roialme & dire leur avys comment il purra meuz estre amendez & mys en Melieur Governance & Disposition & sur ce lexamination fait, & le report sur ce fait au Roy sibien par Bouche come en escript le dit nadgairs Chancellor disoit
en

en plein Parlement que les ditz Advifement & Ordenance deuffent estre mys en due Execution, & ce. ne feust fait en defaute de luy qalors feust Principal Officer.

A R T. III.

ITEM, La ou la Charge feust grantez per les Communes au darrein Parlement pur estre despenduz en certain Forme demande per les Communes & Assentuz per le Roi & les Seignours & noun pas autrement les Deniers ent provenantz feurent despenduz en autre Manere Si qe la Meer nestoit Gardez en manere come feust Ordeines per ou plusours Mischiefs sont avenuz au Roialme & vray semblable est devenir, & ce en defaut du dit nadgairs Chancellor.

Money given by the last Parliament to be laid out in a certain Form for the Good of the Kingdom, and no otherwise. Yet misapplied to other Uses by the Fault of the Chancellor.

A R T. IV.

ITEM, Per la ou un Tydeman de *Lymbergh* qavoit a lui & ses heirs de don le Roy laiell 50 *l.* per an de la Customes de *Kingston sur Hull*, le qele Tydeman forefist devers le Roy & auxint le paiement des ditz 50 *l.* annuels feust discontinue per 20 ou 30 ans le dit nadgairs Chancellor le Sachant purchacea a lui & ces heirs du dit Tydeman les ditz 50 *l.* annuelz & fist tant que le Roi lui conferme la dite purchase, la ou le Roy deust avoir ove le profit.

Purchase.

A R T. V.

ITEM, Per la ou le haut mestre de Saint *Antoigne* est Schismatick & per celle cause le Roi deust avoir le profit qa lui appartenoit en le Roialme d'Engleterre le dit nadgairs Chancellor qi deust avoir avancez & procurez le profit du Roy prist a ferme le dit profit du Roy pur 20 Martz par an & ent prist a son oepe propre bien entour 1000 Martz & al heure que le Mestres de Saint *Antoigne* en Engleterre qore est deust avoir possession & livre du dit profit, il ne le poast avoir avant qil & deux personnes ovefque lui Savoient obligez per recognizance en la Chancellerie & per instrumentz en trois 1000 Livres de paier annuelment a dit nadgairs Chancellor & a *Johan* son fitz 100 *l.* per an a terme de lour deux vies.

Grievous Injustice and Oppression.

A R T. VI.

ITEM, Qen le temps du dit nadgairs Chancellor feurent grantez & faitz diverses Chartres & Patentes des Murdrez Tresons Felonies, Rasures des Roules, Vente des Bois, & en especial puis le commencement de cest Parlement feust faite & enseale une Chartre de certains Franchises grantez au Chastell de *Doverr* en desherison de la Corone & Subversion des toutes les Places & Courts du Roy & de ses Loies.

Divers Charters and Patents of Murders, &c.

To the Dishonour of the Crown, and Subversion of the Laws.

A R T.

A R T. VII.

ITEM, per la ou Ordenance feust fait au derrein Parlement pur le Ville de Gant que dys 10000 Martz deussent estre cheuiz & par celle Che-
vance deussent estre perduz 3000 Martz la en defaut & negligence
du dit nadgairs Chancellor la dite Ville feust perduz & nientmaynes les
10000 Martz paieiz & les ditz 3000 Martz pur le Chevance perduz
come defuis est dit de toutz les queuz Articles les dites Comunes
demandent jugement du Parlement.

*The Earl's De-
fence to the
Charge laid a-
gainst him.*

A quoi le dit Count fist ses respons en manere qensuit.

1. *Primerment* le dit Count disoit as Seigneurs du Parlement coment
il estoit Chancellor *Dengleterre* & pur le temps representa le pèrsonne du
Roi en sa absence & demanda sil deveroit respondre sanz presence du
Roi depuis qil feust empesche des faitz en temps qil estoit Chancellor.

2. *Secondment*, Le dit Count avoit ordeine par lavys de son Conseil
par Monf. *Richard Lescrop* son frere en loy averoit les paroles de se re-
sponse des ditz empeschementz a quele chose les Seigneurs disoient qe
feust honest pur lui de respondre par sa bouche de mesme & sur ce il
fesoit Protestation qil purroit adder ou diminuer a se response ceo qe
a lui purroit estre honorable & profitable par avys de son Conseil le
quele chose lui estoit grante.

Et quant al Primer Article de son empeschement cestassavoir depuis
qil estoit Chancellor qil deust purchacer certaines terres du Roi, &c.
la dit Count respount que depuis qil feust Chancellor, il ne purchacea
unqes nulles terres ne tenemenz du Roy ne le Roy lui dona, ne a nully de
Soens nulles terres ne tenz tanque au temps que le Roy lui fist prendre
lestat du Count mes par voie de verroie eschange Cestceffavoir que
come le dit Count avoit 400 Martz annuels sur la Custume de *King-
ston sur Hull* par descent deheritage pur queuz il pluist au Roi dassigner
au dit Count terres & tentz a la value & assigna & dona partie de-
vant qil feust Chancellor & partie depuis & ce au profit du Roi Sibien
annuellement come par cause dune Sume de 1000 Martz paie au Roi
par la dit Count pur celle cause & outre dist que le Roi a son primer
viage en Escoce il lui pleust de faire Dukes, Baneretz, & Chivaleirs al
honour de lui & de son Roialme il pleust a Lui sanz desire ou covetise du
dit Count de sa propre motion de lui faire Count & lui comaunda de
prendre lestat & nom de Count de *Suff.* en lieu de cellui qe nadgairs
morust & apres ceo noma la quantite de ceo qil averoit pur maintenir
celle estate & outre ceo disoit qil voilloet assigner mesme le quantite
de les terres qe estoient au dit Count de *Suff.* que derrein morust &
pur ce qe le dit Count disoit au Roi que ma Dame le Roigne & la
Dame de *Suff.* avoient toutz telles terres a terme de lour vies en lour
meyns nostre dit Seigneurs le Roi disoit qil ordeigneroit aillours pur lui a
la

la value tanque mesme les Terres lui feurent descenduz & quant a la desert, &c. le dit Count respount qe a nomer sa desert ne gist en sa propre bouche honorablement a dire mes un chose dist il que queconque Personne que ce soit que present ascune charge sur lui tantost il ad deserui ce qappertient a mesme la charge & outre dist qil avoit este pris deux foitz de guerre, & un foitz en Alemayne quant il estoit mesfager pur la Marage du Roi & avoit a mesme le temps tant de damage & peril en son corps & perde de ses biens qil navoroit pur a tantz des terres avoir tieux meschiefs sil ne quidoit meulx eschaper qil ne tenoit a mesme le temps autres choses il ne voet nomer mesmes mes si pleust au Roi ascuns choses recorder bien soit &c. mes le dit Mons. *Richard Lescrop* disoit pur le dit Count que le dit Count avoit travaille a Baner per 30 ans & sans deshonar ou resproeue, Loiez ent soit dieu & ad este Capitaine de Caleys & Admiral & envoie en diverses foitz en Message & tretees du Roy & auxint este Chancellor *Dangleterre* per grand temps & du Conseil du Roy & ne feust mye treit de petit estat a cest honour du Count mes endoioez honorablement & sufficentment pur lestat qest plus pres lestat du Count les quelles choses purront estre causes de desert ovesque mesmes les causes que la dit Count ad nome devant pur luy mettre a tiel estat & honour & quant a les empeschementz de les extents qe feurent faitz en desceit du Roi, &c. le dit Count respount qil pria au Roi qil lui plerra assigner ascuns en queux il sassoit de veer que le ditz extents ferroient resonablement faitz & le Roi disoit que ce ne seroit my honorable pur le dit Count de faire nouvelles extents du temps qil estoit Chancellor qar serroit suspicieux qe a cause de celle office les extentz ferroientz faitz plus favourablement, mes la voluntee du Roy feust que le dit Count prendroit les extents que feurent faitz devant le temps qil pensoit de lui faire Count ou que le dit Count qui doit davoit mesmes les terres & de ce nully purroit parler mal & pur ce le dit Count dist que nulles extents des ditz terres feurent faitz au temps qil estoit fait Chancellor mes qi ad pris a plus haut extents & que sont plus profitables au Roi & outre ce le dit Count dist que son dit estat du Count ovesque ce que le Roy lui dona pur mesme lestat meyntenir feust conferme en plein Parlement & sur ce sefoit son homage pur le dit estat chargez de bouche de Mons. *Despaigne* & Duc de *Lancastre* & sur ce le Roi lui dona les patentes ent faitz en ses mayns propres en nom de possession commandant le Clerc du Parlement de les mettre en la Rolle du Parlement & sont enrollez.

Item, Quant al second Article voir est que les 9 Seigneurs assignez firent report de leurs avys au Roi & le dit Count par commandement de Roy disoit que la voluntee du Roi estoit que ferroient mys en execution quele chose les Officers & autres du Conseil le Roy & luy firent en partie come *Gbirburgh* & *Brest* Cestassavoir annuelment au profit

* A a a

du

du Roy 5000 Martz & plus & il fist sa diligence come il poaist que tout le dit avys deust avoir estre mys en execution tante come en luy feust & pur ce que les Articles & le execution des ditz pointz touchent les faitz dautres Officers & auxint en ascun manere autres du Conseil du Roy le dit Count respount qil est avyse que autres Officers joyndrent a luy en cest responce & en cas que eux ou nul autre lui vorra assignez defaute en especiale il sa excusera si dieu plest.

Et mesme la manere il respount a la tierce Article & a la darreine.

Item, Quant al quart Article il dist que le dit *Tydeman* avoit 50*l.* annueles sur lannciene custome de *Kingstone sur Hull* a luy & ses heires enheritablement a toutz jours du grant le Roi E. Aiel le Roi qore est & feust paie de ycell long temps come piert par laccompt des custumers de *Kingstone sur Hull* en Leschequer nostre Seigneur le Roi quel *Tydeman* pur 1000 Martz queux il devoit au dit Count lui granta per son fait long temps passe en la temps le Roi E. aiel les 50*l.* avanditz avoir & prendre au dit Count & ces heirs a toutz jours & par cause que le dit Count fist restitution del Patent du dit *Tydeman* & le Roi deschargez de arrearages le Roi lui fist pardon de mesme le purchase sanz ce que le dit Count lors conust & unqore fait aucune forfeiture ou dette envers le Roi du dit *Tydeman*.

Item, Quant a la quint Article le dit Count devant qil feust Chancellor pria au Roi de doner a *Joan* son fitz Lospital ou la procuracie de Seint *Antoine* en *Engleterre* & le Roi luy granta franchement sanz rien rendre ou autre condition & lui fist un Garrant au Prive Seal sur qoi le Gardein du Prive Seal pur ce qil y avoit une eglise apropiée a mesme Lospital ou procuracie ne verroit faire garrant du grant sans une certeine ferme rendue au Roi & a cause de paiement de ycell il fist la garrant es ditz Count & *Joan* rendant vint Martz par an durant la guerre a quele temps le dit Count ne savoit my la value del dit Hospitall ou procuracie & a plus tost qil savoit il monstra au Roi qil feust de la value de quatre centz Martz par an & le Roi disoit qil lui plerroit bien qil laveroit tout soit il de greindre vallue & le dit Count disoit au Roi que le dit Rent ne feust mye del possession de Temporale ne Spirituele mes des coillet de pardon & qil ne voilent mye prendre le profit a son oeps mes employer en *Almoigne* sil pleust au Roy quele chose il ad fait par assent du Roy, &c. Et si appiert overtement que le Roi ne feust desceu depuis que la value lui feust clerement monstrez & mys par assent du Roy en *Almoigne* sanz profit temporel du dit Count & outre il fist protestation qil nest pas tenuz de respondre a la partie per ceste Empeschement nientmoins pur declaration de son estate il dist que a cause que la Benefice feust Spirituel il envoia al Pape pur avoir ent collation a son dit fitz quele le Pape lui ottroia per issint que son dit fitz feusse professe en lordre deinz certain temps & pur ce que pur certain causes son dit fitz

ne

ne poelitz estre professe deinz le dit temps il remanda a la dite Court pur avoir ent Despensation & ceste chose issint pendant en delay vient le mestre qore est ove les bulles del Apostoil de mesme la chose & per la issint & treita ove la dit ore Count qil cesseroit de feure plus avant vers la dite Court pur son dit fitz & issint de son bone gree par celle encheson granta de rendre annuelment al dit Count & son dit fitz les Centz Livers contenuz en la dit Article.

Item, Quant al sisme Article en quelle est especifie dune chartre grante a duar il dist que garrant lui vient de la faire & pur ce que ce feust le Chastel & al profit le Roi sanz male entent du dit Count elle passe le Seale legerement sanz grand avys nient entendant lors que feust encontre les loies & si ascun vorroit avoir declare ou enforme le dit Count que ce eust este prejudiciall au Roi ou ses lois il neust point este enseale & tout feust elle enseale il la volloit avoir repelle & dont nulle damage nest unquore avenuz, &c. Et quant as autres Chartres especifiees en mesme Larticle il les fist par garrant sanz male entention ou covyne de luy en null point & outre il prie que nulle noveltie soit mys sur luy autrement que nad este avant ces heures sur tieux officers entendants que si Chancellor face patente encontre reson ou juge rendre juggement encontre la loi que tiel patent serra repelle & tiel juggement reversez sanz autre punissement affaire a tiel officer ou juge.

Et les Comunes repliantz al responce du dit Count del primer Article monstrentent as Seignours le copie de son serement fait quant il feust creez Chancellor en manere qensuit *[Vous jurrez que bien & loialement servirez a nostre Seigneur le Roy & a son People en Loffice de Chancellor & droit faire as toutes gentz poveres & riches solont les lois & usages du Roialme & loialement conseilerez le Roi & son conseil celerrez & que vous ne Sacherez ne soeffrez le damage ne disberiteson le Roy ne que les droitures de la Corone soient destruz par null voie si avant come vous le poiez destourber, & si voeus ne poiez destourber vous le ferrez savoir clerement & expressement au Roi ensemblement ove vostre loial avys & conseil & que vous ferrez & purcharez le profit le Roi per tout ou vous le purrez faire resonablement si dieu vous aid & les seints Evangiels]* ^{The Chancellor's Oath.} prient que ce lieu & bien entendu & confiderez les circumstancez de son dit responce sibien cestassavoir de ce qi nad pas le dit qil ne resceut du don le Roi puis qil estoit fait Count esteant en loffice du Chancellor diverses terres & tenemenz qe come contenuz est en lempeschement come qil ad coniz overtement qil resceut du Roi autres terres & tentz que sont certains & seures a la value de quatre Centz Martz par an en eschange de quatre Centz Martz annuels quels il avoit sur la custome de *Kingstone sur Hull* que sont casuels & nemye si seures nient enformant le Roi clerement de son damage de celle partie & coment qil ad dit qil resceut partie des ditz terres & tenemenz issint pris

pris en Eschange devant qil estoit Chancellor les Comunes dient qil estoit lors du Prive Conseil du Roy & a ce jurrez & puis en la Creation del Office du Chancellor astrict de novell par Serement & il en celle Office agreant as eschanges per lui devant suppliez prist & resceust du Roi le remenant des ditz Terres & Tenz en plein per fournissement des eschanges suisditz & demandent Juggment du Parlement sur tout son respons deffusdit.

Et al responce del Second Article les Comunes repliantz disoient qe depuis qil conust en sa Primere Protestacion qil representa lestat du Roi tant come il estoit tiel Officer & issint lestendy de son poair sur toutz les autres per qoi coment qe defaut estoit en les autres il ne poast pour tant estre excusez & per especiale ce qe la Roi lui comanda a dire en Parlement come il ad dit il estoit le plus tenuz de mettre la chose en Execution & desicome il ne dist Point qe les Damages ne sont avenuz come ils surmettent ils prient Juggement de Parlement.

Et al Responce del Quatre Article les Communes repliantz disoient quil ferra trove de Record en Leschequer lavantdit Tydeman estre dettour au Roy en Grantz Somes come ils supposent & per celle cause appertient au Roy le dit Rent tout neust il autrement forfait & issint fuist le Roy desceu & prient que les Recordes soient examinez & dient outre que un Neel *Hakeney* fuist occis per sa Femme & sa Servant & le dit Tydeman pur quele Felonye les ditz Femme & Servant furent Ars & le dit Tydeman sensuy.

Et al Responce del Quint Article, les Communes replierent, purposantz Ensamblez dun *William de Thorp* nadgairs Chief Justice du Bank le Roy, qi mort est surmetantz quil prist 20 *l.* dune Partie qavoit affaire en Plee devant luy & pourtant vendy la loy pur quelle Cause il estoit ajugge a la Mort & Forfaiture de ses Terres & Chateaux & disoient qen ce que le dit Count esteant issint Chancellor prist le dit Centz Livrz du dit Provisour devant qui fist la Livere al dit Provisour hors des Mayns du Roi des ditz Profitz quele Livere il deust avoir fait felont le Comandement du Roy franchement sanz riens prendre lour semble qil vendy la loy & prierent Juggement.

Et al Responce del Sisme Article, les Communes repliantz disoient quil appartenoit a lui si Sage come il est destre bien Avyse & bien Conseile que nassenteront ne ferroit tiele chose que cheroit en Desherison du Roy, & Oppression de son People desicome il poaist avoir en Sufficeantie de Conseil de Justices & des autres a sa Volunte, & prient Juggement de Parlement.

Et

Et fur ce le dit Count repliant a le Replication des Comunes touchant son Serement disoit que prendre les ditz paroles du dit Serement generalmente sanz autre especiale entendement null Chancellor enseal-roit james nulles choses de donn ou Grant du Roy a nulle Personne des Terres & tenemenz ou autre biens sanz Offense de son Serement mes que le dit Count dist qi nest pas compris en la dit Serement ne defenduz a lui de prendre a luy mesmes de Dons du Roi nient plus que nul autre Personne.

Et depuis que les dons donez as autres Personnes en le dit Voyage des diverses Estates ne as autres devant ne sont empeschez ne tenuz encontre le *Serement* du Chancellor il semble a luy que ne plus il doit estre empeschez pur dons donez a lui pur son Estat depuis que le dit Serement nest defenduz ne Restreint a lui plus quas autres & plus especialement pur ce que le dit Estat & les donz' donez sont confirmez per plein Parlement, et outre dist qil accepta le Serement de Chancellor al entent qil le tendroit, Selonc son sceu, sa Conscience & Poair, & pur les Causes devant expressez il dist que devant dieu a respondre qil ne pense rien avoir fait en les chose suisditz encontre son Serement et sa Conscience & nentend mye si le Chancellor enseallent dons du Roy as Seignours pur lour Estat meyntener ou pur autre Cause resonable per Garrant du Roi que lui vient soit encontre son Serement &c. Et dist que ce qest compris en le Serement qil ne foerrera Damage ne Disherison du Roy &c. ce est a entendre a ce qil entende des Matiers dont le Roy nad Conissance & ce appiert per Clause compris en le Serement qil ferra Savoir au Roi Clerement & Expressément & apres que le Roi est enforme en tiel Manere le Chancellor purra faire le Commandement du Roy sanz Offence du dit Serement & dist que de son Estat & de ce qui le Roy luy dona fust expressément fait per le Commandement, Conissance, & Voluntee du Roi, & issint nient Encontre son Serement & nentend mye que de celle matire ne doit estre empesche.

Item, Quant a ce qui les Comunes disoient que le dit Count avoit Deceu le Roy a Cause qil avoit Pris de Roy le Manoir de *Faxfleet* en Value de 50 Livres quel Manoir vaut 200 Livres per An &c. le dit Count respount que Monf. *William de Morrers* luy disoit qil avoit ewe les deux Parties du dit Manoir ove le Rent en *Northdalton* a Ferme per 7 An pur 50 Martz per An. & qil avoit perduz de celle ferme en le dit temps 100 Martz, & outre dist que le dit Manoir ove les dis Martz de Rent en *Dalton* tout ensemble sont Estenduuz come piert en la Chancellerie forsque a 41 Livres, 9 Soulds, 3 Deniers ob. & pour ce que le dit Count avoit entenduz qi le Count de *Kent* avoit les ditz deux Parties du dit Manoir ensemblement ove les ditz Martz de Rent suisditz en Value de 50 Martz si que tout entiers le

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Manoir

Manoir feust de Value de 50 Livres il les prist le Value de Mesme les 50 Livres, & outre dist qe le dit Manoir ove les dis Martz suifditz ne vallent pluis & a plein a tant & dist qe qiconque Personne qf voet sustenir les Charges du dit Manoir sufficialement & lui Paier pur les deux Parties 50 Martz per An & quant la tierce Partie soit eschue de lui adonques Paier pur la dit Manoir ove les 10 Marcz de Rent 50 Livres per An qil le ferra de bone coer.

Item, Quant a lempeschement des Communes de 100 *l.* de la Pension del Provisour de Saint *Antoyn* & qe le dit Count daveroit vendre les Lois & misteroit Ensamble de *Monf. William de Thorpe, &c.* Le dit Count respount qe les Cases ne sont rien semblables qar les Parties plederent devant le dit *Monf. William* come devant leur juge per les Lois *Dengleterre* en qele cas nul juge ne doit prendre de nulle Partie de leur faire droit mes en le cas du dit Provisour nulles Parties plederent devant le dit Count come Chancellor mes le dit Provisour vient a luy ove Bulles de nostre Seint *Piere* le Pape & nemye come a Chancellor na juge en celle cas mes come *Pier & Amy a Joban.* son Fitz a quele heure homme ne savoit si le dit *Joban* avoit exploit de sa Grace du Pape ou nemye & auxint defautes feurent trevez par le Counceil du dit Count en les Bulles du dit Provisour & par mesme la cause le dit Provisour par ses Amys de sa bone gree profrist une en Pension de 100 *l.* pur Cesser sa Suit en la Court de *Rome* pur son dit Fitz & pur ceo qi nenpecheroit ses Bulles si qe les choses susdits ne feurent faitz come devant juge mes par amyable Composition come poet estre prove par Instrument & par Testmoignes en ceste ville & issint ceste Matire ne touche mye les Loies *Dengleterre* & touz jours le dit Count nentende mye qil ferra tenuz de Respondre a la Partie en cest Cause.

The Earl, at the Request of the Commons, committed to the Constable of England.

Et sur ce apres les Responce du dit Count donez as Accusementz des dites Comunes & les Replications a yceux faites dune Partie & dautre le dit Count a la Requeste des dites Comunes pur la Grandesse des Defauts a lui issint Surmises estoit Arestu par Comandement du Roi & comys en la Garde de Constable *Dengleterre,* & puis lessie a Mainprise.

Et pur ce qe le dit Count nallegea Point en sa Responce qil observe L'effect de son Serement en ce qil jurraff *Quil ne javeroit ne foefferoit le Damage ne la Disberison du Roy ne qe les Droitures de la Corone feussent destrutz par null Voie si avant come il les poiaff destrourber & sil ne les poiaff destrurber il le ferroit savoir Clerement & Expressivement au Roy ensemblement ove son loial avys & Conseils & qil ferroit & purchaceroit le Profit le Roy par tout ou il le parroit faire resonablement,* & il tant come il estoit ensi Principal Officer du Roi sachant L'estat & Necessitee du Roi & du Roialme prist du Roi dels Terres & Teñs

Teñz come est suppose par lempeschement a luy en le dit Primer Article surmys & coment qil allegea en son Respons qe les dons a luy issint faitz feurent confermez per plein Parlement il y a nul tiel Record enrolle de Parlement per quoy agard est qe toutz les Manoirs All his Manors Lands, Tenements, &c. so be reseized into the King's Hands. Terres Teñtz Rentz Services Fees Advoesons Reversions & Profits ove lour Appurtenances par lui issint receuz de Roi soient reseizez & re- prisez en les Mains du Roi avoir & tenir a nostre dit Seigneur le Roi & ces Heirs si pleinement & enheritablement come il les avoit & tient devant le donn ent fait al dit Count & qe touz les Issues & Profits ent recevez ou levez al oepe du dit Count en le mesme Temps soient levez al oepe nostre Seigneur le Roi des Terres & Chatels du dit Count illoeqes & aillours mes nest pas lention du Roi ne des Seignours qe celle Juggement festende de lui faire perdre le Nom & de Title de Count ne les 20 Livres annuels queux le Roi lui granta a prendre des Issues du Counte de *Suff.* pur le Nom & Title avantditz & outre But not to lose the Name and Title of Earl, &c. pur ce qe le dit Count nad pas dedit qil nestoit du Prive Conseil du Roi, & a lui jurre quant il demanda primes du Roi la dit Eschange estre fait & ad conuz qe devant les ditz Eschanges perfourmez il feust fait Chancellor en quell Office il feust astrict par son Serement fait en la Forme avantdite.

Et il esteant issint el dit Office prist du Roy Partie des ditz Quatre Centz Martz de Terre par reson du dite Eschange agreant al dite Covenant deschange qil fist ensy devant qil feust Chancellor & nallegea point en son dite Responce qe le Roi feust Destinctment enforme de son Damage celle Partie cestassavoir en ce qe le Roi dona a lui Manoirs All the Exchanges the Earl made with the King, to be taken again into the King's Hands, &c. Terres & Rents qe sont certeignes & seures & ne poent vraisiblement estre destruitz ne adnullez pur les avantditz Quatre Cent Martz annuels qi sont en noun certains & levables & demandables des Custumes & ensy come casuels & en diverses cas qe purtoient aventureusement eschere agarde est qe toutz les Terres & Teñiz issint prisez per le dit Count pur les Eschanges susditz soient reprizez es meyns nostre Seigneur le Roy a tenir a lui & ses Heirs in manere come il les tient devant le donn ent fait en la dite Eschange & qe les Issues & Profits Prises & leues des Terres Teñtz & Profits susditz puis le dite Eschange remaignant al dit Count en Recompensation des dites Quatre Centz Martz annuels queux il avoit ensy enheritablement de la Custume devant les Eschanges susditz hors pris qe si les ditz Issues & Profits issint prises puis les dites Eschanges festendent a greindre value qe les dites Quatre Centz Martz annuels qadonques le Roi eit celle Surplus a lever des Terres & Chateaux du dit Count illoeqes & aillours.

Et quant al Article contenant qe le dit Count deust avoir purchase Cynkante Livres de Rent de Tydehan *Lymborgh* pur ce qe le dit Tyde-
man

man avoit les avantditz Cynkant Livres de Rent per An aprendre tantseulement de la Custume al Port de *Hull* & nemye allours la quelle Custume appertient al Corone nostre Seigneur le Roi dauntien Temps & le dit Tydeman estoit Alien come Bien est conuz & se tient hors du Roialme *Dengleterre* par trent ans & plus & desconuz est fil soit en Vie ou non & nest pas allegge qe ascun de sa Part le chalengea de long temps & le dit Tydeman ne poast en nul manere translater le dit Rent en autre Persone par Voie Dalienation sanz le bone Volunte du Roi pur ceo qe lestat qil avoit en le dit Rent feust a lui & ses Heirs tantseulement & non pas a ses Assignes come par la Chartre du Roi qil ent avoit & qest de Record pleinement appiert & le dit Count ne monstra pas qe le dit Rent feust purchase del dit Tydeman en *Engleterre* par quoy il ne poet estre conuz si la dite Purchase fuist bone & legale ou non et le dit Count nallegea point en son Respons qil quant il purchase Pardon & Confirmation du Roy de purchase du dit Rent monstra pleinement au Roi qil purroit avoir retenu le dit Rent a son propre oepe au meyns tanque le dit Tydeman ou les Heirs lineals nees deinz le Legeance & conuz eussent demande la dite Rent per qoy y semble per les ditz Causes qe le Roy en le Grant des ditz Pardon & Confirmation qe demanderent per reson grant fyn & estoient faitz sanz fyn & si feust deceu.

Et auxint come le dit Count prist apres de don le Roy lavantdit Manoir de *Faxfleet* & dis Martz de Rent qe feurent certains & seures en Eschange pur le ditz Cinkant Livres de Rent qi feurent casuels pur ce qe le dit Port de *Hull* poet par Possibilitie estre adulle par Flotz de Meer ou le Passage de Laynz illoeqes destourbe & anyenty & auxint pur diverses autres Causes & ensy mesque le dit Count eust eu bone & profitable Estate en le dit Rent il nallegea Point en son respons qil fist Pleinement son devoir envers le Roy en la Price du Manoir & dis Martz de Rent susditz en Eschange en la fourme avantdite & ensy son dit Respons est meyns sufficient de lui excuser del defaut a lui ent surmis & pur ceo agarde est qe sibien le dit Manoir de *Faxfleet* & les dis Martz de Rent susditz ove les Appurtenances soient Reprises en Mayn du Roy a tenir a lui & ses Heirs come il les tient devant le don au dit Count ent issint fait come le Chartre de Pardon & Confirmation del Purchase des ditz Cynkantz Livres ensy faitz au dit Count soit repelle & autrement adulle Et qe les avantditz Cinkantz Livres de Rent soient retenuez es Mayns du Roy & ses Heirs en fourme come ce estoit avant la Purchase qe le dit Count si dist a lui estre ent fait si ascun y fuist & qe les Issues & Profits resceuz ou euz al oepe du ditz Count sibien du dit Manoir de *Faxfleet* & de les Dis Martz de Rent come les Issues & Profits des ditz Cynkant Livres de Rent sil ascuns prist par reson del Purchase avantdit soient levez
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al oepe nostre Seignour le Roy des Terres & Chateaux du dit Count illoques & aillours.

Item, Quant al Article conteignant le Profit de Saint *Antoign* pur ce que le Mestre del Maçon de Saint *Antoign* a qi le dit Profit provenant en *Engleterre* estoit due a ce qest dit est Sismatick & auxint del Enmite du Roi & Poiar de *France* & pur tielle repute adonque & unqore est pur quoi tout le dit Profit duist appartenir au Roi sicome de Sismatick & Alien quel chose ne deveroit de reson avoir este Disconu au dit Count avant qil demandast du Roy le dit Profit & il conust expressement qil le demanda a son Fitz come un Hospitall & nallegea mye en son Respons que le Roi quant il lui granta le dit Profit estoit enformez dument des choses suisditz & auxint en ce quant il fust tiel Officer come devant est dit il envoia a la Court de *Rome* pur mesme le Profit avoir a son Fitz de la Collation du Pape come Benefice de Saint *Esglise* & davoit ensi le dit Profit hors du Mayn du Roy par Collation del Apostoil & il ne dedist Point qil ne resceust des ditz Profitz Quatre Centz Martz per An nient alleggeant qil les rendist au Roi & come apres le dit Count conust qil fist une Bargayne ove le Provisour qi clame la dit Profit du Grant du Pape davoit du dit Provisour Cent Livres per An a lui & a *John* son Fitz a Terme de lour deux Vies pur deliuer le dit Profit au dit Provisour pur queux Cens Livres ensy a paier a lui & son ditz Fitz il prist Suerte del Provisour par Recognizance & Obligations des diverses Somes nient contrestant que le Roi lui avoit commanda per sa brieve de deliurer hors de ses Mayns al dit Provisour tout le Profit avantdit la ou y semble par riens que unqore est monstre que tout le dit Profit deust avoir Demure en la Mayn du Roy pur les Causes avantdites au Meyns tanque il eust este discusse ou le dit Profit feust Benefice de Saint *Esglise* grantable par la Pape ou appartenant au Roi par reson de Scismacie & Enmyte du dit mestre & il nallegea mye en son Respons que le Roi feust Clerement enformez des choses suisditz par qui agarde est que les avantditz Quatre Centz Martz per An du Temp que le dit Profit lui estoit issint grante par le Roy tanque au Temps qil delivera mesme le Profit au dit Provisour come auxint les ditz Centz Livres annuels receuz apres del dit Provisour tanque en ceo soient Levez al oepe nostre Seignour le Roy de ces Terres & Chateaux & que tout le Profit que deust desore appartenir au dit Count par reson du dit Reconissance ou dautres Obligations ou Covenances ensy faitz en Suertie de la Paiement des ditz Centz Livres remaignent al oepe nostre dit Seignour le Roy come Forfeitz & que le dit Provisour soit ent Outrement Descharge envers le dit Count & son Fitz & pur les Defautes & Mesprisions suisditz des queux le dit Count est ensy convict par non Sufficiencie de ses ditz Respons agarde est qil soit Comys a Prisone du Roy a demurrer a volente du Roi & qil ne soit delivre

He is for the Insufficiency of his Answers committed to the King's Prison during the King's Pleasure,

delivre du dite Prifone avant qil eit fait Fyn & Ranceon a la Volunte du Roi & quant al 1000 Martz queux il ad allegge qil ad Paic au Roy pur les ditz Eschanges agarde est qe les ditz 1000 Martz remeignent en les Mayns du Roi come en Partie du Paiement del Fyn & Ranceon qe le dit Count enfy ferra au Roy avant qil soit delivere du Prifone.

As for the Third Articles viz. of the Nine Lords, the keeping of the Sea and Ghant, he was not to be impeached by himself without his Companions then of the King's Council.

Et quant a les Troix Articles cestassavoir de les 9 Seignours la Gard du Mere & Gant y semble au Roi & as Seignours du Parlement qe le dit Count ne doit estre empesche par soi sanz fes Compaignons qi feurent alors du Conseil le Roi & si ascun lui verra Empescher dascun Defaut en especial il foi offrist presta respondre.

Dover Patent repealed, cancelled, and annulled.

Et quant al Article contenant Chartres de Pardon & la Patent de Dovarr agarde est qe le Patent de Dovarr soit repellee cancellee & outretement adnullez. Et quant as autres Chartres & Patentz contenuz en lempeschement avantdit si ascuns soient faitz encontre la ley agarde est qe toutes Tielles Chartres & Patents si ascunes tielles y soient, soient repellez & adnullez esteantz les autres en lour Force & Vertue.

Here we see this Noble Lord was impeached,

Observations from the whole of these Proceedings.

I. For purchasing the King's Lands, whilst he was Chancellor; and appraising them at a less Value than they were worth; which was in Deceit of the King.

II. That an Act of the then last Parliament was not put in Execution through his Default, he being then Chief Minister of State.

III. That the Money arising by a Tax given to the King in the then last Parliament had not been expended for the Uses for which it was given; and that in Default of the said late Chancellor.

IV. For that whilst he was Chancellor divers Pardons were granted for Murders and Treasons, &c. and Charters were sealed in Disherison of the Crown, and Subversion of the Laws.

To which he answered,

That since he had been Chancellor, he had purchased no Lands or Tenements of the King otherwise than by real and true Exchange, 'till such Time as the King caused him to take upon him the Estate of an Earl; at which Time he assigned him some Estate in Land, to maintain his Degree. Then he spoke modestly of his Services and his

his Sufferings; and that the Lands were valued according to former Extents; and his Earldom, and the Lands assigned him were confirmed in Parliament.

To the *Second* and *Third* Charge, he answered, That they related to and concerned other Officers as well as himself; and he conceived that therefore he ought not to be put to answer without their joining with him in making a Defence, unless himself were charged with some especial and particular Offence therein.

To the *Fourth* he answered, That what he did, he did by Warrant, not conceiving that he acted contrary to Law therein; and desired that no Novelty might be put upon him: But if he, as Chancellor, had issued a Patent, or if a Judge had given Judgment contrary to Law, the Patent might be repealed, or the Judgment reversed, without other Punishment to be inflicted upon such Officer or Judge.

The Commons, by way of Replication to this Defence, set forth the Chancellor's Oath:

“ You shall swear well and lawfully to serve our Lord the King
“ and his People in the Office of Chancellor; and shall do Right to
“ all People Poor and Rich, according to the Laws and Usages of the
“ Realm; and shall counsel the King according to Law, and his
“ Counsel shall conceal.

“ You shall not be privy to, nor suffer the Damage nor Dishonour
“ of the King, nor that the Rights of his Crown be destroyed in any
“ Manner, so far forth as you can lett it; and if you cannot lett it,
“ you shall clearly and expressly acquaint the King with it, and give
“ your Advice and Counsel according to Law.

“ And you shall procure the King's Profit, as far forth as you reasonably can. So help you God, &c.”

And that it appeared of his own showing, That he had, contrary to this Oath, obtained of the King Lands to the yearly Value of four hundred Marks certain, in Exchange for four hundred Marks arising by the Customs of *Hull*, which is a casual Profit, not informing the King of his Damage in that Behalf; and thereupon the Commons prayed Judgment against him.

To the *Second* and *Third* Articles they replied, That the Chancellor being in Office and Power superior to the rest, it was more in his Power than in theirs to see that the Laws were put in Execution: And for that he had not denied, but that Damage had arisen thereby, they also demanded Judgment against him.

To

To the *Fourth* they replied and said, That he ought to have been well advised, and taken Counsel to prevent his assenting to any thing that might be to the King's Disherison, and in Oppression of the People: For that he might have consulted at his Pleasure with the Judges and others: And then the Commons pray Judgment.

The Chancellor rejoined, As to the Matter of his Oath, that if it were to be understood literally, no Chancellor could ever set the Great Seal to any Grants made by the King of Lands, &c. to any other Persons, without breaking the Oath: And that a Chancellor is no more tied up by his Oath from taking a Grant of Lands from the King to himself, than from making out Grants to others: That he took the said Oath to keep it according to his own Judgment and Conscience, which he had done: That that Part of his Oath which concerns the King's Damage and Disherison is to be understood in Cases where the King is not apprized of it; as appears by his swearing, to acquaint the King with it: But that the King being made acquainted with it, the Chancellor may well obey the King's Command without breaking his Oath; and that what he had done was with the King's Knowledge and Consent.

And hereupon Judgment was given to this Effect, as followeth:
viz.

*Judgment
against him.*

Forasmuch as the said Earl had not alledged in his Answer, That he had kept that Part of his Oath, wherein he swore not to be privy to, nor suffer the Damage nor Disherison of the King; nor that the Rights of his Crown should be destroyed, by any means so far forth as he could lett it; and if he could not lett it, that he would clearly and expressly acquaint the King with it, and give him his Advice and Counsel according to Law: And that he would procure the King's Profit so far forth as he reasonably could:

And for that being Prime Minister of State, and consulant of the State and Necessity of the King and Kingdom, he had notwithstanding taken Lands and Tenements by Grants from the King, as was charged in the *first* Article:

And for that there was no Record of any such Confirmation in Parliament, as he had alledged; it was adjudged, that all the Lands he had of the King's Grant, should be re-seized into the King's Hands, and the King be answered the mean Profits since the Grants.

And for that the said Earl had not set forth in his Answer, that he had distinctly informed the King of his Damage, in that the Lands which he the said Earl had in Exchange for the Customs
of

of *Hull*, were of the sure and certain Value of four hundred Marks *per Annum*, and the Customs of a casual Profit: It was likewise adjudged,

That the said Lands, taken in Exchange for the said Customs, should be rezeized into the King's Hands.

As to the *Second* and *Third* Article, it seemed to the King and the Lords,

That the said Earl ought not to be put to answer solely without others, that were of the King's Council, unless some especial and particular Offence were laid to his Charge.

As to the *Fourth* Article, it was adjudged,

That such Charters and Patents mentioned in the Impeachment as were contrary to Law, should be repealed and annulled and all others to continue in Force.



C H A P. VIII.

A summary Account of the Impeachments of the Judges of Westminster Hall, and the King's Serjeant at Law, and others, in the Parliament 11 Richard II. for their extrajudicial Opinions in misinterpreting the Law; and the Judgments of Treason thereupon given against them as Traitors to the King and Kingdom; together with the powerful Effects which those Judgments had upon succeeding Judges for several Generations after.

See the Parliament Rolls, 11 Rich. II. pars 1, 2, & 3. Judgment of High Treason given in Parliament against eighteen several Persons.

IN a Parliament held at *Westminster* in the 11th Year of *Richard II.*, Judgment of High Treason was given against eighteen several Persons, and all, save one of them, of eminent Rank: Three Privy Counsellors; the Archbishop of *York*; the Duke of *Ireland*; the Earl of *Suffolk*; the Bishop of *Exeter*, the King's Confessor; five Knights; six Judges, *viz.* Sir *Robert Tresilian*, Chief Justice of the King's Bench; Sir *Robert Bealknapp*, Chief Justice of the Common-Pleas; Sir *John Cary*, Chief Baron of the Exchequer; *John Holt*, *Robert Fulthorp*, and *William Burgh*, his Fellows; *John Locton*, the King's Serjeant at Law; *Blake*, of the King's Counsel at Law; and *Uske*, the Under-Sheriff of *Middlesex*.

See Rushworth's Historical Collections, vol. 2. Appendix, p. 260.

Eight of those executed.

Three saved themselves by Flight.

The rest banished, with small Pensions whilst they lived.

Of those eighteen, eight were executed; that is, *Tresilian*, five Knights, *Blake*, and *Uske*.

But the Archbishop of *York*,

The Duke of *Ireland*,

And Earl of *Suffolk*,

saved their Heads by Flight.

The rest had their Lives given them, but were banished.

Their Lands and Goods were forfeited, and little Pensions allowed them during their Lives; so that they might be living Monuments of their own Reproach and Shame.

Besides

Besides it was made Felony for any one to procure their Pardons, and that they should be dealt withal as Traytors, if they returned Home from their Banishment.

Parliament declared it Felony to procure their Pardons.

And of eighteen Persons all save three were impeached by the Commons.

And they to be dealt with as Traytors upon returning.

The Offences which procured these exemplary Punishments, although their Proceedings be long, and comprehended almost all that was done in this Parliament,

I will briefly open to the Reader.

During the Minority of that King, by the evil Counsel of some near his Person there were great Miscarriages in Government.

These heinous Offences briefly laid open.

In the 10th Year of his Reign, and in the 20th Year of his Age, a Parliament was holden at *Westminster*, and in that Parliament in Aid of good Government and of due Execution of the Laws, a Commission was awarded to twelve several Peers and others of greatest Wisdom and Fidelity.

A Commission was awarded by Parliament to twelve Peers, &c.

The Commissioners had Power in all Things concerning the Household, Courts of Justice, and the Revenues,

In a Word, in all Things concerning the Good of the Realm, with full Power finally to determine and put in Execution for the Honour of the King, the better Governance of the Peace and Laws of the Realm, and Relief of the People.

The Extent of it.

This Commission was to endure for one Year.

Continuance.

At the End of which the King would be of full Age.

The endeavouring to overthrow this Commission issued by Authority of Parliament for the Welfare of the Realm, upon Pretence that it trenched upon the Royal Power, tended to the Dishonour of the King and Derogation of the Crown, together with the Destruction of the Commissioners who procured it, and put the same in Execution, upon Pretence that they and some others had in Parliament forced the Royal Assent.

The endeavouring to overthrow this Commission, and those that procured it, is the Case in brief.

As also,

The conspiring to overthrow this Commission and the Procurers of it is the Case in brief.

For though there be divers other Articles against many of them, yet this was the Ground-work of all, and this singly and alone is declared in all the Proceedings in that Parliament to be Treason.

Of these eighteen Persons condemned five of them were Plotters,

Five of the condemned were Plotters.

- viz.*
- The Archbishop.
- The Duke of *Ireland*.
- Earl of *Suffolk*.
- Tresilian*, the Chief Justice, and
- Sir *Nicolas Bramber*.

These

The Insinuations to the King about this Commission.

These insinuated to the King, that this Commission was in Diminution of his Kingly Power:

That the Procurers of it had extorted his Royal Assent, and that this was Treason.

Blake declares it to be Treason.

Thereupon *Blake*, one of the King's Counsel at Law, was advised withal, who declared his Opinion, that it was Treason.

He was commanded to prepare an Indictment of Treason against the Commissioners, and some of the Procurers of it, who had been active therein.

And draws up an Indictment against the Commissioners. The Effect of the Indictment.

The Indictment was drawn by him, which is entered in the Roll, and is to this Effect:

That they had traiterously conspired amongst themselves in the Parliament to make this Commission by Authority of Parliament against the Regality of the King, to his Dishonour and Derogation of the Crown.

That they compelled the King's Consent, and that they confederated and bound themselves to maintain one another in so doing.

The Indictment intended to be tried in Middlesex or London.

It was intended that they should be tried upon this Indictment in *Middlesex* or in *London*.

The Under-Sheriff made acquainted with the Design.

Usk, the Under-Sheriff of *Middlesex*, was acquainted with the Business, who was to prepare Things for the effecting of this Design, some of the Parties to be indicted not being Peers, which he performing accordingly, was therefore executed.

Some of the Judges Opinions to be asked in order to the Trial.

The five Plotters, that the King might the more confide in their Counsels (for so are the Words of the Record) and that under the Colour of Law they might colour their Malice from the King and the Kingdom, before the Trial was to be had, advised the King to demand the Opinion of some of the Judges, that is, of the two Chief Justices and Chief Baron,

The Judges of the Common Pleas, six in Number, and of *Locketon* the King's Serjeant.

Blake to draw up the Questions.

Blake of the King's Council at Law, was commanded to draw up these Questions for the Judges Opinions, who did so accordingly.

The Judges sent for to Nottingham Castle.

The Questions being thus drawn up into Writing, the Judges were sent for to *Nottingham Castle*,

How they were required to answer.

Where, in the Presence of the King, and several others, *per dictum Dominum Regem requisiti in fide & legeantia, quibus eidem Regi firmiter sunt astricti, quod ad certas quæstiones inferius designatas & eis coram recitatas fideliter responderint,*

Et super eis secundum discretionem suam legem dicerent.

The first Question. Raft. Stat. 21 R. 11. cap. 12.

The first Question was,

Whether the new Statute and Ordinance and the Commission made in the last Parliament were in Derogation of the King's Royal Prerogative.

Their Answer.

To which they all answered, that they were, because they were made *contra voluntatem Regis*.

The

The second was,

The second Question.

How they ought to be punished which procured the said Statute, Ordinance and Commission?

To which they unanimously answered, That they deserved to be punished by capital Pain (that is to say of Death) unless the King out of his Grace would in that Behalf pardon them. *Their Answer.*

There are eight Questions more, several of them concerning the Parliamentary Proceedings.

I shall only give the Reader

The fifth Question;

The fifth Question.

Which thus follows:

Item, Quærebatur ab eis, quomodo sunt illi etiam puniendi, qui impediverunt Regem quo minus poterat exercere quæ ad Regalem & Prærogativam suam pertinuerunt.

Ad istam Quæstionem unanimiter responderunt, quod sunt ut proditores etiam puniendi, i. e.

Item, How they ought to be punished that did interrupt (or hinder) the King; so that he might not exercise those Things that pertained to his Regalty and Prerogative.

Whereunto with one Assent it was answered, That they ought to be punished as Traytors. *Their unanimous Answer.*

These were the main Questions and Answers, and those for which the Judges were condemned as Traytors to the King and Kingdom. *On these Answers the Judges were condemned as*

And in order thereunto, as *Knyghton* tells us,

Primo die Parliamenti arrestati sunt omnes Justiciarii, excepto Domino Willielmo Stypwith,

Scilicet,

Dominus Rogerus Fultborp.

Dominus Robertus Bealknapp.

Dominus Johannes Carey.

Dominus Johannes Holt.

Dominus Willielmus Burgh.

Johannes de Lockton, serviens Regis ad Legem.

Isti omnes capti sunt sedentes in officio suo judiciali, & ducti sunt apud Turrin, & separatim positi sunt in custodiam sub hac causa.

Knyghton de Eventibus Angl. Lib. 5. col. 2706. l. 11.

But there is a Question and an Answer more, which I cannot permit, and that is the eighth, which runs in these Words: *The eighth Question.*

Item, It was required, since that the King, whensoever him pleased, might remove his Officers, *Rast. Stat. 21 R. II. c. 12.*

Whether the Lords and Commons might without the King's Will impeach the same Officers and Justices, upon their Offences, in the Parliament, or not?

To which Question it was by one Mind answered, That they might not, and that he that doth the contrary is to be punished as a Traitor. *Their unanimous Answer.*

A a a

This

*Remark upon
the preceding
Matter.*

This was a very high and daring Presumption in the Judges to think that they ought to obtrude their extrajudicial Opinions upon the whole Parliament for Law, and that too in their own Case; they vainly thought, perhaps, that under the Notion of the Resolution of all the Judges of *England*, they might shelter themselves in Times of Storms and Tempest; but it was not long after ere their Illusion was discovered, and they were made to know by woeful Experience, that their Office was *Jus dicere*, to say what the Law said, and not *Jus dare*, to give Law as they pleased. And such Law which directly struck at the Frame and excellent fundamental Policy of the State, the Authority and Jurisdiction of the great Court of the Kingdom.

*The Office of a
Judge.*

But in the next Place we are to enquire what the Reasons were which those Legicides gave to justify their Opinions to be according to Law.

And this will best appear, by giving their Defence which they made to the Impeachment of the Commons.

*A Copy of the
Question read
to them.
The Prayer of
the Commons
that they might
be adjudged
Traitors, and
for what Rea-
sons.*

The Commons having gotten a Copy of the Question, And those being read to *Bealknapp, Fulthorp, Holt, Burgh, Sir John Cary*, Chief Baron of the *Exchequer*, it was prayed on Behalf of the Commons, that forasmuch as the said late Justices, Baron of *Exchequer* and King's Serjeant were commanded to answer in the King's Presence what the Law was, and answered contrary to Law, by Colour whereof they designed to destroy all the Lords and other the King's Lieges, who had been aiding and counselling in the making the said Commission and Statute, and by such their Resolutions became aiding and abetting to the traitorous Purposes of the Appellees, and had concealed the same without declaring them to the Lords appointed by the said Commission, for the good Governance of the Kingdom,

Upon these Reasons the Commons prayed that the said Legicides might be adjudged Traitors.

*The Commons
demand if the
said Questions
were so asked
and answered
so by them.*

Whereupon it was demanded of them, Whether or no the said Questions were proposed to them, and answered by them, as aforesaid?

To which they said, That they would not deny but that the said Questions were proposed to them:

But that their Answers were taken otherwise than according to their Intention.

This was their general Answer.

Now for a more particular one.

*Sir Rob. Bea-
knapp's par-
ticular Answer
for himself.*

First, *Sir Robert Bealknapp* alledged, that about the Feast of *Epiphany* next after the last Parliament he came to *Windsor* by the King's Commandment, and there the Archbishop of *York* charged him to have been the Contriver of the said Commission and Statute in Derogation of the King's Regality, and that there was no Man which the King hated more than himself, and that if he could not invent some Way to defeat

defeat and annul the same, and to restore the King to his Royalty, (*il serroit occis comme faux Traitour*) that he should be killed like a false Traitor as he was. To which, as he said, he answered, That the Lords and others that were aiding in making the said Commission and Statutes, intended thereby the Welfare, Honour and good Governance of the State, of the King, and of all his Kingdom, and that he left *Windfor* at that Time in great Disgrace, and Danger of his Life.

That afterwards by the King's Command he came to *Woodstock*, where he was again charged and threatned, and answered as before, and departed in like Fear of his Life.

And said further in his Defence to the Impeachment, that the Answers which he made to the said Questions were not made *de sa frank volunte mes encontre son gree*, for that he was threatned by the said Archbishop of *York*, the Duke of *Ireland*, and the Earl of *Suffolk*, that if he did not answer agreeably to the King's Pleasure he should be killed.

So that the Answers which he made were made by reason of the great Fear that he was put into by these evil Persons.

Besides all which he said he was sworn and commanded in the King's Presence upon Pain of Death to keep the Matter secret, as being of the King's Council.

And so in Conclusion prayed, that for the Love of God he might have a gracious and merciful Judgment. *His Prayer for a merciful Judgment.*

Secondly, As for the Answer of Sir *John Holt*, it was to the same Purpose with *Bealknapp's*, viz. That he subscribed out of Fear of Death, and makes the like Prayer for a gracious and merciful Judgment. *Sir John Holt's particular Answer for himself. Wish the like Prayer.*

Thirdly, Sir *William Burgh* and Sir *John Cary* answered severally and said, That they had heard how Sir *Robert Bealknapp* and Sir *John Holt* had been evilly intrated for the Cause aforementioned, and urged that the said Sir *William Burgh* and Sir *John Cary* had likewise been threatned by the said Archbishop of *York*, the Duke of *Ireland*, and the Earl of *Suffolk*, that if they did not make Answer agreeable to the King's Pleasure, they should be killed too. *Sir William Burgh and Sir John Cary's several Answers.*

And that they were told that the said Sir *Robert Bealknapp* and Sir *John Holt* had made Answer as aforesaid, and at last confessed that they themselves had set their Seals thereto through Fear. Which being said, they likewise prayed for a gracious and merciful Judgment. *Their Prayer for a merciful Judgment.*

Fourthly, Sir *Roger Fulthorp* alledged, That he was menaced by the said Archbishop of *York*, Duke of *Ireland*, Earl of *Suffolk*, and Sir *Robert Tresilian*, that if he did not answer according to the King's Will he should be killed or destroyed. *Sir Roger Fulthorp's Answer for himself.*

Fifthly,

Sir John
Lockton's
Answer for
himself.

Fifthly, Sir *John Lockton* said, That he was menaced in like manner by the said Archbishop of *York*, the Earl of *Suffolk*, and Sir *Robert Tresilian*, that if he did not make Answer according to the King's Mind, he should be also killed or destroyed; adding withal, that himself was but the King's Serjeant, and of small Power to resist their Malice.

And also, that the said Earl of *Suffolk* told them the said Sir *Roger Fulthorp* and Sir *John Lockton*, that the others aforesaid, then Justices, had made Answer as aforesaid.

For which Cause, and for the great Fear that they were put into by the said Menaces, they said that they assented to the Answers made to the said Questions, and set their Seals thereto.

Sir Roger
Fulthorp's
Discovery of
this to the Earl
of Kent.

And that shortly after, to wit, on the Morrow, the said Sir *Roger Fulthorp* discovered the Matter aforesaid to the Earl of *Kent* at *Nottingham*, and told him that what he had done was against his Will, and desired him that in Time to come, if there were Occasion, he would bear witness of the same.

Sir Roger
Fulthorp's
and Sir John
Lockton's
Prayer for the
like Judgment.
The Commons
Reply to all.
That those were
accounted Men
learned in the
Law, &c.

For which Causes the said Sir *Roger Fulthorp* and Sir *John Lockton* prayed for the Love of God that they might have a gracious and merciful Judgment.

To all which the Commons replied, and said,

First, That the said late Justices and Baron of the *Exchequer*, and the King's Serjeant, were accounted and taken to be learned Men in the Law, and that the King's Will was, that they should answer him according to Law, and no otherwise.

Notwithstanding which they had answered falsely and contrary to Law, and thereby encouraged the Archbishop of *York*, Duke of *Ireland*, &c. Traytors, &c. to have murdered and destroyed by false Colour of Law, the Lords and others that had been aiding and assenting in the making of the said Commission and Statutes.

The Words of the Roll are these: *Que les avanditz nadgaires Justices, Baron de Leschequer & Serjeant du Roi feurent apris & tenuz pur Sages de Ley:*

Et que la volunte du Roy n'estoit autre mes quils deussent avoir respondu as questions susditz come la Ley verroit & nemye en autre manere, as queux questions ils responderent fausement encontre la Ley donantz bardiment, & bandours as ditz faux Traitours adjudgez come devant est dit, d'avoit murdre & destruit per faux colour de Ley, les Seigneurs & loialx Lieges questoient eidantz & assentantz a la fessance des ditz Commissions & Estatutz faitz, al d'arrein Parlement pur la bone governance de L'estate le Roy nostre Seigneur & son Royalm.

But

But

Secondly, The Commons farther replied and said, That they, &c. had concealed the false Purposes and Compassements of the said Traitors, without discovering the same to any of the Lords of the said Commission; so that a Course might have been taken to prevent the Effect of the said false Purposes and Compassements. And yet had concealed these Masters from the Lords, &c.

Which Concealment ought not to have been of so high a Treason that concerned the State of the King and his Kingdom, for an Oath taken, or any other Cause.

For these Reasons the Commons prayed, That the said late Justices, Baron of the *Exchequer*, and the King's Serjeant, might be convicted and attainted of Treason, *come Traitours au Roy & son Roialm*. The Commons pray that these may be convicted, &c. as Traitors both to the King and Kingdom.

Whereupon the Lords Temporal took Time to advise what Judgment they should give, which might be for the Honour of God, and the Honour and Benefit of the King, and of all his Kingdom. The Lords take Time to advise what Judgment to give.

Sixthly, Then the Commons prayed, That *John Blake* and *Thomas Uske*, both in Custody, might be brought into Parliament to answer their Impeachment; The Commons impeach John Blake and Thomas Uske.

Which being done on the third Day of *March*, the Commons impeached him.

First, For that the said *Blake* had been retained by the said Archbishop of *York*, Duke of *Ireland*, &c. to be of the King's Council, and thereby had connusance of the Treason and evil Purposes of the Appellees, and had also sworn to give his Advice therein, and to counsel them; and for that he had framed the Questions that were proposed to the said late Justices and Barons of the *Exchequer* at *Shrewsbury*, and to the said Justices and King's Serjeants at *Nottingham*, to the End that they might answer to the same as aforesaid. That Blake, as King's Counsel, had Connusance of the Treason. And had framed the Questions, &c.

Secondly, And inasmuch as he had imagined and compassed with the said Appellees, to procure the Lords, and other the King's Lieges, who had been aiding in making of the said Commission and Statute, to be indicted in *London* and *Middlesex* of Treason for that Cause, *Et que ils deussent avoir este arrestus & murders fauxment traiterousement, & malveisement*. And had procured the Lords and others to be indicted of Treason, &c.

Thirdly, and lastly, For that the said *Blake* was knowing, aiding, and counselling, of, and in, the Treasons aforesaid. And was aiding and counselling of these Treasons.

But as for *Uske*,

The Commons charged him, That he knew of the said Treasons, and procured himself to be made Under-Sheriff of *Middlesex*, to the Intent that he might the better be enabled to cause the said Lords, and other Uske knowing, &c. procured to be made Under-Sheriff of Middlesex.

B b b

other

ther the King's Lieges, to be indicted and arrested as aforesaid, and, was adhering, counselling, and aiding to the said Archbishop of *York*, Duke of *Ireland*, &c. in their Treasons.

And being both arraigned. Upon all which Articles *Blake* and *Uske* being arraigned,

Blake's Plea. I. *Blake* pleaded that he was retained of Counsel for the King by the King's Command, that he was sworn to conceal and keep his Counsel, and that what he did, he did by the King's Command, whom he ought to obey.

Uske's Plea. II. *Uske* also pleaded, that what he did he did by the like Command,

Et les dit John Blake & Thomas Uske autre chose ne allegeront pur leur excusation en celle partie.

The Lords adjourn till the next Day. Hereupon the Temporal Lords took time to advise till the next Day.

And then Blake and Uske were brought into full Parliament, and being found guilty, At which Time *Blake* and *Uske* were brought in *plein parlement*, and the Lords finding by Proof and their own Confession, that they were guilty of the Crimes whereof they were accused by the Commons :

And forasmuch as they had alledged in their Excuse the King's Command, their Fault was so much the more heinous, because they well knew that the said Archbishop of *York*, Duke of *Ireland*, &c, had inroached to themselves a Royal Power over the King, and that these Commands were made *a leur Ordinance*.

The Temporal Lords award with the King's Assent. Wherefore it was awarded by the said Lords Temporal, with the King's Assent,

Blake to be a Traytor, and open Enemy to the King and Kingdom, and so be drawn and hanged, &c. *First*, That *John Blake* as a Traytor, and an open Enemy of the King and Kingdom, should be drawn and hanged, and his Heirs disinherited, and his Lands and Goods forfeited.

Uske to be drawn, hanged, and beheaded, &c. *Secondly*, That *Uske* should be drawn, hanged, and beheaded, and his Head set upon *Newgate*, his Heirs to be disinherited, and his Lands and Goods to be forfeited to the King.

Bealknapp and the five others brought into full Parliaments. After which Judgments so given, *Bealknapp*, *Fulthorp*, *Holt*, *Burgh*, *Cary*, and *Lockton* were brought into Parliament, and the Lords Temporal were of Opinion,

The Temporal Lords Opinion of them.

I. That forasmuch as *Bealknapp*, *Fulthorp*, *Holt*, *Burgh*, and *Lockton* were present at the making of the said Commission and Statute :

II. And

II. And because they and the said *Cary* well knew that the Commission and Statute were made to the Honour of God, and for the good Government of the State of the King and Kingdom :

III. And forasmuch as the King's Will never was that they should have answered to the said Questions otherwise than according to Law, and they knowing the Law, had answered otherwise contrary to Law, giving Colour thereby to the said Appellees to accomplish their false Treasons and Compassements, in murdering and destroying the said Lords and loyal Leiges that had been aiding, counselling, and assenting to the making of the said Commission and Statute :

IV. And inasmuch as the said Sir *Robert Bealknapp*, and other the Legicides, had Connusance of the said false Purposes and Compassements of so high a Treason, and would not discover the same to any of the Lords that were in the said Commission, whereby Remedy might have been taken for the Safety of the King and Kingdom,

That this was Treason,

Pour se agard feust per les ditz Seigniors Temporels per assent du Roy. *That they were guilty of Treason.*

I. That the said Sir *Robert Bealknapp* should be drawn and hanged, *comme Traitour en cel point*, and that he and his Heirs should be disinherited for ever. *Judgment on Sir Robert Bealknapp.*

II. That the said Sir *Roger Fulthorpe* should be *treyn & pendue* as *a Traitour en cel point ; & quil & ces heires feussent disheritex, a touz jours.* *On Sir Roger Fulthorpe.*

III. That Sir *John Holt* should be drawn and hanged as a Traitor in that Point, and that he and his Heirs should be disinherited for ever. *On Sir John Holt.*

IV. That Sir *William Burgh* should be drawn and hanged as a Traitor in that Point, and that he and his Heirs should be disinherited for ever. *On Sir William Burgh.*

V. That *John Cary* should be drawn and hanged as a Traitor in that Point, and that he and his Heirs should be disinherited for ever. *On Sir John Cary.*

VI. And that Sir *John Lockton* should be drawn and hanged as a Traitor in that Point, and that he and his Heirs should be disinherited for ever. *On John Lockton.*

And

And it was further adjudged, that all their Lands, Tenements, Goods and Chattels, should be forfeited to the King.

Robert Tresilian was appealed of false Treasons against both King and Kingdom, as a Traytor and Enemy of the King and Kingdom.

VII. But as for *Robert Tresilian, faulx Justice*, he was appealed by the Lords Appellants *de haux Tresons, faitz encontre le Roy & son Roialme, come Traitour & Enemy du Roy & de Roialme*, and amongst several other Articles of High Treason and Offences wherewith he was charged,

These that follow were Part :

For not suffering les grandes de Roialme, &c. to speak, or come near to the King to give him Counsel, nor let the King speak to them.

First, That the said *Robert Tresilian, faulx Justice*, and other the Appellees by their false Covine, would not suffer *les grandes de Roialme*, nor other the King's good Counsellors to speak nor approach to the King to give him good Counsel, nor would permit the King to speak to them, but in the Presence and Hearing of the said Appellees, by the Assent and Counsel of the said *Robert Tresilian, faulx Justice*, and of *Nicholas Brembre, faulx Chiviler de Londres*, or in the Presence of some of them at least, at their own Pleasure, and as them best pleased, thereby preventing *les grands*, and the King's good Counsellors from expressing their Good-will to their Sovereign, and encroaching to themselves Royal Power, Seigniorie, and Sovereignty over the Person of the King, to the great Dishonour and Peril of the King, and of his Crown and Kingdom,

And encroaching Royal Power.

Tresilian, &c. misleading and evil counselling the King.

Secondly, That the said *Robert Tresilian, faulx Justice*, together with the rest of the Appellees, by their false Covin, and Encroachment of their false Malice, misled and evil counselled the King.

For that whereas the King was bound in Duty to answer *les Grands Seigneurs & son Peuple ses Lieges*, of such Graces and Rights as they should require of him, he made no Answer, but according to the Will and Pleasure of the said *Robert Tresilian, faulx Justice*, and other the Appellees, *en oustant le Roy, de son devoir, contre son serement*, and in withdrawing the Affections of the Grands and the People from their Sovereign; encompassing likewise to effoyn the King's Heart from the Peers of the Land, that they might engross the Government of the Kingdom to themselves only.

Thereby alienating the Affections of the Lords and People from the King, and the King's Heart from them.

He and others procuring Grants and Mannors, &c. from the King, for which they got great Bribes, &c.

And made them of their Faction in Defiance of the King and his Kingdom.

Thirdly, That by the said Encroachment the other Appellees, by Assent and Counsel of the said *Robert Tresilian, faulx Justice*, and *Nicholas Brembre, faulx Chivaler*, had procured Grants from the King of divers Mannors, Lands, Tenements, Rents, Offices, and Bayliwicks, to several of their Kindred, and divers others of whom they took great Bribes, as well for procuring the said Grants, as also upon promise that they would become of their Faction, *en defeasance du Roy & de*

de son Royalme, except only of *Robert Mansel*, Clerk, *John Blake*, *Thomas Uske*, and some others.

Fourthly, That the said *Robert Tresilian*, *faulx Justice*, and other the Appellees, encroaching to themselves Royal Power as false Traitors to the King and Kingdom, had procured and counselled the King to grant Pardons of horrible Treasons and Felonies, as well against the Estate of the King as of the Party, which thing was against Law, and the King's Oath.

He and others procured of the King Pardons of horrible Treasons and Felonies.

Both against Law and the King's Oath.

Fifthly, That whereas the Lords and Commons of the Realm, after they had understood that the King's Will, through the evil Mitigation and Counsel of the said *Robert Tresilian*, and others the Appellees, was such that he would not suffer any thing to be begun, prosecuted, or done against the said Malefactors, would not proceed farther against them, contrary to the King's Will; and afterwards in the said Parliament, after Consultation and Advice with all the Lords, Justices, and other Sages and Commons of the said Parliament, how the State of the King, of his Regalty, and of his Kingdom, might best be preserved from the Perils and Mischiefs aforesaid, they could not find out any other Remedy than to ordain that twelve *des loyalls & sages Seigneurs de la terre*, should be of the King's Council for one whole Year then next ensuing.

The Lords and Commons perceiving, through his and others Counsel, that the King would not suffer any thing to be done against the said Malefactors,

They would no further proceed against them to the King's Displeasure.

But awarded in Parliament a Commission of twelve Peers, &c. to be of the King's Council for one Year.

And that such a Statute and Commission should be made to them, whereby they might have full and sufficient Power to make Ordinances for the Government of the King and Kingdom;

And for whatsoever appertained to the King on this Side and beyond the Sea, and to repeal, repair, and redress whatever had been done amiss against the Estate, Honour, and Profit of the King and Kingdom, and to do divers other things necessary for the Good of the King and Kingdom.

And that no Person should presume to advise the King, or to move him in any sort against the said Ordinance and Statute.

And if any did that,

For the first Offence he should forfeit his Goods and Chattels, and for the second, should undergo the Punishment of Life and Member.

And that none should presume to advise the King against that Ordinance and Statute.

What the Punishment for such first Offence.

What for the second.

And that that Ordinance and Remedy should be provided if the King should please, and not otherwise.

To which Ordinance all the Justices of the Kingdom agreed and gave their Advice upon it, both in the Presence of the King, and of the Lords. And also the King fully assented thereunto.

To that Ordinance all the Justices agreed and advised upon it.

C c c

And

* And the said Ordinance, Statute, and Commission were made according to the Assent of the King, the Lords, the Justices, and other the Sages and Commons assembled in Parliament, for the Safety of the King, his Regalty, and the Realm.

And yet Tresilian and others at the End of the Parliament told the King that the Ordinances were against his Regalty, and that those that procured the making thereof deserved Death as Traitors to the King.

And after the End of that Parliament the said Traitors and Malefactors by their said evil Encroachments, falsely and traiterously inform the King, that the said Ordinance, Statute, and Commission, were made in Defeazance of his Regalty, and that all they that procured or counselled the making of the said Ordinance, Statute, and Commission, and all those who persuaded the King to assent to it, were worthy of Death as Traitors to the King.

Tresilian, &c. caused the King to make a Progress throughout his Kingdom, and most Part of Wales, and to call the chief Men of the Cities and Boroughs, &c. And bound them some by Bonds and others by Oaths, to stand with the King against all Men, to accomplish his Purposes.

Sixthly, That to accomplish the said High Treason the aforesaid Malefactors and Traitor *Alexander* Archbishop of *York*, &c. with the Assent, and by the Counsel of the said *Robert Tresilian*, caused the King to go with some of themselves throughout his Kingdom, and the greater Part of *Wales*, and to call before him the Lords, Knights, Esquires, and other sufficient Persons of those Parts, as well of the Cities and Boroughs as of other Places; and bound them, some by their Bonds, and some by their Oaths to the King, to stand with him against all Men, and to accomplish the King's Purposes.

Which Purpose of the King was at that time to fulfill the Wills and Purposes of the said Malefactors and Traitors.

Which Securities and Oaths were contrary to the good Laws and Usages of the Land, and against the King's Oath, to the great Disservice and Dishonour of the King and the Realm.

Tresilian, &c. caused the King to betake himself to the remotest Parts of the Kingdom, to defeat the End of the Commission, &c.

Seventhly, That to enforce the said traiterous Purposes, the said *Robert Tresilian*, and other the Appellees, often caused the King to betake himself to the most remote Parts of the Realm, to the End that the Lords assigned by the said Ordinance, Statute, and Commission, might not consult with him about the Affairs of the Realm, in Disturbance of, and to defeat the Purport and Effect the Ordinance, Statute, and Commission aforesaid, to the great Disservice of the King and the Realm.

He, &c. caused the King to retain great Numbers of new People, and give them divers Badges never used anciently.

Eighthly, That the said *Robert Tresilian*, and other the Appellees, caused the King to retain great Numbers of new People, and to give them divers Badges, otherwise than any the King's Progenitors had used to do of ancient Times.

* *The Assent of the Justices is here mentioned to aggravate their Crime; but the Statute was made, as appears by the Title,*

1. *By the King,*

2. *Of the Assent of the Lords and Commons assembled in Parliament.*

Raft. Stat. 10 Rich. II. in the title of the Statute.

To

To the End that they might the better be enabled to perform their false Treasons aforesaid.

Ninthly, That the said Robert Tresilian, and the other Appellees, for the more thorough Accomplishment of their Treasons aforesaid, and to make the King confide and trust in them, and in their Counsel, and to take them for the loyalest and wisest of all his Kingdom *, and thereby the better to colour their Treasons and Falsties aforesaid, caused the King to call before him at different Places, divers Justices and Men of Law, to wit, Robert Tresilian, Robert Bealknapp, John Cary, John Holt, Roger Fulthorp, and William Burgh, his Justices, and John Lockton, Serjeant at Law, and John Blake, Referendary, and others, who being opposed and asked in the King's Presence by the said Malefactors, whether the said Ordinances, Statute, and Commission, were made in Derogation of his Regalty and Prerogative or not, with divers other Questions.

And for the further Accomplishment of their Treasons, the said Appellees caused the King to call his Judges before him to ask them the before-recited Questions.

To which the said Justices, Serjeant, and John Blake, answered in the Affirmative, as it hath before been shewn.

Tenthly, Whereupon it was resolved by the said Malefactor to arrest, and by false Inquests to indict and attain several of the Lords and Commons, who had been concerned in making of the said Commission and Statute.

Thereby to arrest, indict, and attain several of the Lords and Commons concerned in the making the said Commission.

Eleventhly, † That the said Robert Tresilian, faux Justice, and other the Appellees, Traitors to the King and Kingdom, had caused the King to direct his Counsel to make certain Persons that were named to him by the said Malefactors and Traitors to be Sheriffs throughout England, to the Intent that they might procure such Knights of Shires to come to Parliament as they liked of, en defeasance des bones Seigneurs & leaux & bones Communes de Royalme, and of the good Laws and Customs of the Land.

Tresilian, &c. caused the King to direct his Council to make such Men Sheriffs thro' England, as they had named to him, to get such Knights of Shires to Parliaments as they approved of.

Tresilian being solemnly called in Parliament to appear and answer to the said Articles of Appeal, and others, made default, which being recorded the Lords Appellants prayed that he might be adjudged and convicted de les hautes Treasons contained in their Appeal.

Tresilian called in Parliaments to answer to these Articles made default, whereupon the Lords Appellants pray he may be convicted of the High Treasons he was charged with.

* Et un faire le Roy croyer en eux & en leur Conseil, & les tenir plus totalx a luy & plus Sages que nullex autres de son Roialme & de sons ceo, plus colerer leur faux treisons & fauzetecs.

† Ad castellum de Nottingh. Rex advocari fecit cunctos Regni Vicecom. ut ipsi nullum miletem de pago vel schira permitterent elegi, nisi quem Rex & ejus consilium elegisset. Ad quod responsum est per Vicecom. De Militibus eligendis dixerunt Communes velle teneri consuetudines usitatas, quæ volunt, quod a comunibus milites eligantur. *Walsingham. Hist. Angl. in Vita Rich. II. p. 323.*

Whereupon,

‡ Whereupon, after mature Deliberation, the Lords of Parliament, by the King's Assent, adjudged the said *Treflian* guilty and convict of the Treasons contained in several of the said Articles.

And awarded,

The Judgment awarded against him as a Traitor to the King and Kingdom.

First, That he should be drawn and hanged as a Traitor and Enemy to the King and Kingdom.

Secondly, That He and his Heirs should be disinherited for ever.
And

Thirdly, That his Lands, Tenements, Goods, and Chattels, should be forfeited to the King.

Then he was brought into Parliament so he heard what he had to say why Execution should not be accordingly.

After which the said *Treflian* was taken and brought into Parliament, and there was asked if he had any thing to say or alledge, since the said Judgment was given against him, why Execution of the said Judgment should not be done.

Execution pronounced.

And forasmuch as he could not say nor alledge any thing in stay of the said Execution, it was commanded that he should be carried to the *Tower*, and from thence to be drawn through the City of *London* to *Tyburn*, and there to be hanged by the Neck.

The Marshal of England so see is done.

And that the Marshal of *England* should see Execution done, taking to him the Assistance and Force of the Mayor, Sheriffs, and Aldermen of *London*.

Which was done that Day accordingly.

Which was accordingly done the same Day.

Rode, caper, vitem, tamen hinc, cum stabis ad aras,

In tua quod fundi cornua possit, erit.

These Judgments were almost the whole Work of this Parliament.

These Judgments were not huddled up in haste; but they were given upon long and mature Deliberation, being almost the whole Work of that Parliament.

And it is declared in the Roll, that the Lords spent a long Time, and took great Pains to examine the Evidences, the better to satisfy their own Consciences and the World.

These Judgments were ten Years after made void in Parliament.

Raft. Stat. 21 Rich. II. cap. 12.

But that Parliament was held by Force.

It is true that the Judgments which were given in this Parliament were after revoked, and made void in the Parliament 21 *Richard II*, but it is as true that that Parliament was held by Force, as it is declared in the Parliament 1 *Henry IV*, that it was held *Viris armatis & Sagittariis immensis*.

‡ The King is here made a Party to the Judgment, the Reason thereof (as I conceive) was that the Temporal Lords thought he could, by giving his Assent thereto, be the stronger obliged to maintain those Judgments afterwards; and that this must be so, consults the Jurisdiction of the House of Peers asserted, written by the late Lord Hollis, wherein there are several Precedents both before and after this Parliament, which declare the Lords only to be Judges in Parliaments.

But

But to take away all Objections, the Statute 1 *Henry IV.* doth wholly reverse, revoke, repeal, and annul for ever the Statute of 11 *Rich. II.* and all the Circumstances and Dependants thereupon.

Raft. Stat. 1 Hen. IV. cap. 3. and this Statute doth for ever repeal and annul the Statute that did revoke those Judgments.

It being further accorded, assented, and established in the said Parliament 1 *Henry IV.*, that the Parliament 11 *Richard II.* should be firmly holden and kept after the Purport and Effect of the same, as a Thing made for the great Honour and common Profit of the Realm.

So that these Judgments of Attainders against the Judges have the Authority of two Acts of Parliament, and both of them (for any thing that I can find) stand unrepealed to this Day.

These Judgments of Attainders have the Authority of two Acts of Parliament.

I am afraid I have tired the Reader with so long a Relation of the Proceedings in the Parliament 11 *Richard II.*

But I have two Reasons to offer in my Excuse.

The one is,

That I never met with these particular Impeachments, Answers, Replies, and Judgments in Print, and therefore thought it fit they should be better known.

Two Reasons given for relating these proceedings in Parliament as length.

The other is to shew,

That by the bold and daring Answers of the Judges, they not only attempted to subvert the very Rights and Beings of Parliaments, but to deprive the King of his legal Power in Parliament, and to place it in their single Votes out of Parliament.

For before this extrajudicial Resolution, I confess I could never find in all my Reading, that the Judges of *Westminster Hall* durst presume to question the Proceedings of Parliament.

Before this extrajudicial Opinion, the Judges durst never question the Proceedings of Parliament.

And therefore this Case was an Original, it being against Nature, and the Order of those Ages, that any Members of inferior Courts should introduce such a high-flying pernicious Practice as to undertake to judge of a superior Court, especially the Court of Parliament, which was then a Court of the highest Jurisdiction, and could not be censured by any other Law or Sentence but its own.

But to draw to a Conclusion :

First, Is it not plain, that those unfortunate Gentlemen very well knew, that the Commission was awarded by Authority of Parliament?

Observations from the whole.

Secondly, That it was ordained for the Publick Good.

Thirdly, That the Justices of the Kingdom had agreed and given their Advice that such a Commission was legal, and that they could not find out any other Remedy for the good of the King and Kingdom.

D d d

Fourthly,

Fourthly, That they themselves were acquainted with the traiterous Intents of the Appellees to murder and destroy, under a false Colour of Law, all those that had been concerned in the procuring of that Commission in Parliament?

Fifthly, And was it not sufficiently evident to the Judges, that the Questions were framed and forged, and their extrajudicial Answers demanded and pressed in order to accomplish those illegal and wicked Ends, and by Consequence to bring Ruin and Destruction to the legal Form of the *English* Government.

Sixthly, Could they be so grossly ignorant of the Law, as to fancy that the Resolutions of Matters which concerned the publick State were ever within the Cognizance of them or their Predecessors?

They being but Judges in *Westminster-Hall*, and only Attendants and Assistants in Parliament.

Seventhly, Or how could they be so infatuated and abandoned of all Understanding, as to imagine, but that at one Time or another a black Day of reckoning would come, in which the long withheld Hands of Justice being let loose, they should be forced to give an exact Account of such their Opinions delivered in an extrajudicial Manner against Law; and made to know how dangerous it was for the Judges of *Westminster Hall* (and who might be only during Pleasure) to attempt the Alteration, much more the Overthrow of the Civil Government of the Kingdom?

What then I pray could be the true Motives and Reasons for their giving such Opinions? Why, though they would not speak out, it was that

The true Motives and Reasons for those Judges giving such Opinions as they did set forth.

I. That Law, which took Place with them and was paramount and sovereign to all other Law, was a premeditated Resolution to please and comply with the then present Interest.

II. That rather than they would run the Hazard of losing their Cushions, they would exchange and part with their Consciences.

III. That they were called and intituled the Guardians and Interpreters of the Law, and as such might by their accursed Glosses confound the plain Text thereof, making it speak another Language than the Law-makers ever intended, and put such a Sense upon it, that preceding Judges never durst so much as whisper.

IV. And lastly, They might foolishly think to justify all by *Blake's* general Principle.

That

That they, as being of the King's Counsel, were bound to obey his universal and absolute Commands without Exception, Limitation, or any Restriction whatsoever.

When as it is impossible to think they could be ignorant of that ancient Rule of Law and Constitution of this Kingdom, *viz.*

Rex Angliæ hoc non potest facere quod non potest injuste agere.

The Government of *England* is a Government according to the Laws of the Land. The Govern-
ment of Eng-
land, what.

And the Judges of the Land, &c. are obliged by their Oath, and the Duty of their Places, to do Justice and Right according to those Laws.

And it is well known, that the King of *England* can do no Wrong. The King can
do no Wrong.
But as *Seneca* very rightly observes,

— *Ubi non est pudor, nec cura Juris, sanctitas, pietas, fides, instabile Regnum est.* Seneca Thye-
tis, Act. 2.

Which we shall find to be too truly verified in the Reign of that unhappy Prince *Richard II.* if the Histories and Records of that Time were consulted with.

OBJECTION.

But what if after all it be objected, That the Lord Chancellor *Ellesmere* hath told the World,

I. That he would not remember *Richard* the Second his Time (of which, he says, some of our Chronicles do talk idly, and understand little) where Power and Might of some potent Persons oppressed Justice and faithful Judges for expounding the Law foundly and truly. The Speech of
the Lord Chan-
cellor Ellesmere
in the Exche-
quer Chamber
touching the
Post-Nati
printed 1609,
anno 7 Jac. 1.
P. 13.

II. That Sir *Robert Bealknapp*, that Reverend and Learned Judge, was banished out of the Realm (*relegatus in Gasconiam*) not for any Desert or Offence of his, but by the Might of his potent Enemies; and Malice of the Time. And,

III. In his Preface to the loving Reader acquaints the World, That his Argument was viewed by his then Majesty King *James I.* who gave him Charge to cause it to be printed.

To all which I shall answer,

ANSWER.

I. In his own Words, That his Age, his Infirmary, and Indisposition of Health, and his Decay and Weakness of Memory and *Defuetudo*, and long Discontinuance from that Manner of legal Exercise, Page 1,
(above

(above fourteen Years) had bereaved him of the Means and Helps that should have enabled him to speak in so great a Cause. For,

II. There are *tanti viri pace*, several Particulars in his Argument concerning the Force and Strength of the King's Proclamations *, as also touching the Authoritative Power of the Opinions of the Judges, which shewed, that either his Memory failed him, or else he was not very well read in Parliamentary Antiquities, especially when he tells us that the faithful Judges in *Richard* the Second's Time were oppressed for expounding the Law soundly and truly.

By many Records of Parliament the Judges own Confession, and the Statute Book their extrajudicial Opinions are doomed to be Treason.

This is indeed Matter of just Admiration, and is neither more nor less than, contrary to the Rule of Law, to aver against so many solemn Records of Parliament, the Judges own Confessions, and the Statute Book in Print.

Wherein their extrajudicial and illegal Opinions stand doomed, even till this very Day to be Treason.

So that we see notwithstanding his great Character and Office of Lord Chancellor of *England*, he was in those Particulars extremely deceived and misled, and by Consequence he hath imposed upon the Understandings of his Readers.

But who are they that have such an Exemption from human Frailty as that they cannot err? But to go on. And in the next Place to observe,

What Effects the Judgments had upon the Judges for Generations after. S. Gardiner, Bishop of Winchester his Letter to the D. of Somerset Protector to Edward VI. Apud Fox, Vol. II.

What powerful Effects these Judgments had upon the Judges of *Westminster Hall* for several Generations after.

And this will appear by a Letter which *Stephen Gardiner* Bishop of *Winchester*, and after Lord Chancellor of *England*, sent to the Duke of *Somerset*, Protector to *Edward VI.*

The Words of the Letter are these :

“ Now, whether the King may command against an Act of Parliament, and what Danger they may fall in that break a Law with
 “ the King's Consent, I dare say, says the Bishop, no Man alive at
 “ this Day hath had more Experience with the Judges and Lawyers
 “ than I.

* Item Johan. Holt & Will. de Burgh baillerent en Parlement un Petition en les paroles suivantes. A tres excellent tres redouté & tres gracieux Seigneur nostre Seigneur le Roy humblement suppliant vos pources lieges Johan. Holt & Will. de Burgh, que, come en le Parlement tenuz a Westminster l'an xi. le Roy Richard que darrein feust estoit adjudge, que toutz leur terres biens & chateaux feussent forfaits & leur personnes emprisonnes & puis exiles, en queux ils demeurerent entour noef ans & plus, a cause que a eux estoit surmis quils assenterent a certains questions as queux ils ne assenterent unques de leur gree, mes per cohercion dure & compulsion, come veritablement pourra estre prove par ceux qui feurent presents. *Rot. Parl. 2 Hen. IV. N^o 37. par Mr. Johan. Holt & Mr. W. de Burgh.*

“ First I had Experience in my old Master the Cardinal, who obtained his Legacy by our late sovereign Lord’s Request at Rome, and in his Sight and Knowledge occupied the same with his two Crosses and Maces born before him many Years.

See Coke’s 4th Instit. c. 8. fol. 89.

Articles against Card. Woolsey. Occupying his legantine

“ Yet because it was against the Laws of the Realm, the Judges concluded it the Offence of the Premunire.

Power was adjudged against the Laws of the Realm, and an Offence of Premunire.

“ Which Conclusion I bear away, and take it for a Law of the Realm, because the Lawyers so said; but my Reasons digested it not.

“ The Lawyers, for Confirmation of their Doings, brought in a Case of the Lord *Tiptoft*, as I remember, a jolly Civilian;

“ He was Chancellor to the King, who, because in the Execution of the King’s Commission he had offended the Laws of the Realm, he suffered on *Tower Hill*.

Lord Tiptoft beheaded.

“ They brought in Examples of many Judges that had Fines set on their Heads in like Case for doing against the Law of the Realm by the King’s Commandment, and then was brought in the Judges Oath, not to stay any Process or Judgment for any Commandment from the King’s Majesty.

Several Judges fined for doing against the Law of the Realm by the King’s Command.

“ And one Article against my Lord Cardinal was, that he had granted Injunctions to stay the Common Law.

“ And upon that Occasion *Magna Charta* was spoken of.

“ And it was made a great Matter, the Stay of the Common Law.

“ And this I learned in that Case.

“ Sithence that Time, being of the Council, when many Proclamations were devised against the Carriers out of Corn at such a Time as the Transgressors should be punished, the Judges would answer, it might not be by the Laws.

Proclamations against the Carriers out of Corn.

“ Whereupon ensued the Act of Proclamation.

“ In the passing of which Act many liberal Words were spoken, and a plain Proviso, That by the Authority of the Act of Proclamation nothing shall be made contrary to an Act of Parliament or Common Law.”

A Proviso in the Act of Proclamation, that nothing should be contrary to an Act of Parliament or Common Law.

Thus far out of the Bishop’s Letter.

Now follows the

Act that Proclamations made by the King’s Highness, with the Advice of his Honourable Council, should be obeyed and kept as though they were made by Act of Parliament.

Raft. Stat. 3¹ Hen. VIII. c. 8.

“ Be it enacted by the Authority of this Parliament, with

1. “ The King’s Majesty,
2. “ The Lords Spiritual and Temporal,
3. “ And the Commons Assent.

E e e

“ That

The Parliament enacts, that the King, with the Advice of his Council or Majority of them may set forth Proclamations and Penalties, which shall be observed as if made by Act of Parliament. So as not to be prejudicial to any Persons Inheritance, Offices, Liberties, Goods, Chattels, or Life.

“ That always the King for the Time being, with the Advice of
 “ the most Part of them, may set forth, at all Times, by Authority
 “ of this Act, his Proclamations under such Penalties and Pains, and
 “ of such Sort, as to his Highness and his said Honourable Council,
 “ or the more Part of them, shall seem necessary and requisite.

“ And that those same shall be obeyed, observed, and kept as though
 “ they were made by Act of Parliament for the Time in them limit-
 “ ed, unless the King’s Highness dispense with them or any of them
 “ under his Great Seal.

No Acts, Common Laws, then in Force, nor lawful Customs of the Realm to be infringed, &c. by any Proclamation to be made by Vertue of this Act of Parliament.

“ Provided always that the Words, Meaning, and Intent of this Act
 “ be not understood, interpreted, construed or extended, that by Ver-
 “ tue of it any of the King’s Liege People of what Estate, Degree
 “ or Condition soever he or they be, Bodies Politick and Corporate,
 “ their Heirs or Successors, should have any of his or their Inheri-
 “ tances, lawful Possessions, Offices, Liberties, Privileges, Franchises,
 “ Goods or Chattels, taken from them, or any of them, nor by Vertue
 “ of the said Act suffer any Pains of Death, other than shall be here-
 “ after in this Act declared.

No Acts, Common Laws, then in Force, nor lawful Customs of the Realm to be infringed, &c. by any Proclamation to be made by Vertue of this Act of Parliament.

“ Nor that by any Proclamation to be made by Vertue of this Act,
 “ any Acts, Common Laws, standing at this present Time in Strength
 “ and Force; nor yet any lawful or laudable Customs of this Realm,
 “ or other his Dominions, nor any of them, shall be infringed, broken
 “ or subverted, and especially all those Acts standing this Hour in
 “ Force, which have been made in the King’s Highness Time:

“ But that every such Person and Persons, Bodies Politick and Cor-
 “ porate, their Heirs and Ancestors, and the Heirs and Successors of
 “ every of them, their Inheritances, lawful Possessions, Offices, Liber-
 “ ties, Privileges, Franchises, Goods and Chattels, shall stand and be
 “ in the same State and Condition to every Respect and Purpose, as if
 “ this Act or Proviso had never been had nor made.

“ Except such Forfeitures, Pains and Penalties, as in this Act, and
 “ in any Proclamation which hereafter shall be set forth by Authority
 “ of the same, shall be declared and expressed.

There was a further Act made, giving Authority to the King’s Pro-
 clamations, *Anno 34 Hen. VIII. c. 13.* But both this and that were re-
 pealed by an Act made *1 Edw. c. 2.*

*34 Hen. VIII. cap. 13.
 1 E. VI. c. 12.*

Before we proceed farther, I desire the Reader should stay and pause
 a while, and see if he cannot from the Act of *29 Hen. VIII.* make these
 Observations.

First, In general, That the Act is a Specimen how our ancient Go-
 vernment continued to be till that Time.

Secondly, In Particular.

1. That

1. That neither *Henry VIII.* nor his Council did ever before suppose, that he could by his Royal Proclamations supply the Defect of any Law, or by Colour of such Proclamations oblige the Subjects to any new Penalties without a direct new Statute to empower him so to do.

2. That this Act cannot be understood to be a Declarative Law. And the Reason is plain, for it enables the King to issue forth such Proclamations,

By Vertue of that Act.

3. The Parliament also limits and qualifies his Power, and prescribes Directions both for the making, publishing and executing of such Laws as should be so made by Proclamation.

And consequently they had then no Notion at all,

That it was essential to the *English* Royalty, that the King could alter, change, abrogate or suspend either the Common or Statute Laws of the Kingdom, by his sole uncontrollable Prerogative.

For the King of *England* hath no Prerogative but what the Law of the Land allows him.

But the King indeed, for Prevention of Offences, may by Proclamation admonish his Subjects, that they keep the Laws, and do not offend them upon Punishment to be inflicted by the Law.

But to return from this Digression: About the 28th of *Queen Elizabeth, R. Cavendish* suggested to her Majesty, That it was in her Power to erect an Office for making all Writs of *Supersedeas, quia improvide, &c.* in the *Common Pleas*.

Whereupon the *Queen* by her Letters Patent granted the said Office to *Cavendish* for divers Years.

And the Judges were commanded by a Messenger to admit him, which they forbore to do.

Upon which *Cavendish* procured a Letter to be directed to the Judges under the Sign Manual and Signet, wherein, taking Notice that they had not complied with the Message that she had sent to them before,

She farther commands them, that they should forthwith sequester the Profits of the said Office that had grown due since her Grant, and that should grow due till the Controversy for the Execution of the said Office should be decided, &c.

The Letter being delivered to the Judges, and being considered of by them, their Opinion was, That they could not lawfully obey the *Queen's* Command therein.

And the Reason they gave was, because others, who then pretended a Right to make out the said Writs, might by such Sequestration be disseized of their Freehold, which they claimed in the making of such Writs, and in the Fees due for the same, for which Reason no Sequestration was made.

See Coke, lib. 12. fol. 74. The King's Proclamations cannot make that an Offence which was not so before.

Anderson's 1 Rep. fol. 152. Case 201. The Queen creating a new Office in the Common Pleas by her Letters Patent, the Judges refuse to admit the Patentee upon her Commandment.

A Letter directed to them with further Command, to sequester the said Office grown due since her Grant, &c.

The Judges Opinion that they could not lawfully obey this Command, and their Reason why.

The

The Queen being informed of the Judges Resolutions by some of *Cavendish's* Friends at Court, another Letter was procured from her under the Signet and Sign Manual directed to the said Judges; which follows in these Words:

*The Queen
sends another
Letter to the
Judges.*

“ Trusty and well beloved, we greet you well.

“ Whereas We granted to Our trusty and well beloved Servant
“ *Richard Cavendish* Esq; by Our Letters Patent under Our Great
“ Seal of *England*, the making and writing of all *Supersedeas's* upon
“ Exigents issuing out of the Court of *Common Pleas*,

“ And have divers Times sent unto you for his Admittance into
“ the said Office, as well by Message delivered by Persons near about
“ Us, as otherwise;

“ Which nevertheless hath been neglected.

“ In Consideration whereof, We, for that Our said Servant was to
“ depart into the *Low Countries* for a Season, gave a Commandment
“ for the Sequestration of the Profits of the said Office until Our fur-
“ ther Pleasure therein should be declared.

“ Wherefore for that We look for some more dutiful Regard to be
“ had by you of our Prerogative Royal, We have thought good to
“ signify unto you Our further Pleasure in this Behalf.

“ Which is, that Our said Servant be no longer with-holden from the
“ Benefit and Use of Our said Grant.

“ And these are therefore to will and command you, and every of
“ you, that immediately upon the Receipt hereof, without any fur-
“ ther Delay, you cause present Payment to be made unto him, or to
“ his Assignee, of all the aforesaid Profit since the Day of Our said
“ Grant upon Bond, with Condition, that if, from the Time of his
“ Admission into the said Office, he, his Deputy or Deputies, shall
“ by Vertue of Our said Grant hold and enjoy the same without Evic-
“ tion or Recovery thereof out of the Hands of him or his Deputy
“ or Deputies by any other pretended Title to the making and wri-
“ ting of the said Writs,

“ That then the said Bond to be void, &c.

“ And furthermore Our Will and Pleasure is, and therefore We will
“ and command you, that upon Our said Servant's offering of himself
“ unto you in Our said Court this Term, you presently, without any
“ further Delay, admit him unto the Use, Execution and Profits of
“ the said Office according to our said Grant.

“ For that We be nothing ignorant, that if any of your Clerks
“ have any such Title or Interest as they pretend, both our Laws lye
“ open for their Remedy, and also they be Persons both for Wealth
“ and Skill able to recover their own Right, if any such be.

“ In Consideration whereof We look that you and every of you
“ should dutifully fulfil Our Commandment herein. And these Our

“ Letters

Letters shall be our Warrant. Given under, &c. 21 April, 1587.
 Anno 29 Eliz.

This Letter being delivered to the Judges, in the Presence of the Lord Chancellor and the Earl of *Leicester*, in the beginning of *Easter* Term, Anno 29 Eliz.

Which was delivered to the Judges in the Presence of the Lord Chancellor and the Earl of Leicester. And the Judges were to give their Answer to them.

The Chancellor declared to the Judges, that the Queen had granted that Patent to *Cavendish* out of the great Desire that she had to provide for his Advancement; and therefore had commanded himself and the said Earl to hear the Judges Answer to the Contents of that Letter:

Whereupon the Judges took the Letter, and desired a little Time to consider of it, and that being allowed them, they perused it, and forthwith went back to the said Lords and delivered their Answer as followeth, viz.

They pray a little Time to consider of it, which was allowed.

First, That they were willing in all lawful Points to obey her Majesty dutifully and in humble Manner.

Then they gave the following Answer.

Secondly, But that as that Case was, they could not obey her *ſans eſtre perjuries*, without being perjured, which they very well knew, that the Queen (if she were informed of it) would not command nor require of them.

Having given this Answer, they departed, and their Answer was reported to the Queen;

Which was reported to the Queen.

Who then commanded the Chancellor, the Chief Justices of the *King's Bench*, and the Master of the *Rolls*, to hear the Judges Reasons, and what the Causes were that moved them to give such an Answer:

The Chancellor, Chief Justice of the King's Bench, and Master of the Rolls, commanded to hear the Judges Reason for giving such an Answer.

As also what they had to say against the Queen's Prerogative and Right in that Matter.

And the Queen's learned Counsel was likewise commanded to attend;

Who being all assembled, the Queen's Serjeant shewed that the Queen had a Right and Prerogative to grant the making out of these Writs, and shewed Precedents of making Writs of *Subpœna*, and of the Office of Curfitors erected by Means of Sir *Nicholas Bacon*, late Keeper of the Great Seal, and of an Office in the *King's Bench*, and furnished his Discourse with such Reasons and Arguments as he had to prove that the Queen might grant this pretended Office.

The Queen's Serjeant argued her Prerogative in the Case.

To which the Judges, protesting that they to the utmost of their Power would help the Queen in all her Rights, whereunto they were

F f f

bound,

bound, not only by common Duty, but by Oath, which Rights they wished might be maintained and preserved,

For Answer said, that this Proceeding was extrajudicial and *hors del Course de Justice*.

And for that Cause they would make no Answer to what the Queen's Serjeant had said;

For as for themselves, they claimed no Advantages by the said Writs, but the Prothonotaries and divers Exigeneers of the Court did.

For these Officers claimed a Freehold during their Lives in the Profits of such Writs.

And therefore they according to Law and Reason ought to be brought to answer, and not the Judges.

After all which the Letters abovementioned were produced.

The former Letters charged upon the Judges for Disobedience to the Queen's Commands.

And the Judges were charged for not having obeyed the Queen's Command therein contained.

To that they said they must confess they had not fulfilled the Queen's Command, but this they said was no Offence or Contempt against her Majesty, because *les Commandments feurent encounter la Ley de Terre, en queux Cases nul est lie d'obeyer tiel Commandement, i. e.*

Because the Commands were against the Law of the Land; in which Case no Man is bound to obey such Command.

The Judges offer Precedents to justify themselves.

And in Justification hereof they offered to shew Precedents of former Times.

They were forced to shew the Reasons of their Answer.

At which the Chancellor, Master of the *Rolls*, and the rest, seeming to be somewhat surprized, the Judges were forced to shew their Reasons of their Answer, who thereupon said,

First, That the Queen herself had taken an Oath, *Que elle garder son Leys, i. e.*

That she herself would keep and observe the Laws.

Secondly, That the Judges had sworn to do the like.

Thirdly, That for what concerned the Judges, if they should obey those Commands, they should act otherwise than the said Laws warranted, and go directly contrary to them, which would be against their Oath, and consequently an Offence against God, the Country, and Commonwealth in which they were born and lived.

Fourthly, That if they had thrown off all Fear of God, yet the Examples of others and the Punishments of such as had thentofore offended against the Laws would be sufficient to put them in Mind, and to restrain them from being guilty of the like.

And

And the Precedents which they produced were as follows, viz.

The Precedents they produced.

I. *Exitium Hugonis Despencer*, commonly to be seen in the printed Book of *Magna Charta*, did notably declare how great an Offence it was to procure the King to endanger his Oath, and to do things under Colour of his Authority, *encounter le Ley*.

1. *The Banishment of Hugh le Despencer.*

Which *Hugh* was Lord Chamberlain to King *Edward II*, and then a Man of great Power.

II. * The next Precedent was that of *Thorpe*, a Judge in King *Edward the Third's* Time, who for breaking his own and the King's Oath, was adjudged to a great Punishment.

2. *Of Judge Thorpe.*

III. And then they remember the several Precedents in King *Richard the Second's* Time, which appeared in the Statutes and Histories of that King's Reign, (and which we have already given an Account of out of the *Rolls of Parliament*).

3. *Several Precedents in Richard II's Time.*

IV. And lastly, They further urge in their Defence the several Indictments of *Empson*, late Counsellor to King *Henry VII*, which had been made and taken in divers Counties of *England*, at which time another (*viz. Dudley*) was proceeded against in like manner, for the like Offences.

4. *The Indictments against Empson and Dudley.*

And they produced the Tenor of one of the said Indictments, which, as they said, was to be seen among the Records.

The Indictment in the Book is in Latin, which I have thus translated.

The Jurors present, That *Richard Empson*, late of *London*, Knt. late Counsellor of the most excellent Prince *Henry*, late King of *England*, upon the 17th Day of *May*, in the 12th Year of the said late King's Reign, and at divers Times before and after at *London*, in the Parish of *St. Bridget*, in the Ward of *Farringdon Without* †, not having God before his Eyes, but as a Child of the Devil, subtilly contriving to lessen and diminish the Honour, Dignity, and Prosperity of the said late King, and the Prosperity of his Kingdom of *England*; and that he might the better obtain singular Favours from the said late King to

What the Jurors presents in Empson's Indictment.

* Consideratum est — quod, quia prædictus W. de Thorp, qui sacramentum Domini Regis, quod erga populum suum habuit, fiegit maliciose, false, & rebelliter in quantum in ipso fuit, & ex causis supradictis [viz. quia cepit munera contra juramentum suum] suspendatur; & quod omnia terræ & tenementa & catalla sua remaneant forisfacta. *Ros. Pat. 24. Edw. III. pars 3. m. 2. Coke's 3^d Inst. cap. 68. fol. 145. of Bribery, Extortion, Exaction, &c.*

† *Empson and Dudley were two great Ministers, but wicked Instruments to Henry VII. They outdid all that went before them; for what by vexatious Suits upon penal but obsolete Laws, what by unjust Imprisonments, and other violent and illegal Proceedings, they raised a general Odium upon the Governemts. For which, and other Crimes, they were (as last) in the first Year of Henry VIII. both found guilty of Treason in a legal Tryal, and after both executed. Dr. Burnet's History of the Reformation, part 4. fol. 2. qui eorum vestigia insunt, eorum exitus perhorrescant. Coke's 4th Inst. fol. 41.*

himself,

himself, whereby he might become a great Minister of State, and govern the whole Kingdom of *England* according to his Pleasure, falsely, deceitfully, and traiterously subverting the Law of *England*, had of his own false Covin, and subtle Contrivance, and contrary to the Common Law of *England*, caused and procured divers of the said late King's Leiges to be indicted of divers Felonies, Murders, and of other Articles and Offences by him the said *Richard* supposed to have been committed, and had abetted and encouraged the same.

And when the said Persons were so indicted, he sent them without any Process according to the Law of the Land, to divers of the said late King's Prisons; to wit, to the *Fleet*, the *Compter*, and the *Tower of London*, there to be detained during his the said *Empson's* Pleasure.

And caused them to be there detained, so that they could not come to answer to such false Indictments, according to the Law of the Kingdom of *England*, until such Time as they had agreed with this *Richard* upon divers great Fines and Ransoms, as well for the Profit of the said late King, as also for his the said *Richard's* particular Gain, in Subversion of the Laws, and to the impoverishing, impairing, and grievous Damage of the said Lieges.

And also that the said *Richard* on the Day and Year abovementioned, at *London*, in the Parish and Ward aforesaid, and at divers Times before and after, caused and procured several false Inquisitions †, and Offices of Intrusions, and Alienations of Manors, Lands, and Tenements, of divers of

they held the Manors by the Lord Chancellor to the Queen, who specified of the Relation of the Matters aforesaid, and of the Reasons

* And after which the Lord Chief Justice *Anderfon* (who makes this Report in the King's name had heard her Majesty well accepted of. Law of so more was done in it; nor did the Judges hear further of it Traverserem, nor the next, which made them think that no more would their jone in it. they Here the Report ends.

OBSERVATIONS.

Now whoever will consider the Bishop of *Winchester's* Letter, and this memorable Case of *Cavendish*, must, without a strong Bias of Partiality, do that Right and Justice to the *English* Government, as to confess that it is no notorious false State Maxim to assert,

“ That Kings, as they are Kings of *England*, are never said to err,
 “ only the best may be abused by Misinformation,
 “ The highest Point of Prerogative is, the King of *England* can do
 “ no Wrong.

Francclin's
Annals, fol.
820. col. 2.
Kings of Eng-
land never err.

† The Courage and Magnanimity of the Judges of the Common Pleas in Queen Elizabeth's Reign in Matters of Justice, wherein the Prerogative and the Subjects Rights were in Dispute.

“ If

C H A P. IX.

*Proceedings in the Parliament of 21 Hen. VIII.
touching Cardinal Woolsey's high Misdemeanours whilst he was Lord Chancellor of England.*

Grafton's
Chronicle, pag.
1189.

DURING this Parliament there was brought down to the Commons the Book of Articles, which the Lords had put to the King against the Cardinal, saith *Grafton*.

The Articles as they are given us by my Lord *Coke*, thus follow :

*Articles against
Cardinal Woolsey,
Coke's 4
Inst. fol. 89.*

Constrained by Necessity of our Fidelity and Conscience, complain and shew to your most Royal Majesty, we your Grace's humble, true, faithfull, and obedient Subjects: That the Lord Cardinal of *York*, lately your Grace's Chancelour, presuming to take upon him the Authority of the Pope's Legate *De Latere*, hath by divers and many sundry Ways and Fashions committed high and notable grievous Offences, misusings, altering, and subverting the Order of your Grace's Laws: And otherwise contrary to your high Honour, Prerogative, Crown, Estate, and Dignity Regal, to the inestimable great Hinderance, Diminution, and Decay of the Universal Wealth of this your Grace's Realm. And it is touched summarily and particularly in certain Articles here following, which be but a few in Comparison of all his Enormities, Excesses, and Transgressions, committed against your Grace's Laws.

That is to say,

*The Sovereignty,
Prerogative,
regal Jurisdiction,
and Freedom of the
Crown of England.*

I. Where your Grace and noble Progenitors within this your Realm of *England*, being Kings of *England*, have been so free, that they have had in all the World none other Sovereign, but immediate subject to Almighty God in all Things touching the Regalty of your Crown of *England*, and the same Pre-eminence, Prerogative, Jurisdiction, lawful and peaceable Possession, your Grace and your noble Progenitors, have had, used, and enjoyed, without Interruption or Business therefore,

fore, by the Space of two hundred Years and more: Whereby your Grace may prescribe against the Pope's Holiness, that he should not nor ought to send or make any Legate, to execute any Authority Legatine contrary to your Grace's Prerogative within this your Realm. Now the Lord Cardinal of *York*, being your Subject and natural Liege born, hath, of his high orgallous, and insatiable Mind, for his own singular Advancement and Profit, in Derogation and to the great Imbleshment and Hurt of your said Regal Jurisdiction and Prerogative, and the long Continuance of the Possession of the same, hath obtained Authority Legatine: By reason whereof he hath not only hurt your said Prescription, but also by the said Authority Legatine hath spoiled and taken away from many Houses of Religion, within this your Realm, much Substance of their Goods: And also hath usurped upon all your Ordinaries within this your Realm, much Part of their Jurisdiction, in Derogation of your Prerogative, and to the great Hurt of your said Ordinaries, Prelates, and Religious.

Cardinal of York.

The Cardinal by his Authority Legatine spoiled many Houses of Religion, usurped upon Ordinaries.

II. Also the said Lord Cardinal, being your Embassador in *France*, made a Treaty with the *French King* for the Pope, your Majesty not knowing any Part thereof, nor named in the same; and binding the said *French King* to abide his Order and Award, if any Controversy or Doubt should arise upon the same, betwixt the said Pope and the *French King*.

Embassadors. A Treaty by him made with the French King for the Pope, without his Majesty's Privy, &c.

III. Also the said Lord Cardinal, being your Embassador in *France*, sent a Commission to Sir *Gregory de Cassalis*, under your Great Seal, in your Grace's Name, to conclude a Treaty of Amity with the Duke of *Ferrara*, without any Commandment or Warrant of your Highness, nor your said Highness advertised or made privy to the same.

Embassador. A Commission sent by him to Sir Gregory de Cassalis, under the Great Seal, to conclude a Treaty, &c. the King knowing nothing of it.

IV. Also the said Lord Cardinal, of his presumptuous Mind, in divers and many of his Letters and Instructions sent out of this Realm to outward Parts, had joined himself with your Grace, as in saying and writing, *The King and I would you should do thus; The King and I do give unto you our hearty Thanks*. Whereby it is apparent, that he used himself more like a Fellow to your Highness than like a Subject.

The King and I.

V. Also where it hath ever been accustomed within this Realm, That when Noblemen do swear their Household Servants, the first Part of their Oath hath been, That they should be true Liegemen to the King and his Heirs, Kings of *England*; the same Lord Cardinal caused his Servants to be only sworn to him, as if there had been no Sovereign above him.

Noblemen swearing their Household Servants: first to be true Liegemen to the King, &c. The Cardinal swore his only to himself.

H h h

VI. And

VI. And also whereas your Grace is our Sovereign Lord and Head, in whom standeth all the Surety and Wealth of this Realm; the same Lord Cardinal, knowing himself to have the foul and contagious Disease of the Great Pocks broken out upon him in divers Places of his Body, came daily to your Grace, rowning in your Ear, and blowing upon your most noble Grace with his perilous and infective Breath, to the marvellous Danger of your Highness, if God of his infinite Goodness had not better provided for your Highness: And when he was once healed of them, he made your Grace to believe, that his Disease was an Imposthume in his Head, and of none other Thing.

Having the Great Pocks broken out in several Places of his Body, he yet came daily into the King's Presence, to the endangering of the said King.

VII. Also the said Lord Cardinal, by his Authority Legatine, hath given by Prevention the Benefices of divers Persons, as well Spiritual as Temporal, contrary to your Crown and Dignity, and your Laws and Statutes therefore provided; by reason whereof he is in Danger to your Grace of Forfeiture of his Lands and Goods, and his Body at your Pleasure.

Provision.

Premunire.

Counsellor.

Foreign Embassadors first coming to him,

Contrary to the King's Command.

VIII. Also the said Lord Cardinal, taking upon him otherwise than a true Counsellor ought to do, hath used to have all Embassadors to come first to him alone; and so hearing their Charges and Intents, it is to be thought he hath instructed them after his Pleasure and Purpose, before that they came to your Presence, contrary to your high Commandment by your Grace's Mouth to him given; and also by other Persons sent to him by your Grace.

Letters sent from beyond Seas first to him.

So that the King nor his Council knew any thing but what he was pleased to shew them.

His Way of Insimulation.

IX. Also the said Lord Cardinal hath practised so that all manner of Letters sent from beyond the Seas to your Highness, have come first to his Hands, contrary to your high Commandment by your own Mouth, and also by others sent to him by your Grace: By reason whereof your Highness nor any of your Council, had Knowledge of no Matters but of such as it pleased him to shew them; whereby your Highness and your Council have been compelled of very Force to follow his Devices, which oftentimes were set forth by him under such crafty and covert Meanings, that your Highness and your Council have oftentimes been abused; infomuch that when your Council have found and put divers Doubts and Things, which afterwards have ensued, he to abuse them used these Words, *I will lay my Head that no such Thing shall happen.*

Foreign Intelligence not suffered to come to any but to him, &c.

X. Also the said Lord Cardinal hath practised, that no manner of Person having Charge to make Espial of Things done beyond the Sea, should

should at their Return come first to your Grace, nor to any other of your Council, but only to himself: And in case they did the contrary, he punished them for their so doing.

XI. Also the said Lord Cardinal hath granted Licences under your Great Seal, for carrying out of Grain and other Victuals, after the Restraining hath been made thereof; for his own Lucre and singular Advantage of him and his Servants, for to send thither as he bare secret Favour, without your Grace's Warrant or Knowledge thereof.

Licences to transport Grain and Victuals.

XII. Also the said Lord Cardinal used many Years together, not only to write unto all your Ambassadors resident with other Princes, in his own Name, all Advertisements concerning your Grace's Affairs being in their Charge; and in the same his Letters wrote many Things of his own Mind, without your Grace's Pleasure known, concealing divers Things which had been necessary for them to know; but also caused them to write their Advertisements unto him: And of the same Letters he used to conceal, for the compassing of his Purpose, many Things both from all your other Counsellors and yourself also.

Lord Cardinal's writing to Embassadors resident with other Princes in his own Name.

Concealing Things from them necessary to be known.

XIII. Also where good Hospitality hath been used to be kept in Houses and Places of Religion in this Realm, and many poor People thereby relieved, the said Hospitality and Relief is now decayed and not used: And it is commonly reported, that the Occasion thereof is, because the said Lord Cardinal hath taken such Impositions of the Rulers of the said Houses, as well for his Favour in making of Abbots and Priors, as for his Visitation by his Authority Legatine: And yet nevertheless taketh yearly of such Religious Houses such yearly and continual Charges, as they be not able to keep Hospitality, as they were used to do; which is a great Cause that there be so many Vagabonds, Beggars, and Thieves.

Hospitality in Houses of Religion decayed.

Yearly Charges taken from them.

A great Cause of increasing Vagabonds, &c.

XIV. Also where the same Lord Cardinal said, before the Suppression of such Houses as he hath suppressed, that the Possessions of them should be set to farm amongst your Lay Subjects, after such reasonable yearly Rent as they should well thereupon live, and keep good Hospitality; and now the demesne Possession of the same Houses, since the Suppression of them, hath been surveyed, met, and measured by the Acre, and be now set above the Value of the old Rent: And also such as were Farmers by Covent Seal and Copy-holders, be put out and removed of their Farms, or else compelled to pay new Fines, contrary to all Equity and Conscience.

Suppression of Houses.

His Proviso so set reasonable Rents, &c.

But yet his setting them above the Value of the old Rent.

New Fines imposed, or else so turn out.

XV. Also

*Abused the Pri-
vy Council.*

XV. Also the said Lord Cardinal, sitting amongst the Lords, and others of your most Honourable Privy Council, used himself, That if any Man would shew his Mind, according to his Duty, contrary to the Opinion of the said Cardinal, he would so take him up with his accustomable Words, that they were better to hold their Peace than to speak; so that he would hear no Man speak, but one or two great Personages; so that he would have all the Words to himself, and consumed much Time with a fair Tale.

*He would have
all the Words to
himself.*

*His Ambition
and Pride.
Want of Dis-
patch.
No Man should
meddle but
himself.*

XVI. Also the said Lord Cardinal, by his Ambition and Pride, hath hindered and undone many of your poor Subjects, for Want of Dispatchment of Matters: For he would no Man should meddle but himself; insomuch that it had been affirmed by many wise Men, that ten of the most wise and expert Men in *England* were not sufficient in convenient Time to order the Matters that he would retain to himself. And many Times he deferred the ending of Matters, because that Suitors should attend and wait upon him; whereof he had no small Pleasure, that his House might be replenished with Suitors.

*Defer Matters
so make Suitors
so attend upon
him.*

*Taken the Goods
of rich Spiritual
Men deceased,*

XVII. Also the said Lord Cardinal, by his Authority Legatine, hath used, if any Spiritual Man having any Riches or Substance deceased, he hath taken their Goods as his own; by reason whereof their Wills be not performed: And one Mean he had to put them in Fear, that were made Executors, to refuse to meddle.

*and frightening
their Executors
from meddling.*

*All Ordinaries,
&c. so com-
pound with him
yearly,
or he would
usurp upon their
Jurisdiction,
and so extort
Treasure.*

XVIII. Also the said Lord Cardinal constrained all Ordinaries in *England* yearly to compound with him, or else he will usurp half or the whole of their Jurisdiction by Prevention; not for good Order of the Dioceses, but to extort Treasure: For there is never a poor Archdeacon in *England*, but that he paid yearly to him a Portion of his Living.

*Slandered Reli-
gious Houses to
the Pope.*

XIX. Also the said Lord Cardinal hath not only by his untrue Suggestion to the Pope, shamefully slandered many good Religious Houses, and good virtuous Men dwelling in them, but also suppressed by reason thereof, above thirty Houses of Religion. And where, by Authority of his Bull, he should not suppress any House, that had more Men of Religion in Number above the Number of six or seven, he hath suppressed divers Houses that had above the Number: And thereupon hath caused divers Offices to be found by Verdict untruly, that the Religious Persons so suppressed had voluntarily for-
faken

*By Authority of
his Bull suppress-
ed thirty Houses
of Religion.*

*Causes divers
Offices to be
found untruly.*

faken their said Houses; which was untrue, and so hath caused open Perjury to be committed, to the high Displeasure of Almighty God.

Caused open Perjury to be committed.

XX. Also the said Lord Cardinal hath examined divers and many Matters in the *Chancery*, after Judgment thereof given at the Common Law, in Subversion of your Laws; and made some Persons restore again to the other Party condemned That that they had in Execution by Virtue of the Judgment at the Common Law.

Examined Matters in Chancery after Judgment. In Subversion of the Laws.

XXI. Also the said Lord Cardinal hath granted many Injunctions by Writ, and the Party never called thereunto, nor Bill put in against them; and by reason thereof, divers of your Subjects have been put from their lawful Possessions of their Lands and Tenements. And by such Means he hath brought the more Party of the Suitors of this your Realm before himself; whereby he and divers of his Servants have gotten much Riches, and your Subjects suffered great Wrongs.

Granting many Injunctions by Writ, and the Party never called, nor Bill filed against them; whereby the Subjects have been put from their lawful Possessions.

XXII. Also the said Lord Cardinal, to augment his great Riches, hath caused divers Pardons granted by the Pope to be suspended, which could not be revived 'till that the said Lord Cardinal were rewarded, and also have a yearly Pension of the said Pardon.

The Pope's Pardons suspended by him. He to be rewarded before they could be revived.

XXIII. Also the said Lord Cardinal, not regarding your Laws nor Justice, of his extort Power hath put out divers and many Farmers of his Lands, and also Patentees of the Archbishoprick of *York*, and the Bishoprick of *Winchester*, and of the Abbey of *St. Albans*; which had good and sufficient Grant thereof by your Laws.

His Oppression of Farmers and Patentees.

XXIV. Also the same Lord Cardinal, at many Times, when any Houses of Religion have been void, he hath sent his Officers thither, and with crafty Persuasion hath induced them to compromit their Election in him: And that before he named or confirmed any of them, he and his Servants received so much great Goods of them, that in manner it hath been to the undoing of the House.

Getting to himself the Elections of Abbots, Priors, &c. And he bribed before he would nominate: To the Houses undoing.

XXV. Also by his Authority Legatine the same Lord Cardinal hath visited the most part of the Religious Houses and Colleges of this your Realm, and hath taken from them the twenty fifth Part of their Livelihood; to the great Extortion of your Subjects, and Derogation of your Laws and Prerogative, and no Law to bear him so to do.

Visited most of the Religious Houses. His Extortion, by taking away the twenty fifth Part of their Livelihood.

XXVI. And also, when Matters have been near at Judgment, by
Injunctions. Procefs at your Common Law, the same Lord Cardinal hath not only
 given and sent Injunctions to the Parties, but also sent for your Judges,
Threatened and exprefsly by Threats commanded them to defer the Judgment, to
Judges to defer the evident Subversion of your Laws, if the Judges would so have
giving Judg- ceafed.
ment.

XXVII. Also, whereas neither the Bishop of *York* nor *Winchester*,
 nor the Abbey of *St. Albans*, nor the Profit of his Legation, nor the
His Pension out Benefit of the *Chancery*, nor his great Pension out of *France*, nor his
of France. Wards and other inordinate Taking, could not suffice him; he hath
Making in Ap- made his Son *Winter* to spend seven and twenty hundred Pounds by
pearance his Son the Year, which he taketh to his own Use, and giveth him not past
Winter spend two hundred Pounds yearly to live upon.
2700 l. yearly,
and yet he not
allowing him
above 200 l.
yearly.

XXVIII. Also where the said Lord Cardinal did first sue unto your
 Grace, to have your Assent to be *Legate de Latere*, he promised and
Legate de solemnly protested, before your Majesty, and before the Lords both
Latere his Spiritual and Temporal, that he would nothing do nor attempt, by the
Promise. Virtue of his Legacy, that should be contrary to your gracious Prero-
To do nothing gative or Regality, or to the Damage or Prejudice of the Jurisdiction of
against Preroga- any Ordinary; and that by his Legacy no Man should be hurt nor
tive or Regality; offended: And upon that Condition and no other he was admitted by
or to the Preju- your Grace, to be Legate within this your Realm: Which Condition he
dice of any Or- hath broken, as is well known to all your Subjects. And when that
inary's Juris- he made this Promise, he was busy in his Suit at *Rome* to visit all the
isdiction. Clergy of *England*, both exempt and not exempt.

XXIX. Also, upon the Suit of the said Lord Cardinal at *Rome*, to have
Untrue Surmise his Authority Legatine, he made untrue Surmise to the Pope's Holi-
to the Pope, of nefs against the Clergy of your Realm, which was, that the regular
the Clergy here. Persons of the said Clergy, had given themselves *in reprobum sensum*;
 which Words *St. Paul* writing to the *Romans*, applied to abominable
 Sin; which Slander to your Church of *England* shall for ever remain
 in the Register at *Rome*, against the Clergy of this your Realm.

XXX. Also the said Lord Cardinal had the more Part of the Goods
His further Op- of *Dr. Smith* late Bishop of *Lincoln*, Bishop *Savage* of *York*, Master
pression and Ex- *Dalbye* Archdeacon of *Richmount*, Master *Tonyers*, *Dr. Rotball* late
ortion. Bishop of *Durbam*, and of *Dr. Fox* late Bishop of *Winchester*; con-
 trary to their Wills and your Laws and Justice.

XXXI. Also

XXXI. Also at Oyer and Terminer at *York*, Proclamation was made, That every Man should put in their Bills for Extortion of Ordinaries; and when divers Bills were put in against the Officers of the said Lord Cardinal, of Extortion, for taking Twelve Pence in the Pound for Probation of Testaments; whereof divers Bills were found before Justice *Fitzberbert* and other Commissioners; the said Lord Cardinal removed the said Indictments into the *Chancery* by *Certiorari*, and rebuked the said *Fitzberbert* for the same Cause.

Extortion of Ordinaries.

Indictments of Extortion of Ordinaries removed into the Chancery.

And his rebuking the Chief Justice.

XXXII. Also the said Lord Cardinal hath busied and endeavoured himself, by crafty and untrue Tales, to make Diffension and Debate amongst your Nobles of your Realm, which is ready to be proved.

Made Debate between the Nobles of the Realm.

XXXIII. Also the said Lord Cardinal's Officers have divers Times compelled your Subjects to serve him with Carts for Carriage; and also his Servants have taken both Corn and Cattle, Fish, and all other Victuals, at your Grace's Price, or under, as though it had been for your Grace; which is contrary to your Laws.

Purveyance for him at the King's Price or under. Vide inf. 35, 36.

XXXIV. Also the said Lord Cardinal hath misused himself in your most honourable Court, in keeping of as great Estate there in your Absence, as your Grace would have done, if you had been there present in your own Person.

Keeping great Estate in Court in the King's Absence, as the King himself.

XXXV. Also his Servants by Virtue of your Commission under your Broad Seal by him to them given, have taken Cattle and all other Victual at as low a Price as your Purveyors have done for your Grace by your Prerogative, against the Laws of your Realm.

Purveyance. Prerogative in taking Purveyance.

XXXVI. Also w^here it hath been accustomed that your Purveyors for your honourable Household have had yearly out of your Town and Liberty of *St. Albans* three or four hundred Quarters of Wheat, Truth it is, that since the Lord Cardinal had the Room of the Abbot that your said Purveyors could not be suffered by him and his Officers to take any Wheat within the said Town or Liberty.

Purveyance denied by him and his Officers in the Town and Liberty of St. Albans when he was Abbot.

XXXVII. Also he hath divers Times given Injunctions to your Servants that have been for Causes before him in the *Star-Chamber*, that they, nor others for them, should make Labour by any Manner of Way, directly or indirectly, to your Grace, to obtain your Grace's Favour or Pardon, which was a presumptuous Intent for any Subject.

Injunctions not to sue for Pardon for Causes in the Star-Chamber, a very great Presumption.

XXXVIII. Also

*His Oppression
of Sir John
Stanley Knt.*

XXXVIII. Also the said Lord Cardinal did call before him Sir *John Stanley* Knt. which had taken a Farm by Covent Seal of the Abbot and Covent of *Chester*, and afterwards by his Power and Might contrary to Right committed the said Sir *John Stanley* to the Prison of the *Fleet* by the Space of a Year, unto such Time as he compelled the said Sir *John* to release his Covent Seal to one *Leghe* of *Adlington*, which married one *Lark's* Daughter, which Woman the said Lord Cardinal kept, and had with her two Children; whereupon the said Sir *John Stanley*, upon Displeasure taken in his Heart, made himself Monk in *Westminster*, and there died.

*Leghe of Ad-
lington.*

*The Cardinal
kept Lark's
Daughter, and
had by her two
Children.*

*Clerk of the
Market.*

*Prices of Vic-
tuals set up
according to
ancient Custom
and Usage
sealed with the
King's Seal.*

*He pulled down
and set up his
own Prices
sealed with his
Seal, and
would have set
the Clerk of
the Market in
the Stocks.*

XXXIX. Also on a Time your Grace being at *St. Albans*, according to the ancient Custom used within your Verge, your Clerk of the Market doing his Office, did present unto your Officers of your most honourable Household the Prices of all manner of Victuals within the Precinct of the Verge: And it was commanded by your said Officers to set up the said Prices both on the Gates of your honourable Household, and also within the Market-place within the Town of *St. Albans*, as of ancient Custom hath been used. And the Lord Cardinal hearing the same presumptuously, not like a Subject, caused the aforesaid Prices, which were sealed with your Grace's Seal, accustomedly used for the same, to be taken off and pulled down in the said Market-place, where they were set up, and in the same Place, set up his own Prices sealed with his Seal, and would, if it had been letted, in semblable Manner used your Seal standing upon your Gates. And also would of his presumptuous Mind have openly set in the Stocks within your said Town your Clerk of your Market. By which Presumption and Usurpation your Grace may perceive that in his Heart he hath reputed himself to be equal with your real Majesty.

*The Cardinal's
Hat in the
King's Coat of
Groats, &c.*

XL. Also the said Lord Cardinal, of his further pompous and presumptuous Mind, hath enterprized to join and imprint the Cardinal's Hat under your Arms in your Coat of Groats made at your City of *York*; which like Deed hath not been seen to be done by any Subject within your Realm before this Time.

XLI. Also where one Sir *Edward Jones*, Clerk, Parson of *Orewly* in the County of *Bucks*, in the eighteenth Year of your most noble Reign, let his said Parsonage, with all Tithes and other Profits of the same, to one *William Johnson*, by Indenture for certain Years; within which Years, the Dean of the said Cardinal's College in *Oxford* pretended Title to a certain Portion of Tithes within the said Parsonage, supposing the said Portion to belong to the Parsonage of *Chicheley*, which

which was appointed to the Priory of *Tykeford* lately suppressed, where (of truth) the Parsons of *Orewly* have been peaceably possessed of the said Portion out of the Time of Mind: Whereupon a *Subpœna* was directed to the said *Johnson*, to appear before the Lord Cardinal at *Hampton Court*, out of any Term, with an Injunction to suffer the said Dean to occupy the said Portion. Whereupon the said *Johnson* appeared before the said Lord Cardinal at *Hampton Court*, where without any Bill the said Lord Cardinal committed him to the *Fleet*, where he remained by the Space of twelve Weeks, because he would not depart with the said Portion: And at last, upon a Recognizance made that he should appear before the said Lord Cardinal, whensoever he was commanded, he was delivered out of the *Fleet*. Howbeit, as yet the said Portion is so kept from him, that he dare not deal with it.

Subpœna directed to Will. Johnson to appear before the Cardinal out of any Term.

Upon his appearing without any Bill, he was committed to the Fleet. Remained there twelve Weeks; but delivered at last upon Recognizance.

XLII. Also where one *Martin Decowra* had a Lease of the Manor of *Balsall* in the County of *Warwick*, for Term of certain Years, an Injunction came to him out of the *Chancery*, by Writ, upon Pain of one thousand Pounds, that he should avoid the Possession of the same Manor, and suffer *Sir George Throckmorton* Knight, to take the Profits of the same Manor, to the Time the Matter depending in the *Chancery* between the Lord of *St. John's* and the said *Decowra* were discussed: And yet the said *Decowra* never made Answer in the *Chancery*, nor ever was called into the *Chancery* for that Matter, and now of late he hath received a like Injunction, upon pain of two thousand Pounds; contrary to the Course of the Common Law.

Injunction.

XLIII. Also whereas in the Parliament Chamber and in open Parliament, Communication and Devices were had and moved, wherein mention was an Incident made of Matters touching Heresies and erroneous Sects; it was spoken and reported by one Bishop, there being present, and confirmed by a good number of the same Bishops, in presence of all the Lords Spiritual and Temporal then assembled, That two of the said Bishops were minded and desired to repair into the University of *Cambridge* for Examination, Reformation, and Correction of such Errors as then seemed and were reported to reign amongst the Students and Scholars of the same, as well touching the *Lutheran* Sect and Opinions as otherwise. The Lord Cardinal, informed of the good Minds and Intents of the said two Bishops in that Behalf, expressly inhibited and commanded them in no wise so to do. By means whereof the same Errors, as they affirmed, crept more abroad, and took greater Place; saying furthermore, that it was not in their Defaults that the said Heresies were not punished, but in the said Lord Cardinal; and that it was no Reason any Blame or Lack should be arrested to them

Heresies and erroneous Sects reported in Parliament before all the Lords Spiritual and Temporal.

Two Bishops desired to go down to Cambridge, to examine, reform, and correct such Errors, &c.

The Cardinal expressly forbids them so to do.

K k k

for

Whereby he became the Disturber of the Correction of Heresies. for his Offence. Whereby it evidently appeareth, that the said Lord Cardinal, besides all other his heinous Offences, hath been the Impacher and Disturber of due and direct Correction of Heresies; being highly to the Danger and Peril of the whole Body and good Christian People of this your Realm.

His outrageous Pride and insatiable Avarice. XLIV. Finally, forasmuch as by the aforesaid Articles is evidently declared to your most real Majesty, that the Lord Cardinal by his outrageous Pride hath greatly shadowed a long Season your Grace's Honour, which is to be most highly regarded; and by his insatiable Avarice and ravenous Appetite, to have Riches and Treasure without Measure, hath so grievously oppressed your poor Subjects, with so manifold Crafts of Bribery and Extortion, that the Commonwealth of this your Grace's Realm is thereby greatly decayed and impoverished: And also by his Cruelty, Iniquity, Affection, and Partiality, hath subverted the due Course and Order of your Grace's Laws, to the undoing of a great Number of your loving People.

The Lords Prayer to the King, so to deal with the Cardinal, as to make him a terrible Example to all others in time to come, how they offend the Laws of the Kingdom. Please it your most Royal Majesty therefore, of your excellent Goodness towards the Weal of this your Realm, and Subjects of the same, to set such Order and Direction upon the said Lord Cardinal, as may be to the terrible Example of others to beware so to offend your Grace and your Laws hereafter: And that he be so provided for, that he never have any Power, Jurisdiction, or Authority hereafter to trouble, vex, and impoverish the Commonwealth of this your Realm, as he hath done heretofore, to the great Hurt and Damage of every Man almost, high and low; which for your Grace so doing will daily pray, as their Duty is, to Almighty God, for the prosperous Estate of your most Royal Majesty; long to endure in Honour and good Health, to the Pleasure of God and your Hearts most Desire.

Subscribed the first Day of *December*, the one and twentieth Year of the Reign of our Sovereign Lord King *Henry* the Eighth.

<i>T. Moore,</i>	<i>T. Rochford,</i>
<i>T. Norfolk,</i>	<i>T. Darcy,</i>
<i>Charles Suffolke,</i>	<i>W. Mountjoy,</i>
<i>Tho. Dorset,</i>	<i>William Sandys,</i>
<i>H. Exon,</i>	<i>William Fitz William,</i>
<i>J. Oxenford,</i>	<i>Henry Guldeford,</i>
<i>H. Northumberland,</i>	<i>John Fitz James,</i>
<i>G. Shrewsbury,</i>	<i>Anthony Fitz Herbert.</i>
<i>R. Fitz Walter,</i>	

These

These Articles were read in the Commons House, and signed with the Cardinal's Hand, and were confessed by him: And also there was shewed a Writing sealed with his Seal, by the which he gave to the King all his Moveables and Immoveables. Grafton, pag. 1189.

But the Journals of the Commons in King *Henry* the VIIIth's Time, being all lost, as several of those of the Lords also are, we are left in the dark to know what the Proceedings were upon these Articles exhibited to the King against the Cardinal, and afterwards offered to both Houses of Parliament.

OBJECTION.

Indeed my Lord *Hobart* tells us, that there was no Journal Book kept for the Lower House 'till the Time of *Edw.* VI. And the Reason of his Assertion, I conceive, was, because he could not find with the Clerk of that House any such Book in *Henry* the VIIIth's Time. Hobart's Rep. fol. 109. No Journal of the Commons 'till Edw. VI.

ANSWER.

And if that was his Reason, give me leave then to tell him, That there is no Journal Book now to be found of the Higher House before *Henry* the VIIIth's Reign: And would he have inferred from thence, as a good Argument to prove that there were no Journals kept for that House 'till the Time of *Henry* VIII. A gross Error so asserts so.

But that which shews my Lord *Hobart* was clearly mistaken in the Antiquity of the Journal of the House of Commons is, that the Statute of the 6th of *Henry* VIII. declares,

That forasmuch as in the End of every Parliament, divers and many great and weighty Matters, as well touching the Pleasure, Weal, and Security of the King, as the Common-weal of the Realm and Subjects, were to be treated, communéd of, and by Authority of Parliament to be concluded; so it was, that divers Knights of Shires, Citizens for Cities, and Burgeses for Burroughs, and Barons for the Cinque Ports, long time before the End of the Parliament, of their own Authorities did depart, and go Home into their Countries, whereby the said great and weighty Matters were many time greatly delayed. Pulton's Stat. 6 Hen. VIII. cap. 16. Great and weighty Matters concerning the King and Kingdom to be treated, communéd, and considered of in Parliaments.

In Consideration whereof, it was enacted,

1. By the King,
2. The Lords Spiritual and Temporal,
3. And the Commons,

in that Parliament, and by Authority of the same, That from thenceforth none of the said Knights, Citizens, Burgeses, and Barons, nor any of them, that thereafter should be elected or come, or be in any Parliament, should depart from the same Parliament, nor absent himself from the same, 'till the said Parliament should be fully finished, ended,

ended, or prorogued, except he or they so departing had Licence of the Speaker and Commons in the said Parliament assembled, and the same Licence be entered of Record in the Book of the Clerk of the Parliament appointed or to be appointed for the Commons House, upon Pain to every of them so departing or absenting themselves in any other Manner, to lose all those Sums of Money, which he or they should or ought to have had for his or their Wages.

And that all the Counties, Cities, and Boroughs, whereof any such Person should be elected, and the Inhabitants of the same, should be clearly discharged of the said Wages against the said Person and Persons and their Executors for evermore.

So that to say, that there was no Journal Book kept for the Lower House 'till the Time of *Edward VI.* is a gross Error, if this solemn Act of Parliament made in the 6th of *Henry VIII.* who was Father to *Edward VI.* be to be believed. But if not, then I will own that my Lord *Hobart* was in the right.



C H A P. X.

An Apology of the House of Commons, made in the first Session of the first Parliament of King James the First, touching their Privileges: Together with several Notes thereupon.

KING James the First, in his Speech to the Parliament, *Anno regni sui primo*, declared,*

That it should ever be far from his Royal and sincere Care and Affection to the Subjects of *England* to alter or innovate the fundamental and ancient Laws, Privileges, and good Customs of this Kingdom.

King James's Promise never to alter the fundamental Laws of this Kingdom, &c.

Whereby not only his Regal Authority, but the People's Security of Lands, Livings, and Privileges (both in general and in particular) are preserved and maintained; and by the abolishing or alteration of which, it is impossible but that present Confusion would fall upon the whole State and Frame of this Kingdom.

They being the best Security both to King and People.

It were a Presumption of too high a Nature to think that his Majesty's Kingly Resolutions were not seated in the Ark of his sacred Breast, since he wisely foresaw, that nothing less than all this could keep up the Honour and Splendour of the *English* Crown, either at Home or Abroad.

But in one Thing the Nation may be said to be extremely unhappy, namely, That (as the said King ingenuously confessed in his Speech to the Parliament held in the 18th Year of his Reign) he at his first coming hither knew not the Laws and Customs of the Land; but said, that he was led by the old Counsellors he found, which the old Queen left. †

The King led the beginning of his Reign by Queen Elizabeth's old Counsellors.

* This Speech is inserted in an Act, authorizing certain Commoners of the Realm of England to treat with the Commons of Scotland, for the Weal of both Kingdoms. *Raft. Stat. 1 Jac. I. cap. 2.*

† *Dr. Nelson's Collections of the great Affairs of State in King Charles the First's Time, Vol. I. Introduction, fol. 6, &c. 14.*

So that his first Mistakes and Errors ought to be imputed to them, &c. Misrepresenters of what the good old English Government was.

So that whatever Mistakes and Errors were committed in the Beginning of his Reign, may truly be said (and ought) to be done by those old Counsellors and other new ones that succeeded them, who misrepresented the good old *English* Government to that King: And therefore no Fault ought to be imputed to him.

It is true Sir *Edward Phillips* being chosen Speaker of the House of Commons in this King's first Parliament, which he called in *England*, acquainted him,

Journal Dom. Com. The Ark of this Government had ever been steered by the Laws thereof.

That the Ark of Government of this Kingdom had ever been steered by the Laws of the same, and those distributed to the Jurisdiction of several Courts of Justice;

The Commanding and Imperial Court whereof was that of his Majesty's great and high Court of Parliament, by whose Power only,

The Power of a Parliament.

- I. New Laws were to be instituted,
 - II. Imperfect Laws reformed,
 - III. And inconvenient Laws abrogated :
- Whose Justice therein was such and so absolute,
- IV. That no such Laws could either be instituted, reformed, or abrogated, but,
 1. By the Unity of the Commons Agreement,
 2. The Lords Accord,
 3. And his Majesty's Royal and Regal Assent.

This was a safe and happy Method of Government.

These were the *Maxima Vitalia Regni*.

King James the First's Speech to the Lords and Commons at Whitehall. 21 March, 1609. His Works, fol 527, 531.

But, alas! it was not long before those his old and new Counsellors, turning Flatterers of Prerogative, whom that King justly called Vipers and Pests to their Prince and Commonwealth, laid the Ground-works and Foundations of most of the future Distempers and woful Miseries which afterwards fell upon both.

And that this is too true,

Give me leave to insert here the Apology of the House of Commons, which they made to King *James* in that very Parliament, touching their Privileges.

To the King's most Excellent Majesty: From the House of Commons assembled in Parliament.

Most gracious Sovereign,

WE cannot but with much Joy and Thankfulness of Mind acknowledge your Majesty's great Graciousness, in declaring lately unto us, by the Mouth of our Speaker, That you rested now satisfied with our Doings.

The Apology of the House of Commons touching their Privileges in the first Session of Parliament of King James I. Ex Journ. Dom. Com.

Which Satisfaction notwithstanding, though most desired and dear unto us, yet proceeding merely from your Majesty's most gracious Disposition, and not from any Justification, which on our behalf hath been made; we found this Joy intermingled with no small Grief; and could not, *dread Sovereign*, in our dutiful Love to your Majesty, and in our ardent Desire of the Continuance of your Favour towards us, but tender in humble sort this farther Satisfaction, being careful to stand right not only in the Eye of your Majesty's Grace, but also (and that much more) in the Ballance of your Princely Judgment; on which all Assuredness of Love and Grace is founded. Into which Course of Proceedings we have not been rashly carried by vain Humour of Curiosity, of Contradiction, of Presumption, or of Love of our own Devices or Doings, unworthy Affections in a Council of Parliament, and more unworthy in Subjects towards their Lord and Sovereign.

The House of Commons great Desire to stand right not only in the Eye of the King's Grace, but in the Ballance of his Judgment.

But, as the Searcher and Judge of all Hearts doth know, for these and for no other undue Ends in the World; to increase and nourish your Majesty's gracious Affection towards your loyal and most loving People, to assure and knit all your Subjects Hearts most firmly to your Majesty, to take away all Cause of Jealousy on either Part, and Diffidence for Times ensuing, and to prevent and controll all sinister Reports, which might be unreasonably spread either at home or abroad with Prejudice to your Majesty, or the good State of your Kingdom.

And to make a firmer Union of Affection and Duty between the King and his Subjects. To remove Jealousy on either Hand. To stifle all sinister Reports prejudicial both to King and Kingdom.

With these Minds, *dread Sovereign*, your Commons of *England*, represented in us their Knights, Citizens and Burgeses, do come with this humble Declaration to your Highness, and in great Affiance of your most gracious Disposition, that your Majesty, with Benignity of Mind correspondent to our Dutifulness, will be pleased to peruse it.

Therefore come with this humble Declaration.

We know, and with great Thankfulness to God acknowledge, that he hath given us a King of such Understanding and Wisdom as is rare to find in any Prince in the World.

Howbeit, seeing no human Wisdom, how great soever, can pierce into the Particularities of the Rights and Customs of People, or of the Sayings

The Commons declare their Grief, for their having Misinformations made of them to the King.

Sayings and Doings of particular Persons, but by Tract of Experience and faithful Report of such as know them (which it hath pleased your Majesty's princely Mouth to deliver) what Grief, what Anguish of Mind hath it been unto us at some Time, in Presence to hear, and so in other Things to find and feel by Effect your gracious Majesty (to the extream Prejudice of all your Subjects of *England*, and in particular of this House of the Commons thereof) so greatly wronged by Misinformation, as well touching the Estate of the one as the Privileges of the other, and their several Proceedings during this Parli-

Which they had 'till then only complained of amongst themselves.

ament: Which Misinformations, though apparent in themselves, and to your Subjects most injurious, yet have we in some humble and dutiful Respect rather hitherto complained of amongst ourselves, than presumed to discover and oppose against your Majesty;

But now, no other Help or Redress appearing, and finding those Misinformations to have been the first, yea the chief and almost the sole Cause of all the discontentful and troublesome Proceedings so much blamed in this Parliament.

But could no longer be silent in, without a Breach of Duty both to their King and their dear native Country.

And that they might be again the Cause of like or greater Discōntents and Troubles hereafter (which the Almighty Lord forbid) we have been constrained, as well in Duty to your Royal Majesty, whom with faithful Hearts we serve, as to our dear native Country, for which we serve in this Parliament, to break our Silence, and freely to disclose unto your Majesty the Truth of such Matters concerning your Subjects the Commons, as hitherto by Misinformation hath been suppressed or perverted: Wherein that we may more plainly proceed,

Those Informations reduced to three principal Heads.

(which next unto Truth we affect in this Discourse,) we shall reduce these Misinformations to three principal Heads.

1. Touching their Joy of the King's Accession to the Throne.

First, Touching the Cause of the joyful receiving of your Majesty into this your Kingdom.

2. Concerning the Rights of the Subjects and Privileges of their House.

Secondly, Concerning the Rights and Liberties of your Subjects of *England*, and the Privileges of this House.

3. Touching the several Actions and Speeches of the House.

Thirdly, Touching the several Actions and Speeches passed in the House, it has been told us to our Faces by some of no small Place (and the same spoken also in the Presence of your Majesty) that on the 24th of *March* was a Twelvemonth, we stood in so great Fear that we would have given half we were worth for the Security wherein we now stand.

Whereby some Misunderstanders of Things might perhaps conjecture that Fear of our own Misery had more prevailed with us in the Duty which on that Day was performed, than Love of your Majesty's Virtues, and Hope of your Goodness towards us.

We

We contrarywise most truly protest the contrary, that we stood not at that Time, nor of many a Day before, in any Doubt or Fear at all.

The Commons Protestation against what some great Persons had alledged against them to their Faces, and in his Majesty's Presence, viz. that Fear more prevailed with them to proclaim him King, than their Duty or Love to his Virtues.

We all professing true Religion by Law established (being by manifold Degrees the greater, the stronger, and more respective Part of this your Majesty's Realm) standing clear in our Consciences touching your Majesty's Right, were both resolute, with our Lives and all other our Abilities to have maintained the same against all the World, and vigilant also in all Parts to have suppressed such Tumults, as, but in regard of our poor united Minds and Readiness, by the Male-contented and Turbulent might have been attempted.

But the true Cause of our extraordinary great Chearfulness and Joy in performing that Day's Duty, was the great and extraordinary Love which we bear towards your Majesty's most royal and renowned Person, and a longing Thirst to enjoy the happy Fruits of your Majesty's most wise, religious; just; virtuous; and gracious Heart :

But the true Cause of their Joy in the Performance of that Duty, sprang from the extraordinary Love they bore to his Majesty's Person, &c.

Whereof not Rumour; but your Majesty's own Writings, had given us a strong and undoubted Assurance.

For from hence, *dread Sovereign*, a general Hope was raised in the Minds of all your People, that under your Majesty's Reign Religion, Peace, Justice, and all Virtue should renew again and flourish.

And the great Assurance they had from his Writings that all Things which tended to the Peace of the Kingdom, would be more firmly established.

That the better Sort should be cherished, the bad reformed or repressed, and some moderate Ease should be given us of those Burdens and sore Oppressions, under which the whole Land did groan.

This Hope being so generally and so firmly settled in the Minds of all your most loyal and most loving People, recounting what great Alienation of Men's Hearts the defeating of great Hopes doth usually breed, we could not in Duty as well unto your Majesty as to our Country, Cities, and Boroughs, who hath sent us hither not ignorant or uninstructed of their Grievs, of their Desires, and Hopes, but, according to the ancient Use and Liberty of Parliaments, present our several humble Petitions to your Majesty of different Nature,

The Grounds and Reasons of making this Apology.

from the ancient Use and Liberty of Parliaments.

Some for Right, and some for Grace, to the easing and relieving of us, of some just Burdens, and of other some unjust Oppressions, wherein what due Care, and what Respect we have had that your Majesty's Honour and Profit should be enjoyed with the Content and Satisfaction of your People, shall afterwards in their several due Places appear.

* Now concerning the ancient Rights of the Subjects of this Realm, chiefly consisting in the Privileges of this House of Parliament,

** Our sovereign Lord, Your humble and true Lieges that been called for the Commons of your Lord, by petition unto your Rizz. Wiffenesse, that soo as is bath ever be thair Libertie and Freedom that shure should beo Statute, noo Law, made of lesse than they yaf thereto their Assent, considering that the Commons of your Land, the which that is and ever hath be a Member of your Parlemtent, beo as well Assentirs as Petitioners. Rot. Parl. 2 Hen. V. pars 2. N^o. 10.*

The Misinformation openly delivered to your Majesty, hath been in three Things :

*The Misinfor-
mations were,
1. That the
Privileges of
Parliament were
not held of Right
but of Grace.
2. That they
were no Court
of Record.*

First, That we held not Privileges of Right, but of Grace only, renewed every Parliament by way of Donature upon Petition, and so to be limited.

Secondly, That we are no Court of Record, nor yet a Court that can command View of Records, but that our Proceedings here are only to Acts and Memorials, and that the Attendance with the Records is Courtesy, not Duty.

*3. That the Ex-
amination of the
Return of Writts
for Members,
&c. belongs on-
ly to Chancery.
Which Things
are to the utter
Overthrow of
the Fundamen-
tal Privileges of
the House of
Commons.*

Thirdly, And lastly, That the Examination of the Return of Writts for Knights and Burgeſſes is without our Compaſs, and due to the Chancery; againſt which Aſſertions (*moſt gracious Sovereign*) tending directly and apparently to the utter Overthrow of the very fundamental Privileges of our Houſe, and therein of the Rights and Liberties of the whole Commons of your Realm of *England*,

Which they and their Anceſtors from Time immemorable, have undoubtedly enjoyed under your Majesty's moſt noble Progenitors,

*And highly de-
rogatory to the
Dignity, Liber-
ty, and Autho-
rity of Parlia-
ments.*

We the Knights, Citizens, and Burgeſſes of the Houſe of Commons aſſembled in Parliament, and in the Name of the whole Commons of the Realm of *England*, with uniform Conſent for ourſelves and our Poſterity, do expreſſy proteſt, as being derogatory in the higheſt Degree to the true Dignity, Liberty, and Authority of your Majesty's High Court of Parliament, and conſequently to the Rights of all your Majesty's ſaid Subjects, and the whole Body of this your Kingdom.

*And pray this
their Proteſta-
tion may be re-
corded.*

And deſire that this our Proteſtation may be recorded to all Poſterity.

And contrarywiſe with all humble and due Reſpect to your Majesty, our ſovereign Lord and Head, againſt thoſe Miſinformations we moſt truly avouch,

First, † That our Privileges and Liberties are our Right and due Inheritance, no leſs than our very Lands and Goods.

Secondly, ‡ That they cannot be withheld from us, denied, or impaired, but with apparent Wrong to the whole State of the Realm.

† *The Commons ever enjoyed theſe Privileges,*

1. *Of Acceſs to the King,*

2. *Of Freedom of Speech,*

3. *And Freedom from Arreſts, in as amiable manner as now, though not formally prayed by the Speaker; Elking's Ancient Method of holding of Parliaments, cap. 7. pag. 137.*

‡ *The Commons ever enjoyed theſe Privileges which the Speaker now petitions for, though never deſired by any of the ancient Speakers until after the 7th of King Henry VIII.*

The Speaker's petition for Freedom of Speech is not recorded before 33 Henry VIII. made by Thomas Moyle, Speaker. Idem, cap. 7. pag. 138, 139.

Thirdly,

Thirdly, And that our making of Request in the Entrance of Parliament, to enjoy our Privilege, is an Act only of Manners, and doth weaken our Right, no more than our suing to the King for our Lands by Petition.

Which Form, though new and more decent than the old by || Precipe, yet the Subject's Right is no less new than of old.

Fourthly, We avouch also, That our House is a Court of Record, and so ever esteemed. The House of Commons a Court of Record.

Fifthly, That there is not the highest standing Court in this Land that ought to enter into Competency either for Dignity or Authority with this High Court of Parliament, which with your Majesty's Royal Assent gives Laws to other Courts, but from other Courts receives neither Laws nor Orders. No Court ought to stand in Competency with the High Court of Parliaments.

Sixthly, And lastly, We avouch that the House of Commons is the sole proper Judge of Return of all such Writs, and of the Election of all such Members as belong unto it, without which the Freedom of Election were not entire: House of Commons the only proper Judges of the Return of all such Writs, and of the Election of their Members.

And that the *Chancery*, though a standing Court under your Majesty, be to send out those Writs, and receive the Returns, and to preserve them, yet the same is done only for the Use of the Parliament:

Over which neither the *Chancery*, nor any other Court, ever had, or ought to have, any manner of Jurisdiction.

From these misinformed Positions (*most gracious Sovereign*) the greatest Part of our Troubles, Distrusts, and Jealousies have risen; having apparently found that in the first Parliament of the happy Reign of your Majesty, the Privileges of our House, and therein the Liberties and Stability of the whole Kingdom, have been more universally and dangerously impugned than ever, (as we suppose) since the Beginnings of Parliaments. From these Misinformations most of the Parliament's Troubles have arisen.

Besides that in regard of her * Sex and Age which we had great Cause to tender, and much more upon Care to avoid all Trouble which by wicked Practice might have been drawn to impeach the Quiet of your

|| Fuit dit que en le temps le Roy Henry & devant le Roy fut empleade come serroit autre Home du Peuple, mes Edw. Roy son fitz ordeign que home fueroit vers Roy par petition. *The Year Book, Term Hillary 22 Edw. III. fol. 3, 6.*

Wilbye a *Judge* said, Jaye view tiel brief precipe Henry Regi Angliæ &c. en lieu de que est ore dun petition pur son prerogative. *The Year Book, Term Trin. 24 Edw. III. fol. 55. b.*

* *Queen Elizabeth.*

Majesty's

Majesty's Right in the Succession, those Actions were then passed over, which we hoped in succeeding Times of freer Access to your Highness of renowned Grace and Justice, to redress, restore, and rectify.

Whereas contrarywise in this Parliament, which your Majesty in great Grace (as we nothing doubt) intended to be a Precedent for all Parliaments that should succeed, clean contrary to your Majesty's so gracious Desire,

The Mischief by these Misinformations.

By reason of these Misinformations, not Privileges, but the whole Freedom of the Parliament and Realm have from Time to Time, upon all Occasions, been mainly hewed at. As

1. Freedom of Elections hindered.

First, The Freedom of Persons in our Election hath been impeached.

2. Freedom of Speech.

Secondly, The Freedom of our Speech prejudiced by often Re-proofs.

3. Particular Persons marked.

Thirdly, Particular Persons noted with Taunt and Disgrace who have spoken their Consciences in Matters proposed to the House, but with all due Respect and Reverence to your Majesty.

† Whereby we have been in the End subject to so extream Contempt, as a Goaler durst so obstinately withstand the Decrees of our House.

Some of the higher Clergy to write a Book against us, even sitting the Parliament.

Persons presuming to print and preach against the Rights of Parliaments.

The inferior Clergy to inveigh against us in Pulpits, yea to publish their Protestations, tending to the Impeachment of our most ancient and undoubted Rights in treating of Matters for the Peace and good Order of the Church.

What Cause we your poor Commons have to watch over our Privileges, is manifest in itself to all Men.

Prerogatives increase, the Subjects Privileges at a Stand.

The Prerogatives of Princes may easily, and do daily grow.

The Privileges of the Subject are for the most Part at an everlasting stand.

They may be by good Providence and Care preserved, but being once lost are not recovered but with much Disquiet.

† We be informed by our Judges, that We at no Time stand so highly in our Estate Royal as in the Time of Parliaments, wherein we as Head, and you as Members, are conjoined and knit together in one Body Politick, so as whatsoever Offence or Injury (during that Time) is offered to the meanest Member of this House, is to be adjudged as done against our Person, and the whole Court of Parliament. King Henry the Eighth's Speech to the Commons in the Parliament 34 of his Reign, in *George Ferrer's Case*. Crompton's Jurisdiction of Courts, pag. 10.

If

If good Kings were immortal as well as Kingdoms, to strive for Privilege were but Vanity perhaps and Folly; but seeing the same God who in his great Mercy hath given us a wise King and religious, doth also sometimes permit Hypocrites and Tyfants in his Displeasure, and for the Sins of the People;

No need of Privileges. &c. if good Kings were as immortal as Kingdoms.

From hence hath the Desire of Rights, Libertieſ, and Privileges, both for Nobles and Commons, had its juſt Original;

By which an harmonical and ſtable State is framed;

Each Member under the Head enjoying that Right, and performing that Duty, which, for the Honour of the Head and Happineſs of the whole is requiſite.

Thus much touching the Wrong done to your Maſteſty by Miſinformation touching our Privileges.

The laſt Kind of Miſinformation made to your Maſteſty, hath been touching the Actions and Speeches of particular Perſons uſed in the Houſe.

Which Imputation notwithstanding, ſeeing it reacheth the whole Houſe in general, who neither ought, neither have at any Time ſuffered any Speech touching your Maſteſty, other than reſpectively, dutiful, and as become loyal Subjects of a King ſo gracious;

The Speeches of particular Members concern the whole Houſe.

And forasmuch as it is very clear unto us by the Effect, that divers Things ſpoken in the Houſe, have been perverted and very untruly reported to your Maſteſty;

If it might ſeem ſo fit in your Maſteſty's Wiſdom; and were ſeemingly for us to crave, we ſhould be moſt glad, if, for our better Juſtification, and for your further Satisfaction, which we principally deſire; the Accuſers and the Accuſed might be confronted.

The Accuſer and Accuſed ought to be confronted.

And now (*moſt gracious Sovereign*) theſe neceſſary Grounds of our Cauſes and Defences being truly laid, and preſented ſincerely to your Maſteſty's Grace and Wiſdom, the Juſtification of ſuch Particulars, wherein your Highneſs ſeemed doubtful of our dutiful Carriage (tho' not ſo much for the Matter, as for the Manner of our Proceedings) we truſt will be plain; and to expedite which Particulars, we find them to have been of three different Natures.

The Commons Juſtification of themſelves, as to Particulars, ſtated. Being of three Sorts.

The *Fiſt* Sort concerning the Dignity and Privileges of our Houſe.

The *Second*, the good Eſtate of the Realm and Church.

The *Third*, was for Eaſe of certain Grievances and Oppreſſions.

In the *Fiſt* Rank there were Five Particulars.

1. The Matter of the Gentleman Uſher.

N n n

2. Of

The fiſt ſubdivided into five Parts.

2. Of the Yeomen of the Guard.
3. Of the Election of the Knights of *Buckinghamshire*.
4. Of Sir *Thomas Shirley's* Deliverance.
5. And of the Bishop of *Bristow's* Pamphlet.

The second into two Parts.

The *Second* Head had two Particulars,
The Union and Matters of Religion.

The third into three.

The *Third* Head had three,
The Bill * of Affarts, and Matter of Purveyors, and the Petition for Wardships.

Of each of these we must say somewhat to give your Majesty Satisfaction, and that with all Brevity, to shun Tediousness and Trouble.

The Gentleman Usher's Misbehaviour to the Commons.

The Gentleman Usher's Fault in depriving, by his unaccustomed Neglect, a great Part of our House from hearing your Majesty's Speech the first Day of Parliament, we could not, in the Grief of being frustrate of our so longing and just Desire to hear your Majesty's Voice and renowned Wisdom, but complain of in decent Sort among ourselves,

And further we proceeded not.

Your Majesty's extraordinary great Grace and Favour in rehearsing the Day ensuing your former admirable Speech, did give us Content, with abundance of Increase of Joy.

The Yeomen of the Guard's † Words were very opprobious, and howsoever they might have been not unfitly applied to the Peasants of *France*, or Boores of *Germany*;

The Yeomen of the Guard's Misbehaviour to the Commons.

Yet could they not be other than very reproachful and injurious to the great Dignities and Honour of the Commons of this Realm, who contain not only the Citizens, Burgeses, and Yeomanry, but also the whole inferior Nobility of the Kingdom, Knights, Esquires, and Gentlemen, many of which are come immediately out of the most Noble Families, and some other of their Worth advanced to the high Honour of your Majesty's Privy Council, and otherwise have been employed in very honourable Service.

The great Quality of the Commons, and Advantages by them to the Crown.

In Sum, the sole Persons of the higher Nobility excepted, they contain the whole Power and Flower of your Kingdom.

First, With their Bodies your Wars,

Secondly, With their Purfes your Treasures are upheld and supplied.

* Affart (as it is here properly so be understood) signifies where the Subject within the Limits and Bounds of the King's Forests stubs the Ground, making it fit for Tillage, without the King's Licence.

† Brian Tash, the Yeoman of the Guard, keeping one of the Doors of the Upper House, repulsed several Members of the Lower House, and shut the Door upon them, with these uncivil and contemptible Terms, Goodmen Burgeses, you come not here. Journ. Dom. Com.

Thirdly,

Thirdly, Their Hearts are the Strength and Stability of your Royal Seat.

All these, amounting to many Millions of People, are representatively present in us of the House of Commons.

The Wrong done to us doth redound upon the whole Land, and will be so construed.

We could not therefore do less in our Duties to the Realm, than to advertise such a Delinquent of the Unseemliness of his Fault, neither could we yet do more in Duty to your Majesty, than upon his Acknowledgment thereof so freely to remit it.

The Rights of the Liberties of the Commons of *England* consisteth chiefly in these three Things.

The Rights of the Commons consist chiefly in three Things.

First, † That the Shires, Cities, and Boroughs of *England*, by Representation to be present, have free Choice of such Persons as they shall put in Trust to represent them.

Secondly, That the Persons chosen during the Time of the Parliament, as also of their Access and Recess, be free from Restraint, Arrest, and Imprisonment.

Thirdly, That in Parliament they may speak freely their Consciences without Check and Controulment, doing the same with due Reverence to the Sovereign Court of Parliament, that is to your Majesty and both the Houses, who all in this Case make but one Politick Body, whereof your Highness is the Head.

These three several Branches of the ancient Inheritance of our Liberty, were in three Matters ensuing apparently injured.

The Commons injured in each of them in three Matters.

The Freedom of Election in the Case of Sir *Francis Godwin*.

Freedom of Election.

The Freedom of the Persons elected in Sir *Thomas Shirley's* Imprisonment.

Freedom of Persons elected.

The Freedom of our Speech, as by divers other Reproofs, so also in some Sort by the Bishop of *Bristow's* Invective.

Freedom of Speech.

For the Matter of Sir *Francis Goodwin*, the Knight chosen for *Buckinghamshire*, we were and still are of a clear Opinion, that the Freedom of Election was in that Action extreamly injured; that by the same Right it might be at all Times in a Lord Chancellor's Power

The Election in Buckinghamshire.

† And because Elections ought to be free, the King commandeth upon great Forfeiture, that no Man by Force and Arms, nor by Malice or Menaceing, shall disturb any to make free Elections. Pulton's Stat. 3 Edw. I. cap. 5. made Ann. Dom. 1275. Coke's 2^d Inst. fol. 168.

to reverse, defeat, to evert and substitute all the Elections, and Persons elected, over all the Realm.

Neither thought we that the || Judges Opinion, which yet in due Place we greatly reverence, being delivered what the Common Law was, which extends only to inferior and standing Courts, ought to bring any Prejudice to this High Court of Parliament, whose Power being above the Law is not founded on the Common Law, but have their Rights and Privileges peculiar to themselves.

The Commons Defence for issuing a Writ out of Chancery in the King's Name without his Notice.

For the manner of our Proceeding, which your Majesty seemed to blame, in that the second Writ going out in your Majesty's Name, we presumed to censure it without first craving Access to acquaint your Highness with our Reasons therein, we trust our Defence shall appear just and reasonable.

It is the Form of the Court of *Chancery*, as of divers other Courts, that Writs going out in your Majesty's Name, are returned also as to your Majesty, in that Court from whence they issue;

Howbeit therefore, no Man ever repaireth to your Majesty's Person, but proceeds according to Law, notwithstanding the Writ.

This being the universal Custom of this Kingdom, it was not, nor could be admitted into our Conceits, that the Difference was between your Majesty and Us (for God forbid that between so gracious a Sovereign, and so dutiful and loving Subjects, any Difference should arise;)

But it always was and still is conceived, that the Controversy was between the Court of *Chancery* and our Court, an usual Controversy between Courts about their Pre-eminences and Privileges:

The Commons, and not the Chancery, to judge the Return of the Writ.

And that the Question was, Whether the *Chancery*, or our House of the Commons, were Judge of the Members returned for it.

Wherein though we supposed the Wrong done to be most apparent, and extremely prejudicial for the Rights and Liberties of this Realm,

Their Readiness to comply with the King's Proposal.

Yet such and so great was our Willingness to please your Majesty, as to yield to a middle Course proposed by your Highness, preserving only our Privileges by voluntary Cessions of the lawful Right.

And this Course, as it were, of deceiving of ourselves, and yielding in our apparent Right (wheresoever we could but invent such Ways of Escape as that the Precedent might not be hurtful, we have held, *dread Sovereign*, more than once this Parliament, upon Desire to avoid that, which in your Majesty by Misinformation, whereof we

|| *In the memorable Case of Thorp, which happened 31 Henry VI. the Judges being asked their Opinions by the Lords, answered in these Words: It hath not been used before Time, nor becomes it us to determine Matters concerning the High Court of Parliament, which is so high and mighty in its Nature, that it is Judge of the Law, and makes that to be Law which is not Law, and that to be no Law which is; and the Determination of its Privileges belongs to the Lords in Parliament, and not to the Justices. Rot. Parl. 31 Hen. VI. No. 25, 26, &c.*

have

have had Cause always to stand in Doubt, might be distasteful or not approveable: So dear hath your Majesty's gracious Favour been unto us.

In the Delivery of Sir *Thomas Shirley*, our Proceedings were long; our Defence of them shall be brief.

* We had to do with a Man, the Warden of the *Fleet*, so intractable, and of so resolved Obstinacy, as that nothing we could do, no not your Majesty's Royal Word for Confirmation thereof, could satisfy him for his own Security.

This was the Cause of the Length of that Business: Our Privileges were so shaken before, and so extremely vilified, as that we held it not fit in so unreasonable a Time, and against so mean a Subject, to seek our Right by any other Course of Law, or by any Strength than by our own.

The Case between the Warden of the Fleet and the Commons.

The Bishop of *Bristol's* Book was injurious and grievous to us, being written expressly with Contempt of the Parliament, and of both the Houses in the highest Degree; undertaking to deface the Reasons proposed by the Commons, approved by the honourable Lords, confirmed by the Judges, and finally by your Royal Majesty not disaffected to.

Concerning the Bishop of Bristol's Book.

And to increase the Wrong, with strange Untruths he had perverted those Reasons in their main Drift and Scope, pretending that they were devised to impugn the Union itself.

Whereas both by their Title and by themselves it was clear and evident, that they were only used against Alteration of Name, and that not simply, but before the Union of both Realms in Substance were perfected.

† This Book being thus written and published to the World, con-

* In the Parliament 34 Hen. VIII. because the Serjeants of the Court made a Fray upon the Serjeant of the Mace, sent from the Commons House for George Ferrers their Member, then lately arrested: And for that the Sheriff rejected the Complaints of the Fray and the Message contemptuously: The House,

1. Committed the Sheriff to the Tower;
2. The Clerk, which was the Occasion of the Fray, to a Place called Little Ease;
3. And the Officers to Newgate.

Compton's Jurisdiction of Courts, pag. 8. b.

† The Lords for yielding Satisfaction unto the Lower House concerning the Bishop's Book, did all agree in Opinion, that the same might best be done if he would voluntarily acknowledge himself to have committed an Error in that Behalf, and to be sorry for it; which in the End he did in these Words following; viz.

1. I confess I have erred, in presuming to deliver a private Sentence in a Matter so dealt in by the High Court of Parliament.
2. I am sorry for it.
3. If it were to do again, I would not do it.
4. But I protest it was done of Ignorance, and not of Malice towards either of the Houses of Parliament, or any particular Member; but only to declare my Affection to the intended Union, which I doubt not but all your Lordships do allow of.

Journ. Dom. Procerum, 5 Jun. an. 1 Jac. I.

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taining moreover sundry slanderous Passages, and tending to Murmurs, Distraction, and Sedition;

We could not do less against the Writer thereof, than to complain of the Injury to the Lords of the Higher House, whereof he had now attained to be a Member.

These Wrongs were to the Dignity of our House and Privileges.

Concerning the Causes belonging to State and Church.

Touching the Causes appertaining to State and Church, true it is, we were long in treating and debating the Matter of Union.

The Propositions were new;

The Importance great;

The Consequence far reaching, and not discoverable but by long Disputes: Our Numbers also as large; and each hath Liberty to speak.

But the Doubts and Difficulties once cleared or removed, how far we are from opposing to the just Desires of your Majesty, as some evil disposed Minds would perhaps insinuate, who live by Division, and prosper by Disgrace of other Men, the great Expedition, Alacrity, and Unanimity, which was used and shewed in passing the Bill, may sufficiently testify.

Concerning Matters of Religion.

* For Matter of Religion, it will appear by Examination of Truth and Right, that your Majesty should be misinformed, If any Man should deliver, that the Kings of *England* have any absolute Power in themselves, either to alter Religion (which God defend should be in the Power of any mortal Man whatsoever), or to make any Laws concerning the same, otherwise than as in Temporal Causes, by Consent of Parliament.

† We have and shall at all Times by our Oaths acknowledge, That your Majesty is Sovereign Lord and Supreme Governour in both.

Touching our own Desires and Proceedings therein, they have not been a little misconceived and misreported.

With what Temper and Spirit the Commons came to Parliament.

We have not come in any *Puritan* or *Brownish* Spirit, to introduce their Party, or to work the Subversion of the State Ecclesiastical, as now it standeth;

Things so far and so clearly from our Meaning, as that with uniform Consent in the Beginning of this Parliament we committed to

* See, 1. *The Statute of Magna Charta.*

2. *The Statutes of Provisors*, 25, 38 Ed. III. 16 Rich. II.

3. *The Statutes of* 24 Hen. VIII. cap. 12. 25 Hen. VIII. cap. 21. 27 Hen. VIII. cap. 15. 28 Hen. VIII. cap. 16.

† *Dialogus de Fundamentis Legum Angliæ, & de Conscientia*, per Christopherum de Sancto Germano, cap. 10. pag. 34. Sextum fundamentum legis Angliæ stat in diversis Statutis per Dominum Regem & progenitores suos, & per Dominos Spirituales & Temporales, & per Communitatem totius regni in Parliamentis editis, ubi lex rationis, lex divina, consuetudines maxima sive alia fundamenta legis Angliæ prius sufficere minime videbantur.

the

the *Tower* a Man, who out of that Humour, in a Petition exhibited to our House, had slandered the Bishops.

But according to the Tenour of your Majesty's Writ of Summons directed to the Counties from whence we came, and according to the ancient and long continued Use of Parliaments, as by many Records from Time to Time appeareth, we come with another Spirit, even with the Spirit of Peace.

We disputed not of Matters of Faith and Doctrine, our Desire was Peace only, and our Device of Unity how this lamentable and long lasting Diffension amongst the Ministers, from which both Atheism, Sects, and all ill Life, have received such Encouragement and so dangerous Increase, might at length, before Help come too late, be extinguished.

There was no Dispute of Matters of Faith; But how to extinguish Diffensions amongst the Ministers;

And for the Ways of this Peace, we are not all addicted to our own Inventions, but ready to embrace any fit Way that may be offered; neither desire we so much, that any Man in regard of Weakness of Conscience may be exempted after Parliament from Obedience unto Laws established, as that in this Parliament such Laws may be enacted, as by the Relinquishment of some few Ceremonies of small Importance, or by any Way better, a perpetual Uniformity may be enjoined and observed.

And to establish Peace in the Church by the best Ways.

Our Desire hath also been, to reform certain Abuses crept into the Ecclesiastical State, even as into the Temporal.

And lastly, that the Land might be furnished with a learned, religious, and godly Ministry:

For the Maintenance of whom we would have granted no small Contributions, if in these, as we trust just and religious Desires, we had found that Correspondency from others which was expected.

These Minds and Hearts we in secret present to that Sovereign Lord who gave them, and in publick profess to your gracious Majesty, who we trust will so esteem them.

There remains the Matters of Oppression or Grievance in the Bill of Affairs.

The Commons Defence as to Matters of Oppression or Grievance in the Bill of Affairs.

Your Majesty's Council was heard, namely, your Solicitor and Sir Francis Bacon.

It was also desired by the House, That other of your Council would have been present.

We knew that our passing the Bill could not bind your Majesty: Howbeit, for sundry equitable Considerations (as to us they seemed) we thought good to give so much Passage to the Bill, in Hope your Majesty might either be pleased to remit in some sort unto this Equity that Right, which the Rigour of Law had given, or otherwise intreated by this Kind of Sollicitation, to let them fall into your Majesty's

jefty's Hands full of Piety and Mercy, and not into the Jaws of devouring Promoters.

And this do we understand to be your gracious Intent, wherewith we rest joyfully content, and satisfied.

The Grievance was not unjust in Rigour of Law, and was particular.

As to Cart-takers and Purveyors.

But a general, extreme, unjust, and crying Oppression is in Cart-takers and Purveyors, who have rummaged and ransacked since your Majesty's coming in, far more than under any of your Royal Progenitors: There hath been no Prince since *Henry III.* except *Queen Elizabeth*, who hath not made some one Law or other, to repress or limit them. They have no Prescription, no Custom to plead.

All Parliaments have complained of them.

For there hath not been any Parliament, wherein Complaint hath not been made, and Claim of our Rights, which doth interrupt Prescription.

* We have not in this present Parliament fought any thing against them, but Execution of those Laws, which are in Force already.

We demand but that Justice, which our Princes are sworn neither to deny, delay, nor sell.

That we fought into the Accounts of your Majesty's Expence, was not our Presumption, but upon Motion from the Lords of your Majesty's Council, and after from your Officers of your Highness's Household, and that upon a Demand of a perpetual yearly Revenue, in lieu of the taking away of those Oppressions; unto which Composition neither know we well how to yield, being only for Justice and due Right, which is unsaleable:

Justice and due Right unsaleable.

† Neither yet durst we impose it by Law upon the People, without first acquainting them, and having their Consents unto it.

* *Our Sovereign Lord the King, at his Parliament holden at Westminster in the Term of St. Hillary, the 38th Year of his Reign, having Regard to the Quietness of his People, which he chiefly desireth to sustain in Tranquillity and Peace, to govern according to the Laws, Usages, and Franchises of this Land, as he is bound by his Oath made at his Coronation, following the Ways of his Progenitors, which for their Times made certain good Ordinances and Provisions against the said Grievances and Perils [of Provisions from Rome] which Ordinances and Provisions, and all the other made in his Time, and especially in the 25th and 28th Year of his Reign, our Sovereign Lord the King, by the Assent and express Will and Concord,*

1. *Of the Dukes, Earls, Barons;*
2. *And Commons of this Realm;*
3. *And of all other whom these Things toucheth;*

By good and mature Deliberation and Advisement, hath approved, accepted and confirmed, &c. Rastal's Statutes; the Statute of Provisors, made 38 Edw. III. cap. 1.

† *The Lords having granted to the King the tenth Sheaf of all the Corn of their Demesnes, except of their Bond Tenants, the tenth Fleece of Wooll, and the tenth Lamb of their own Store, to be paid in two Years; The Commons made Answer, That they knew and tendered the King's Estate, and were ready to aid the same, mes pur ceo quil coment que laide soit grante en ce cas ils nolereat assentir tant quilz eussent conseillez & advisez avec les Communes de leur pais, They durst not agree, without farther Conference with their Countries. Rot. Parl. 13 Edw. III. No. 5, 8.*

But

But if your Majesty might be pleased, in your gracious Favour, to treat of Composition with us for some Grievance, which is by Law and just; How ready we should be to take that Occasion and Colour to supply your Majesty's Desire, concerning these also, which we hold for unjust, should appear, we nothing doubt, to your Majesty's full Satisfaction.

And therefore we come, lastly, to the Matter of Wards, and such other Burthens (for so we acknowledge them) as to the Tenures of *Capite* and *Knights Service* are incident. We cannot forget (for how were it possible?) how your Majesty, in a former most gracious Speech in your Gallery at *Whitehall*, advised us for unjust Burthens to proceed against them by Bill: But for such as were just, if we desired any Ease, that we should come to yourself, by way of Petition, with Tender of such countervailable Composition in Profit, as for the supporting of your Royal Estate was requisite. According unto which your Majesty's most favourable Grant and Direction, we prepared a Petition to your most excellent Majesty, for Leave to treat with your Highness touching a perpetual Composition, to be raised by yearly Revenue out of the Lands of your Subjects, for Wardships and other Burthens depending upon them, or springing with them; wherein we first entered into this dutiful Consideration, That this Prerogative of the Crown, which we desire to compound for, was Matter of mere Profit, and not of any Honour at all or princely Dignity. For it could not then, neither yet can by any means, sink into our Understandings, that these æconomical Matters of Education and Marrying of Children, which are common also to Subjects, should bring any Renown or Reputation to a potent Monarch, whose Honour is settled on a higher and stronger Foundation. Faithful and loving Subjects, valiant Soldiers, and honourable Nobility, wise Counsellors, a learned and religious Clergy, and a contented and a happy People, are the true Honour of a King: And contrarywise, that it would be an exceeding great Honour, and of memorable Renown to your Majesty with all Posterity, and in present an assured Bond of the Hearts of all your People, to remit unto them this Burthen, under which our Children are born.

This Prerogative then appearing to be a mere Matter of great Profit, we entered into a second Degree of Consideration, With how great Grievance and Damage of the Subject, to the Decay of many Houses, and disabling of them to serve their Prince and Country; with how great Mischief also, by occasion of many forced and ill suited Marriages; and lastly, with how great Contempt and Reproach of our Nation in Foreign Countries; how small a Commodity now was raised to the Crown in respect of that, which with great Love and Joy and Thankfulness, for the Restitution of this Original Right in disposing

P p p of

The Matter of Wards.

Unjust Burthens to be proceeded against by Bill; others that were just, but uneasy, by way of Petition.

The Commons Petition to treat with the King for a perpetual Composition, by yearly Revenue out of the Subjects Lands, in lieu of Wardships and other Burthens.

What is the true Honour of a King.

The great Grievance and Mischief of Wardships.

of our Children, we would be content and glad to assure unto your Majesty.

The Original of Wardships, what.

We fell also from hence into a third Degree of Consideration, That it might be, that in regard that the Original of these Wardships was, serving of the King in his Wars against *Scotland*, which Cause we hope now to be at an everlasting End ;

The whole Kingdom's Hope of being then forever eased of the Burthen of it.

And in regard moreover of that general Hope, which at your Majesty's first Entry by the whole Land was embraced (a Thing known unto all Men) that they should be now for ever eased of this Burthen ;

Your Majesty, out of your most noble and gracious Disposition and Desire to overcome our Expectation with your Goodness, may be pleased to accept the Offer of a perpetual and certain Revenue, not only proportionable to the uttermost Benefit that any of your Progenitors ever reaped thereby, but also with such an Overplus and large Addition, as in great part to supply your Majesty's other Occasions, that our Ease might breed you Plenty with their humble Minds.

With these dutiful Respects, we intended to crave Access unto your Majesty.

Misinformations given touching what the Commons House said of this Burthen.

But that ever it was said in our House by any Man, That it was a Slavery under your Majesty more than under our former Princes, hath come from an untrue and calumnious Report. Our Sayings have always been, That this Burthen was just, That the remitting thereof must come from your Majesty's Grace, and that the denying our Suit was no Wrong.

This Apology hath truly represented the State of their House.

And thus, most gracious Sovereign, with dutiful Minds and sincere Hearts towards your Majesty, have we truly disclosed our secret Intentions, and delivered our outward Actions in all these so much traduced and blamed Matters ;

And from hence forward shall remain in great Affiance, that your Majesty resteth satisfied, both in your Grace and in your Judgment, which above all worldly Things we desire to effect, before the dissolving of this Parliament, where in so long Time, with so much Pains and Endurance of so great Sorrow, scarce any thing hath been done for their Good and Content, who sent us hither ; and whom we left full of Hope and joyful Expectation.

And how little hath been done for the Good and Content of those who sent them.

There remaineth, *dread Sovereign*, yet one Part of our Duty at this present, which Faithfulness of Heart, not Presumption doth press : We stand not in Place to speak or do Things pleasing.

What is the Care of the Commons so deserve well both of King and Subject.

Our Care is, and must be, to confirm the Love, and tye the Hearts of your Subjects, the Commons, most firmly to your Majesty.

Herein lieth the Means of our well-deserving of both :

There

There was never Prince entered with greater Love, with greater Joy and Applause of all his People.

This Love, this Joy, let it flourish in their Hearts for ever.

Let no Suspicion have Access to their fearful Thoughts, that their Privileges, which they think by your Majesty should be protected, should now by sinister Informations or Counsel be violated or impaired: *

Or that those, which with dutiful Respects to your Majesty speak freely for the Right and Good of their Country, shall be oppressed or disgraced.

Let your Majesty be pleased to receive publick Information from your Commons in Parliament, as to the Civil Estate and Government; for private Informations pass often by Practice: The Voice of the People, in the Things of their Knowledge, is said to be as the Voice of God.

The Commons in Parliament to give publick Information of the State of the Government to the King.

And if your Majesty shall vouchsafe, at your best Pleasure and Leisure, to enter into your gracious Consideration of our Petition for the Ease of these Burthens, under which your whole People have of long time mourned, hoping for Relief by your Majesty; then may you be assured to be possessed of their Hearts; and, if of their Hearts, of all they can do or have.

The Commons Request to the King to consider their Petition for the Ease of those Burthens, under which the Kingdom had long mourned.

And so we, your Majesty's most humble and loyal Subjects, whose Ancestors have with great Loyalty, Readiness, and Joyfulness, served your famous Progenitors, Kings and Queens of this Realm, shall with like Loyalty and Joy, both we and our Posterity, serve your Majesty and your most Royal Issue for ever, with our Lives, Lands, and Goods, and all other our Abilities:

With the Assurance of their Loyalty to him and his Royal Issue for ever.

And by all Means endeavour to procure your Majesty Honour, with all Plenty, Tranquillity, Content, Joy and Felicity."

Hinc Dolor, sed unde Medicina?

But farther to justify the Integrity of this Apology in the general, I think it will be seasonable and useful to close it with the Statute of 2 Henry IV. which follows.

The Integrity of this Apology justified.

First, That Holy Church have her Rights and Liberties: And that all the Lords Spiritual and Temporal, and all the Cities, Boroughs,

Rastal's Stat. 2Hen. IV. c. 1.

* The Commons did oftentimes under Edward III. discuss and debate among themselves many Things concerning the King's Prerogative; and agreed upon Petitions for Laws to be made directly against his Prerogative, as may appear by divers of the said Petitions. Yet they were never interrupted in their Consultations, nor received Check for the same; as may appear also by the Answers to the said Petitions. Those Precedents of Edward III. are the best, he being the right Heir to the Crown, absolute in his Government, and well beloved of his People, and may be freely cited. Elsyng, cap. 7. pag. 129.

and

*What was the
ancient Govern-
ment of Eng-
land.*

and Towns enfranchised, have and enjoy all their Liberties and Franchises, which they have duly used, and which they have of the Grant of his noble Progenitors and Predecessors Kings of *England*.

Secondly, And that the Great Charter, and the Charter of the Forest, and all other good Ordinances and Statutes made in his Time, and in the Time of his noble Progenitors not repealed, be firmly holden and kept in all Points.

Thirdly, And that all his Liege People and Subjects may freely and peaceably, in his sure and safe Protection, go and come to his Courts to pursue the Laws, or defend the same without Disturbance or Impediment of any.

Fourthly, And that full Justice and Right be done as well to the Poor as the Rich, in his Courts aforesaid.

Here we have the Evidence of the whole Kingdom clearly and fully delivered, What was the ancient Government of *England* before this declarative Law was made.



Jus

Jus Parliamentarium.

P A R T II.

A short History or Series of the Invasions upon the Privileges of Parliaments, as to Freedom of Speech for the Redress of Grievances. First, begun in the Reign of RICHARD II. Secondly, revived by Queen ELIZABETH. Thirdly, continued and improved in the Reign of King JAMES I. And, Fourthly, completed in that of King CHARLES I. by the bold Resolutions of the Judges of the King's Bench; which was one main and principal Cause of those direful Calamities, which afterwards fell both upon King and Kingdom.

BEFORE we come to make out the Truth of this Proposition, it will be necessary to enquire into the Practice of preceding Times, touching the Right of the Commons to treat and debate in Parliament, *super diversis negotiis Regem & Statum Regni specialiter tangentibus*; that so the Reader may be the better satisfied in this weighty Point.

I will proceed by these Steps from the Writs *de expensis Militum & Burgenfium, qui venerunt ad Parliamenta.*

Rot. Clauf.
28 Ed. I. m. 3.
dorf. De Militibus,
Civibus, & Burgenfibus
mittentibus ad
Parliamentum
Regis.

I. It appears, That in a Parliament held 28 *Edw.* III. they were called, *Nobiscum* [i.e. *Rege*] *super diverfis negotiis, Nos & Populum regni nostri specialiter tangentibus, tractaturi.*

II. And the Writs of Expences run in the same Form (after the Parliaments were ended) as may be seen in those Clauses

Clauf. 29 Ed. I.
m. 17. dorf.
Clauf. 33. Ed. I.
m. 13. dorf.
Clauf. 34 Ed. I.
m. 11. dorf.
Cl. 35. 1 Ed. I.
m. 14. dorf.

1. Of the 19th
 2. Of the 23^d
 3. Of the 24th
 4. And of the 35th
- } of *Edward* I.

III. As to the Writs of Expences during the Reign of *Edward* II. they also prove,

That the Commons were, *de Mandato Regis*, called,

Clauf. 2 Ed. II.
m. 4. dorf.
Clauf. 5 Ed. II.
m. 16. dorf.
De expensis
Militum &
Burgenfium.

1. To the Parliament of the 2^d
 2. To the Parliaments held the 5th
- } of *Edward* II.

Nobiscum super diverfis negotiis, Nos & Statum Regni nostri specialiter tangentibus, tractaturi.

Stat. 17 Ed. II.

IV. But that which confirms all this, is the Statute of 17 *Edw.* II. so often mentioned before, which declares,

That those Things which were for the establishing the State of the King and of his Heirs, and for the Estate of the Realm and of the People, *soient tretez en Parlement.*

But by whom was all that to be done?

1. *Par Seigneur le Roy, & par l'assent*
2. *Des Prelats, Counts & Barons,*
3. *Et la Communalte du Reaume,*

as had been accustomed in former Times.

Cl. 16 Ed. II.
m. 19. dorf.
Cl. 17 Ed. II.
m. 24. dorf.
Cl. 18 Ed. II.
m. 25. dorf.
Cl. 19. Ed. II.
m. 19. dorf.

V. But the Writs concerning the Parliament held *ann.* 16, 17, 18, and 19 of *Edward* II. though they somewhat differ from the former, and say, *ad tractandum super diverfis arduis negotiis, Nos & Statum Regni nostri tangentibus;*

Yet they enforce my Argument: For the Commons were by them to treat, not only of divers, but of arduous *Busineffes*, which concerned the King and the State of the Realm.

VI. And for the Writs which we find recorded in the Time of *Edward* III. several of them also run, *venientibus ad tractandum super diverfis & arduis negotiis, Nos & Statum Regni nostri tangentibus.*

To

To give two or three Instances; they run so to the Sheriff, after the Ending,

1. Of the Parliament held at *Westminster*, 1 *Edw.* III.
2. Of the Parliament called at *New Sarum*, 1 *Edw.* III.
3. And lastly, of another Parliament called at *Northampton* in the same Year.

Clauf. 1 Ed. III.
pars 1. N^o. 15.
Cl. 2 Ed. III.
m. 9. dorf.
Cl. 3 Ed. III.
m. 30. dorf.

The Writ follows.

REX Vicecomiti Norf. salutem. — Præcipimus tibi, quod de communitate comitatus tui, tam infra libertates quam extra, habere facias dilectis & fidelibus nostris *Johanni de Ormesby* & *Roberto de Nowers*, Militibus, comitatus illius nuper ad Parliamentum nostrum apud *Northampton*. die Paschæ proximo præterito in tres septimanas summonitum pro communitate comitatus prædicti, venientibus ad tractandum ibidem nobiscum, & cum Prælati, Proceribus regni nostri super diversis & arduis negotiis Nos & statum regni nostri tangentibus, undecim libras & quatuor solidos pro expensis veniendo ad Parliamentum prædictum, ibidem morando, & exinde ad propria redeundo; videlicet, pro viginti & octo diebus utroque prædictorum *Johannis* & *Roberti* capiente per diem quatuor solidos.

Rot. Clauf.
2 Ed. III. par. 1.
m. 26. dorf.

Et hoc nullatenus omittas. Teste Rege apud *Northampton*. 14 die Maii.

Per ipsum Regem & Concilium.

Confimilia brevia habent Milites subscripti, Vicecomitibus subscriptis de summis subscriptis, &c.

I will not trouble the Reader with Multitudes more of these Writs, which might be produced, and are to be met with in Mr. *Prynne's* fourth Part of *A brief Register, or Calendar and Survey of the several Kinds and Forms of Parliamentary Writs*. But,

VII. Plain it is, that in all the long Reign of *Edward* III. and of the several Parliaments which he held in his Time, and the many Bills and Petitions which the Commons then framed and proposed in Matters that highly concerned the Prerogative, together with the King's Answers to them all,

I have yet met with nothing throughout the *Rolls* of those Times, which gives me the least Occasion to believe that the Commons were ever debarred the Right and Privilege of Freedom of Debate in those Parliaments.

Nay, on the contrary, that victorious King having a regard to the Quietness of his People, which he chiefly desired to maintain in Tranquillity and Peace, and to govern according to the Laws, Usages and

and Franchises of his Land, as he saith, He was bound by his Oath made at his Coronation: That victorious King, I say, did acknowledge before, upon the grievous Complaint of the Commons, That the Right of the Crown of *England*, and the Law of the said Realm, was such, that upon the Mischiefs and Damages which happened to the Realm,

He ought and was bound of the Accord of his People in Parliament, thereof to make Remedy and Law, in voiding of the Mischiefs and Damages which thereof came.

Which never could be done without a fundamental Freedom of Speech in Parliament.

VIII. We have already in another Chapter had the solemn Declaration of both Lords and Commons assembled in the Parliament 16 *Richard II. viz.*

That in Parliament, which is the highest Court of the whole Realm, all Equity do shine forth, without the least Cloud or Shadow, like the Sun in its Meridian Glory, where Poor and Rich, refreshed with Peace and Ease of their Oppressions, may always find infallible and sure Refuge and Succour:

The Grievances of the Kingdom may be redressed, and the State of the King and Government of the Realm debated with wise Counsels:

The Domestick and Foreign Enemies of the King and Kingdom destroyed and repelled:

And that the Charges and Burthens of both may be sustained with more Ease to the People.

Having thus made my Way smooth and plain through the four Reigns, and therein proved the Right of the Commons to treat and debate in Parliament, as some Writs do run,

1. *Super diversis negotiis, Nos & Statum Regni nostri specialiter tangentibus*; or as others,

2. *Super diversis & arduis negotiis, Nos & Statum Regni nostri tangentibus.*

3. Or, as the Statute 17 *Edw. II.* For the establishing of the King and of his Heirs, and for the Estate of the Realm and of the People.

4. Or, as the Statute 25 *Edw. III.* saith, The Mischiefs and Damages which happened to the Realm, were to be remedied by the King, with Accord of his People in Parliament.

5. And lastly, As the solemn Declaration of both Lords and Commons, 2 *Rich. II.* say, That in Parliament,

1. The Grievances of the Kingdom are to be redressed:

2. The State of the King;

3. And

3. And Government of the Realm :
4. The Enemies of the King and Kingdom to be repelled and destroyed ;
5. And the Charges and Burthens of both to be sustained to the greatest Ease of the People. And so,
6. Both the Poor and Rich to be relieved from their Oppressions.

I cannot pass by this natural and obvious Reflection upon the whole ; viz.

That the Parliament being the highest Court of the whole Realm, wherein all Equity is to shine forth like the Sun in its meridian Glory ;

And the Commons being so constituent and essential a Part and Member thereof, and called to treat with the King and Lords about the arduous Affairs concerning the State of the Kingdom ;

That the Commons, as well as the Lords, must necessarily have a Freedom of Speech in Parliament ; or otherwise it is impossible to imagine how they could ever treat or debate of all those Affairs for which they were called, and much less agree to them.

For Treating, Debating, and Agreeing, does necessarily imply Liberty of Speaking, without which there never can be any Treating, Debating, or Agreeing at all.

And this King *Edward III.* and his Council well knew, that when he commanded all the Sheriffs of *England* to make speedy Proclamation,

Rot. clauf. 4.
Ed. III. m. 18.
dors. De con-
queri volenti-
bus ad Parlia-
mentum veni-
endum.

That such of his People, which had been oppressed and grieved, not only by his ordinary Ministers, but, as the *Rolls* hath it, *Auxi per ascuns grants de nostre Realm auxi bien nos Counseillers, come autres a damage & dishonour de nous* ; Should forthwith repair to his Parliament, then near at hand, there to receive speedy Help and Consolation.

Nay, Declaration was openly made in the Parliament of the 15th of the same King, by his special Command,

Rot. Parliam.
15 Edw. III.
No. 5.

Que chescun que se sente grevez per le Roi, ou ses ministres, ou autres, que ils metroient leur petitions avant, & ils averont bone & convenable remedie.

And in the Writs for summoning a Parliament in the 21st of the same King, directed to all the Sheriffs of *England* to chuse Knights, Citizens, and Burgeses, there is this memorable Clause inserted :

Rot. clauf. 21
Ed. III. par. 2.
m. 9. dors.

Et scire vos volumus, quod dictum Parliamentum, non ad auxilia seu Tallagia a populo dicti Regni nostri petenda, vel alia onera eidem populo imponenda, sed duntaxat pro justitia ipsi populo super damnis & gravaminibus sibi illatis facienda fecimus summoniri.

R r r

Lastly,

Rot. Parliam.
37 Edw. III.
No. 2.

Lastly, in the Parliament of the 37th of the very same King, *Simon de Langham*, Bishop of *Ely* and Lord Chancellor, in the Presence of the King, Lords, and Commons, declares, That the only Cause of summoning of that Parliament was for the Redress of Grievances; *viz.*

That the King, having well considered the great Goodness of God, eminently vouchsafed unto him in all his mighty and important Affairs; as also the extraordinary Aids given him,

1. By his Nobles,

2. And Commonalty,

and the manifold Perils sustained by them in his Wars:

He did therefore then call them together in Order;

First, For the firmer Establishment of the Franchises of Holy Church;

Secondly, To redress the Grievances, Outrages and Mischiefs, which had been done as well to the Nobles as Commonalty, against the Law of the Land.

And thereupon the King willed, saith the Chancellor, *Qui si ut sente grevez mette avant sa petition en ce Parlement, & il ent avera covenable response.*

And who was it, do we think, that treated this People with all this Clemency and Sweetness? Was he a Prince deficient either in Courage or Sweetness?

Surely none dare say, when he considers that it was *Edward III.* the Arbitrer and Ballance-holder of Christendom, Vicar General of the Empire, and who led Captives after his Triumphal Chariot two mighty Princes, the *French* and *Scottish* Kings.

Having thus previously enquired into the Practice of preceding Times, touching the Right of the Commons to treat and debate in Parliament of the arduous Affairs of the Kingdom, 'till the 11th of *Richard II.*

We will now begin with the History or Series of the Invasions which were made upon the Privileges of Parliament, touching Freedom of Speech for Redress of Grievances, and give several Instances.

The Original Grand Precedent.

IN the Parliament 20 *Richard II.* *Thomas Haxey*, Clerk, for the Honour and Profit of the said King, and of all the Realm, delivered a Bill to the Commons, which being translated out of old *French*, runs thus:

“ May

“ May it please the Commons of *England* in this present Parli-
 “ ment, to consider the great Charges of our Lord the King in his House-
 “ hold, by reason of the Multitude of Bishops and Ladies, with their
 “ Retinue and People that belong to them, which are greater than
 “ have been in the Time of his Progenitors.

“ And thereupon to ordain due Remedy, that the Bishops hence-
 “ forth may abide upon their Bishopricks, and the Ladies upon their
 “ Seignories; as well in case of our Lord the King and of the Peo-
 “ ple, as for the Benefit and Good of the said Bishops Subjects, and
 “ for other good Purposes that may come thereof:

“ And also to consider how it came to pass, that the Pope laid an
 “ Imposition upon the Clergy of the Diocese of *Canterbury*, of four
 “ Pence in the Pound last Year; which Imposition was expressly a-
 “ gainst the Regality of our Lord the King, to the great Damage and
 “ Destruction of the Clergy, and of the Crown of *England*; and
 “ annulling of the Rights of the Crown of our said Lord the
 “ King:

“ And thereupon to ordain due Remedy for the Benefit of our
 “ Lord the King and of his Kingdom, for God’s sake and of Cha-
 “ rity.”

King *Richard* being informed of the Bill, was very much offended
 at it, telling the Lords, That the Commons had thereby committed
 Offence against him, his Dignity and Liberty; the which he willed
 the Lords to declare the next Day to the Commons; and commanded
 the Duke of *Lancaster* to charge Sir *John Bussie*, Speaker for the
 Commons, upon his Allegiance to tell the Duke the Name of him
 who had delivered the said Bill to the Commons.

Rot. Parliam.
 20 Rich. II.
 No. 15.

Upon *Saturday les Seigneurs Esperituelx & Temporelx* feurent avec
les Communes, and declared to them the Will and Commandment of
 the King.

Ib. No. 16.

Whereupon the Commons delivered the Bill aforesaid to the Lords,
 with the Name of the Exhibiter, viz. Sir *Thomas Haxey*, which Bill
 was after given to the Clerk of the Crown by the Clerk of the Par-
 liament, by the Commandment of the King.

All this being done, the impetuous King and his Privados so far pre-
 vailed with the Lords; that on the fifth Day of *February* it was ad-
 judged and declared, “ That if any one, of what State or Condition
 “ foever, should move or excite the Commons of the Parliament, or
 “ any other Person, to make Remedy or Reformation of any thing
 “ which concerned the King’s Person, his Government, or Regalty, he
 “ should be held for a Traitor.”

Ib. par. 3.
 m. 12.

And

And thereupon, the 7th of *February*, *Thomas Haxey* being brought before the King, the Lords Temporal, and Commons in *Alba Camera*, and the Bill being there read,

It was demanded by the Duke of *Lancaster*, (*Seneschal of England*) of the said *Thomas Haxey*, whether he delivered the said Bill to the Commons or no.

To which the said *Thomas Haxey* answered that he did, *Et intentione sua propter honorem & proficuum Regis ac Dominorum & totius Communitatis Regni*.

But this was not then admitted for a good Plea, for immediately *judicium fuit redditum* against poor *Haxey* as a Traitor.

Rot. Parl.
20 Rich. II.
No. 23.
Protestation
des Prelatz a-
pres le Juge-
ment de Sire
Thomas
Haxey.

This sudden Judgment very much alarmed the Lords Spiritual, who thereupon made a Protestation, and humbly prayed the King that he would *remissa & releffa l'execution de la mort du dit Thomas & lui attribia & dona sa vie*; which was granted.

Then they prayed the King that for the Reverence of God, and for the Honesty of Holy Church, he would grant them *la garde del Corps du dit Thomas*;

Which the King likewise assented to, commanding Sir *Thomas Piercy*, Steward of his Household, to deliver *Haxey* to the Archbishop, *a garder sauvement du grace du Roy*.

Rot. Parl.
20 Rich. II.
pars 3. m. 12.

Thus stood the Case of *Haxey* during that Parliament, but after it was ended, he one way or other got a Pardon of the Judgment, with very ample Clauses of restoring him, *ad communem Legem & in statum pristinum*.

Rot. Parl.
& Hen. IV.
No. 9. par
Tho. Haxey,
Clerk.

But not relying upon the Validity of that Pardon, he in a Parliament held 1 *Henry IV.* setting out the former Matter of Fact, and that he was *de voluntee du dite Roy Richard II.* adjudged a Traitor, *encontre droit & la Course quel avoit usse devant en Parlement, i. e.* contrary to Right, and to the Course that had been heretofore used in Parliament, prayed the King to cause the Record and Process of the Judgment to be produced in that Parliament, and to call and adnul it as erroneous.

And also to restore him intirely to his Degree, Estate, Goods, Chattels, Farms, Annuities, Pensions, Lands, Tenements, Rents, Offices, Advowsons, and Possessions whatsoever.

Upon which Petition the King, *de l'avis & assent des toutz les Seigneurs Espirituelx & Temporelx*, ordained and adjudged, That the said Judgment should be wholly quashed, reversed, repealed, and annulled; and that the said *Thomas Haxey* should be restored to his Name and Fame, and that He, and his Heirs, should be capable to pursue, demand, and have their Inheritance as Heirs to their Ancestors, notwithstanding the said Judgment, whereby the Blood was interrupted between the said *Thomas* and his Heirs whatsoever.

But

But as if the Reversal by the King and Lords of *Haxey's* Judgment was not sufficient, the Commons back all that with their Petition, much in the same Words of *Haxey's*.

Rot. Parl.
1 Hen. IV.
No. 104.
Entrepetition
baillez par
communes
d'Angleterre
en Parlement
pur Thomas
Haxey, Clerk.

1. That he was by the Will of *Richard II.* adjudged a Traitor for delivering a Bill to the Commons.

2. And to forfeit all that he had.

3. And contrary to the Course that had been theretofore used in Parliament, *en Amentissement des Custumes de les Communes.*

4. Therefore they prayed that the Judgment might be annulled and quashed in that Parliament as erroneous.

5. And that *Haxey* might be entirely restored, as is expressed in his Petition.

6. And all this the Commons pray, *si bien en accomplissement de droit come pur Salvacion des Liberties de les ditz Communes.*

To which Bill of the Commons this Answer was given :

The King willeth, by the Advice and Assent of all the Lords Spiritual and Temporal, That the said Judgment given against the said *Thomas Haxey*, Clerk, in the Parliament held at *Westminster* in the 20th Year of the Reign of the late King *Richard*, *soit de tout cassez, reversez, adnullez, & tenuz, de null force ne d'effect. Et que lite Thomas soit restituit a les noun & fame & fait & tenuz persone hable en manere come il feust devant le dite jugement en se rendu come en le Record ent fait & emollez perdevant en cest Roll de Parlement y piert pluis au plein.*

Answer to the
Commons Bill
for Haxey, by
the King and
Lords.

I have dwelt the longer upon this great Instance, because I would not have the Reader misled into a wrong Judgment of *Haxey's* Case, as some have been for want of being sufficiently informed of the several Transactions which fell out concerning it.

I do not know what any Man can say to justify this Invasion, which *Richard II.* made upon the ancient Privilege and Freedom of Parliament, in the Person of *Haxey*; but I do know, that amongst other Articles with which that unhappy King was charged at the Time of his Deposition, this was one :

ARTICLE IX.

“ *Item, Licet de Statuto & Consuetudine Regni,*

“ At the calling of every Parliament, the People in all Countries
“ ought to be free to chuse and depute Knights for Shires to sit in
“ Parliament, and present their Grievances, and to sue for Remedy to
“ the King, that the King might the better obtain in Parliament the
“ Effects of his own rash Will, frequently directed his Precepts to his
“ Sheriffs, that they would cause certain Persons named by the King
“ himself to come to his Parliaments as Knights for the Shires, which
“ Knights being addicted to the King's Interest, he could prevail with,

Rot. Parl.
1 Hen. IV.
Les Records
& processe
del Renuncia-
tion du Roy
Richard II.

“ as he often did, sometimes by divers Threats, sometimes by Rewards, to consent to things prejudicial to the Kingdom, and very burthensome to the People, and particularly to grant to the said King a Subsidy upon Wools for Term of his Life.

“ And another Subsidy for certain Term of Years, *suum populum nimium opprimendo.*”

And that which confirms all that I have said in this Instance, is a Statute which was made 4 *Henry VIII.*

Whereby it was established and enacted,

Raft. Stat.
4 Hen VIII.
cap. 8.

“ That all Suits, Accusements, Condemnations, Executions, Amercements, Punishments, Corrections, Charges, and Impositions that had been then put, or which hereafter should be put, upon *Richard Strode*, and every of his Complices that were of that Parliament, or should be of any other Parliament, for any Bill, speaking, reasoning, or declaring of any Matter or Matters concerning the Parliament, to be communed or treated of, should be utterly void, and of none effect.”

This Act was not introductive of any new Law, nor did it give any new Privilege to the Members of either Houses of Parliament.

It was only declarative of the ancient Custom and Usage of Parliament, and was a publick general Law, though made upon a private and a particular Occasion.

Which is an evident Proof how the Privilege of Parliament stood, as to Freedom of Speech for Redress of Grievances, for any thing I have yet found out to the contrary, till the Reign of *Queen Elizabeth.*

And therefore I am come to consider what Instances are to be gathered out of the Journals of Parliament in her Reign.

The First Instance.

Sir Simond
D'Ewe's Journal
of Parliaments
during the Reign
of Queen *Elizabeth*,
fol. 168.
col. 1.

IN the Parliament *anno 13 Elizabeth*, Mr. *Strickland*, a Member of the House of Commons, for exhibiting a Bill for Reformation of Ceremonies, and his Speech thereupon, was called before the Lords of the Privy Council, and required to attend upon them, and to make stay for coming to the House in the mean Season.

Idem, fol.
175. col. 1.

Mr. *Charlton*, with a very good Zeal and orderly shew of Obedience, made Signification, how that a Member of the House was detained from them, (meaning Mr. *Strickland*) by whose Commandment, or for what Cause he knew not.

But forasmuch as he was not now a private Man, but to supply the Room, Person, and Place of a Multitude specially chosen, and therefore

fore sent, he thought that, neither in regard of the Country, which was not to be wronged, nor for the Liberty of the House, which was not to be infringed, we should permit him to be detained from us, but, whatsoever the Intendment of this Offence might be, that he should be sent for to the Bar of that House, there to be heard, and there to answer.

Mr. Treasurer in some Case gave Advertisement to be wary in our Proceedings, and neither to venture further than our assured Warrant might stretch, nor to hazard our good Opinion with her Majesty, on any doubtful Cause. Withall he wished us not to think worse than there was Cause; for the Man (quoth he) that is meant is neither detained nor misused, but on Consideration is required to expect the Queen's Pleasure upon certain special Points, wherein (he said) he durst to assure that the Man should have Cause to dislike or complain, since so much Favour was meant unto him as he reasonably could wish.

He farther said, that he was in no sort stayed for any Word or Speech by him in that Place offered, but for the exhibiting of a Bill into the House against the Prerogative of the Queen, which was not to be tolerated.

Nevertheless, the Construction of him was rather to have erred in his Zeal and Bill offered, than maliciously to have meant any thing contrary to the Dignity Royal.

And lastly, he concluded, That oft it had been seen, that Speeches have been examined and considered of.

Sir *Nicholas Arnold*, with some Vehemency moved, that Care might be had for the Liberty of the House. He was enforced (he said) rather to utter, and so to run into Danger of Offence of others, than to be offended with himself.

Mr. Comptroller replied to the Effect Mr. Treasurer had before spoken.

Mr. *Cleere* told, how the Prerogative is not disputable, and that the Safety of the Queen is the Safety of the Subject.

He added, how that, for Matter of Divinity, every Man was for his Instruction to repair to his Ordinary, being a private Man, where he utterly forgot the Place he spake in, and the Person who was meant; for that Place required and permitted free Speech with Authority, and the Person himself was not a private Man, but a publick, by whom even the Ordinary himself was to be directed; he concluded that forasmuch as the Cause was not known, he therefore would that the House should stay.

Mr.

Mr. *Yelverton* said he was to be sent — for arguing in this Sort.

First he said the Precedent was perillous, and though in this happy Time of Liberty amongst so good and honourable Personages, under so gracious a Prince, nothing of Extremity or Injury was to be feared, yet the Times might be altered, and what now is permitted, hereafter might be construed as of Duty and enforced, even on this Ground of the present Permission.

He farther said, that all Matters not Treason, or too much to the Derogation of the Imperial Crown, were tolerable there, where all Things came to be considered of, and where there was such Fullness of Power, as even the Right of the Crown was to be determined, and by Warrant thereof we had so resolved, that to say the Parliament had no Power to determine of the Crown, was High Treason.

See the Act of
13 Elizabeth,
cap. 1. where-
by certain Of-
fences be made
Treason.

He remembred, how that Men are not there for themselves, but for their Countries.

He shewed, it was fit for Princes to have their Prerogative, but yet the same to be straitened within reasonable Limits.

The Prince he shewed could not of herself make Laws, neither might she by the same Reason break Laws.

He further said, that the Speech uttered in that Place, and the Offer made of the Bill, was not to be condemned as evil.

For that, if there were any thing in the Book of *Common Prayer* either Jewish, Turkish, or Popish, the same was to be reformed.

He also said, that amongst the Papiests it was bruited, That by the Judgment of the Council *Strickland* was taken for an Heretick, it behoved therefore to think thereof.

Mr. *Fleetwood* first shewed the Order of civil Arguments from the Cause to this Effect:

That Time must be known and Place observed. He said then, that of Experience he could report of a Man that was called to account of his Speech in the 5th of this Queen; but he said he could not meddle with so late Matters, but what he had learned in the *Parliament Rolls*, he thought convenient should be known and considered of.

In the mean Time of *Henry IV.* a Bishop of the Parliament was committed to Prison by Commandment of the King.

The Parliament resolved to be Suitors for him, and in the Time of King *Henry V.* the Speaker himself was committed, &c. with him another of the House.

The House thereupon stayed, but Remedy they had none, other than to be Suitors to the King for them.

Whereupon he resolved, that the only and whole Help of the House for Ease of their Grief in this Case, was to be humble Suitors to her Majesty, and neither send for him, nor demand him of Right.

During

During which Speech the Counfel whispered together and thereupon the Speaker moved that the House would make stay of any further Consultation thereupon.

Now follows an Observation upon Mr. *Strickland's* coming to the House. Idem, fol. 176. col. 2.

This Day being nominated, the last Committee in a Bill out of that often beforecited anonymous Journal mentioned by Sir *Symeon D'Ewes*, because it doth very much conduce to the Declaration and Maintenance of the Liberties of the House.

For the said Mr. *Strickland* having, on *Saturday* the 14th Day of this Instant *April*, pressed very earnestly the Reformation of the Book of *Common Prayer*, and some Ceremonies of the Church, was, after the Adjournment of the House of Commons on that Day, being *Easter* Eve, called before his Majesty's Council about the Beginning of the Week following, and was commanded by them to forbear coming to the said House in the mean Season, and to attend their further Pleasure.

Whereupon on *Friday* immediately following, being the 20th Day of this said Instant *April*, divers Speeches and Motions having passed in the House, touching the Breach of the Liberties thereof, by restraint of one of the Members from repairing thither, (though he were neither imprisoned nor confined) Mr. Speaker did at the last desire them to forbear further Consultation on the said Matter.

And the House having at his Request passed over the said Day in the Morning, in the Agitation of other Business, the abovementioned Mr. *Strickland* did this Afternoon (upon an Advertisement, as it should seem, from her Majesty's Council) repair again to the said House soon after it was set.

And coming just upon the Time when the foregoing Bill for coming to Church and receiving the Communion, was in the referring to Committees,

The said House did, in witness of their Joy for the Restitution of one of their said Members a while from them restrained, presently nominate him one of the said Committees.

This put me in Mind of the Protestation which was made in the Names of *Henry VIII*, and the whole Council, and Clergy of *England*, why they refused to come to the Pope's Council at his Call.

In which Protestation they say,

That they would have a Council, and desired it; yea and craved nothing so oft of God as that they might have one: But yet they would have it to be such a one as Christian Men ought to have, that is, frank and free, where every Man without Fear might speak his Mind. Foxe's Acts and Monuments, Vol. II. fol. 310. Impref. 1684.

T t t

They

They desired that it might be an Holy Council, where every Man might go about to set up Godliness, and not apply all their Study to oppressing of Truth.

They would have it to be general, that is to say, kept at such Time and in such Place, that every Man which sought the Glory of God might be present, and there frankly utter his Mind.

The Second Instance.

Sir Symeon
D'Ewes's
Journal of the
House of
Commons,
fol. 282. col. 1.

ON Saturday the 21st Day of January, 23 Elizabeth, Mr. Paul Wentworth made a Motion for a publick Fast, and daily Preaching.

The Fast to be appointed on some certain Day, but the Preaching to be every Morning at Seven of the Clock, before the House did sit.

That so they beginning their Proceedings with the Service and Worship of God, he might the better bless them in all their Consultations and Actions.

Sir Francis Knollys, Treasurer of the Queen's Household, spoke against this Motion;

Mr. Thomas Cromwell spoke for it;

Mr. Alford against it;

Mr. Coke for it;

Mr. Secretary Wilson for it;

Mr. Serjeant Flowerden for it;

And Mr. Norton shewed Precedents, that there had been Fasts in London, by Order only from the Council.

By which it seemeth he intended to infer, that a Parliament might much rather appoint it.

Hereupon the House being divided, and many Arguments being spent *pro & con*, at length the said Matter in Question was put to Voices, and the better Side had the greater Number :

For there were one hundred and fifteen Voices for it;

But one hundred against it.

And so it was ordered, that as many of the House of Commons as conveniently could, should on the Sunday seven-nights after, being the 29th of this Instant January, assemble and meet together in the Temple Church, there to hear Preaching, and join in Prayer, together with Humiliation and Fasting, for the Assistance of God's Spirit in
all

all their Consultations during this Parliament; and for the Preservation of the Queen's Majesty and her Realms.

And that the Preachers who should perform the Work and Service of that Day, might be appointed by such of her Majesty's Council as were of the House, to the Intent that they may be discreet Persons, and keep a convenient Proportion of Time, without intermeddling with Matter of Innovation or Unquietness.

Mr. Speaker declared himself for his own Part to be very sorry for the Error that happened here in this House upon *Saturday* last, in resolving to have a publick Fast, and shewed her Majesty's great Misliking of the Proceedings of the House therein, declaring it to fall out in such sort as he before did fear it would do. Idem, fol. 289. col. 3.

And advising the House to a Submission in that Behalf, farther moved them to bestow their Time and Endeavour hereafter, during this Session, in Matters proper and pertinent for this House to deal in, and to omit all superfluous and unnecessary Motions and Arguments, with all due Regard and Consideration to the Order of the House.

Mr. Vice-Chamberlain, declaring a Message from her Majesty to this whole House, by her Highness's Commandment shewed unto them her great Admiration of the Rashness of this House in committing such an apparent Contempt against her Majesty's express Commandment very lately before delivered unto the whole House by the Lord Chancellor in her Highness's Name, as to attempt and put in Execution such an Innovation, as the same Fast, without her Majesty's Privy and Pleasure first known:

And concludeth, That he thinketh it very meet, that this whole House, or some one of this House, by Warrant of the House, in the Name of the said House, do make most humble Submission unto her Majesty, acknowledging the said Offence and Contempt, and in most humble and dutiful wise to pray Remission of the same at her Highness's Hands; Idem, fol. 284. col. 1.

With full Purpose hereafter to forbear committing of the like Offence.

Mr. *Carleton* stood up, and offered to have spoken, but was interrupted by Mr. Speaker and the House.

Then Mr. Speaker asked the Question,
Whether Mr. Vice-Chamberlain should carry the Submission of the House to her Majesty.

And it was agreed by the Consent of the whole House.

Mr.

Mr. *Carleton* offered again to speak, saying with some Repetition, That what he had to say was for the Liberty of the House.

But the Speaker notwithstanding and the House (out of a tender Care, as it seemeth, to give no farther Distaste to her Majesty) did stay him.

The Third Instance.

Sir Symeon D'Ewes's Journal of the House of Commons, fol. 470. col. 2.

ON Saturday the 24th Day of February, 35 Eliz. Mr. *Peter Wentworth* and Sir *Henry Bromley* delivered a Petition unto the Lord Keeper, therein desiring the Lords of the Upper House to be Suppliants with them of the Lower House unto her Majesty, for entailing the Succession of the Crown, whereof a Bill was readily drawn by them.

Her Majesty was highly displeas'd therewith after she knew thereof, as a Matter contrary to her former strait Commandment, and charged the Council to call the Parties before them.

Sir *Thomas Heneage* presently sent for them, and after Speeches had with them, commanded them to forbear the Parliament, and not to go out from their several Lodgings.

The Day after, being Sunday and the 25th of February, though the House fate not,

Yet they were called before the Lord Treasurer, the Lord *Buckburst*, and Sir *Thomas Heneage*.

The Lords intreated them favourably and with good Speeches :

But so highly was her Majesty offended, that they must needs commit them ; and so they told them.

Whereupon Mr. *Peter Wentworth* was sent Prisoner to the Tower : Sir *Henry Bromley*, and one Mr. *Richard Stevens*, to whom Sir *Henry Bromley* had imparted the Matter, were sent to the Fleet ; as also Mr. *Welch*, the other Knight for *Worcestershire*.

About this Matter, in the Beginning of the Parliament, was appointed a Committee to be had of many grave, wise, and ancient Parliament Men, which were of the House : But at this Time few met at the Place appointed, at least not such as were expected.

Memo., fol. 597. col. 1.

On Saturday the 10th Day of March following, Mr. *Wroth* made a Motion touching the Members so committed on the 25th Day of February foregoing ; which remaineth very legible in the original Journal Book of the House of Commons, although it be crossed out.

The Reason of which said crossing out, is very hard to conjecture, in regard that the said Motion was, doubtless, made this Morning, as doth

doth plainly appear also by the afore cited anonymous Journal more particularly mentioned at the beginning of this present Journal; out of which is supplied in Manner and Form following:

Mr. *Wrotb* made a Motion, That in respect some Counties might complain of the Tax of these many Subsidies, their Knights and Burgessees never consenting to them, nor being present at the Grant:

And because an Instrument, taking away some of its Strings, cannot give its pleasant Sound; therefore desired that we might be humble and earnest Suitors to her Majesty, That she would be pleased to set at Liberty those Members of the House that were restrained.

To this was answered by all the Privy Counsellors, That her Majesty had committed them for Causes best known to herself:

And for us to press her Majesty with this Suit, we should but hinder them whose Good we seek.

And it is not to be doubted but her Majesty, of her gracious Disposition, will shortly of herself yield to them that which we would ask for them.

And it will like her better to have it left unto herself, than sought by us.

From hence we may observe, That one must not always ground his Judgment upon such Actions of Princes, which shew rather how far the Abuse of their Power can stretch, than how far the legal Use thereof is extended.

The Fourth Instance.

ON *Tuesday* the 27th Day of *February*, 35 *Eliz.* Mr. *Morrice*, Sir Symeon D'Ewes's Journal of the House of Commons, fol. 474. col. 1. Attorney of the Court of *Wards*, moveth the House touching the hard Courses of the Bishops and Ordinaries, and other Ecclesiastical Judges, in their Courts used towards sundry learned and godly Ministers and Preachers of this Realm, by way of Inquisition, Subscription and binding Absolution, contrary (he said) to the Honour of God, the Regality of her Majesty, the Laws of this Realm, and the Liberties of the Subjects of the same; compelling them upon their own Oaths to accuse themselves in their own private Actions and Words, and Thoughts, if they shall take such Oaths, because they know not to what Questions they shall answer 'till after the Time they be sworn:

U u u

And

And also after such Examination proceed against them by Deprivation, Degradation, or Suppression, by such their own Accusations of themselves.

And if they refuse such Oath, then they commit them to Prison, and there keep and detain them at their own Pleasure, not absolving or releasing them, until they shall first have taken a Corporal Oath of their Canonical Obedience to their Ordinaries.

And shewing farther at large the great Inconveniencies thereby grown to the free Subjects of this Realm, doth in the End pray a Consultation to be had therein by this House for Redress of the said Enormities.

And offereth unto Mr. Speaker two Bills:

The one concerning the said Inquisitions, Subscriptions, and offering of Oaths;

And the other concerning their Imprisonments upon their Refusal to the said Oaths: Praying that the said latter Bill, which concerneth the said Imprisonments, might be read; and the other to be offered to this House at some other more convenient Time.

Idem, fol. 476.
col. 1.

Hereupon the House was in Question, Whether it should be committed to the Speaker only, or to the Privy Council and him: But it was holden to be against the Order of the House, that any Bill should be committed before it was read.

Therefore, upon a Motion made by Mr. *Wroth*, it was agreed, that Mr. Speaker should have it,

— This Afternoon at two of the Clock, Mr. Speaker was sent for to the Court, where the Queen herself gave him Commandment to deliver unto the House —

— And so the Matter abruptly breaks off in the said anonymous Journal, mentioned more particularly in the Beginning of this present Journal, out of which all these aforesaid Speeches are inserted.

But that which should here follow can be no more, but only that her Majesty did command him to deliver a certain Message to the House the Day following, which he did then perform accordingly.

Idem, fol. 178.
col. 2.

The Message delivered me from her Majesty (saith the Speaker) consisteth in three Things.

1. The End for which the Parliament was called.
2. The Speech which the Lord Keeper used from her Majesty.
3. What her Pleasure and Commandment now is.

For the First, It is in me and my Power (I speak now in her Majesty's Presence) to call Parliaments.

It

It is in my Power to end and determine the same.

It is in my Power to assent or dissent to any thing done in Parliaments.

The calling of this Parliament was only that the Majesty of God might be more religiously served: And those that neglect this Service might be compelled by some sharp Means to a more true Obedience and more true Service of God, than there hath been hitherto used.

And farther, That the Safety of her Majesty's Person, and of this Realm, might be by all means possible provided for against our great Enemies the Pope and the King of *Spain*.

Her Majesty's Pleasure being then delivered unto us by the Lord Keeper,

It was not meant we should meddle with Matters of State, or Causes Ecclesiastical;

For so her Majesty termed them.

She wondered that any could be of such high Commandment to attempt (I use her own Words) so expressly contrary to that which she had forbidden.

Wherefore with this she was highly offended.

And because the Words then spoken are not now perhaps well remembered, or some be now here that were not then present; her Majesty's present Charge and express Commandment is, That no Bill touching the said Matters of State or Reformation in Causes Ecclesiastical, be exhibited.

And upon my Allegiance I am commanded, if any such Bill be exhibited, not to read it, &c.

And this also brings to my Remembrance the Account which *Andrew Duditbius*, Bishop of five Churches, writ to *Maximilian II.* Emperor of *Germany*, touching the Council of *Trent*.

His Words are these:

What Good could be done in that Council, in which the Votes were not weighed, but numbered? History of the Council of Trent, fol. 481

If Goodness of the Cause, if Reason had been the Weapons to fight withal, though we were but few, we had vanquished a great Army of our Enemies.

But seeing that Number only came into the Field, in which we were far inferior to them, though our Cause were good, we could not possibly prevail.

The Pope had an hundred for one: and in case those had not been enough, he could have created a thousand more to have helped at a need.

We

We daily saw hungry and needy Bishops come to *Trent*, Youths for the most part, which did but begin to have Beards, given over to Luxury and Riot, hired only to give their Voice as the Pope pleased.

They were both unlearned and simple, yet fit for the Purpose; in regard of their impudent Boldness.

When these were added to the Pope's old Flatterers, Iniquity triumphed, and it was impossible to determine of any thing, but as they pleased, who thought it to be the highest Point of their Religion to maintain the Authority and Luxury of the Pope.

There was a grave and learned Man, who was not able to bear so great an Indignity; he was presently traduced, as being no good Catholick, and was terrified, threatened, and persecuted, that he might approve Things against his Will.

In sum, Matters were brought to that pass, by the Iniquities of those that came thither fitted and prepared, that the Council seemed to consist not of Bishops, but of disguised Maskers; not of Men, but of Images, such as *Dædalus* made, that moved by Nerves which were none of their own.

They were hireling Bishops, who, as Country Bag-pipes, could not speak but as Breath was put into them.

The Holy Ghost had nothing to do in this Assembly.

All the Counsel there given proceeded from human Policy, and tended only to maintain the Pope's immoderate and shameful Domination:

Answers were expected from thence, as from the Oracles of *Delphos* and *Dodona*.

The Holy Spirit, which, as they boast, doth govern their Counsels, was sent from thence in a Postilion's Cloak-bag; which, in case of any Inundations, could not come thither (a Thing most ridiculous) until the Waters were asswaged.

So it came to pass that the Spirit was not upon the Waters, as it is in *Genesis*, but by the Water-Side.

O monstrous extraordinary Madness! nothing could be ratified which the Bishops (as if they had been the common People) did decree, unless the Pope made himself Author of it.

This is by Way of Digression, but I think I have sufficiently shewed in the foregoing Instances, how, after the long Sleep of so many Years, Queen *Elizabeth*, (by the Instigation of some prevailing evil Counsellors about her) was over-persuaded to put in Exercise that Imperial Power they pretended she was cloathed with over Parliaments, as to obstruct and invade the immemorial Liberties of Freedom of
Speech

Speech of the House of Commons, for redress of the Grievances of the Nation.

And now let us look into the Reign of King *James I*, and see by what Instances we can shew that the same Encroachments were continued and improved in his Days.

The Fifth Instance.

ON *Monday* the 5th Day of *February*, 1620. the House being Journ. Dom. Com. 18 & 19 Jac. I. come together, and Mr. Speaker being come with his Mace, and Prayers being ended,

Sir *George Moore* made the first Motion, and moved for the Committee for Privileges and Elections and Returns to be heard at the *Chequer Chamber*, upon *Tuesdays* and *Thursdays* weekly, in the Afternoon.

Sir *Edward Gyles* moved for a Petition to the King for Freedom of Speech, and that those that spake extravagant in the House might be punished by the House, and not after Parliament, in regard of the late Proclamation :

And that those in the Parliament might be secured in respect of the Multitude of Popish Priests and Jesuits, which in a numberless Number flock together to this City, contrary to the Statute that they should not come within ten Miles of it or the Court.

This Motion of Sir *Edward Gyles* was seconded by Sir *Robert Phillips*, whose Speech had two Parts.

First, His approving the two former Propositions.

Secondly, The Means which he thought fittest to bring it to pass.

His Reasons for the *First*, why we ought to stand for our Privileges, as Freedom of Speech, &c. were these :

1. Of Honour and Thankfulness to our Predecessors, who have left our Liberties to us inviolated.
2. We shall do more Hurt than Good, if we infringe or derogate from the Privileges we enjoy.
3. As our Ancestors had a Care of leaving them free to us, so we ought to be careful to preserve them, and leave them free to those that succeed.

The Reasons of the *Second* Proposition, That some Order might be taken with the Papists, Priests and Jesuits, were,

X x x

1. Because

1. Because it is the Honour, that every Law-maker should give to his Laws to see them executed.

2. This would tend to the Safety of the King and all us that are assembled in Parliament.

3. It is unworthy that Papists should enjoy so large a Privilege, as true Subjects that carry loyal Hearts to their Sovereign.

4. The suffering of them is very scandalous: For now to go to a Sermon or a Mass is counted all one.

5. It is unfit that Reformers of Religion, and Reformers both of that and other Wrongs, should be so near together.

The *Second* Part of his Speech was the Means how to have those Propositions effected:

Which in his Opinion was to go to the Lords, and to desire them to afford us a Conference about Privileges and Safety, and to sue with us to the King for them; before which we cannot well proceed, either to the King's Supply, or our own Grievances.

Here the Speaker beginning to interrupt him, Sir *Thomas Roe* replied, That the Speaker was not to have any Voice, but when the House is divided.

Sir *Edward Cooke* seconded and approved the first of the Propositions, to sue for our Privileges, and cited the 4th of *Henry VIII*; where one *Stroade* speaking freely in the Parliament against the Abuses of the Stannaries, was, as soon as he came Home into the Country, committed by the Steward.

But the next Sessions of Parliament he was delivered, and allowed Freedom of Speech; but he liked not of going to the Lords, because they had formerly been rejected by them in the like Kind.

Then spake Secretary *Calvert*, and said, That the Petition of Freedom of Speech was already granted by the King; and that his Majesty had already called this Parliament for Reformation of Manners and Preservation of the State from Scandal, which was likely to grow, if the King's Wants were not supplied.

He thought fit we should begin with the first, because Nature and Reason would, that the Head should first be cured, because an aking Head makes a sick Body.

The Reasons of the Supply were,

First, for the King's private Necessaries being indebted, by reason of the many Embassadors sent and entertained by him.

This could not be spared without Dishonour to the King and these his Kingdoms.

And withal he shewed how frugal the King had been, in saving of his Household Expences, and bestowing it on his Navy, &c.

Yet all could not serve; and so, though nothing grieves him more than to be troublesome to his Subjects, yet, his Wants compelling him, he is enforced to repair to this House for a Supply. Wants and Penury, you know, bring many Inconveniencies in private Persons, but many more in Princes.

Queen *Elizabeth* received so many Subsidies, which annually, if they were computed, amount to three hundred and fifty thousand Pounds yearly.

The Second Cause of this Supply is the Relief and Defence of the *Palatinate*, the Patrimony of the King's Grand Children;

All which *Spinola* hath over-run, except *Heidelberg* and two Towns more.

And therefore it is high Time to make Speed to send Succour.

And that the King had referred the Consideration of this Business to many noble and worthy Gentlemen well experienced, and erected a Council of War, who have set down a Proportion, which I cannot conceal from you, *viz.* That the Maintenance of the Wars there for one Year will amount to three hundred thousand Pounds; wherein how he may be supplied, I leave to the Consideration of this honourable House of Parliament, and desire that they would refer it to a Committee.

Then said Sir *William Cope*, I would this Parliament had been three Months sooner, for Relief of the King of *Bobemia*.

And therefore he desired that a Committee of the whole House might consult of it.

Next after Sir *William Cope*, spake Sir *Thomas Edmonds*, beseeching them to consider, that never any time more pressed the Consciences of Subjects to contribute, than the present Occasion; and that if it should be hindered by any Division, who does not see what Mischief would ensue? And therefore desired them to make it their first Care, and that their Affection to the King being seen, would gain from him so great a Retribution of Grace, as in Reason they could desire.

Next after, Sir *John Cotton* instanceth, That this Supply must be given suddenly, because the Moneys must be levied, that the Forces may go out in the Spring;

And

And then he shewed, That since the Conquest there never was the like Occasion for Subjects to supply the King.

He declareth four principal Supplies since the Conquest. As

First, The Recovery of *Jerusalem*.

Secondly, For Redemption of *Richard Cœur de Lyon*, his Ransome, being imprisoned in *Germany*.

Thirdly, For recovering of *France*.

Fourthly, The Defence of *Ireland* in *Queen Elizabeth's* Time.

For the first, *Henry III.* had the second of all Temporalities.

Edward I. pawned his Jewels, and would (as the Story says) have pawned *London*.

For the second, the Clergy did pawn their Shrines for *Richard's* Ranfom.

But he endeavoured to prefer the King's Occasions at Home and Abroad, by the Defence of the said *Palatinate*, to be beyond all these.

And therefore desired it to go on this Day.

Then stood up Sir *George More*, and shewed how fit it was to have our Privileges free.

The King said in his Speech, That the fundamental Laws of this Kingdom should be maintained.

And because the chief Ends of Parliaments are the Grievances of the Commonwealth, and the King's Supply,

He thought that Grievances and Subsidies, like Twins, as *Jacob* and *Esau*, should go Hand in Hand.

For though Grievances go first, yet the Blessing may be upon Subsidies.

And it would be an Encouragement to give the more bountifully and chearfully.

Then spake Sir *James Parrot*: I desire not to hear myself speak, nor to find Fault with other's Speeches, nor to oppose any Man's Speech.

If we differ from our Superiors, it should be with Reverence, the Relief of the King and Subjects should go both together; nay true Charity begins at Home, and then extends itself to others.

It is fit we should know our Privileges.

I know not how far the late Proclamation extends.

The King (as we conceived) did in a sort debar us from the Prerogative, State Matters, and Defence of Religion;

And therefore my Opinion is to send a Message to the King, humbly desiring that he would explain himself, because else we may many Ways

Ways fall into Matters of State ; I like not going to the Lords first, and after to the King : *Frustra fit per plura, &c.* He that will go to the Stream, when he may go to the Fountain, may have much Trouble, and yet miss of his Purpose :

Some present can tell that we heretofore have been rejected by them, and who can tell whether we may again now ?

And therefore I think it fit that a Committee may be chosen to set down how the Message may be framed.

Next spake Sir *Julius Cæsar*, and said, That he dissented in Opinion from sending any Message to the King, who in his Speech gave us Liberty of Speech, so they spake dutifully, and not to his Dishonour ; and if they do otherwise, I hope the House will take Order to have them punished before it comes to the King's Ear.

Sir *Lyonel Crawfeild* thought not the Petition for Privileges fit, because already granted :

The other for repressing Papiests, and executing Laws against them, he thought necessary ; and that the Supply and Grievances might go together Hand in Hand.

1. Consider Liberty.
2. The Papiests Number to be avoided.
3. The Good of the Kingdom.

In which consider three Things.

1. Religion.
2. Justice.
3. Trade and Patents.

An Act of Parliament is above a Proclamation.

For 4 *Henry VIII.* all may speak freely in Parliament, and not to be questioned.

Sir *Edward Cooke.* *Virtus in Convivio flere, vitium in Senatu,* and so spake earnestly, that all Grievances of the Parliament in 7 *Jacobi*, might be executed against the Papiests.

Next that the Liberty of the House was one of the greatest Things, that belonged to it ; they were like a Circle, of which if any Part be broken, the whole is broken. And therefore it is dangerous to meddle with them.

Therefore he liked not of a Petition touching that Proclamation, for no Proclamation can be in Force against an Act of Parliament.

For the 4th of *Edward III.* is, That there should be a Parliament every Year.

And the 34th of *Edward III.* That the Subjects should speak of their Grievances in Parliament.

Y y

And

And repeated the Case of *Stroade* 4 *Henry VIII*, Let Grievances be then spoken with Duty and Comeliness, and what the true Causes of them are, and I shall be ready to further it; and if you should begin with the Subsidies, yet let both Grievances and Subsidies end together, for they are like *Hippocrates's* Twins: I did not think the Supply would now have been moved, but since it is, shall we deny to treat of it?

What will the Papists then say? They would not give the King Subsidy, being in so great Need.

But what?

Is the King in so great Misery as if his Case were desperate? There is no such Matter, there is a Leak indeed that will shortly be stopped, and I know that if all the Water come home to the Mill that should, the ordinary Charge and the ordinary Receipts would be near at one, and the Extraordinary of a King hath ever been born by his Subjects. I like that the Committee for Grievances, and the King's Supply, should be of the whole House, whereas the Grievances being laid down, it will be a good Encouragement to us to enable us to give a good Account of our Doings to our Country for whom we are intrusted.

Sir Thomas Crew. I arise not up to speak against what hath been said of going Hand in Hand; but for Order, my Advice is in two Things:

First, In Matters of Religion, a *Jove principium*, that it may be intimated to his Majesty by Petition or Signification, how insolent Papists be, that in Hundreds they come to outface Religion, and such as come from the Church.

We know that Images are but Trash, but Artificers (which they were not wont to do) now set them out to affront us, as we pass the Street.

And of the Jesuit's Impunity, we are all sensible, I speak not to draw Blood from any, but that they might be shut up as close Prisoners, that so they might not give Intelligence what is done here.

The Statutes be only upon indicted and convicted Recusants, but we request his Majesty to cleanse the Town of all Recusants.

We had Freedom of Speech last Parliament, yet we know what followed, yet we should intreat his Majesty that if any thing here be spoken amiss, it may be here only censured, and not hereafter.

It is the Order of Parliaments, that Grievances go first, yet such I find the Occasions of Time, that I would set the Subsidies in the Front.

Which

Which being ended, it was agreed that there should be a Committee of the whole House to sit in the Afternoon, to determine of these four Things:

First, Whether a Petition to the King for the Liberties and Privileges of this House were fit.

Secondly, Whether fit to petition the King for some Restraint, and more severe Execution of the Laws against Recufants for our Safety.

Thirdly, What was fit to be done touching the King's Supply.

Fourthly, What concerning the Subjects Grievances.

And so they arose.

After Dinner, the Committee being assembled, they called upon Sir *Gerrard Cooke* to take the Chair at the Committee, which when, with some seeming Willingness, he had accepted,

Sir *Carew Raleigh* said, That it was never seen that a Privy Counsellor was called to the Chair.

But answer was made, That being all Members of one House there was no Difference, and therefore the House might set upon any one whom they pleased.

Then the first Question being alone propounded by Sir *Edward Cooke*, he desired that they would not enter into any other until that were ended.

Which was agreed.

Then spake Sir *Robert Philipps*, saying, That nothing was more to be stood upon than our Privileges; and for that this might concern the Lords, as well as us, he thought fit that we resolved to present this common Case unto them, that so they might join with us that some Act of Parliament might be made, whereby our Liberties and Privileges might be preserved to Posterity.

Mr. *Alford* spake against joyning with the Lords therein.

And Sir *Edward Gyles* asked, Whether we could not go to the King without the Lords.

Mr. Secretary *Calvert* said, You do well to stand upon your Privileges, though I see not yet how they are impeached, but if any doubt by reason of the Proclamation, I think it best to go to the King by Petition, although I think that Proclamation was intended against such as make ordinary Table-Talk of State Matters in Taverns and Ale-houses, and not against Parliament Men.

Then

Then spake Mr. *Pawlet*,

I think nothing can derogate so much from this House as to ask leave to speak, or to be limited what to speak.

At length he agreed concerning this Proposition with Mr. *Thomas Crew*, that spoke in the Forenoon to petition for Freedom of Speech, and if any should speak amiss, that he might be punished in the House, and not otherwise.

Sir *Carew Raleigh* against this Petition.

Sir *Edward Cooke* said, If you go to the King it must be by a Petition of Right, or of Grace; if of Right, you are not able to set them down, for it is dangerous to set them down to suspect. Question.

Sir *Edward Gyles* would have a Number of Men to go to the King without Petition, which was disliked.

Sir *George More* said, We ought not to question our Privileges, but in Case of a Breach, as was suspected the last Parliament.

Then stood up Sir *Robert Philipps*, and said, If ever our Privileges were broken, it was the last Parliament, upon those Men, who, the next Day after the Parliament was dissolved, were dissolved to the *Tower*.

And therefore he thought it fit to go to the Lords, that they might join with us, because their Turn might be next by a Petition of Right for those Privileges only which are supposed to have been broken, so applying the right Medicine to the right Sore.

But Sir *William Stroade* was against going to the Lords, saying, That it was a preposterous Course, because this doth nothing belong unto them, but concerns this House only. Which was agreed unto by the House.

And what was fit to be set down was referred to a Sub-Committee, who were to report back to this Committee what they had done.

The Place appointed was the Court of *Wards*, the Time To-morrow in the Afternoon.

The second thing referred to the Sub-Committee of the whole House, was concerning Recusants, for petitioning the King for more strict Execution of the Laws against them (for now, as Sir *Edward Cooke* says, they were asleep *in vagina*) and that some further Restraint of them might be made, especially at this Time, wherein it was questioned,

Whether we should go to the Lords, and desire them to joyn with us and urge it to the King, which was agreed.

And

And (as Sir *John Bennet* said) we had Precedents that the Lords had joined with us in the like.

Then was a Question moved,

Whether a Committee might make a Sub-Committee :

Which was agreed.

And then it was to make Report to the same Committee that made it, what they had done, which being chosen, the Place was the Court of *Wards*.

The Time *Wednesday* at Two of the Clock.

The other two Parts being Twins, it was not thought fit to enter upon, until Answer was brought from his Majesty concerning Liberty of Speech.

The Sixth Instance.

SIR *Henry Poole*, That a Conference to be had in the *Painted Chamber* at Nine of the Clock, with twenty four of the Lords, and forty eight of the Commons; and Sir *Edward Coke* appointed to make the Report, and the Clerk's Book to be there.

Journal Dom. Com. 18, 19. Jacobi I. Saturday, December 1, 1621. after the meeting of the House upon an Adjournment. Concerning Sir Edwyn Sandys's Restraint.

Mr. Speaker. If we shall suffer the Council Table to call in Question such as fit here for Parliamentary Business, then farewell *England*; that which *Mr. Secretary* hath heretofore said in excuse of this Matter, That Sir *Edwyn Sandys* was not called in question for any thing he did or said in Parliament, satisfieth not me for these Reasons :

First, Because that which was said or done, was so done or said in private, whereas Sir *Edwyn Sandys's* Commitment is voiced throughout all *England*.

Secondly, Because *Mr. Secretary* is a Party, and therefore no fit Person in this Case.

Therefore I desire that some Members of this House may be sent to Sir *Edwyn Sandys*, to question him of the Cause of his Commitment.

Sir William Spencer. That Sir *Edwyn Sandys* be sent to, to send us word, Whether he were committed for Parliamentary Matters in the House or not: For we are not only confined within these Walls with our Privileges, but in *Westminster-Hall*.

Z z z

Mr.

Mr. Mallorie. We are intrusted for our Country.

If we lose our Privileges, we betray it.

If we give way to this, we lose our Privileges; and losing them, we deserve to be hanged.

Let us not look upon ourselves only, but upon our Posterities also.

Those honourable Persons that sit about the Chair, know not whether their Posterity shall be Privy Counsellors, or no.

Neither are they sure that Children shall not be so served.

I have heard it delivered in former Parliaments, That no Member of this House, during the Session, should be questioned, except it were for Felony, Murther, or Treason.

Therefore I desire, that Sir *Edwyn Sandys* may be sent for; and if he cannot come, that he be required to set under his Hand, as he is a Gentleman, for what he was questioned.

Sir *William Spencer* said, Our Privileges are broken, which are and ought to be dearer to us than our Lives.

Sir *Edwyn Sandys* (a worthy Member of this House) hath been committed since the Adjournment.

The Speech of that honourable Person that spake touching this Matter, gave me no Satisfaction.

For he said, It was not for any thing done or spoken in the House; yet it may be for speaking of Parliament Business out of the House.

I would gladly know, Whether we are not as free to speak in *Westminster-Hall*, as here.

And, Whether we are a Parliament in the Forenoon, and not in the Afternoon.

Then farewell Privileges, and farewell *England!*

Chancellor of the *Dutchy*. I know his Majesty's Proceedings in this Business; and I think he used more Moderation than any of us would have done in the like Case.

Sir *Henry Witherington*. I have heard this Business hath been questioned three Times before my coming up.

Better never questioned, than receive no Satisfaction.

They told me in the Country, you are as like to speak as any Man: Take heed, you see what is become of Sir *Edwyn Sandys*.

You are brave Fellows whilst you are together; but what becomes of you when you are parted?

My

My Couafel is, to fend for Sir *Edwyn Sandys*; and if he be fick, that he be required to make his Declaration of the Cause of his Imprifonment.

Sir *Samuel Sandys*. If Silence in Time of Neceffity did not equally incur Blame with too much Loquacity, I fhould have kept Silence at this Time :

But fithence this Time and this Cause doth feem to call me up in particular, I crave your Patience to fpeak what I know in this Bufinefs.

Something hath been fpoken by way of Prevention of the King's Juftice.

There is no Man goes about to lay any Imputation upon his Majefty's Juftice :

But we know, Princes judge not always by their Eyes, but by their Ears.

In the *First* Place, They have care of their own Safety; and it befeems their Wifdoms, upon Jealoufies, to enter into Examination of fuch as they fufpect.

And in the *Second* Place, Though I am very near unto him, yet I know not for what he was examined, I know not one Queftion that was afked him.

We have Liberty and Privilege, but not to deny Kings to be jealous of themfelves, and upon fuch Jealoufies to examine fuch as they fufpect.

The State thought fit to examine him; and then it was fit he fhould be reftained, before he was examined, that fo he might fpeak his own Thoughts.

He wrote unto me this Week, that he was fick, and could not do that Service to this Houfe which he defired.

My humble Motion is, that the Bufinefs may reft 'till he be able to come up, and then he may utter his own Thoughts.

And that in the mean time, you would not fufpect or be jealous of thofe Proceedings which are juft.

Sir *George Moore*. That Entry might be made in the Book, that after we are once elected, we fhould maintain our Privileges.

Sir *Thomas Bellafis*. That if he be not able to come, to fignify if he were committed for Parliamentary Matters or no, or examined.

But the Houfe would not be fatisfied.

It was ordered notwithstanding, that Sir *Peter Hammon* and Mr. *Mallory* fhould go to Sir *Edwyn Sandys* on *Monday*, to bring him to
the

the House if he were able, if not to require him to send a Declaration in Writing, Whether he were examined or committed for any Parliament Business or no?

MONDAY the 3^d of December, 1621.

Sir *Edward Coke* made Report of the Proceedings of the Committee in the Matter of petitioning the King; and so the Petition was read in Form following:

Most gracious and dread Sovereign,

WE your Majesty's most humble and loyal Subjects, the Knights, Citizens, and Burgeses, now assembled in Parliament, who represent the Commons of your Realm, full of heavy Sorrow to be deprived of the Comfort of your Royal Presence; the rather for that it proceeds from the Want of your Health, wherein we all unfeignedly do suffer in all humble manner, calling to mind your gracious Answer to our former Petition concerning Religion, which, notwithstanding your Majesty's pious and princely Intentions, hath not produced that good Effect, which the Danger of these Times doth seem to us to require:

And finding how ill your Majesty's Goodness hath been requited by Princes of different Religion, who even in Time of Treaty have taken Opportunity to advance their own Ends; tending to the Subversion of Religion, and Disadvantage of your Affairs and the Estate of your Children;

By reason whereof your ill affected Subjects at home (the Popish Recusants) have taken too much Encouragement, and are dangerously increased in their Number, and in their Insolencies, we cannot but be sensible thereof:

And therefore humbly represent what we conceive to be the Causes of so great and growing Mischiefs, and what be the Remedies.

I. The Vigilancy and Ambition of the Popes of *Rome*, and his dearest Son; the one aiming at as large a Temporal Monarchy, as the other at a Spiritual Supremacy.

II. The devilish Positions and Doctrines whereon Popery is built, and taught with Authority to their Followers, for Advancement of their Temporal Ends.

III. The distressed and miserable Estate of the Professors of true Religion in Foreign Parts.

IV. The

IV. The disastrous Accidents to your Majesty's Children abroad, expressed with Rejoicing and Contempt of their Persons.

V. The strange Confederacy of the Princes of the Popish Religion, aiming mainly at the Advancement of their's, and Subverting of our's, and taking the Advantage conducing to that End upon all Occasions.

VI. The great and many Armies raised and maintained at the Charge of the King of *Spain*, the chief of that League.

VII. The Expectation of the Popish Recusants of the Match with *Spain*, and feeding themselves with the great Hopes of the Consequences thereof.

VIII. The interposing of Foreign Princes and their Agents on the behalf of Popish Recusants, for Connivance and Favour unto them.

IX. The open and usual Resort to the Houses, and, which is worse, to the Chapels of Foreign Embassadors.

X. Their more than usual Concourse to the City, and their frequent Conventicles and Conferences thereof.

XI. The Education of their Children in many several Seminaries and Houses of their Religion in Foreign Parts, appropriated to the *English* Fugitives.

XII. The Grants of their just Forfeitures, intended by your Majesty as a Reward of Service to the Grantees, but, beyond your Majesty's Intention, transferred or compounded for at such mean Rates as will amount to little less than a Toleration.

XIII. The licentious printing and dispersing of Popish and Seditious Books, even in the Times of Parliament.

XIV. The Swarms of Priests and Jesuits, the common Incendiaries of all *Cbristendom*, dispersed in all Parts of your Kingdom.

And from these Causes, as bitter Roots, We humbly offer to your Majesty, that we foresee and fear there will necessarily follow dangerous Effects both to Church and State. For,

First, The Popish Religion is incompatible with ours, in respect of their Positions.

A a a a

Secondly,

Secondly, It draweth with it an unavoidable Dependency on Foreign Princes.

Thirdly, It openeth too wide a Gap for Popularity to any who shall draw too great a Party.

Fourthly, It hath a restless Spirit, and will strive by these Gradations. If it once get but a Connivance, it will press for a Toleration; if that should be obtained, they must have an Equality: From thence they will aspire to a Superiority; and it will never rest, 'till they get a Subversion of the True Religion.

The Remedy against these growing Evils, which in all Humility we offer unto your most Excellent Majesty, are these:

I. That seeing this inevitable Necessity is fallen upon your Majesty, which no Wisdom or Providence of a peaceable and pious King can avoid, your Majesty would not omit this just Occasion to take your Sword into your Hand.

II. That once undertaken upon so honourable and just Grounds, your Majesty would be resolved to pursue and more publicly avow the Aiding of those of our Religion in Foreign Parts; which doubtless would re-unite the Princes and States of the Union, by these Disasters disheartened and disbanded.

III. That your Majesty would promise to yourself to manage this War with the best Advantage, by a Diversion or otherwise, as in your deep Judgment shall be found fittest; and not to rest upon a War in those Parts only, which will consume your Treasure, and discourage your People.

IV. That the Bent of this War and Point of your Sword may be against that Prince (whatsoever Opinion of Potency he hath) whose Armies and Treasures have first diverted, and since maintained the War in the *Palatinate*.

V. That, for securing our Peace at Home, your Majesty would be pleased to review the Parts of our Petition formerly delivered unto your Majesty hereunto annexed; and to put in execution, by Care of choice Commissioners to be thereunto especially appointed, the Laws already and hereafter to be made, for preventing of Dangers by Popish Recufants, and their wonted Evasions.

VI. That, to frustrate their Hopes for a future Age, our most Noble Prince may be timely and happily married to one of our own Religion.

VII. That the Nobility and Gentry of the Kingdom, and others ill affected and suspected in their Religion, now beyond the Seas, may be forthwith called Home by your Means, and at the Charge of their Parents or Governours.

VIII. That the Children of Popish Recufants, or such whose Wives are Popish Recufants, be brought up during their Minority, with Protestant School-masters or Teachers, who may sow in their tender Years the Seeds of True Religion.

IX. That your Majesty will be pleased speedily to revoke all former Licences for such Children and Youth to travel beyond the Seas, and not to grant any Licence hereafter.

X. That your Majesty's learned Council may receive Commandment from your Highness, carefully to look into former Grants of Recufants Lands, and to avoid them, if by Law they can. And that your Majesty will stay your Hand from passing any such Grants hereafter.

This is the Sum and Effect of our humble Declaration, which we (no ways intending to press upon your Majesty's undoubted and Regal Prerogative) do with the Fullness of our Duty and Obedience, submit to your most princely Consideration.

The Glory of God, whose Cause it is; the Zeal of our true Religion, in which we have been born, and wherein (by God's Grace) we are resolved to dye; the Safety of your Majesty's Person, who is the very Life of your People; the Happiness of your Children and Posterity, the Honour and Good of the Church and State, dearer unto us than our own Lives; having kindled these Affections truly devoted to your Majesty.

And seeing, out of our Duty to your Majesty, we have already resolved to give at the End of the Session one entire Subsidy for the Relief of the *Palatinate* only, to be paid in the End of *February* next; which cannot well be effected, but by passing of a Bill in a Parliamentary Course before *Christmas*,

We most humbly beseech your Majesty (as our assured Hope is) that you will then also vouchsafe to give Life by your Royal Assent to such Bills, as before that Time shall be prepared for your Majesty's Honour and the general Good of your People.

And

And that such Bills may be also accompanied, as hath been accustomed, with your Majesty's gracious Pardon; which proceeding from your own mere Grace, may by your Highness's Direction be drawn to that Latitude and Extent, as may best suit with your Majesty's Bounty and Goodness.

And that not only Felons and Criminals Offenders may take Benefit thereof, but that your good Subjects may receive Ease thereby.

And if it shall so stand with your good Pleasure, that it may extend to the Relief of the old Debts and Duties to the Crown before the first Year of your Majesty's Reign:

To the Discharge of Alienations without Licence, and misusing of Liveries and *Oustre le Main*, before the first Summons of this Parliament; and of concealed Wardships, and not suing of Liveries and *Oustre le Main*, before the twelfth Year of your Majesty's Reign.

Which gracious Favour would much comfort your good Subjects, and ease them from Vexation, with little Loss or Prejudice to your own Profit.

And we by our daily and devout Prayers to the Almighty, the great King of Kings, shall contend for a Blessing upon our Endeavours, and for your Majesty's long and happy Reign over us, and for your Children's Children after you, for so many Generations.

TUESDAY the 4th of December, 1621.

His Majesty's Letter to the Speaker.

*To our trusty and well-beloved Sir Thomas Richardson Knight,
Speaker of the House of Commons.*

Mr. SPEAKER,

WE have heard by divers Reports, to our great Grief, that our Distance from the House of Parliament, caused by our Indisposition of Health, hath emboldened some fiery and popular Spirits of some of the House of Commons, to argue and debate publickly about Matters far above their Reach and Capacity, tending to our great Dishonour and Breach of Prerogative Royal.

These are therefore to command you to make known in our Name unto the House, that none therein shall presume henceforth to meddle with any Thing concerning our Government or deep Matters of State; and namely, not to deal with our dearest Son's Match with the Daughter of *Spain*, nor to touch the Honour of that King, or any other our Friends and Confederates:

And also not to meddle with any Man's Particulars, which have their due Motion in our ordinary Courts of Justice.

And

And whereas we hear they have sent a Message to Sir *Edwyn Sandys* to know the Reasons of his late Restraint, you shall in our Name resolve them, that it was not for any Misdemeanor of his in Parliament.

But to put them out of Doubt of any Question of that Nature that may arise among them hereafter :

You shall resolve them in our Name,

That we think ourself very free and able to punish any Man's Misdemeanor in Parliament, as well during their sitting as after, which we mean not to spare hereafter upon any Occasion of any Man's insolent Behaviour there that shall be ministered unto us;

And if they have already touched any of these Points which we have forbidden in any Petition of theirs which is to be sent unto us :

It is our Pleasure that you tell them, That except they reform it before it come to our Hands, we will not deign the hearing or answering of it.

The King's Letter being thrice read, the Speaker asked the House if they would rise :

Which they presently did.

WEDNESDAY the 5th of *December*, 1621.

Mr. *Velbridge* saith, Let us leave Trade and Impositions, and speak for Religion and the Privileges of the House, let us petition and petition again, as we usually do to God, and without ceasing till he hear us. Journal. Dem. Com. 18 & 19 Jacobi I.

Sir *Robert Philipps*. How fortunate have we been in our Meeting, that we blanch'd the Business of Sir *Edwyn Sandys*? we gave two Subsidies so freely as we never did before.

To the end we did this was to the Glory of God, and Stability of the Kingdom, what is necessary now, we may justify our Proceedings, so as we always submit ourselves to his Majesty, and look out Precedents in the very Case upon such a Letter, and to maintain by our Precedents our Privileges.

Sir *Francis Seymour*. That the King in his Speech said we should have our ancient Privileges in speaking, as anciently we have had.

That seeing we are to judge those that do judge us, and we shall be counted dishonest for doing our Duties :

That we petition to his Majesty that we go into the Country, or be silent here; and that every one may clear himself, one by one, that he hath not spoken or declared this to his Majesty.

B b b b

Sir

Sir George Moore. We came as the Woman in the Gospel, but to have touched the Hem of the Garment of the Prerogative.

Solomon told us if the Spirit of him that riseth against thee doth yet trouble thee, do not leave it so; so we must not give over our Prayers, and to rise and go away.

But let a Committee be chosen for to deliberate of this.

Mr. Hackwell. The Prerogative of Kings increase; but our Privileges are at an eternal stand. If Princes could live always, it might be otherwise.

I have seen three such Storms, I can declare of one, as in the 5th of *Elizabeth* about the Succession, she did gain say it.

But after upon Petition she gave them leave to speak of it.

And so of Marriage in that Parliament :

But afterwards she was contented.

So in the first Parliament about Impositions;

So sent a Message that we should not meddle with it;

Yet afterwards willing.

So about Answer, that Mr. Speaker should speak punctually, which upon Letter he was unwilling, but afterwards was satisfied and gave Leave.

My Advice is,

First, That a Committee be, and the Letter and Precedents be produced.

Secondly, To give Satisfaction to the King by Petition.

Thirdly, To shew such Precedents as may give his Majesty Satisfaction.

That every one may have Copies of the Letter and Petitions to be sent to his Majesty.

Mr. Prynne. That we may not make the Wound wider, but rather lay Balme on it, and give Satisfaction; and those that have brought us into Discredit, we may bring them into Discredit, saving our Reputations.

Sir Edward Coke. We had a glorious Beginning, and I pray we may end so; I have not conferred with any, but I do not say it is unlawful:

Nay, it is most lawful, and it hath been my Fault to bear a great Burthen.

Let us take from ourselves afore we go about our Labour.

There is nothing spoken in the Letter against the Papists but justly.

I would his Sacred Majesty had heard it.

For

For Matter of War, we were induced into it by the Lord's Speech :

We must not speak of any thing, and not of those Things which are within the Courts of Justice.

The first Session of the King he was very angry they took this Course, and I would have us follow it, to strengthen ourselves with substantial Precedents, which we would rely upon, and a Narration that we have done in this House.

Mr. Pymme. When any here hath propounded any thing, when the House doth desire that Course to be taken, it is not the Fault of him but of the House ; for when he is not punished it is the publick Fault, and that the King would not deny that Instance, which he doth not deny to any one.

Sir Dudley Diggs. I have some better Hopes than afore, that if in the War and Marriage any have done amiss, that by an Act it may be confessed, if not justified.

For the last Sessions he could have spoken as much as we did speak now, but that we have been incited by the Narration of the Lords.

Mr. Crew. That we may set down the Reasons and Inducements that carried us to present this Petition, and the Petition itself, that the King may judge we never intended to meddle with Prerogative, though in some Cases we may.

That all the last Sessions we did not, which is remarkable ;
If we may not go to God at any Time with our Petitions ;
Then to the King ;

And to use Inducements and Precedents to satisfy his Majesty in the Title, that whe could not be over-ruled by Will, where he could not be convinced by Reason.

In *Henry* the Third, and *Edward* the Third's Time, there was the like Questions :

For *Henry* III, the famous *Justinian* of his Time, 24 *Henry* III, they petitioned upon the Prerogative which they used, and spoke of :

And he was angry, but yet satisfied again.

Mr. Wentworth. That this is no new thing, 38 *Edward* III, 38 *Henry* VIII, for Punishment of those that misinform the King :

For every one would have Satisfaction, much more the King, to have a Match with those that are our greatest Enemies.

Sir

Sir William Stroade. If it may be justified, as it may, and that it be read, and the Points we have concluded upon, and every one to speak, who hath misinformed the King, rather to make an Excuse than to justify our Proceedings concerning Matters of State, and not to handle Matters of Government; I think we may, but not in Mysteries of State, as Marriage, unless it be committed unto us.

Sir Thomas Wentworth. That a Committee be chosen to draw up a Remonstrance of Precedents, but he dissenteth from them as in the Marriage of his Son, that the King is free and able to punish any Man's Insolence; but in the Parliament, or after a Remonstrance of our Privileges, not by Dispute but by Declaration, but this will stay our Session, and to have that go on though these things sleep.

Mr. Brooke. That in the Petition we had care on Religion for our Souls, not Bodies, as the Insolencies and seducing of us by the Embassadors and their Servants:

There was no Arguments about the Marriage used, I think we did well, and are not faulty.

There is a Precedent about disputing upon Impositions.

The King sent us a Letter:

We made a Remonstrance, and he was satisfied, and we reasoned after of it with his Will and Liking.

That a Committee be chosen to consider of it.

Sir Robert Philipps. We spake not of the Match with *Spain* in the first Sessions, but the Way was traced out to us by the Lords; and not to excuse it, for I do not acknowledge yet an Error.

Therefore I think it fit to justify it by Reason and Precedents, and that is seasonable for a Committee; first of Reason or Precedents of those that know them best to satisfy his Majesty, and respite all Business whatsoever.

Sir ——— Ashley. That we shew to his Majesty that we have not been wronged by Misinformation in most humble-wise.

First, That we should not detract from it, or qualify it; and that if any were guilty, that we would punish him for speaking it against himself.

The King hath his Council but in *arduis rebus*, that is the Council of State, in these urgent Businesses, for they have said that we should have a Toleration in Religion.

Secondly, That our Liberties of Speech may be free, else we shall lose our Privileges.

And

And *Thirdly*, That we have always punished those that shall speak undutifully.

Sir *Edward Coke* saith, *First* will he have Wars with *Spain*, and a Marriage.

Secondly, Our giving of two Subsidies.

Thirdly, The Petition to be annexed as a Narration that we have done.

Fourthly, An humble Apology for what we have done, like the other in the first Parliament.

Mr. *Alford*. That there be three Committees, and all to have Voices, and all to speak that will come.

Sir *George Moore*. That we shall set down a Reason for what we have done, and for our Privileges to justify what we have done.

THURSDAY, the 6th of *December*, 1621.

Mr. *Noy* moved three Things:

First, To set the House straight with the King.

Secondly, To justify what we have done.

Thirdly, To maintain the Privileges.

A Sub-Committee of twenty or more, and they to nominate fourteen:

The Sub-Committee to set down what they had determined in Writing, having the Letter and Petition which was read at the Sub-Committee in the Court of *Wards*. The Tenor whereof followeth:

Most dread and gracious Sovereign,

WE your most humble and loyal Subjects, the Knights, Citizens, and Burgeses assembled in the Commons House of Parliament, full of Grief and unspeakable Sorrow through the Sense of your Majesty's Displeasure, expressed by your Letter lately sent unto our Speaker, and by him related and read unto us; yet comforted again with the Assurance of your Grace and Goodness, and of the Sincerity of our own Intentions and Proceedings, wherein with Confidence we can rely,

In all Humbleness beseeching your most excellent Majesty, that the Loyalty and Dutifulness of as faithful and loving Subjects as ever served or lived under a gracious Sovereign, may not undeservedly suffer by the Misinformation of partial and uncertain Reports, which ever are unfaithful Intelligencers.

C c c c

But

But that your Majesty would in the Clearness of your own Judgment, first vouchsafe to understand from ourselves, and not from others, what our humble Declaration and Petition (resolved upon by the universal Voice of the House, and proposed by your gracious Favour to be presented unto your sacred Majesty) doth contain.

Upon what Occasion we entered into the Consideration of those Things which are therein contained, with what dutiful Respects to your Majesty and your Service we did consider thereof, and what was our true Intention thereby.

And when your Majesty shall truly thereby discern our dutiful Affections, you will in your Royal Judgment free us from those heavy Charges wherewith some of our Members are burdened, and wherein the whole House is involved.

And we humbly beseech your Majesty, that you would not hereafter give Credit to private Reports against all or any of the Members of our House, whom the whole have not censured, until your Majesty have been truly informed thereof from ourselves.

And that in the mean Time, and ever, we may stand upright in your Majesty's Grace and good Opinion, than which no worldly Consideration is, or can be, dearer unto us.

When your Majesty had assembled us in Parliament, by your Royal Commandment, sooner than we expected, and did vouchsafe by the Mouths of three honourable Lords to impart to us the weighty Occasions moving your Majesty thereunto, and from them we did understand these Particulars, -

That notwithstanding your princely and pious Endeavours to procure Peace, the Time is now come that *Janus's* Temple must be opened:

That the Voice of *Bellona* must be heard, and not the Voice of the Turtle:

That there was no Hope of Peace or Truce to be obtained, no not for a few Days:

That your Majesty must either abandon your own Children, or engage yourself in a War, wherein Consideration is to be had, what Foot, what Horse, what Money will be sufficient:

That the *Lower Palatinate* was seized upon by the King of *Spain's* Army, and as Executors of the Ban there in Quality of the Duke of *Burgundy*, as the *Upper Palatinate* was by the Duke of *Bavaria*:

That the King of *Spain*, at his own Charge, had now at least five Armies on Foot:

That the Princes of the Union were disbanded, but the Catholick League remained firm, whereby those Princes so dissever'd were in danger, one by one, to be ruined:

That

That the Estate of those of the Religion in Foreign Parts was miserable, and that out of these Considerations we are called to a War, and forthwith to advise for a Supply for keeping the Forces in the *Palatinate* from disbanding, and to foresee the Means for raising and maintaining the Body of an Army for a War against the Spring:

We therefore out of our Zeal to your Majesty and your Posterity, with more Alacrity and Celerity than ever was preceded in Parliament, did address ourselves unto the Service commended to us.

And although we cannot conceive that the Honour and Safety of your Majesty, and your Posterity, the Patrimony of your Children invaded, and possessed by their Enemies,

The Welfare of your Religion and Kingdom, are Matters at any Time unfit for our deepest Consideration in Time of Parliament; yet being now invited thereunto, and led on by so just an Occasion,

We thought it our Duty to provide for the present Supply thereof, and not only to turn our Eyes on a War Abroad, but to take Care for the Security of our Peace at Home, which the dangerous Increase and Insolence of Popish Recusants apparently, visibly, and sensibly did lead us unto.

The Consideration whereof did necessarily draw us truly to represent unto your Majesty what we conceive to be the Causes, what we feared would be the Effects, and what we hoped might be the Remedy of those growing Evils.

Amongst which, as being incident and unavoidable, we fell upon some Things which seem to touch upon the King of *Spain*, as they have relation to Popish Recusants at Home, to the Wars by him maintained in the *Palatinate* against your Majesty's Children, and to his several Armies now on Foot.

Yet as we conceived without touch of Dishonour to that King, or any other Prince your Majesty's Confederate.

In the Discourse whereof we did not assume to ourselves any Power to determine of any Part thereof, nor intend to encroach or intrude upon the sacred Bounds of your Royal Authority, to whom, and to whom only, we acknowledge it doth belong, to resolve of Peace and War, and of Marriage of the most noble Prince your Son.

But as your most loyal and humble Subjects and Servants, representing the whole Commons of your Kingdom (who have a large Interest in the happy and prosperous Estate of your Majesty and your Royal Posterity, and of the flourishing Estate of our Church and Common-Wealth) did resolve, out of our Cares and Fears, truly and plainly to demonstrate these Things to your Majesty, which we were not assured could otherwise come so freely and clearly to our Knowledge.

And

And that being done, to lay the same down at your Majesty's Feet, without Expectation of any other Answer of your Majesty touching these higher Points, than what as your good Pleasure and in your own Time should be held fit.

This being the Effect of what we had formerly resolved upon, and these the Occasions and Reasons inducing the same ;

Our humble Suit to your Majesty and Confidence is, That your Majesty will be graciously pleased to receive at the Hands of these our Messengers, our former humble Declaration and Petition, and vouchsafe to read, and favourably to interpret the same :

And that so much thereof, as containeth our humble Petition, concerning Jesuits, Priests and *Romish* Recusants, the passing of Bills, and granting your Royal Pardon, you will vouchsafe an Answer unto us.

And whereas your Majesty, by the general Words of your Letter, seemeth to restrain us from the intermeddling with Matters of Government, or Particulars which have their Motion in the Courts of Justice ; the Generality of which Words, in the Largeness of the Extent thereof (as we hope beyond your Majesty's Intention) might involve those Things which are the proper Subjects of Parliamentary Occasions and Discourse :

And whereas your Majesty doth seem to abridge us of the ancient Liberty of Parliament for Freedom of Speech, Jurisdiction, and just Censure of the House, and other Proceedings there (wherein we trust we shall never transgress the Bounds of loyal and dutiful Subjects) a Liberty which we assure ourselves, so wise and so just a King will not infringe ;

The same being our ancient and undoubted Right, and an Inheritance received from our Ancestors, without which we cannot freely debate, nor freely discern of Things in Question before us, nor truly inform your Majesty ;

In which we have been confirmed by your Majesty's most gracious former Speeches and Messages :

We are therefore now again enforced in all Humbleness to pray your Majesty to allow the same, and thereby to take away the Doubts and Scruples your Majesty's late Letter to our Speaker hath wrought upon us.

So shall we your loyal and loving Subjects ever acknowledge your Majesty's Justice, Grace and Goodness, and be ready to perform that Service to your Majesty, which in the true Affection of our Hearts we profess, and pour out our daily and devout Prayers to the Almighty, for long Life, happy and religious Reign, and prosperous Estate, and for your Royal Posterity over us for ever.

WEDNESDAY,

WEDNESDAY the 12th of *December*, 1621.

Mr. Secretary was commanded by his Majesty to deliver this Message by Word of Mouth, which he did; but after, by Appointment of the House, set it down in Writing in these Words, *viz.*

His Majesty, remembering that this House was desirous to have a Session between this and *Christmas*; Whereupon it pleased him to signify unto us, that we should have Contentment therein, and that there should be a Session, if we ourselves were not in the Fault; taking now notice, that the House forbears to proceed with any Bills, 'till the Return of the Messengers lately sent unto his Majesty, hath enjoined me to command the House in his Name, not to lose Time in their Proceedings for preparing of good Laws in the mean while, in consideration of this so near Approach of *Christmas*; and that his Majesty hopes they will not take upon them to make a Recess in Effect, though not in Shew, without his Warrant.

Sir *Robert Phillips*. That we are put upon Rocks, either to discontent his Majesty, or lose our Privileges.

That we chuse a Committee to consider of these Things.

To which Sir *Francis Seymour* joineth.

Master of the *Rolls*. That we may go on with Continuance and Repeal of Statutes, and not read Bills 'till you have an Answer.

So we shall satisfy ourselves, and not disobey his Majesty's Commands in preparing of Bills.

For so is the King's Message.

Mr. *Crew*. We must obey the King, and yet maintain our Privileges.

We are in a Dilemma, as in Sir *Francis Goodwin* being duly elected, and Sir *Thomas Parry* late here and was put out: But the King being misinformed, sent us a Message; yet afterwards he was satisfied, and we went on with a great number of Bills in the Higher House.

If we should go on with others, they will hinder the Residue; and troubled Thoughts will hinder our Judgments in these Businesses; and therefore that there be a Committee.

Mr. *Glanville*. That we be constant to ourselves; and some will say, That we must not go on but with Bills, if the King command us: So we shall not hold our Privileges.

That it may be committed.

D d d d

Friday,

FRIDAY the 14th of December, 1621.

His Majesty's Answer to the Apologetique Petition of the House of Commons; presented to his Majesty by a Dozen of our House of Commons.

WE must here begin in the same Fashion that we would have done if the first Petition had come to our Hands, before we had made a Stay thereof, which is to repeat the first Words of the late Queen, of famous Memory, used by her in Answer to an insolent Proposition made by a *Polonian* Ambassador unto her; that is,

Legatum expectabamus, Heraldum accipimus.

For we had Reason to expect, that the first Message from your House should have been a Thanksgiving for our continued gracious Behaviour towards our People, since your last Recess, not only by our Proclamation of Grace, wherein were contained six or seven and thirty Articles of several Points of Grace to the People: But likewise for the Labour we took for the Satisfaction of both Houses in these three Articles recommended unto us in both their Names, by the Right Reverend Father in God the Archbishop of *Canterbury*; and likewise for the good Government of *Ireland* we are now in hand with at your Request.

But not only have we heard no News of all this, but contrary, great Complaints of the Danger of Religion within this Kingdom, tacitly implying our ill Government in this Point.

And we leave you to judge, Whether it is your Duties, that are the Representative Body of our People, so to distaste them with our Government:

Whereas by the contrary, it is your Duty with all your Endeavours to kindle more and more a dutiful and thankful Love in the People's Hearts towards us, for our just and gracious Government.

And whereas in the very Beginning of this your Apology, you tax us in fair Terms of trusting uncertain Reports and partial Informations concerning your Proceedings;

We will you to remember, That we are an old and experienced King, needing no such Lessons, being in our Consciences freest of any King alive from hearing or trusting idle Reports; which so many of your House as are nearest unto us can bear Witness unto you, if you would give as good Ear to them as you do to some Tribunal Orators amongst you.

And for Proof in this Particular, we have made your own Messengers confer your other Petitions sent by you, with the Copies thereof, which was sent before:

Between

Between which there is no Difference at all, but that since our receiving the first Copy you added a Conclusion to it, which could not come to our Hands, 'till it was done by you and your Messengers sent, which was all at one Time.

And if we had one Copy of it before-hand, we must have received your first Petition to our great Dishonour, before we had known what it contained; which would have enforced us to have returned you a far worse Answer than we now do.

For then your Messengers had returned with nothing, but that we have judged your Petition unlawful, and unworthy of an Answer.

For as to your Conclusion thereof, it is nothing but *Protestatio contraria facto*.

For in the Body of your Petition you usurp upon the Prerogative Royal, and meddle with Things far above your reach.

And then, in the Conclusion, you protest the contrary: As if a Robber would take a Man's Purse, and meant not to rob him.

For first you pretend to give us your Advice, concerning the Match of our dearest Son with some Protestant (we cannot say Princess, for we know none of those fit for him) and dissuade us from his Match with *Spain*, urging to us a present War with that King:

And yet in the Conclusion, forsooth, ye protest, not to press upon an Undoubted and Regal Prerogative; as if the petitioning of us in Matters which yourselves confess ye ought not to meddle with, were not a meddling with them.

And whereas ye pretend that ye were invited to this Course by the Speeches of three honourable Lords, yet by so much as yourselves repeat of the Speeches, nothing can be concluded, but that we were resolved by War to regain the *Palatinate*, if otherwise we could not attain to it.

And you were invited forthwith to advise upon a Supply for keeping the Forces in the *Palatinate* from disbanding, and to foresee the Means for the raising and maintainance of the Body of an Army for that War against the Spring.

Now, what Inference can be made upon this? That therefore we must presently denounce War against the King of *Spain*, break our dearest Son's Match, and match him to one of our Religion? Let the World judge, the Difference is no greater, than if we would tell a Merchant, That we had great need to borrow Money from him for raising an Army; that thereupon it would follow, that we were bound to follow his Advice in the Direction of the War and all Things depending thereupon.

But yet, not contenting yourselves with this Excuse of yours; which indeed cannot hold Water, ye come afterward to a direct Contradiction to the Conclusion of your former Petitions, saying, That the Honour
and

and Safety of us and our Posterity, and the Patrimony of our Children invaded and possessed by their Enemies, the Welfare of Religion and State of our Kingdom, are Matters at any Time not unfit for your deepest Considerations in Parliament.

To this Generality we answer with the Logicians, That where all Things are contained, nothing is omitted.

So as this Plenipotency of yours invests you in all Power upon Earth, lacking nothing but the Pope's, to have the Keys also both of Heaven and Purgatory.

And to this vast Generality of yours we can give no other Answer: For it will trouble all the best Lawyers in the House to make a Commentary upon it.

For so did the Puritan Ministers in *Scotland* bring all Kind of Causes within the Compass of their Jurisdiction, saying, That it was the Church's Office to judge of Slander; and there could no Kind of Fault or Crime be committed, but there was a Slander in it, either against God, the King, or their Neighbour: And by this Means they hooked into themselves the Cognizance of all Causes.

Or like *Bellarmino's* Distinction of the Pope's Power over Kings, in *Ordine ad Spiritualia*: Whereby he gives them all Temporal Jurisdiction over them.

But, to give you a direct Answer to the Matter of War, for which you are so earnest;

We expect you should rather have given us Thanks for the so long maintaining of a settled Peace in all our Dominions; whereas all our Neighbours about are in a miserable Combustion of War, but, *dulce Bellum inexpertis*.

And we indeed find by Experience, That a Number of our Subjects are so pampered with Peace, as they are desirous of Change, tho' they knew not what.

It is true, that we have ever professed (and in that Mind with God's Grace we will live and dye) That we will labour by all Means possible, either by Treaty or by Force, to restore our Children to their ancient Dignity and Inheritance.

And whatsoever Christian Princes or Potentates will set themselves against it, we will not spare any lawful Means to bring our so just and honourable Purpose to a good End:

Neither shall the Match of our Son, nor any other worldly Respect, be preferred to this our Resolution.

For by our Credit and Intervention with the King of *Spain*, and the Arch-Duchess and her Husband (now with God) we preserved the *Lower Palatinate* one whole Year from any farther Conquering in it, which in eight Days Space in that Time might have easily been swallowed up by *Spinola's* Army without any Resistance.

And

And in no better Case was it now at our Ambaffador the Lord *Digby's* coming through *Heidelberg*, if he had not extraordinarily fuccoured it.

But because we perceive that ye couple this War of the *Palatinate* with the Cause of Religion; we muſt a little unfold your Eyes herein.

The Beginning of this miſerable War, which hath ſet all Chriſtendom on Fire, was not for Religion, but only cauſed by our Son in Law, his haſty and harſh Reſolution (following evil Counſel) to take to himſelf the Crown of *Bobemia*.

And that this is true, he himſelf wrote Letters unto us at that Time, deſiring to give Assurance both to the *French King* and State of *Venice*, that his accepting the Crown of *Bobemia* had no reference to the Cause of Religion; but only by reaſon of his Right of Election (as he called it). And we would be ſorry that that Aſperſion ſhould come upon Religion, as to make it a good Pretext for dethroning of Kings, and uſurping their Crowns.

And we would be loth that our People here ſhould be taught that ſtrange Doctrin.

No; let us not ſo far wrong the Jeſuits, as to rob them of their ſweet Poſitions and Practice in that very Point.

And upon the other Part, we aſſure ourſelf ſo far of your charitable Thoughts, that we would never have conſtantly denied our Son in Law, both the Title and Aſſiſtance in that Point, if we had been well perſuaded of the Juſtneſs of his Quarrel.

But to conclude; this unjuſt Uſurpation of the Crowns of *Bobemia* and *Hungaria*; from the Emperor, hath given the Pope and all that Party too fair a Ground, and opened too wide a Gate for curbing and oppreſſing many thouſands of our Religion in divers Parts of Chriſtendom.

And whereas you excuſe your touching upon the King of *Spain*, upon occaſion of the Incidents by you repeated in that Place, and yet affirm, that it is without any touch to his Honour;

We cannot wonder enough, that ye are ſo forgetful both of your Words and Writs.

For in your former Petition ye plainly affirm, that he affects the Temporal Monarchy of the whole Earth; than which there can be no more Malice uttered againſt any great King, to make all other Princes and Potentates to hate him.

But if ye liſt, it may be eaſily tried, whether that Speech touch him in Honour, or not; if ye ſhall aſk him that Queſtion, Whether he means to aſſume to himſelf that Title, or no: For every King can beſt judge of his own Honour.

E e e e

We

We omit the particular Ejaculations of some foul-mouthed Orators in your House, against the Honour of that King's Crown and State.

And touching your Excuse of not determining any thing concerning the Match of our dearest Son, but only to tell your Opinion, and lay it down at our Feet;

First, We desire to know, how you could have presumed to have determined in that Point without committing of High Treason.

And next, you cannot deny but your talking of his Match after that Manner, was a direct Breach of our Commandment and Declaration out of our own Mouth, at the first sitting down of this Parliament; where we plainly professed, that we were in Treaty of this Match with *Spain*, and wished you to have that Confidence in our Religion and Wisdom, that we would so manage it, as our Religion should receive no Prejudice by it.

And the same we now repeat unto you, professing, that we are so far engaged in that Match, as we cannot in Honour go back, except the King of *Spain* perform not such Things, as we expect at his Hands.

And therefore we are sorry that ye should shew to have so great Distrust in us, as to conceive that we should be cold in Religion.

Otherwise we cannot imagine how our former publick Declaration should not have stopped your Mouths in this Point.

And as to your Request, that we would now receive your former Petition;

We wonder what could make you presume that we would receive it.

Whereas in our former Letter we plainly declared the contrary unto you:

And therefore we have justly rejected that Suit of your's.

For what have you left unattempted in the highest Point of Sovereignty, in that Petition of your's, except the striking of Coin?

For it contains the Violation of Leagues, the particular Way how to govern a War; and the Marriage of our dearest Son, both negative with *Spain*, nay with any other *Papish* Princess; and also affirmatively, as to the matching with one of our Religion: Which we confess is a Strain beyond any Providence or Wisdom God hath given us, as Things now stand.

These are unfit Things to be handled in Parliament, except your King should require it of you.

For who can have Wisdom to judge of Things of that Nature, but such as are acquainted with the Particulars of Treaties: And of the variable and fixed Connexion of Affairs of State, together with the Knowledge

Knowledge of the secret Ways, Ends, and Intentions of Princes in their several Negotiations :

Otherwise a small mistaking of Matters of this Nature may produce more Effects than can be imagined.

And therefore, *Ne futor ultra Crepidam.*

And besides, the intermeddling in Parliament with Matters of Peace or War, and Marriage of our dearest Son, would be such a Diminution to us, and to our Crown, in Foreign Countries, as would make any Prince neglect to treat with us, either in Matters of Peace or Marriage, except they might be assured by the Assent of Parliament.

And so it proved long ago with a King of France, who, upon a Trick, procuring his States to dissent from some Treaties, which before he had made, was after refused treating with any other Princes, to his great Reproach, unless he would procure the Assent of his Estates to their Proposition.

And will you cast your Eye upon the late Times, you shall find, that the late Queen of famous Memory was humbly petitioned by a Parliament to be pleased to marry :

But her Answer was, That she liked their Petition well, because it was simple, not limiting her to Place or Person, as not befitting her liking to their Fancies.

And if they had done otherwise, she would have thought it a high Presumption in them.

Judge then what we may do in such a Case, having made our publick Declaration already (as we said before) directly contrary to that which you have now petitioned.

Now to the Points in your Petition, whereof you desire an Answer, as properly belonging to the Parliament.

The first and greatest Point is that of Religion, concerning which, at this Time we can give you no other Answer than in the general, which is, that you may rest secure, that we will never be weary to do all we can for the Propagation of our Religion, and for repressing of Popery : But the Manner and Form you must remit to our Care and Providence, who can best consider of Times and Seasons, not by undertaking a publick War of Religion through all the World at once (which how hard and dangerous a Talk it may prove, you may judge) but this puts us in Mind how all the World complained last Year of plenty of Corn.

And God sent us a cooling Card this Year for that Heat.

And so we pray God that this Desire amongst you of kindling Wars (shewing your Weariness of Peace and Plenty) may not make God permit us to fall into the Miseries of both :

But

But as we already said, our Care of Religion must be such as; on the one Part, we must not, by the hot Persecution of our Recusants at Home, irritate foreign Princes of contrary Religion, and teach them the way to plague the Protestants in their Dominions with whom we daily intercede, and at this Time principally for Ease to them of our Profession that live under them:

Yet on the other Part, we never mean to spare from due and severe Punishment, any Papist that will grow insolent for living under our so mild Government.

And you may also be assured, we leave no Care undertaken as well for the good Education of the Youth at Home, and especially the Children of the Papists, as also for preserving at all Times hereafter the Youth that are or shall be abroad, from being bred in dangerous Places, and so poysoned in Popish Seminaries.

And as in this Point, namely, the good Education of Popish Youth at home, we have already given some good Proofs, both in this Kingdom and in *Ireland*;

So we will be well pleased to pass any good Laws that shall be made now, or at any Time hereafter to this Purpose.

And as to your Request of making this a Session, and granting a general Pardon, it shall be in your own Defaults if we make not this a Session before *Christmas*.

But for the Pardon, ye crave such Particulars in it, as we must be well advised upon, lest otherwise we give ye back the double or treble of that we are to receive by your entire Subsidy without Fifteenths.

But the ordinary Course we hold fittest to be used still in this Case is,

That we should of our first Grace send you down a Pardon from the Higher House, containing such Points as we shall think fittest, wherein we hope ye shall receive good Satisfaction.

But we cannot omit to shew you how strange we think it that ye should make so bad and unjust a Commentary upon some Words of our former Letter, as if we meant to restrain you thereby of your ancient Privileges and Liberties in Parliament:

Truly a Scholar would be ashamed so to misplace and misguide any Sentences in another Man's Book.

For whereas in the end of our former Letter we discharge you to meddle with Matters of Government and Mysteries of State, namely, Matters of War or Peace, or our dearest Son's Match with *Spain*, by which particular Denominations we interpret and restrain our former Words:

And then we after forbid you to meddle with such Things as have their ordinary Course in Courts of Justice:

Ye

Ye couple together these two distinct Sentences, and plainly leave out these Words of Mysteries of State, so as ye err *a bene divisis ad male conjuncta*.

For of the former Part concerning Mysteries of State, we plainly restrain our Meaning to the Particulars that after were mentioned.

And in the latter we confess we meant it by Sir *Edward Coke's* foolish Business, and therefore it had well become him, especially being our Servant, and one of our Council; to have complained unto us, which he never did, though he was ordinarily at Court since; and never had Access refused to him.

And although we cannot allow of the Style, calling it your ancient and undoubted Right and Inheritance, but could rather have wished that ye had said, that your Privileges were derived from the Grace and Permission of our Ancestors, and us (for most of them grow from Precedents which shews rather a Toleration than Inheritance;) yet we are pleased to give you our Royal Assurance, that as long as ye contain yourselves within the Limits of your Duty, we will be as careful to maintain and preserve your lawful Liberties and Privileges as ever one of our Predecessors were.

Nay, as to preserve our own Royal Prerogative :

So as your House shall have only Need to beware to trench upon the Prerogative of the Crown, which would enforce us, or any just King to retrench them of their Privileges that would pare his Prerogative and Flowers of the Crown.

But of this we hope there shall never be Cause given.

Dated at *Newmarket* the 11th Day of *December*, 1621.

SATURDAY the 15th Day of *December*, 1621.

Sir *George Moore*. I have considered not only what to speak, but what to do. Journ. Dom. Com. 19 Jacobi I.

Our Liberties are the dearest Things we have, and the King summoned this Parliament, would have free Election of Knights and Burgesses, the King hath assured us of Religion, which is a great Comfort to us all.

And when as *Exechias* was sick; and he turned himself to the Wall and prayed to God for Health, so we have done our Duties to God, we can do no more. That a Recollection be made of what we have done, that it may appear to Posterity how far we have done.

Mr. *Mallorie*. That we may consider of our Liberties.

F f f f

The

The King hath sent a gracious Letter, but we are worse than before; for he saith our Privileges are not by Inheritance; and that we must not trench into his Prerogative.

Mr. Serjeant *Ashley*. We have Vinegar and Oil, but first Vinegar, which was somewhat sharp, but the Oil, it was Oil of Gladness to me.

If the King were a Tyrant, we had Reason to complain, but he is gentle in Government.

He saith he will maintain our Religion, and to answer the Gentleman about his Speech concerning our Liberties, *Plus valet legalis conclusio quam legalis confessio*, to consider of Things at Home and Abroad of Religion, and to take away the Scandal that may happen Abroad, that they will be glad to see our Religion on Fire.

That the Lords, upon the third reading the Bill of Monopolies, would have a Conference with us; and so gave their Voices, by which it was cast out.

Sir *Francis Seymour*. When I cast mine Eyes back on our Answer from the King, that our Privileges are but permissive, that we do surcease for speaking of the Marriage and War, but with a Protestation that it is our Right notwithstanding, and be Petitioners to the King that we may now depart, and have a Session the next Meeting.

That Bills go on and intreat his Majesty to this Purpose.

Sir *Richard Weston*. I am sorry I have Occasion now to speak, that we do not be discontented with his Majesty's Answer, when he considered not only to give us Satisfaction, but that all the World might conceive well that his Majesty and his Subjects agree that we be not contumacious, seeing his Majesty giveth us Freedom in our Liberties, and hinder not our Countrymen that Good which we may give them, by our ending now of Business.

Sir *James Parrott*. If we were secured of our Religion from his Answer, as by the Queen's Answer to the *Polonian* Ambassador, and in Religion as if we should be slack, and of our Omnipotencies, that there may be a Committee chosen, and that we may chuse those that consider of the rejoicing of our Adversaries, how they may be of *Jerusalem*.

For this may be the happiest Parliament that ever was.

Mr. *Glanville*. That a Letter in these general Terms cannot give us Satisfaction.

Upon every Letter we have been cast upon the Rocks. That

First,

First, Of what Liberties we have here to speak of.

Secondly, Whether we may be questioned in Parliament, or after.

Thirdly, If when we are commanded to go on in Bills, Whether we may only do them and no other Things: For the Lords can pass no more.

1. Bills,
2. Grievances,
3. Judicature.

For without Judicature, we cannot make Laws; and therefore we must use Judicature.

Mr. Sollicitor. Not to have an ominous Interpretation of it; and not to dispute with our Sovereign, for fear we lose more than we get.

Serjeant *Ashley* joineth with Mr. Sollicitor: And that there be a Committee and Protestation, as *in primo Jacobi*; as the old Friar said,

*When Omnipotence cometh in place,
Then Misericordia is out of Grace.*

That we have the Word Command explained,
To go to Bills, by Mr. Secretary.

Mr. *Hackwell*. The Privileges of this House are the Flowers of the Crown, and that we shall never sit here again if they be not maintained now.

Our Privileges are part of the Law; not only my Opinion, but Sir *Edward Coke's*.

The Custom of the Commons of *England*: if so generally, the Law of *England* is the Essence of the Parliament.

The Common Council is a Court to punish Contempts.

Dr. *Cowell's* bold Attempt, he was punished and imprisoned, 5 *Henry V.* N^o. 15.

The Privileges are the Laws of *England*.

To answer an Objection that the Speaker desired the King to maintain our Privileges, but of late this hath been used in the Speaker's Speech.

The 2^d of *Henry IV.* *Johs Cheney* made a Protestation, untill Queen *Elizabeth's* Time not used, for it was disliked always:

And seeing so much Use is made of it, I would have it left out.

That a Committee be chosen, that we may hold our Liberties as our ancient Privileges by Inheritance, used in the Protestation in the first Session of the first Parliament about Impositions.

Sir *William Stroade*. That it be drawn as in the Parliament *primo Jacobi*, some being here that were of the Committee,

That those of the Council seeing there is an Impossibility of a Sessions, that they intreat the King we may depart for the Holydays, and come after,

And that the Committee may be chosen, and this being not in the Clerk's Book; with which Mr. *Pymme* joyneth.

Sir *Edward Coke*. For the particular Privileges being infringed to make a Protestation to the King.

1. Privileges, Donatives.
2. No Court of Record.
3. No Judicature.

When the King was informed he was satisfied.

And yet there was a Protestation of the fundamental Laws of our Kingdom.

Sir *James Puckering*. That the Commons of the Realm might mend the same, if there were an Error; and that if the King would not grant the Liberties, they would be silent.

Mr. *Alford*. For a general Committee for three Things, that they may be debated,

1. Whether we may touch Prerogative or no, may be disputed.
2. Monopolies.
3. Cart-taking.

Nullum tempus occurrit Regi, all Prerogatives, a Committee of the whole House by Question, Time, and Place, in general all the Privileges of the House.

That To-morrow Morning we may go on, and in the Afternoon for Grievances.

To which Sir *Thomas Wentworth* joyneth.

Mr. *Brooke*. That I am somewhat satisfied by the Letter, that we might be all of one Mind, and we must not strive with a mightier Man (saith *Solomon*) that the King is careful of Religion, and the Papists shall be curbed.

But be mild now for appeasing of foreign Princes against Protestants.

That we have Privileges by Grant and Precedent.

It is no matter how we have them, so we have them, as well as by Inheritance.

Let us make a Protestation, and we shall go as well away as we came.

The Schoolmaster would not argue with *Marcellus*, for he had twenty Legions.

That an Act be that all Bills shall remain in the same Plight as they were before, and to consider of Grievances, as of *Dr. Craddock*, and *Dr. Lamb's* Business, that will be otherwise an Offence to the World, who will say we do not agree,

Mr. Treasurer. The House is moved with the angry Letter of our King, that we were the Cause of the same;

And take it for Admonition, for Religion how he will secure it, and for our Privileges that he saith we strained his Letters afore; and as we are jealous, so is he, for while we strive to enrich we lose all, and that we may go on with Bills.

To which Sir *Robert Cary* accordeth.

And that Mr. Speaker may put the Question.

Sir *Robert Philipps*. For Observation in three Respects.

1. Reprehension.
2. Declaration.
3. Admonition.

First, For Reprehension, I wish it never had been, or else now forgotten; but by Justification if he had heard our Discourses, and seen into our Hearts by a true Perspective; but I know there is a Difference between the Language of a Prince and of a Subject.

Secondly, The Declaration.

1. For Religion.
2. The Marriage with *Spain*.
3. Of the *Palatinate*.
4. Our Privileges.

1. That he is the greatest King on Earth, and therefore to protect that, without which God will not protect him, we gave God the first Consultation of us, and not rowl the Stone of Marriage further, and

2. That he will deal plainly with the Match of *Spain*, had we known it sooner, we would not have spoken of it.

3. War with all Princes for the Possession of the *Palatinate*.

4. Our Privileges I would to God we could decline, but I cannot, God knoweth; that we might maintain our Privileges, as sometimes, he said, he would not live longer than we should have all our Favours, and we have gone no further than in the first Parliament of the King, that we had no Liberties but by Grant, but then they were amended, and claiming their Liberties with Protestation; that a Committee be chosen to consider of our Privileges, and to proceed in Businesses also; and that those that would have it a Sessions, I will answer them,

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them,

them, that it is impossible, for it will not content the Country, because Grievances and Trade cannot be effected.

And for Dr. *Lamb*, and Dr. *Craddock*; objected the Subsidy cannot be paid.

Therefore to adjourn now between this and *Christmas*, and it will be but a Month longer, and we shall give Satisfaction to all Parties, and it is fourteen Days since we have been interrupted.

Sir *Thomas Wentworth*. If I respected not the inward Man more than the outward Man, the last Clause of the King's Speech, that the Adversary be not scandalized, and that we go on, and that which stoppeth this that our Privileges are permissive, for the common Laws are but Customs,

For the Common Laws are but Customs:

That a Committee be chosen, and that we may go to Bills,

Not for a Sessions,

Not to set two Things at once, but first the Privileges, and then go on.

Mr. *Beacher*. All that we have done is spread Abroad, what we have done that God would confound all Enemies of these Houses, who are Enemies of the State, that we go on with Bills.

Sir *Dudley Diggs*. First of our Privileges, for *nullum tempus occurrit Regi*.

That it be committed, and then to Bills; for I am persuaded that the King doth not hinder it, but dispute.

Mr. *Carew*. That this Part of the Letter be read, and although we cannot allow of our Privileges, yet it is by Grant confirmed by Precedents, we are upon a weighty Business.

Our Privileges are by Law from our Ancestors, and are our Due.

Not to digress from it, for we have been interrupted twelve Days, for there is but five Days left, that the King would meet with us half way.

His Speech to the Lords, that we should not ask any thing without Blush.

The Pardons and Bills of Grace to be considered of to pass.

I cannot conceive they can be finished in five Days.

And by Mr. Chancellor it was said, we should not stick of the Manner, but of the Matter.

And that we declare to his Majesty that the Privileges are our Inheritances, as in *primo Jacobi*, and a Protestation upon it.

And that Act to be read.

This

This is of that great Consequence, that our Liberties must be maintained, that they are by Inheritance.

If we should yield that they are permissive, the Walls would witness against us the contrary.

As in *Magna Charta*, we have it granted to the Subjects, and to their Heirs for ever, and from us and our Ancestors for ever, the City of *London*, and all Corporations and all Persons, all Privileges as they were wont to have, which they had before, and Franchises and Liberties of Barons.

So as in *primo Jacobi* to make a Protestation.

The Word of Inheritance to be questioned at the Committee amongst us as our Birth-right.

In the 8th of *Henry IV.*, in *Gascoigne's Case*, the Laws there are called our Liberties.

So then our Liberties is to make Laws our Inheritance.

21 *Edward IV.* fol. 44. *Abbot of Waltham's Case*, 49 *Lib. Affize*. Our Custom, Law is not Custom, but by Custom our Laws are our Inheritance; then our Liberties, by which we make Laws.

A Committee chosen to make a Protestation, and to maintain our Privileges.

Mr. Solicitor. That the Liberty of Parliament is the Inheritance of the Subject, but to go that Way by which we should affect it, to pass by the Phrase of his Letter, not to meddle with the Prerogative of the King, to make a Protestation of our Liberties, and to go to the King again:

Although I am sorry that we should not go on.

That the Pardon will be worth three Subsidies, I dare make it known to any.

Sir *Edward Sackville*. In the first Sessions *primo Jacobi*, the King did say our Privileges were permissive, and we might have a Protestation.

So Sir *Francis Fane* said, Let there be some select Committee, and the House to go on.

Lord *Clifford*. The Privileges are our Inheritance, and to go on with a Committee.

Sir *Edward Coke*. Silence would suit my Conscience, *cum equali dubium, cum principe stultum, cum puero pariam, cum pupilla pudorem*.

One out of *Ireland* would not dispute with the King.

The

The King, as the Sun *in summo gradu*, hath his full Light.

In the 39th of *Edw. IV.* The Liberties of the Court is the Law of the Court.

19 *Hen. VI.* When the Law groweth dangerous, they may be freed by Parliament.

How can great Men be punished?

Their Burthen is pulled off.

We must have another Interpretation: He would have us have another Style, as, *Nulli vendimus*: The King will not sell Justice; the Law no Custom, but by Custom, that is, particular Laws.

The King doth not mean to take away our Privileges, but that a Committee of the whole House, for we can have no Proxies, but we represent others.

That a Committee be appointed on *Monday*.

Sir *William Spencer* remembereth the King in his Majesty's former [Speech] of punishing in or after Parliament, — desireth this Particular may be examined by the same Committee.

Mr. *Noy*. That we may not go on, but with a Protestation.

The best Way to maintain our Privileges is by Usages, as in the Cure.

The Second Thing to be enquired of is, not to dispute of it; but to do the best we may to maintain it, as in Judicature.

And any Thing in Question to be handled, as in the Great Charter, not *has Libertates*, but *suas*, not to admit ourselves out of Possession.

Sir *George Calvert*. First, in general our Priviledges.

Secondly, That in particular he thinketh not that the King would take away our Privileges, if the Protestation will do any Good, if not to take any other Course:

For he would have to be used, not to speak of that which Sir *William Spencer*.

Mr. *Glanville*. That the King may, for Matters of Treason spoken, take off his Head, we cannot; for Capital Matters we cannot; and that the Committee may make a Declaration by Question, a Committee of the whole House, concerning the Declaration of our Priviledges and Liberties, and Things incident to it.

Weighty Matters move slowly, by Nature slowly; and therefore *Monday* the Question resolved.

MONDAY,

MONDAY, the 17th of *December*, 1621.

Sir *George Calvert*, Secretary, delivered his Majesty's Letter to the House of Commons; the Tenor whereof followeth:

RIGHT Trusty and Well-beloved Counsellors, We greet you well. Journal Dom. Com. 19 Jac. I.
 We are sorry to hear, that notwithstanding our reiterated Messages to our House of Commons for going on in their Business, in regard of the Shortness of Time betwixt this and *Christmas*, and of their own earnest Desire, that we should now conclude a Session, by making of good and profitable Laws, they continue to lose Time:

And now of late, upon our gracious Answer sent unto them, have taken Occasion to make more Delay, in appointing a Committee to-morrow to consider upon the Points of our Answer; and especially concerning that Point in it, which maketh mention of their Privileges.

Our Pleasure therefore is, that you shall in our Name tell them, That we are so loath to have Time mis-spent, which is so precious a Thing, in the well using whereof our People may receive so great a Benefit; as we are thus far contented to descend from our Royal Dignity, by explaining at this Time our Meaning in our said Answer touching that Point, that all our good Subjects in that House, that intend nothing but our Honour and the Weal of the Common-wealth, may clearly see our Intention.

Whereas in our said Answer we told them, we could not allow of the Style, calling it their ancient and undoubted Right and Inheritance; but could rather have wished, that they had said, their Privileges were derived from the Grace and Permission of our Ancestors and us (for most of them grow from Precedents) which shews rather a Toleration than Inheritance:

The plain Truth is, that we cannot with Patience endure our Subjects to use such Antimonarchical Words to us, concerning their Liberties, except they had subjoined, that they were granted unto them by Grace and Favour of our Predecessors.

But as for our Intention herein, God knows we never meant to deny them any lawful Privileges that ever that House enjoyed in our Predecessors Times, as we expected our said Answer should have sufficiently cleared them; neither in Justice whatever they have Right unto, nor in Grace whatever our Predecessors or we have graciously permitted unto them.

And therefore we made that Distinction of the most part:

For whatsoever Privileges or Liberties they enjoy by any Law or Statute, shall ever be inviolably preserved by us.

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And

And we hope our Posterity will imitate our Footsteps therein :

And whatsoever Privileges they enjoy by long Custom and uncontrolled and unlawful Precedents, we will likewise be as careful to preserve them, and transmit the Care thereof to our Posterity.

Neither was it any way in our Mind, to think of any particular Point, wherein we meant to disallow of their Liberties :

So as in Justice we confess ourself to be bound to maintain them in their Rights ; and in Grace we are rather minded to increase than infringe any of them, if they shall so deserve it at our Hands.

To end therefore as we began, let them them go on cheerfully in their Business, rejecting the curious Wrangling of Lawyers upon Words and Syllables ; otherwise (which God forbid) the World shall see how often, and how earnestly we have pressed them to go on according to their Calling with those Things that are fit to be done for the Weal of our Crown and Kingdom, and how many curious Shifts have been from Time to Time maliciously found out to frustrate us of our good Purpose, and hinder them from the Performance of that Service which they owed to us and to our whole Kingdom ; whereof when the Country come truly to be informed, they will give the Authors thereof little Thanks.

Mr. Secretary. That as the King's Answer is recorded, so that this may be recorded for the conserving of our Privileges, and Copies to be taken, and to go on to our Liberties.

Sir *Edward Coke*. We have our Liberties either by Law, Custom and Precedent, and Parliament, which his Majesty is not acquainted with, nor we particularly, as in the Indemnity of the Lords and Commons in the Case spoken of.

I would I were a Sacrifice, so there was a good Correspondence between us and the King.

The Precedent was drawn upon a small Occasion :

Walter Clarke, Burgefs of *Chippenham*, for a Riot, and indebted to *Robert Bassett* and *John Paine*, was sued and put into the *Fleet*. The Parliament would do nothing : The King could not sue a Parliament Man ; and they could do nothing. And the said *Clarke* was outlawed.

That the Liberties are our Inheritances, and to their Posterities.

39 *Hen. VI.* The Petition to the King, praying the Commons, that great Delay is in the Parliament, by *Walter Clarke* by your Majesty's Suit, against the Liberties of our House, for a Fine and Imprisonment. Please it your Highness, in discharging the Delay to ordain and establish

blish, That the Chancellor send out your Writ to free *Walter Clarke* from the Fine and Imprisonment, with a Saving to the King, and *Robert Bassett* and *John Payne*, after the Parliament, and other Debts, saving our Privileges.

Another Precedent for *John Atwell*, Burgeses for *Exeter*, in the same Case: So there hath been such Delay by such Things.

Sir *Francis Seymour*. That his Majesty hath not cleared these Things.

Sir *Robert Phillips*. I love not Curiosity of Syllables, and in Words, but in our Liberties.

I will not stain my Conscience, how our Liberties have been infringed.

Something in the Letter is doubtful: Therefore to be left to the Committee to compare Precedent with Precedent, that we may not be thrust upon such Rocks.

Mr. Recorder. That the Answer was a Wound to our Liberties: But better doth satisfy me, but one Sentence; he cannot endure any Antimonarchical Power to be in Subjects: For the Word, it was never used in any Precedent that I remember.

But that the King sayeth, they are granted; it is in his Oath, that he shall yield to confirm the Liberties, *concessas Rege, Clero, & Populo*.

We can do nothing in this short Time, and it may be prejudicial to our Posterity, if any such Thing be omitted to go on in Business; and that there may be a good Union between the Head and the Body.

Sir *Nathanael Rich*. That those Liberties that have been questioned, as it is signified by the Letter, there may be a Re-committee chosen to give Satisfaction to his Majesty; that we may end as we began.

Sir *Edward Cecil*. That it is impossible there can be no Sessions: That we maintain our Privileges; and that we take Copies of it, and consider of it 'till to-morrow Morning.

Mr. *Crew*. That we do now chuse a Committee, much more to consider of it.

He repeateth that Part of the Letter, that our Delay hath increased by our late appointing a Committee:

That

That the King cannot abide the Antimonarchical Words of our Subjects :

That by a Committee to consider not to protract Time, but to go on with all Duty.

The Abundance of the Prerogative is great :

So it is for our Liberties to be considered.

Sir *Dudley Diggs*. That the Prerogatives and Liberties are large Fields; and not to be too much intermeddled with:

That the Husband and Wife are to be made Friends, if they be fallen out.

There is such a Jealousy between us, that there must be Humility in the Subject: But the King will say, nay the King will think, that it is his Right; and we think that it is our Right: And will you not consider how Businessses are? For I fear there cannot be a Session.

Mr. Chancellor of the *Dutchy* desireth that we might not stir, for fear of the King, and against the Peace.

TUESDAY the 18th of *December*, 1621.

Mr. Speaker. I have received a Letter from the King to this House; the Tenor whereof followeth in these Words :

Mr. SPEAKER,

WHEREAS; at the humble Suit of the House of Commons, We condescended to make this Meeting a Session before *Christmas*: To which Purpose we gave them Time until *Saturday* next, in case they would seriously apply themselves to that End: And likewise, out of our Grace, and to take away all Mistakings, by our Letters directed to our Secretary, we were pleased so fully and clearly to explain ourselves in the Point of maintaining all lawful Privileges to our said House, which since we cannot hear, hath had the wished Effect in making them spend this short Time in preparing Things most necessary for a Session.

We have thought good once more clearly by this to impart our Mind unto them, which is, That in respect of the Expectation, after this so long a Meeting in Parliament, as also that the generality for the most part rather judge Things by the outward Effects, than enter into the Causes of them;

We have an earnest Desire to make this a Session, to the end that our good and loving Subjects may have some Taste, as well of our Grace and Goodness towards them, by our free Pardon, and good
Laws

Laws to be passed; as they have both by the great and unusual Examples of Justice since this Meeting, and the so many Eases and Comforts given unto them by Proclamation.

And therefore calling to mind, that the passing of a Subsidy, an Act for Continuance of Statutes, and the Pardon, are the three most pressing Businessses to be effected before the End of the Session; we wished them, that as we had given Order for the Pardon to go on with all Expedition, so they presently go Hand in Hand with the Act for Continuance of Statutes.

As for the Subsidy, though the Time presseth much, yet if they find it cannot conveniently be done, we will not make that any way an Impediment to the Good which we desire our People should feel, by making this a Session.

Thus much we thought good to give them to understand, and withall to assure them, that, if they shall not apply themselves instantly to prepare the aforesaid Things for our Royal Assent against *Saturday* next, we will, without expecting any farther Answer from them, construe from their Slackness, that they desire not a Session.

And in such a Case, we must give a larger Time for their returning homewards to such of both Houses as are to go into their Countries to keep Hospitality among their Neighbours in this Time of Recess.

Mr. Weston. This is an unusual Thing, that nothing but the Pardon, and the Continuance of Statutes is impossible to be done, and to declare to his Majesty, that his Majesty's Messages have been the Cause of our Interruptions; and to petition his Majesty, that it may be an Adjournment, not a Sessions.

Sir Robert Phillips. That it is impossible that upon *Saturday* we can go down into the Country to keep *Christmas*.

That this be referred to the Committee: He rejoiceth much at this gracious Letter.

Mr. Mallett. That the King is the Beginning and Ending of Parliaments: And this Bill may be finished easily now.

Mr. Solicitor. That the King's Eye is not now on the Subsidy: And to rely of the King's Favour.

Mr. Crew. *Non est dignus dandis, non est dignus datis.* This Letter is Oil: And that we deal not in our Privileges.

Now then, when we come again for the Continuance of the Statute, it cannot be passed.

Mr. *Noy*. We cannot finish neither the Pardon nor the Continuance.

For the Pardon, we must consider of those Grants that are of these Things pardoned, that they may be recalled; and that we consider some Statutes to be repealed are worth nothing, yea the Penalty granted to us, save that the Laws are worth nothing.

That we may thank his Majesty, and to consider that our Privileges and his Prerogative have a Compatibility.

Sir *Francis Seymour*. That we first consider the Liberties of our House:

Secondly, To give Thanks to his Majesty, and to tell his Majesty, That it is impossible we can now have a Sessions.

Sir *George Calvert*. That the King will not have an Answer.

Serjeant *Ashley*. That the Grants of the Things which are to be pardoned, honourable Persons have them, and the King hath excepted those Things out of the Grant;

[Mr. Serjeant *Ashley* in the Chair]

1. Ancient,
2. Modern.

For Ancient; *First*, The King's Letter, and a Signification of his Favour:

Secondly, A Declaration, that we cannot now have a Sessions.

A select Committee to be chosen, that this Evening may particularly consider of our meeting together.

Mr. *Glanville*. That we do suddenly give the King Thanks for his Letter.

For haply some Enemies of this House have now an Opportunity to do us Mischief, and to signify our Loyalty to his Majesty:

And that we make our Privileges so clear, as no Bones hereafter may be cast.

Sir *Edward Coke*. Only concerning the Letter.

First, An humble Thanksgiving to his Majesty.

Secondly, A Protestation of our Duty to his Majesty.

Not to touch any Thing of our Privileges.

Mr. Solicitor, Sir *Samuel Sandys*, Mr. *Glanville*, and the Chancellor of the *Duchy*, of the Committee.

Sir

Sir *Edward Coke*. If our Privileges have been invaded, to make a Protestation, not in general, but in particular.

Sir *Robert Philipps*. That it be for Election, Jurisdiction, Safety, and Freedom.

That the Liberties of our House are the Inheritance of the Subject,

The King's own Words are a Witness;

First, As a King;

Secondly, As a Christian King.

A Difference between a Christian King and a Political King.

That the King is bound to maintain our Liberties; and that we may read first his Majesty's Letter.

That he might punish any Man in Parliament and without.

Secondly, &c.

Thirdly, That our Privileges are of Grace, and not of Inheritance.

1. To consider in the Apology *primo Jacobi*:

2. The Act of Parliament referred to Mr. *Glanville* to draw:

3. That we petition his Majesty.

Mr. *Noy*. That there be an Act.

But our Liberties, not to dispute them: For then there is a Question of that which is without Question.

Sir *Nathanael Rich*. Freedom of Speech hath been in question: They protested, and the King was satisfied: Freedom of Speech is a Matter often impeached this Parliament. Do this, Do not this, is the Manner of proceeding in this and in that.

And for the Jurisdiction, that we should have Freedom of Speech, that we be not committed in Parliament and after.

Sir *George Moore* moved, not to meddle with any Thing that appertained to the King.

Mr. *Mallett*. If we never had been interrupted, we need not have done any thing.

And to set down the Interruption as the King's Letter.

First, That we should go on with Bills only.

Secondly, That we may be punished in Parliament and after for great Capital Offences.

In the *Exchequer*, the King may, though the Party have a Writ of Privilege, have him punished; but no Exception, that the King may deal with a Parliament Man.

Sir

Sir Thomas Wentworth. When we have justified our Actions in our Declaration, I mislike of this Order.

Mr. Wentworth. That there is no Commandment that we should not do such a Thing in Parliament; a Negative Bond, we have no Exception.

In the 7th of *Henry VIII.* *Kelloway*, Abbot of *Winchester*, at *Paul's* Cross, curseth the Parliament, for dealing with Matter of Religion in the House.

But in an Act of *Henry VIII.* in the Case of *Stroude*, is no Exception used.

In *Ferrers's* Case in *Hollinshead*, *Hen. VIII.* we being informed by our Judges, That we do not stand no where so Royally as in Parliament.

Mr. Sollicitor reported the Tenor of the Petition to his Majesty, as followeth :

May it please your most excellent Majesty,

WE your humble and loyal Subjects, the Knights, Citizens, and Burgeses, of your Commons House of Parliament, having this Morning, to our great Comfort, heard your Majesty's Letter sent to our Speaker, full of Grace and Goodness to us and all our People, have thought it our Duty forthwith to return our most humble and hearty Thanks to your sacred Majesty, for so Royal a Favour vouchsafed unto us.

And we do humbly beseech your Majesty, to be truly informed from us, That although we have been very desirous in our Duty to your Majesty, who called us to this Service, and to our Country for whom we serve, to have some good Laws now to have been passed; and that there might have been a Sessions before *Christmas*.

To which your Majesty upon Petition was heretofore graciously pleased to give way.

Yet entering now into a serious Consideration of the Nature of those Things which must of Necessity be prepared for the finishing of a Sessions, and the Straitness of Time whereunto we are driven by some unhappy Diversions, which have fallen upon us, to our great Grief, we are once again enforced to fly to your Majesty's Grace and Favour, humbly submitting ourselves to your Royal Wisdom, what Time will be fittest for our Departure, and for our Re-access to perfect those Beginnings, which are in Preparation with us: Which Time, by God's Grace, we resolve to spend with that Diligence and Care, as shall give good

good Satisfaction to your Majesty, to our Country, and to our own Consciences:

And that we shall make good use thereof.

Mr. Speaker being in the Chair, by Question it was resolved, that the Petition should be sent to the King by

Mr. Chancellor of the *Dutchy*,
Sir *George Goring*,
Mr. *Murray*,
Sir *Henry Mildmay*.

Mr. *Crew*. That it be entered, that we make a Vow for our Liberties in particular.

Mr. *Alford*. That there may be a Question, that we may touch the Prerogative in Parliament, and securing of our Members.

Sir *John Hilliard*. That they be not infringed for not administering an Oath; whereof we have two Precedents, That we might and we were one House with the Lords.

Mr. *Crew*. Some particular Violation of our Liberties:

First, Not to take notice of our Writ.

Secondly, Freedom of Speech by a Parliamentary Power, not to be questioned in Parliament, nor after, and *primo Jacobi* to be read.

Sir *Edward Coke*. Not to avouch any, that we may have Freedom of Speech; and to confer of State, as in 7 *Edw. III.* and Government, as we find Occasion to speak of War, and Peace, and Marriage, we may treat of any thing concerning the King, State, and Church.

And that the Committee may handle Law, Mischief, and Grievances.

Mr. *Finch*. We shall fall upon a Rock.

That the Messages which his Majesty sent be not prejudicial to us, but that this be reserved for a Sub-Committee.

Sir *George Moore*. That if any Man have offended the Parliament House, he may punish him.

Mr. *Noye*. For Freedom of Speech: For we can have no Council to speak for us in a General Council.

A great while ago, Freedom of Speech was questioned; and there may be something spoken that would be private, therefore to be com-

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mitted:

mitted, for War and Peace are generally treated of, and of the State of the Church, Law, Mischiefs, Grievances, and of the Freedom of our Persons, personal and loyal Freedom by this House punished, and to command us to go about any Business, or in particular confining us, that it is our Inheritance, and all things incident to those things.

That the King is not to be misinformed; that all these be referred to a Sub-Committee, for none here can inform, but the whole House by the Speaker to the King, to make these Articles to be reduced into the Form of a Protestation, and may be debated by the Committee.

To shew the Reasons why they do it not.

To shew the Reasons to the House.

The Committee to be named this Afternoon.

The Sub-Committee to draw a Protestation upon the Points above-rehearsed, their Liberties being confirmed by 39 *Edward III*, anno 4 *Henry VIII*, for our Liberties to treat of State Matters, and Matters of the Church and Government, and other things concerning Parliaments.

And in 21 *Richard II*, That it is no Treason, no Pain to be used for speaking any thing in Parliament, that is Parliament Matter.

1 *Henry IV. cap. 10*, in the printed Books.

Sir *Edward Coke*. In the *Record*, Num. 10, there is no Treason; but according to the Law of the Realm, to wit, to kill the King, Queen, Children, &c.

After it was wrote, put to the Question, and passed the Committee, Mr. Speaker being in the Chair; by Question to be entered into the Clerk's Book in this Manner:

The Protestation of the House of Commons, entered into the Clerk's Book.

THE Commons now assembled in Parliament being justly occasioned thereunto concerning sundry Liberties, Franchises, Privileges, and Jurisdictions of Parliament, (amongst others herein not mentioned) do make this Protestation following:

That the Liberties, Franchises, Privileges, and Jurisdictions of Parliament, are the ancient and undoubted Birth-right and Inheritance of the Subjects of *England*, and that the arduous and urgent Affairs concerning the King, State, and Defence of the Realm, and of the Church of *England*, and the Maintainance and making of Laws, and redressing of Mischiefs and Grievances which daily happen in this Realm, are

are proper Subjects and Matter of Council and Debate in Parliament, and that in the handling and proceeding in those Busineses, every Member of the House of Parliament hath, and of Right ought to have, Freedom of Speech, to propound, treat, reason, and bring to Conclusion the same.

And that the Commons in Parliament have like Freedom and Liberty to treat of those Matters in such Order, as in their Judgment shall seem fittest.

And that every Member of the said House hath like Freedom from all manner of Impeachment, Imprisonment, and Molestation (other than by the Censure of the said House itself) for or concerning any Bill, speaking or declaring of any Matter or Matters touching the Parliament or Parliamentary Busineses.

And if any of the said Members be complained of, or questioned for any thing done or said in Parliament, the same must be shewed to the King, by the Advice and Consent of all the Commons assembled in Parliament, before the King give Credence to any private Information.

WEDNESDAY, the 19th of *December*, 1621.

Mr. Chancellor of the *Dutchy* reported the King's Answer to the Petition of Thanks to his Majesty from the House of Commons,

Which he returned by our own Messenger in these Words :

That we were sorry this could not be made a Session according to their own Desire expressed in their late Petition preferred unto us, to which we had most willingly assented: That they knew there was no Fault in us, who, observing the needless Impediments upon which they took Occasion to stay their Proceedings, had often admonished them not to lose Time, first by Secretary *Calvert*, and afterwards by three sundry Letters and Answer.

But since they concerned, the Straitness of Time (which they had drawn upon themselves) was such, that it would permit nothing to be done at this Time :

We had given Order to adjourn the Parliament till the eighth of *February* next, which was the first Day we had formerly appointed for our Meeting.

We were likewise pleased to say, that we could not omit to tell them, that we expected other Thanks from them, than they had sent us at this Time, namely, for our gracious Promises, to maintain their Privileges as our own Sovereign Prerogative.

First, Contained in our Answer to their Petition.

And

And afterwards as clearly explained and enlarged by our next Letter to Secretary *Calvert*, as our Writs for their Safety, Satisfaction and Advantage, could possibly devise.

And this Day the Parliament was adjourned to the said eighth of *February*, and before that Time dissolved by Proclamation.

A Record of some memorable Proceedings in the Honourable House of Commons, in the Parliament held Anno 1610, i. e. in the seventh Year of the Reign of King James I, with some necessary Reflections thereupon.

The Record begins thus,

To the King's Most Excellent Majesty.

Most gracious Sovereign,

A Record of some worthy Proceedings in the honourable, wise, and faithful House of Commons, in the late Parliament. Justitia suum cuique tribuere. Printed 1611.

WHEREAS we your Majesty's most humble Subjects, the Commons assembled in Parliament, have received first by Message, and since by Speech from your Majesty, a Commandment of Restraint from debating in Parliament your Majesty's Right of imposing upon your Subjects Goods exported or imported out of, or into, this Realm;

Yet allowing us to examine the Grievances of those Impositions in regard of the Quantity, Time, and other Circumstances or Disproportion thereto incident:

We your said humble Subjects, nothing doubting but that your Majesty had no Intent, by that Commandment, to infringe the ancient and fundamental Right of the Liberty of Parliament, in Point of exact discussing of all Matters concerning them and their Possessions, Goods and Rights whatsoever,

Which yet we cannot but conceive to be done, in Effect, by this Commandment, do with all humble Duty make this Remonstrance to your Majesty.

First, We hold it an ancient, general, and undoubted Right of Parliament, to debate freely all Matters which do properly concern the Subject, and his Right or State:

Which Freedom of Debate being once foreclosed, the Essence of the Liberties of the Parliament is withal dissolved.

And

And whereas in this Case the Subjects Right on the one Side, and your Majesty's Prerogative on the other, cannot possibly be severed in Debate of either,

We alledge that your Majesty's Prerogatives of that Kind, concerning directly the Subjects Right and Interest, are daily handled and discussed in all Courts at *Westminster*, and have been ever freely debated upon all fit Occasions, both in this and all former Parliaments, without Restraint.

Which being forbidden, it is impossible for the Subject either to know or maintain his Right and Property to his own Lands and Goods, though never so just and manifest.

It may further please your most excellent Majesty, to understand that we have no Mind to impugn, but a Desire to inform ourselves of your Highness's Prerogative in that Point:

Which, if ever, is now most necessary to be known.

And though it were to no other Purpose,

Yet to satisfy the Generality of your Majesty's Subjects, who finding themselves much grieved by these new Impositions, do languish in Sorrow and Discomfort.

These Reasons, *dread Sovereign*, being the proper Reasons of Parliament, do plead for the upholding of this our ancient Right and Liberty.

Howbeit, seeing it hath pleased your Majesty to insist upon that Judgment in the *Exchequer*, as being Direction sufficient for us, without further Examination, upon great Desire of leaving your Majesty unsatisfied in one Point of our Intents and Proceedings;

We profess, touching that Judgment, that we neither do nor will take upon us to revere it.

But our Desire is to know the Reasons whereupon the same was grounded.

And the rather for that a general Conceit is had, that the Reasons of that Judgment may be extended much further, even to the utter Ruin of the ancient Liberty of this Kingdom, and of the Subjects Right of Property, to have Lands and Goods.

Therefore the Judgment itself being the first and the last that ever was given in that Kind, for ought appearing unto us, and being only in one Case, and against one Man,

It can bind in Law no other than that Person, and is also reversible by Writ of Error granted heretofore by Act of Parliament.

And neither he nor any other Subject is debarred by it from trying his Right in the same or like Case, in any of your Majesty's Courts of Record at *Westminster*.

Lastly, We nothing doubt but our intended Proceeding in a full Examination of the Right, Nature, and Measure, of these new Impositions

sitions (if this Restraint had not come between) should have been so orderly and moderately carried, and so applied to the manifold Necessities of these Times, and given your Majesty so true a View of the State and Right of your Subjects, that it would have been much to your Majesty's Content and Satisfaction (which we most desire) and removed all Cause of Fears and Jealousies from the loyal Hearts of your Subjects (which is, as it ought to be) our careful Endeavour.

Whereas contrarywise in that other Way directed by your Majesty, we cannot safely proceed, without concluding for ever the Right of the Subject.

Which without due Examination thereof, we may not do.

We therefore your Highness's loyal and dutiful Commons, not swerving from the approved Steps of our Ancestors, most humbly and instantly beseech your gracious Majesty, that without Offence to the same, we may (according to the undoubted Right and Liberty of Parliament) proceed in our intended Course of a full Examination of these new Impositions, that so we may chearfully pass on to your Majesty's Business, from which this Stop hath by Diversion, so long withheld us:

And we your Majesty's most humble, faithful, and loyal Subjects, shall ever, according to our bounden Duty, pray for your Majesty's long and happy Reign.

Delivered by twenty of the Lower House of Parliament, the
24th of May, 1610.

P E T I T I O N S.

Most gracious and dread Sovereign,

SINCE it hath pleased Almighty God of his unspeakable Goodness and Mercy towards us, to call your Majesty to the Government of this Kingdom, and hath crowned you with Supreme Power, as well in the Church as in the Common-wealth, for the Advancement of his Glory, and the general Benefit of all the Subjects of this Land,

We do in all Humility present at the Feet of your excellent Majesty, Ourselves, and our Desires, full of Confidence in the Assurances of your religious Mind, and Princely Disposition, that you will be graciously pleased to give Life and Effect to these our Petitions, greatly tending (as undoubtedly we conceive) to the Glory of God, the Good of his Church, and Safety of your most Royal Person, wherein we acknowledge our greatest Happiness to consist.

I. Whereas

I. Whereas good and provident Laws have been made for the Maintenance of God's true Religion, and Safety of your Majesty's Royal Person, Issue, and Estate, against Jesuits, Seminary Priests, and Popish Recufants :

And although your Majesty by your godly, learned, and judicious Writings, have declared your Christian and Princely Zeal in the Defence of the Religion established, and have very lately (to the Comfort of your best affected Subjects) published to both Houses of Parliament your Princely Will and Pleasure, that Recufants should not be concealed, but detected and convicted :

Yet for that the Laws are not executed against the Priests, who are the Corrupters of the People in Religion and Loyalty, and many Recufants have already compounded, and (as it is to be feared) more and more (except your Majesty in your great Wisdom prevent the same) will compound with those that beg their Penalties, which maketh the Laws altogether fruitless, or of little or none Effect, and the Offenders to become bold, obdurate, and uncomfortable :

Your Majesty therefore would be pleased, at the humble Suit of your Commons in this present Parliament assembled, in the Causes so highly concerning the Glory of God, the Preservation of true Religion, of your Majesty and State, to suffer your Highness's natural Clemency to retire itself, and give Place to Justice, and to lay your Royal Command upon all your Ministers of Justice, both Ecclesiastical and Civil, to see the Laws made against Jesuits, Seminary Priests, and Recufants (of what Kind and Sort soever) to be duly and exactly executed without Dread or Delay : And that your Majesty would be pleased likewise to take into your own Hands the Penalties due for Recufancy, and that the same be not converted to the private Gain of some, to your infinite Loss, the imboldening of the Papists, and Decay of true Religion.

II. Whereas also divers painful and learned Pastors, that have long travelled in the Work of the Ministry with good Fruit and Blessing of their Labours, who were ever ready to perform the legal Subscription appointed by the Statute of the 13th of *Elizabeth*, which only concerneth the Confession of the true Christian Faith, and Doctrine of the Sacraments :

Yet for not conforming in Points of Ceremonies, and refusing the Subscription directed by the late Canons, have been removed from their Ecclesiastical Livings, being their Freehold, and debarred from all Means of Maintenance, to the great Grief of sundry your Majesty's well-affected Subjects :

Seeing

Seeing the whole People that want Instruction, are by this Means punished, and through Ignorance lye open to the Seducements of Popish and ill-affected Persons.

We therefore most humbly beseech your Majesty would be graciously pleased, that such deprived and silenced Ministers may, by Licence or Permission of the Reverend Fathers, in their severall Diocesses instruct and preach unto their People, in such Parishes and Places where they may be employed.

So as they apply themselves in their Ministry to wholesome Doctrine and Exhortation, and live quietly and peaceably in their Callings, and shall not by Writing or Preaching, impugn things established by publick Authority.

III. Whereas likewise through Plurality of Benefices, and Toleration of Non Residency in many who possess not the meanest of Livings, with Cure of Souls, the People in divers Places want Instruction, and are ignorant and easy to be seduced, whereby the Adversaries of our Religion gain great Advantage :

And although the Pluralities and Non Residents do frame Excuse of the smallest of some Livings, and pretend the Maintainance of Learning ; yet we find by Experience, that they coupling many of the greatest Livings, do leave the least helpless, and the best as ill served and supplied with Preachers as the meanest :

And where Pluralists heaping up many Livings into one Hand, do by that means keep divers learned Men from Maintenance, to the Discouragement of Students, and the Hindrance of Learning,

And the Non Residents (forsaking or absenting themselves from their Pastoral Charges) do leave the People as a Prey to the Popish Seducers :

It might therefore please your most excellent Majesty, for Remedy of those Evils in the Church, to provide that Dispensations for Plurality of Benefices, with Cure of Souls may be prohibited,

And that the Toleration of Non-Residency may be restrained.

So shall true Religion be better upheld, and the People more instructed in Divine and Civil Duties.

IV. And forasmuch as Excommunication is the heaviest Censure for the most grievous Offences which the Church doth retain, yet exercised and inflicted upon an incredible Number of the common People, by the Subordinate Officers of the Jurisdiction Ecclesiastical, most commonly for very small Causes, grounded upon the sole Information of a base Apparitor,

In which Case the Parties, before they can be discharged, are driven to excessive Expence for Matters of very small Moment, so that the richer

richer break through more heinous Offences, and escape that Censure by Commutation of Penance, to the great Scandal of the Church Government, in the Abuse of so high a Censure, the Contempt of the Censure itself, and Grievance of your Majesty's poor Subjects.

Wherefore your Majesty's most dutiful Commons most humbly beseech your Highness, that some due and fit Reformation may be had in the Premises.

To the King's Most Excellent Majesty.

Most gracious Sovereign,

YOUR Majesty's most humble Commons assembled in Parliament, being moved as well out of their Duty and Zeal to your Majesty, as out of the Sense of just Grief, wherewith your loving Subjects are generally, through the whole Realm at this Time possessed, because they perceive their common and ancient Right and Liberty to be much declined and infringed in these late Years, do with all Duty and Humility present these our just Complaints thereof to your gracious View, most instantly craving Justice therein, and due Redress. Grievances complained of.

And although it be true that many of the Particulars, whereof we now complain, were of some Use in the late Queen's Time, and then not much impugned, because the Usage of them being then more moderate, gave not so great Occasion of Offence, and consequently not so much Cause to enquire into the Right and Validity of them;

Yet the Right being now more thoroughly scanned, by reason of the great Mischiefs and Inconveniencies which the Subjects have thereby sustained:

We are very confident that your Majesty will be so far from thinking it a Point of Honour or Greatness to continue any Grievance upon your People, because you found them begun in your Predecessor's Times, as you will rather hold it a Work of great Glory to reform them.

Since your Majesty knoweth well, that neither Continuance of Time, nor Errors of Men, can or ought to prejudice Truth or Justice;

And that nothing can be more worthy of so worthy a King, nor more answerable to the great Wisdom and Goodness which abound in you, than to understand the Grievs, and redress the Wrongs of so loyal and well deserving People.

In this Confidence, *dread Sovereign*, we offer these Grievances (the Particulars whereof are hereunder set down) to your gracious Consideration.

And we offer them out of the greatest Loyalty and Duty, that Subjects can bear to their Prince.

M m m m

Most

Most humbly and instantly beseeching your Majesty, as well for Justice sake (more than which, as we conceive, in these Petitions we do not seek) as also for the better Assurance of the State and general Repose of your faithful and loving Subjects, and for Testimony of your gracious Acceptation of their full Affections; declared as well by their joyful receiving of your Majesty at your happy Entrance into these Kingdoms, which you have been often pleased with Favour to remember, as also by their extraordinary Contributions granted since unto you, such as have been never yielded to any former Prince, upon the like Terms and Occasions, That we may receive to these our Complaints your most gracious Answer.

Which we cannot doubt but will be such as may be worthy of your Princely Self, and will give Satisfaction and great Comfort to all your loyal and most dutiful loving Subjects, who do and will pray for the happy Preservation of your most Royal Majesty.

New Impositions.

The Policy and Constitution of this your Kingdom appropriates unto the Kings of this Realm, with the Assent of the Parliament, as well the Sovereign Power of making Laws, as that of Taxing, or Imposing upon the Subjects Goods or Merchandizes, wherein they have justly such a Propriety, as may not without their Consent be altered or changed.

This is the Cause that the People of this Kingdom, as they ever shewed themselves faithful and loving to their Kings, and ready to aid them in all their just Occasions with voluntary Contributions;

So have they been ever careful to preserve their own Liberties and Rights, when any thing hath been done to prejudice or impeach the same.

And therefore, when their Princes, occasioned either by their Wars, or their over great Bounty, or by any other Necessity, have without Consent of Parliament set Impositions either within the Land, or upon Commodities either exported or imported by the Merchants; they have in open Parliament complained of it, in that it was done without their Consents;

And thereupon never failed to obtain a speedy and full Redress, without any Claim made by the Kings of any Power or Prerogative in that Point.

And though the Law of Propriety be originally and carefully preserved by the Common Laws of this Realm, which are as ancient as the Kingdom itself;

Yet these famous Kings, for the better Contentment and Assurance of their loving Subjects, agreed, That this old fundamental Right should be farther declared and established by Act of Parliament:

Wherein

Wherein it is provided, That no such Charges should ever be laid upon the People, without their common Consent; as may appear by sundry Records of former Times.

We therefore, your Majesty's most humble Commons assembled in Parliament, following the Example of this worthy Care of our Ancestors, and out of a Duty to those for whom we serve, finding that your Majesty, without Advice or Consent of Parliament, hath lately in Time of Peace set both greater Impositions, and far more in Number, than any your noble Ancestors did ever in Time of War, have with all Humility presumed to present this most just and necessary Petition unto your Majesty, That all Impositions set without the Assent of Parliament may be quite abolished and taken away: And that your Majesty, in imitation likewise of your noble Progenitors, will be pleased, That a Law may be made during this Session of Parliament, to declare, That all Impositions set or to be set upon your People, their Goods or Merchandises, save only by common Assent in Parliament, are and shall be void: Wherein your Majesty shall not only give your Subjects good Satisfaction in point of their Right, but also bring exceeding Joy and Comfort to them which now suffer; partly through the abating the Price of native Commodities, and partly through the raising of all Foreign; to the Overthrow of Merchants and Shipping; the causing of a general Dearth and Decay of Wealth among your People, who will be hereby no less discouraged than disabled to supply your Majesty, when Occasion shall require it.

Whereas by the Statute 1 Eliz. cap. 1. intituled, *An Act restoring* ^{Commissions} *to the Crown the Ancient Jurisdiction over the State Ecclesiastical, &c.* ^{Ecclesiastical.} Power was given to the Queen and her Successors, to constitute and make a Commission in Causes Ecclesiastical;

The said Act is found to be inconvenient and of dangerous Extent in divers Respects:

First, For that it enableth the making of such a Commission, as well to any one Subject born as to more.

Secondly, For that, whereas by the Intention and Words of the Statute, Ecclesiastical Jurisdiction is restored to the Crown, and your Highness by that Statute enabled to give only such Power Ecclesiastical to the said Commissioners; Yet under Colour of some Words in that Statute, where the Commissioners are authorised to execute their Commission, according to the Tenor and Effect of your Highness's Letters Patents, and by Letters Patents grounded thereupon; The said Commissioners do fine and imprison, and exercise other Authority not belonging to the Ecclesiastical Jurisdiction restored by that Statute; which

which we conceive to be a great Wrong to the Subject: And that those Commissioners might as well, by Colour of those Words, if they were so authorized by your Highness's Letters Patents, fine without Stint, and imprison without Limitation of Time: As also, according to Will and Discretion, without any Rules of Law, Spiritual or Temporal, adjudge and impose utter Confiscation of Goods, Forfeiture of Lands; yea and the taking away of a Limb, and of Life itself: And this for any Matter whatsoever pertaining to Spiritual Jurisdiction. Which never was nor could be meant by the Makers of that Law.

Thirdly, For that by the Statute, the King and his Successors (however your Majesty hath been pleased out of your gracious Disposition otherwise to order) make and direct such Commission into all the Counties and Dioceses, yea into every Parish of *England*; and thereby all Causes may be taken from Jurisdiction of Bishops, Chancellors and Archdeacons, and Laymen solely to be enabled to excommunicate and exercise all other Censures Spiritual.

Fourthly, That every petty Offence pertaining to Spiritual Jurisdiction, is by Colour of the said Words and Letters Patents, grounded thereupon, made subject to Excommunication and Punishment by that strange and exorbitant Power and Commission; whereby the least Offenders, not committing any thing of any enormous or high Nature, may be drawn from the most remote Places of the Kingdom to *London* or *York*; which is very grievous and inconvenient.

Fifthly, For that Limit touching Causes subject to this Commission, being only with these Words; *viz.* "Such as pertain to Spiritual or "Ecclesiastical Jurisdiction;" It is very hard to know what Matters or Offences are included in that Number: And the rather because it is unknown, what ancient Canons or Laws Spiritual are in Force, and what not; From hence ariseth great Inconveniency, and Occasion of Contention.

And whereas upon the same Statute a Commission Ecclesiastical is made, therein is Grievance apprehended thus:

First, For that thereby the same Men have both Spiritual and Temporal Jurisdiction, and may both force the Party by Oath to accuse himself of any Offence, and also enquire thereof by a Jury: And lastly, may inflict for the same Offence at the same Time, and by one and the same Sentence, both a Spiritual and a Temporal Jurisdiction.

Secondly,

Secondly, Whereas upon Sentences of Deprivation or other Spiritual Censures given by Force of Ordinary Jurisdiction, an Appeal lyeth for the Party aggrieved, that is here excluded by express Words of the Commission: Also here is to be a Trial by Jury, yet no Remedy by Traverse nor Attaint; neither can a Man have any Writ of Error, though a Judgment or Sentence be given against him, amounting to the taking away of all his Goods, and imprisoning of him during Life, yea, to the adjudging him in case of *Præmunire*, whereby his Lands are forfeited, and he out of the Protection of the Law.

Thirdly, That whereas Penal Laws and Offences against the same cannot be determined in other Courts, or by other Persons than by those trusted by Parliament with the Execution thereof; yet the Execution of many such Statutes (divers whereof were made since the first of *Eliz.*) are commended and committed to these Commissioners Ecclesiastical, who are either to inflict the Punishment contained in the Statute being *Præmunire*, and of other high Nature, and so enforce a Man upon his own Oath to accuse and expose himself to those Punishments, or else to inflict other Temporal Punishments at their Pleasure. And yet besides and after that done, the Party shall be subject, in the Courts mentioned in the Acts, to Punishment by the same Acts appointed and inflicted. Which we think very unreasonable.

Fourthly, That the Commission giveth Authority to enforce Men called into Question, to enter into Recognizance, not only for Appearance from Time to Time, but also for Performance of whatsoever shall be by the Commissioners ordered.

And also that it giveth Power to enjoin Parties defendant or accused to pay such Fees to the Ministers of the Court, as by the Commissioners shall be thought fit.

And touching the Execution of the Commission, it is found grievous these Ways among other:

First, For that Laymen are by the Commissioners punished for speaking (otherwise than in Judicial Places and Courtes) of the Simony and other Misdemeanors of the Spiritual Men, though the Thing spoken be true, and the Speech tending to the inducing of some condign Punishment.

Secondly, In that these Commissioners usually appoint and allot to Women discontented at and unwilling to live with their Husbands, such Portion and Allowance for present Maintenance, as to them
N n n n shall

shall seem meet; To the great Encouragement to Wives to be disobedient and contemptuous against their Husbands.

Thirdly, In that their Pursuivants and other Ministers employed in the Apprehension of suspected Offenders in any thing spiritual, and in the searching for any supposed scandalous Books, use to break open Mens Houses, Closets and Desks, rifling all Corners and secret Custodies, as in Cafes of High Treason or Suspicion thereof.

All which Premises, amongst other Things considered, your Majesty's most loyal and dutiful Commons, in all Humbleness beseech you, that, for the easing of them, as well from the present Grievance, as from the Fear and Possibility of greater in Times future, your Highness would vouchsafe your Royal Assent and Allowance to and for the ratifying of the said Statute, and the reducing thereof, and consequently of the said Commission, to reasonable and convenient Limits, by some Act to be passed in the present Session of Parliament.

Proclamations.

Amongst many other Points of Happiness and Freedom, which your Majesty's Subjects of this Kingdom have enjoyed under your Royal Progenitors, Kings and Queens of this Realm, there is none which they have accounted more dear and precious than this, to be guided and governed by certain Rule of Law, which giveth both to the Head and Members that which of Right belongeth to them; and not by any uncertain or arbitrary Form of Government.

Which, as it hath proceeded from the Original and Constitution and Temperature of this Estate, so hath it been the principal Means of upholding the same in such Sort, as that their Kings have been just, beloved, happy and glorious; and the Kingdom itself peaceable, flourishing and durable, so many Ages.

And the Effect, as well of the Contentment that the Subjects of this Kingdom have taken in this Form of Government, as also of the Love, Respect and Duty, which they have, by reason of the same, rendered unto their Princes, may appear in this, That they have, as Occasion hath required, yielded more extraordinary and voluntary Contributions to assist their Kings, than the Subjects of any other known Kingdom whatsoever.

Out of this Root hath grown the indubitable Right of the People of this Kingdom, not to be made subject to any Punishment that shall extend to their Lives, Lands, Bodies or Goods, other than such as are ordained by the common Laws of this Land, or the Statutes made by their common Consent in Parliament.

Never-

Nevertheless, it is apparent, both that Proclamations have been of late Years much more frequent than heretofore, and that they are extended, not only to the Liberty, but also to the Goods, Inheritances; and Livelihood of Men; some of them tending to alter some Points of the Law, and make them new:

Other some made shortly after a Session of Parliament, for Matter directly rejected in the same Session:

Others appointing Punishments to be inflicted before lawful Trial and Conviction;

Some containing Penalties in form of Penal Statutes;

Some referring the Punishment of Offenders to the Courts of arbitrary Discretion, which have laid heavy and grievous Censures upon the Delinquents:

Some, as the Proclamation for Starch, accompanied with Letters commanding Enquiry to be made against the Transgressors at the Quarter Sessions:

And some vouching former Proclamations, to countenance and warrant the latter; as by a Catalogue hereunder written more particularly appeareth.

By reason whereof there is a general Fear conceived and spread amongst your Majesty's People, that Proclamations will by degrees grow up and increase to the Strength and Nature of Laws.

Whereby not only that ancient Happiness [Freedom] will be as much blemished (if not quite taken away) which their Ancestors have so long enjoyed;

But the same may also (in Process of Time) bring a new Form of Arbitrary Government upon the Realm.

And this our Fear is the more increased, by occasion as well of certain Books lately published, which ascribe a greater Power to Proclamations than heretofore hath been conceived to belong unto them;

As also of the Care taken to reduce all the Proclamations made since your Majesty's Reign into one Volume, and to print them in such Form as Acts of Parliament formerly have been, and still are used to be; which seemeth to imply a Purpose to give them more Reputation and more Establishment than heretofore they have had.

We therefore, your Majesty's humble Subjects, the Commons in this Parliament assembled, taking these Matters into our Consideration, and weighing how much it doth concern your Majesty, both in Honour and Safety, that such Impressions should not be enforced to settle in your Subjects Minds, have thought it to appertain to our Duties, as well towards your Majesty, as to those that have trusted and sent us to their Service, to present unto your Majesty's View these Fears and Grievs of your People; and to become humble Suitors unto
your

your Majesty, That thenceforth no Fine or Forfeiture of Goods, or other pecuniary or corporal Punishment, may be inflicted upon your Subjects (other than Restraint of Liberty, which we also humbly beseech may be but upon urgent Necessity, and to continue but 'till other Order may be taken by Course of Law) unless they shall offend against some Law or Statute of this Realm in force at the Time of their Offence committed.

And for the greater Assurance and Comfort of your People, That it will please your Majesty, to declare your Royal Pleasure to that Purpose, either by some Law to be made in this Session of Parliament, or by some such other Course (whereof your People may take Knowledge) as to your princely Wisdom shall seem most convenient.

A Catalogue of some of the Proclamations complained of.

I. Proclamations importing Alterations of some Points of the Law, and making new :

11 *January, 1 Jac. fol. 57.* forbiddeth chusing of Knights and Burgeses Bankrupt or outlawed ; and commandeth Choice of such as are not only taxed to Subsidies, but also have ordinarily paid and satisfied the same, *fol. 57.*

If Returns be made contrary to Proclamation, they are to be rejected as unlawful and insufficient, *fol. 60.*

25 *August, 5 Jac. fol. 151.* That the Proclamation should be a Warrant to any Officer or Subject to seize Starch, and to dispose or destroy any Stuff, &c. And restraineth all Men not licenced to make Starch, *fol. 154.*

II. A Proclamation made shortly after Parliament, for Matter directly rejected the precedent Session :

1 *March, 2 Jac. fol. 112.* A Proclamation for building with Brick, after a Bill to that End rejected.

III. Proclamations touching the Freehold Livelihood of Men :

16 *September, 1 Jac. fol. 41.* Raising and pulling down Houses authorized, and Prohibition to build them again at any Time.

12 *October, 5 Jac. fol. 160.* Forbidding building and taking away the Materials ; and appointing the Owners Land to be let by other Men at what Price they please, *fol. 101.*

IV. Proclamations, referring Punishments to be done by Justices of the Peace, Mayors, Bailiffs, Constables, and other Officers ; or Seizure by

by Persons who have no Authority to enquire, hear and determine of those Offences; so it is to be inflicted before lawful Trial and Conviction.

8 January, 2 Jac. fol. 72. A Proclamation for folding Wools, &c.

23 August, 5 Jac. fol. 151. A Seizure of Starch, &c.

V. Proclamations penned with Penalties, in form of Penal Statutes:

4 November, 1 Jac. fol. ... Pain of Confiscation of Goods.

18 January, 2 Jac. fol. 72. Ten Days Imprisonment, and standing in the Pillory.

Justices of Peace to forfeit Twenty Pounds if they see not the Proclamation of folding Wools executed.

23 August, 5 Jac. fol. 151. Forfeiture of one Moiety of Starch, &c. seized, &c.

VI. Punishment of Offenders in Courts of Arbitrary Discretion, as Star-Chamber:

1 March, 2 Jac. fol. 102. Proclamation for Building.

12 October, 5 Jac. fol. 159. A Proclamation for Building.

July, 6 Jac. fol. 177. Proclamation for Starch.

25 July, 6 Jac. fol. 180. Proclamation for Building.

VII. Former Proclamations become Precedents, and vouched in latter Proclamations:

18 June, 2 Jac. fol. 75. avoucheth 5 Ed. VI. and 4 Eliz. fol. 73.

25 July, 6 Jac. fol. 180. mentioneth former Proclamations against Buildings, and explaineth and qualifieth them.

Your Majesty's Commons, in this Session of Parliament assembled, do chearfully acknowledge the Spring and Fountain of publick Justice of this State to be originally in your Majesty.

For the Benefit thereof is conveyed and derived into every Member of this politick Body by your Highness's Writs.

Amongst which none are more honourable for the Support of the common Justice of the Realm, than the Writs of *Prohibition*, *Habeas Corpus*, & *De Homine replegiando*: Which Writs have been ever held and found to be a chief Means of Relief unto the poor, distressed and oppressed Subjects of this Kingdom, and can be no Inconvenience at all: Seeing they are no way conclusive against any Man, and do draw no Benefit to the Procurers, but rather a fruitless Charge, if they be obtained upon any unjust Ground or Pretence.

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In the free granting of, and proceeding upon, some of which Writs, especially that of Prohibition, there hath of late been observed to be some Obstruction, by reason that upon the Complaints and the Impor- tunity of some, who desire the Support of Inferior Courts against the Principal Courts of the Common Law, (wherein your Majesty hath been greatly troubled) you have taken into your Royal Consideration the several Extents of the Jurisdiction of the said several Courts.

Since which Time the said Writs have been more sparingly granted, and with stricter Cautions than anciently hath been accustomed.

It is therefore most humbly desired that it may please your Majesty, (whose Glory is never more conspicuous than when the poorest of the Commonality are blessed with the Influence of the ancient Beams of Justice) to require your Judges in the Courts of *Westminster* to grant the said Writs, in Cases wherein such Writs do lye, and by Law are grantable.

And in such Sort as that such Persons whose Bodies being either committed to Prison, or their Causes like to recover great Prejudice by Proceedings against them in Times of Vacation, may not be debarred nor deferred from having the speedy Relief and Benefit of those Writs, more than in former Times.

Went Shires.

Forasmuch as the Exercise of Authority over the Counties of *Gloucester, Hereford, Wigorn, and Salop*, by the President and Council of *Wales*, by Way of Instructions upon a Pretext of a Statute made in the 34th Year of the Reign of King *Henry VIII*, is conceived not to be warranted by that, or any other Law of this Realm of *England*.

And for that in the second Session of this present Parliament, there did a Bill pass the House of Commons, whereby it was declared that the true Intent and Meaning of that beforementioned Statute, was not thereby to subject these Countries to that Kind of Government by In- structions;

And yet notwithstanding the Inhabitants of those Counties are since utterly discouraged, and in effect debarred from the Tryal of the Right of that Kind of Jurisdiction over those Counties, by the ordinary Course of the common Laws of this Land, by Reason of Prohibitions which were heretofore frequently granted (upon Suggestion that those Counties are not Part of *Wales*, or of the Marches of the same, which is the very Point in Question) are now very hard to be obtained, except in Cases where those of that Council do exceed the In- structions set down to them by your Majesty :

As also for that, in Cases where Actions have been brought at the Common Law, whereby that Question might have come to Decision, the Plaintiffs have been stopped, sometimes by Injunctions out of your Majesty's Court of *Chancery* from their Proceedings, sometimes be- fore, sometimes after Judgments, and also by Imprisonment,

The

The Precedent of which Proceedings do concern all your Majesty's loyal and dutiful Subjects of this Kingdom, as well in respect of the stopping of the free Course of Justice, as also by reason that if that kind of Jurisdiction were at first extended over these four Counties, and be now still continued without Warrant of Law; the Consequence of this Example may in future Times give Countenance to the erecting of like Jurisdictions in other Places of this Realm:

And forasmuch as your Majesty was pleased to command all the Judges to consider of this Question, and that they thereupon bestowed very many Days in hearing the Cause argued by learned Counsel on both Sides,

And in viewing and considering great Numbers of Records, produced before them concerning that Cause;

Whereby they have (no doubt) truly informed themselves of the Right;

It is therefore the most humble Petition of the Commons in this present Parliament assembled, that your most excellent Majesty will also be pleased to command that the Judges may deliver their Opinion upon that so exact and deliberate hearing which was had before them, concerning the Right of the aforesaid Jurisdiction over those four Counties, by Force of that Statute;

And that the Opinion which they shall deliver therein, may be in such Sort published, as that all your Majesty's Subjects whom it may concern, may have means to take Knowledge thereof.

And that your Majesty will vouchsafe to declare it; by your most princely Pleasure, that any of your Majesty's Subjects who may have Occasion thereof, may try his or their Right in that Point, by the due and ordinary Course of the Common Law, either by suing out of Prohibitions, or any other your Majesty's Writs, without Restraint;

And that if the said Jurisdiction over these four Counties shall appear to your Majesty by the Opinion of the Judges, or otherwise, not to be warranted by Law, that then your Majesty will be pleased, out of your most princely and gracious Favour towards all your loyal, dutiful Subjects, to order the ceasing of the said Jurisdiction over those Counties:

To the great Comfort of the Inhabitants of those Counties, and of the rest of your Subjects of all the Kingdom.

Complaint was made in all humble Manner, the second Session of *New Drapery*. this present Parliament, of many Disorders, Outrages, and Oppressions, committed upon Occasion of Letters Patents granted to the Duke of *Lenax*, for searching and sealing of Stuffs and Manufactures, called by the Name of *New Draperies*.

Which Patent we held in all, or the most Part of it, to be questionable, and in many apparently unlawful, and the Execution thereof
we

we found stretched by the Farmers and Deputies beyond the Extent of the said Letters Patents, as appears in the Particulars set down in the said Grievance.

To which it pleased your Majesty to give this gracious Answer ;
 “ That the Validity of the said Patent should be left to be judged by
 “ the Law,

“ And whensoever any Abuse arising in the Execution thereof should
 “ appear, it should severely be punished,”

Which was for that Time to our good Satisfaction.

Yet finding by divers Complaints made now in Parliament, that not only the said Letters Patents are still in Force, and the Validity of them undecided by Judgment, but Disorders in the Execution of them are so far from being reformed, that they multiply every Day, to the Grievance of your Majesty's Subjects :

And those of the poorer Sort, who exercising these Manufactures, are subject to much Oppression, to the great Hindrance of some, and utter undoing of many, as hath appeared in the Particularities of the Complaints presented to us :

Our humble Desire is, that your Majesty will be pleased, according to your former Resolution, to give Order that this Cause, which hath thus long hung in suspense, be speedily brought to Judgment :

And that before all the Judges, because it concerneth all the Subjects of the Land.

And in the mean Time that the Execution of the said Letters Patents, so far forth as they concern the said New Drapery, may be suspended till Judgment be given :

Whereby your Subjects, who do in all Humility present this Grievance unto your Majesty, may be relieved, and have no Occasion to reiterate their Complaints.

*Licence of
Wines.*

Whereas by ancient and late Statutes it hath been enacted, That Wines should be retailed at such low Rates and Prices, as for this fifty Years past they could not be afforded,

And for Redress thereof, it was ordained by a Statute in the 5th Year of the late Queen *Elizabeth*, That (those former Laws notwithstanding) Wines might be sold at such Prices, as by Proclamation from Time to Time to be made by Consent of many great Officers, should be published and set down :

Which Proclamation, nevertheless, the late Queen and your most excellent Majesty have been drawn to forbear, upon the earnest Suit of certain Persons, who therein only intended their private Game :

By Reason whereof, both great Sums of Money in Fines, Rents, and Annual Payments, have been gotten and raised unto the said Persons, and their Assignees, and great Damage and Prejudice hath likewise fallen and light upon your People :

Not

Not only by enhancing the Prices of Wines, licencing over many Taverns, and appointing of unmeet Persons, in unfit Places, to keep the same :

But also by reason that corrupt, mingled, evil, and unwholesome Wines have been uttered and sold, to the great Hurt of the Health of your Highness's People ;

One Man sometimes engrossing all the Licences designed for that Place.

Whereupon Complaint being made to your Majesty, amongst other Grievances of your People,

In the second Session of this present Parliament, your Highness was pleased to answer, That your Grants in that Behalf were no other than such as were warrantable by the Law.

Whereas the Grievance was the greater, for that all Laws concerning the Sale of Wines being intended and conceived to stand and be repealed, there were nevertheless, by the oversight of them which were trusted in that Business, casually omitted, and left unrepealed, certain obsolete Laws impossible to be observed :

As namely one, in the Time of King *Edward I*, commanding Wines to be sold at one Shilling the Sextern.

And one other made in the 28th Year of King *Henry VIII*, prohibiting all Persons, under Penalty, to sell any *French Wines* above Eight Pence the Gallon ; and other Wines, as Sacks and Sweet Wines, above One Shilling the Gallon :

And one Branch of a Statute made in the 7th Year of King *Edward VI*, prohibiting Men to sell any Wines by Retail in their Houses.

Whereupon your Majesty hath been induced and drawn to ground new Patents of Dispensation, and to grant the Benefit thereof unto the Lord Admiral :

Whereby the like Discommodities and Inconveniencies have since ensued unto the Common-wealth, as formerly did arise and grow upon the other repealed Laws, whereof in the former Petitions of your Subjects, exhibited unto your Majesty in the said second Session, your Highness never had any direct and clear Information.

May it therefore please your most excellent Majesty, at the humble Request of your Commons, (who have taken into Consideration the greatest Charges and Expences which the said Lord Admiral hath been at in your Majesty's Service, and have considered likewise the present Licences and Grants, for valuable Considerations unto many Hundreds of your Highness's Subjects, which without great Loss to the said Grantees, cannot be so suddenly made void) out of your Princely Wisdom and Goodness, wherein you have professed not to extend and strain your Prerogative Royal, against the publick Good of your

P p p p

People,

People, for the particular Gain of any private Persons to vouchsafe :

That from thenceforth there may no more Grants of that Nature be made unto any of your Subjects whomsoever.

But that the said Statute of the 5th of *Elizabeth* for the appricing of Wines, to be published by Proclamation, as Time and Occasion shall require, may be put in Execution.

And that your Majesty will likewise vouchsafe to grant your Royal Assent to a Bill of Repeal of the said obsolete Statutes, and all other whereupon any such *Non Obstantes* and Dispensations might be grounded.

In which Statute of Repeal, Provision shall be made for the Indemnity of all such, as under your Majesty's Great Seal have already procured Licence for such Sale of Wines.

Ale Houses.

Whereas by the Laws of this your Majesty's Realm of *England*, no Taxes, Aids, or Impositions of any Kind whatsoever, ought or can be laid or imposed upon your People, or upon any of their Goods or Commodities, but only by Authority and Consent of Parliament.

Which being undoubtedly the ancient and fundamental Law of the Land, is yet for more abundant Clearness expressly declared in sundry Acts of Parliament, made and enacted in the Time of sundry your Majesty's Progenitors, the noblest and most prudent Kings of this Realm.

Your Commons with just Grief do complain unto your Majesty of the late Tax and Imposition laid and imposed yearly upon such as are allowed to keep Victualling Houses, or sell Ale and Beer by Retail.

Which Imposition not being taxed by Assent of Parliament, but commanded and directed only by Letters and Instructions,

Your Commons are persuaded that the same proceeded rather from Misinformation, than by the Direction and Judgment of your most noble and and royal Heart.

Wherefore your said Commons, knowing the Grief of your People in this Behalf, do (according to their Duties) in all Humility inform and signify unto your Majesty,

First, That the said Taxation being singular and without Example, and it is in itself a Precedent of dangerous Consequence, and (as your People fear) may easily (in Time) be extended farther, as to Badgers of Corn, Makers of Malt, Drovers of Cattle, and such like, who in such sort are to be licenced by Justices of the Peace, as those Persons are, upon whom, at this Time, this present Tax is charged and laid.

Secondly, Such Houses being often Times (at the best) Harbours of Idleness, Drunkenness, Whoredom, and all manner of Villanies, the Licences

Licences are now (the honeſter Sort in moſt Places refuſing to undergo the new Charge) rented and taken by the looſer and baſer Sort of People, who have no Conſcience how they gain.

By reaſon whereof all manner of Vice and evil Behaviour, is likely every Day to increaſe.

Neither can the Juſtices of the Peace conveniently prevent the ſame :

For that the Perſons licenced under the late Contribution, affirm with Clamour, that they have a Toleration for a Year, and that ſuch Perſons are not Friends unto the Crown that ſeek to ſuppreſs them, and thereby to diminifh your Majeſty's Revenues.

Thirdly, Many Juſtices of the Peace, (being ſworn to execute their Office) which for this Particular conceive to be, that Ale-Houſe Keepers formerly licenced, are not to be ſuppreſſed without juſt and reaſonable Cauſe, cannot be ſatisfied touching their ſaid Oath, but are much diſtracted and perplexed what to do (the late Inſtructions notwithstanding) againſt ſuch Perſons as otherwiſe being not known to be of evil Behaviour, only to reſuſe to pay this late taxed and impoſed Sum of Money.

In Conſideration whereof, your humble Commons moſt inſtantly beſeech your moſt excellent Majeſty, that the former Letters and Inſtructions may be countermanded or ſtayed, and all further Directions and Proceedings in that kind forborn.

Among many Reſemblances which are obſerved to be between natural and politick Bodies, there is none more apt and natural than this, that the Diſeaſes of both do not at one Inſtance commonly feize upon all Parts :

But beginning in ſome one Part, do by Tract of Time, and by Degrees, get Poſſeſſion of the whole, unleſs by applying of wholeſome and proper Remedies in due Time they may be prevented, which, as it is in many things very viſible, ſo it is in nothing more apparent than in this Matter of Impoſitions :

Which beginning at the firſt, either with foreign Commodities brought in, or ſuch of your own as were tranſported, is now extended to thoſe Commodities, which growing in this Kingdom are not tranſported, but uttered to the Subjects of the ſame :

For Proof whereof, we do in all Humility preſent unto your Majeſty's View the late Impoſition of One Shilling the Chaldron of Sea-Coals, riſing in *Blith* and *Sunderland*, not by Virtue of any Contract or Grant (as in the Coals of *Newcaſtle*) but under a mere Pretext of your Majeſty's moſt Royal Prerogative :

Which

Which Imposition is not only grievous for the present (especially to those of the poorer Sort, the Price of whose only and most necessary Fuel is thereby to their great Grief enhanced) but dangerous also for the future, considering that the Reason of this Precedent may be extended to all the Commodities of this Kingdom.

May it therefore please your most excellent Majesty, which is the great and sovereign Physician of the Estate, to apply such a Remedy as this Disease may be presently cured, and all Diseases for Time to come of like Nature prevented.

These Grievances were presented to his Majesty, with a Speech of Sir *Francis Bacon's*, by twelve of the Lower House, the 7th of *July*, 1610, in the fourth Session of Parliament, because the King commanded twelve and no more, &c.

And now I come to make some necessary Reflections.

REFLECTION I.

Concerning Impositions.

Coke, lib. 12. fol. 50. Marmaduke Langdale's Case, touching the High Commission, 6 Jac. primi. Idem, lib. 12. fol. 74. Mich. 8 Jac. primi. A Proclamation cannot make that an Offence, which was not so before.

My Lord *Coke* complains, That the Judges had been oftener called before the Lords of the Privy Council in the Beginning of King *James* the First's Reign, than in former Times they had been, which (as he says) was much observed, and gave much emboldening to the Vulgar.

And tells us, that in *octavo Jacobi* he was sent for to attend the Lord Chancellor, Lord Treasurer, Lord Privy Seal, and the Chancellor of the *Duchy*, there being present the Attorney, the Solicitor, and Recorder.

And two Questions were moved unto him by the Lord Treasurer, The one, if the King by his Proclamation might prohibit new Buildings in and about *London*, &c.

The other, if the King might prohibit the making of Starch of Wheat.

And the Lord Treasurer said, that those were preferred to the King as Grievances, and against the Law and Justice.

And that the King had answered that he would confer with his Privy Council and his Judges, and then he would do Right to them.

To which Sir *Edward* answered;

First, That those Questions were of great Importance.

Secondly,

Secondly, That this concerned the Answer of the King to the Body, *viz.* to the Commons of the House of Parliament.

Thirdly, That he had not heard of those Questions until that Morning at nine of the Clock; for the Grievances were preferred, and the Answer made, when he was in his Circuit.

Fourthly, and lastly, That both the Proclamations which then were shewed him, were promulgated *anno 5 Jacobi*, after his Time of Attorneyship.

And for these Reasons he humbly desired them that he might have Conference with his Brethren the Judges about the Answer of the King, and then to make an unadvised Answer according to Law and Reason.

To which the Lord Chancellor said, That every Precedent had first a Commencement, and that he would advise the Judges to maintain the Power and Prerogative of the King.

And in Cases in which there was no Authority and Precedent, to leave it to the King, to order it according to his Wisdom, and for the Good of his Subjects:

Or otherwise the King would be no more than the Duke of *Venice*.

And that the King was so much restrained in his Prerogative, that it was to be feared the Bonds would be broken.

And the Lord Privy Seal said, That the Physician was not always bound to a Precedent, but to apply his Medicine according to the Quality of the Disease.

And all concluded, That it should be necessary at that Time to confirm the King's Prerogative by the Judges Opinion, although that there were not any former Precedent or Authority in Law; for every Precedent ought to have a Commencement in Law.

To which Sir *Edward Coke* answered, That true it was that every Precedent had a Commencement, but when Authority and Precedent were wanting, there is need of great Consideration, before that any thing of Novelty should be established, and to provide that that be not against the Law of the Land:

For he said, That could not change any Part of the Common Law, nor create any Offence by his Proclamation, which was not an Offence before, without Parliament.

But at that Time, proceeds the Chief Justice,

Q q q q

He

He only desired to have Time of Consideration and Conference with his Brothers:

For deliberandum est diu quod statuendum est semel.

To which the Solicitor said, That divers Sentences were given in the *Star Chamber*, upon the Proclamations against Building:

And that the Chief Justice himself had given Sentence in divers Cases against the said Proclamation.

To which the Chief Justice answered, That Precedents were to be seen, and Considerations to be had, of that upon Conference with his Brethren; for that,

Melius est recurrere quam male currere.

And the Indictment concludes *contra Leges & Statuta*, but he never heard an Indictment concluded *contra Regiam proclamationem*.

At last he tells us that this Motion was allowed, and the Lords appointed the two Chief Justices, Chief Baron, and Baron *Albam*, to have Consideration of it.

This Instance, I conceive, speaks full to my Purpose, and proves three Things:

I. That about that Time the King's Proclamations began to grow up and increase to the Strength and Nature of Laws. And

II. That by this Means they brought in by Degrees a new Form of Arbitrary Government upon the Realm.

III. And all this brought to pass by the influential Power which the great Officers of State had over the Judges of *Westminster Hall*, inveigling or awing them to give extrajudicial Opinions, thereby to shock the true ancient Liberty of the *English Monarchy*, and make it absolute and despotical.

REFLECTION II.

Concerning New Impositions.

The Commons in their Grievances said, and said truly, That the Policy and Constitution of this Kingdom appropriated to the Kings of this Realm, with the Assent of Parliament, the Sovereign Power of taxing or imposing upon the Subjects, Goods, or Merchandizes; wherein they have justly such a Propriety as may not, without their Consent, be altered or changed.

And therefore the Commons prayed the King, that all Impositions set or to be set upon his People, their Goods, or Merchandizes, save only by common Assent in Parliament, might be declared void.

Now the Reason of this was, by occasion of a then late Judgment which had been given upon an Information in the *Exchequer* against *Bates*, in *Michaelmas* Term, *quarto Jacobi primi*.

Lane's Rep.
fol. 22.
*An Informa-
tion against
Bates, Mich.
4 Jac. I. in the
Exchequer.*

In which Information it was recited, That the King by his Letters Patents under his Great Seal, had commanded his Treasurer, That he should command his Customs and Receivers to ask and receive of every Merchant *Denizen*, who brought within any Port within his Dominions any Currants, five Shillings a Hundred for Impost, above Two Shillings and Six Pence, which was the Poundage by the Statute *primo Jacobi* of every Hundred, which five Shillings *Bates* refused to pay, because it was imposed unjustly and unduly against the Law of the Land, as he pleaded.

So that the Question between the King and *Bates*, being whether the King, without Assent of Parliament, might set Impositions upon Wares and Goods of Merchants exported and imported, out of and into this Realm :

The Barons of the *Exchequer* gave Judgment for the King, against which the Commons complained.

But no Redress being made of this Grievance by the King as soon as the Parliament 12 *Jacobi* met,

The Commons fell again to debate the Legality of that Judgment, as appears by what follows out of this Lords Journal.

Dis

Die Luna, videlicet 23 Die May, 1614.

Journal. Dom.
Procer.
12 Jac. I.

Archiepisc. <i>Cantab.</i>	Dominus <i>Ellesmere,</i>
Archiepisc. <i>Eborum.</i>	Cancellar. <i>Angl.</i>
Episc. <i>Dunelm.</i>	Comes <i>Nottingham.</i> Admiral-
Episc. <i>London.</i>	lus & Seneschallus.
Episc. <i>Winton.</i>	Comes <i>Suffol.</i>
Et 11 alii Episc.	Camerar. <i>Hospitii Regis.</i>
	Comes <i>Salop.</i> & 15 alii Comi-
	tes.
	Vicecomes <i>Lisse,</i> } Et 34 alii
	Dominus <i>Bergevenny,</i> } Barones.

THE Lord Chancellor remembred to the Lords the Message on *Saturday* last sent from the Lower House, whereby the Knights, Citizens, and Burgesses of that House did pray a Conference with their Lordships, touching the Point of Impositions, referring the Number, Time, and Place to their Lordships, desiring only to be forborn that same Day, because being then employed upon other Service, they could not intend that Business.

Secondly, His Lordship did briefly put them in mind of the Answer, which from hence was returned to the Lower House, *viz.*

That the Lords had taken Notice of their Message, and would with the soonest Conveniency send Answer by Messengers of their own.

Then his Lordship likewise remembred, that the Messengers of the Lower House, being with the Answer aforesaid dismissed, the Lords did by general Consent agree, That because they were to treat of Matter of great Importance, and such as, being *vexata Quæstio*, would perhaps require, upon some Occasion, Reply, or one Man oftner to speak, than sitting the House, Order and Custom would permit,

Therefore the Court to be adjourned, and the Lords continuing together as a Committee, to take full Consideration of the said Message, and what further Answer might be fit in due Time to send unto the Commons, which then [as his Lordship rehearsed] was in Effect that their Lordships would meet them of the Lower House, and hear what they would deliver unto them, Time and Place in this Course falling next into Consideration; his Lordship shewed, what Disadvantage, as well to the King's Cause as to their Honours, the Lords should admit, if altogether unprovided they should meet with the Lower House.

In which his Lordship moved, That the Lord Chief Justice of the *King's Bench*, the Lord Chief Justice of the *Common Pleas*, the Lord Chief Baron, and one Judge of every of the said Courts, namely, Mr. Justice *Warburton*, Mr. Baron *Altbam*, and Mr. Justice *Crooke*; who had been required, and now were present, to assist this Court, as Occasion should serve, might now be heard for the better Information and enabling of their Lordships, for the meeting to deliver their Opinions touching the Point of Impositions; being the Subject of the Treaty proposed by the Lower House, before farther Consideration were taken of any other Answer to be sent down.

Which Motion was by divers Lords approved, and by others disallowed; and by both Sides spoken to and argued.

Which Difference, not being by that Course reconciled; but their Lordships remaining in Diversity of Opinions, by general Consent the Question was by the Lords put, *viz.*

Whether the Lords the Judges shall be heard, to deliver their Opinions touching the Point of Impositions, before farther Consideration be had of Answer to be returned to the Lower House concerning the Message lately from them received.

Whereupon the Number of the Lords requiring to hear the Judges Opinions by saying *Content*, exceeding the others which said *Not Content*; the Lords the Judges so desiring, were permitted to withdraw themselves into the Lord Chancellor's private Rooms;

Where having remained a while, and advised together, they returned into the House;

And having taken their Places, all standing uncovered; did by the Mouth of the Lord Chief Justice of the *King's Bench* [Sir *Edward Coke*] humbly desire to be forborn at this Time, and in this Place to deliver any Opinion in this Case, for many weighty and important Reasons, which his Lordship delivered with great Gravity and Eloquence.

Concluding, That himself and his Brethren are upon Particulars in Judicial Course to speak and judge between the King's Majesty and his People;

And likewise between his Highness's Subjects, and in no case to be Disputants on any Side.

The Lord Chancellor moved the Lords,

That forasmuch as no Opinion or Direction is to had from the Judges, they would now advise what Answer should be sent to the Lower House, who expect to hear from hence.

But Time not now serving thereunto, farther Consideration thereof is referred unto the next Sitting of this House.

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The

The Diversity of Opinions before mentioned, as well touching Answer to be returned to the Lower House, as whether the Judges should now deliver their Opinions concerning the Point of Impositions, was in Manner and Sort following, * *viz.*

The Lord *Rich* moved, to consider what Message shall be sent to the Lower House, because they will expect an Answer this Day.

Lord Chancellor. I know not what Expectation the Lower House hath of this Day, but your Answer was [at a convenient Time.] So you are tied to no Time.

But if your Lordships will now consider what Answer at a convenient Time shall be sent, That is to the Purpose.

The Lord *St. John*. The Committee agreed upon an Answer. Now, the Time and Place is the Question.

Lord Chancellor moved, That the Lords should hear the Judges touching Impositions, before they determine either of Conference or Answer.

Lord *Chandois*. It is fit to hear the Commons House, and to hold Correspondence with them: For we shall, by refusing them, give them Cause to refuse us, and hinder all good Proceedings of this Parliament:

Therefore good to meet the Commons, and hear the Judges in their Time, which is not yet.

Lord Chamberlain. We shall hear the Prerogative wounded by the Commons, and be unfit to answer:

Therefore let us hear the Judges first.

Lord Chancellor. The Question now is, Whether before you give Meeting or Answer to the Lower House, you will hear the Judges.

Earl of *Southampton*. The Judges not to be heard.

Lord *Knollys*. To hear the Judges.

Earl of *Worcester*. To hear the Judges.

* These following Debates are inserted into the Lords Journal by Mr. Bowyer, then Clerk of the House of Lords, out of his scribbled Book, as he saith; a Copy of which Journal, written with his own Hand, I have.

Lord *De la Ware*. If we were to confer with the Commons, it were fit to hear the Judges: But seeing we are but to hear them, we may hear the Judges in good Time afterwards.

Lord *Zouch*. To hear the Judges first: For we shall wrong the King, to hear him complained on, and called to the Bar before the Judges be ready to answer.

Lord *Say*. I see not why we should lay any Imposition on the Lower House, as if they would impeach the King's Pretogative, before we hear them: Neither do I hold it fit at this Time to hear the Judges.

Lord Bishop of *Lincoln*. There may pass seditious Words in handling the Matter of Impositions.

I would have them meet, but first to know upon what Point of Impositions; and then to hear the Judges upon that Point, will be fit.

The Six Bills were here brought from the Commons House, which are hereafter mentioned; which being received, the Lords proceeded in debating the former Matters, as followeth: *viz.*

Lord *Spencer*. No Charity to think with the last Lord, that the Lower House will wrong the King, or to presume what they will say before we hear them.

Next I think, That if you hear the Judges first, you submit yourselves to them, who come but to assist you. Therefore I would have a Message sent down.

Lord Archbishop of *Canterbury*. I see a Distraction, not in Substance, but in Form.

It was resolved to give the Lower House meeting; but this Resolution was had in a Committee, which the House sitting may revoke:

And it may be the same Resolution may hold;

For my own part, I have not the least Imagination what the Judges will say.

Yet I think it fit to hear them, and then determine what we will do.

Lord Bishop of *Batbon*. In a Question I will always rather study what may tend to Edification of that which is in Being, than to Destruction of it.

Therefore I would hear what may be said *ad ædificationem*, and making good the Prerogative in this Point by the Judges.

Lord *Sheffield*. It seemeth to me, that the hearing of the Judges before we hear the Lower House, is a Pre-occupation and a fore-judging of the Commons.

It may be, the Meaning of the Lower House is to speak only of the Abuse of Officers; and therefore I would not refuse to hear them.

Lord *Rich* offered to speak; but because he had spoken before, he might not now speak again.

Lord *Knyvet*. To hear the Lower House first, and then the Judges.

Lord Chancellor, as a Baron. The Matter is the Point of Impositions; *hoc est*, Whether the King can lay an Imposition: Wherein I would be glad to hear the Judges, before we meet the Lower House.

Touching the Judges, if they be required, they may speak; if they see Cause, they may desire to be heard:

They are not to sit and look about them: They have no casting Voice.

The Question is, Whether the Judges shall be heard before any farther Proceeding; and such as will hear them is to say *Content*, and the others *Not Content*.

Content, stand up bare.

Not Content, sit still covered.

Thereupon one Lord of each Side did count them:

And the *Content* did exceed the *Not Content* by Nine or Ten Voices.

The Lords which counted the Numbers were the Earls of *Pembroke* and *Southampton*.

The Judges withdrew themselves into the Lord Chancellor's private Rooms, to confer before they should speak in the House.

The Judges returned, and it was resolved to hear them. They all stood bare.

Lord

Lord Chief Justice of the King's Bench touching the Impositions.

THIS is a Case great in itself, but greater in the Consequence.

I have not considered, nor I think any of my Brethren, one Quarter of an Hour.

I protest I know not what to do, or think: We humbly thank these Lords that would not hear us.

And we desire the same; and I hope shall shew your Lordships Cause to forbear us.

If you do confer with the Lower House, I know we must confer with them:

For it is *Quæstio Juris*, and *Magna Quæstio Juris*.

The Subject claimeth, as his Birthright, to be free from all Impositions by Absolute Power; that is, not by Parliament, but by the King.

The King claimeth a Power in some Case to impose:

So the Question is between the Subjects Claim and the King's.

We are sworn to serve the King, How? and his People; not *in Statu Deliberativo*, but *Judiciali*; not *de Bono*, but *de Vero*.

For the King hath no Prerogative, but what the Law giveth him.

Therefore I hope your Lordships look for no present Opinion from us:

I will neither look above me, nor about me.

We give no Judgment, but we say, *Quibus Lectis*, &c.

The House of Commons have ripe young Men, learned: They have had View of Records, and long Time to deliberate.

I and my Brethren never saw any Record.

Therefore, my Lords, do you look for a present Opinion?

In the Book of *Judges*, God saith to Judges, *Ad Pœnitentiam properat, qui cito judicat*.

Again, No general is put to Judges, as, Whether the King can impose: But it is, *Nativum*, that is, to be transported; or, *Exoticum Mercimonium*.

Another Reason we offered to your Lordships, *viz.* Shall we confer, and not hear on the King's Side? That is not equal.

Here is none of the King's learned Council, who ought to be all here.

They are misplaced there:

They have Writs to be here:

They ought to argue:

Judges are no Disputants:

S f f f

W e

We are to give your Lordships Counsel.

Our Writ is, *Ad tractandum Nobiscum & cum Proceribus, &c.*

When you ask me a Question, I will answer; but if the Lower House ask me, I will not answer.

If you appoint a Meeting, and hear what the Commons will say, you will likewise hear it answered; which we that are Judges may not do: We are to judge, not to dispute.

The Extent of this Matter is large, all the Time of Queen *Elizabeth* and the King.

This Question is not usual; it never came before me in *Westminster-Hall*.

The Subject hath this Remedy, either by Bill in Parliament; and the Commons must dispute, and your Lordship with them: or by, &c.

He that shall restrain the Prerogative narrower than Right, tendeth to Popularity.

To extend it farther than is Law, in Judges is Perjury, in others is base Flattery.

But, not long after this, *viz.*

Die Lunæ 6 die Janii,

The Lord Chancellor, after a general and long Silence in the House, in a very grave and worthy Speech, gave unto the Lords great Thanks, that they had so nobly born with him in many Motions, which (as he spake) he had unseasonably made unto them; and craved Leave to move unto them a Matter, which (as he said) himself scarce understood.

He then did put their Lordships in mind, That the King, for weighty and important Occasions, did call a Parliament to begin the fifth Day of *April* last:

And farther declared unto them, That his Majesty's Pleasure then was, to dissolve the same:

And for that Purpose, by his Highness's Commandment, a Commission was then sent forth, under the Great Seal, which was that Day to be executed.

The Order and Form thereof his Lordship likewise remembered to be thus: *viz.*

That the Lords having first put on their Robes, do send for the Speaker and Commons to hear the King's Pleasure.

He then moved them, to send a Message to the Lower House; the Effect whereof he also proposed; which all the Lords allowing, was sent accordingly.

Message.

*Message sent to the Lower House, by
Mr. Doctor Bird, and
Mr. Doctor James: viz.*

That the Lords having understood of a Commission under the Great Seal of *England*, for dissolving, as this Day, of the Parliament, which was begun on the sixth of *April* last;

Forasmuch as they ought to have heard this Morning something from that House, have hitherto stayed the publishing of the said Commission, and do now expect to know whether their Lordships shall hear any thing from them, or not otherwise, the Lords Commissioners must this Day dissolve the Parliament.

ANSWER.

That they will take into Consideration the Message which the Lords have sent; and presently send Answer by Messengers of their own.

*Second Answer from the Lower House, by
Sir George Moore and others: viz.*

That they received a Message from the Lords, signifying that there is a Commission forth unto certain select Lords, to dissolve the Parliament this Day:

And that the Lords have hitherto made Stay of publishing the same, expecting to hear somewhat from that House, &c. *ut supra*.

In answer whereunto, they do let their Lordships understand, That this Morning they received a Letter directed to their Speaker, from the King's Highness, whereby was signified,

That whereas his Majesty by former Letters had declared his Determination to dissolve the Parliament on *Thursday* next;

In the mean time that whole House should proceed to that important Business, for which the same was especially called:

Yet now his Majesty's Pleasure to be, to dissolve the Parliament to-morrow, being the seventh of this Month, unless they shall before that Time perform what by his said former Letters was required.

Lastly, That they have entered into Consideration of that great Matter.

Answer returned to the Lower House, by Messengers of their own, viz.

That the Lords have heard their Answer, and will take it into Consideration.

The

The Lords Commissioners named in the Commission abovesaid, by Order of the Lords, withdrew themselves, to advise what in this Case were fit by them to be done :

And being returned into the House, by the general Consent of them, and all the Lords then present,

Answer was sent by the Lower House, by
Mr. Doctor *Bird*, and
Mr. Doctor *James* :

That the Lords having considered of the Answer which that House sent to their Lordships, have resolved to adjourn this Court until two of the Clock to-morrow in the Afternoon, which will be the seventh of this Month.

At which Time that Parliament was dissolved, by virtue of the said Commission.

Now because the Case of Impositions was agreed by all the Judges in the House of Lords to be *Quaestio Juris*, and *Magna Quaestio Juris*; the Subject claiming as his Birthright to be free from all Impositions by Absolute Power; that is to say, by the King's, without the common Consent of the Parliament: And because the Report of *Bates's* Case is printed, wherein the Barons of the *Exchequer* gave Judgment for the King :

I have thought it a just Duty to Truth, here to give at length the learned Argument of an excellent and no less worthy Author, who was afterwards preferred to be a Judge of this Kingdom, touching the Point of Impositions.

THE ARGUMENT.

The Question is, *Whether the King, without Assent of Parliament, may set Impositions on the Wares and Goods of Merchandizes exported out of and into this Realm.*

THREE Things have been debated in this Parliament, that have much concerned the Right of our whole Nation :

Of which every one of them have exceeded the other, by a Gradation in Weight and Moment.

The

The *First* was the Change of our Name, which was a Point of Honour, wherein we shewed ourselves not willing to leave that Name,

By which our Ancestors made our Nation famous.

Yet have we lost it, saving only in those Cases where our ancient and faithful Protector, the Common Law, doth retain it.

The *Second*, was the Union; a Question of greater Moment: For that concerned the Freehold of our whole Nation:

Not in so high a Point, as having or not having;

But in Point of Division and Participation; that is, Whether we should enjoy the Benefits and Liberties of the Kingdom, Ourselves only, as we and our Ancestors have done, or admit our Neighbour Nation to have equal Right in them; and so make our own Part the less, by how much the greater Number should be, among whom the Division was to be made.

This was adjudged against, as both legal and solemnly.

And therefore in that we do rest, hoping of that Effect in this Judgment, which we read of in the Poet,

Tros Tyriusque mihi nullo discrimine habetur.

Co. lib. 7.
Calvin's Case.

Virg. Æneid.
lib. 1.
Dido's Speech
to Æneas.

The *Third* is the Question now in hand, which exceedeth the other two in Importance and Consequence, concerning the whole Kingdom.

For it is a Question of our very Essence; not what we shall be called, nor how we shall divide that we have; but whether we shall have any thing or nothing.

For if there be a Right in the King to alter the Property of that which is our's without our Consents, we are but Tenants at his Will of that which we have.

If it be in the King and Parliament, then have we Property, and are Tenants of our own Will:

For that which is done in Parliament, is done by all our Wills and Consents.

And this is the very State of the Question which is proposed, Whether the King may impose without Consent of Parliament?

Impositions are of two Sorts, *Foreign* and *Intestine*:

Intestine, by those which are raised within our Land, in the Commerce and Dealing that is at home within ourselves, and may as well for that Reason be so called, as for that *vescantur intestinis Reipublicæ*, they are fed and nourished with the consuming and wasting of the Intrails of the Common-wealth.

T t t t

Against

Against these I need not to speak;

For the King's learned Council have with great Honour and Conscience, in full Council acknowledged them to be against the Law.

Therefore I will apply myself to speak of Impositions *Foreign*, being the single Question now in hand, and maintained on the King's Behalf with great Art and Eloquence.

The Inconvenience of those Impositions to the Common-wealth; that is, how hurtful they are to the Merchants, in impoverishing them in their Estates; to the King, in the decreasing of his Revenues by Decay of Traffick; and to the whole People, in making all Commodities excessive dear, is confessed by all:

And therefore need no Debate.

The Point of Right is now only in Question; and of that I will speak with Conscience and Integrity, rather desirous that the Truth may be known, and Right be done, than that Opinion of myself or any other may prevail.

The Occasion of this Question was given by the Book of Rates lately set out; affronted with the Copy of Letters Patents dated *July 28, 6 Jacobi.*

In which Book, besides the Rates, is set down upon every Kind of Merchandize exported and imported, for the true answering of Subsidy to the King, according to the Statute of Tonnage and Poundage.

In the first Year of his Reign, there is an Addition of Impositions upon all those Kind of Wares, which within the Book are expressed; and the Rate of the Imposition as high, and in some Cases higher than the State of the Subsidy: And this declared to be by Authority of those Letters Patents.

Hereupon considering with myself, That heretofore the setting on of one only Imposition, without Assent of Parliament, upon some one Kind of Merchandize, and that for a small Time, and upon urgent Necessity of actual War, did so affect our whole Nation, and especially the great Court of the Parliament, being the representative Body of the whole Common-wealth, that neither the Sun did shine, nor the Rivers run their Courses, until it was taken off by the whole Judgment of the State.

I thought it concerned me, and other Members of that Council, that were no less trusted for our Countries than those in former Times, and have their Actions to guide and direct us, to have the same Care they had in preserving the Rights and Liberties of the People, having now more Cause than they had: For that the Impositions, now set on without Assent of Parliament, are not upon one or two special Kinds of Goods, but almost indefinite upon all; and do extend to the

the Number of many Hundreds, as appeareth by that printed Book of Rates, and are set in Charge upon the whole Kingdom, as an Inheritance, to continue to the King, his Heirs and Successors, for ever.

Which Limitation of Estate in Matters of Impositions was never heard of nor read of before, as I conceive.

The Inducements expressed in these Letters Patents, are much upon Point of State, and with reference to the Rights and Practice of Foreign Princes.

For this I will not take upon me to enter into the Consideration of such great Mysteries of Policy and Government?

But only will put you in mind of that I observe out of *Titus Tit. Liv. lib. 8. Livius* the Roman Historiographer: *Omnem divini humanique moris memoriam abolemus, cum nova peregrinaque patriis & priscais præferimus.*

To that which hath been spoken for the King's Prerogative, I will give Answer to so much of it as I may conveniently in my Passage through this Debate:

Wherein I will principally endeavour to give Satisfaction to such new Objections as were made by the worthy and learned Counsellor of the King that spake last in Maintenance of his Majesty's Prerogative.

The Case in Terms is this:

The King, by his Letters Patents before recited, hath ordained, willed and required, that these new Impositions contained in that Book of Rates, shall be for ever hereafter paid unto him, his Heirs and Successors, upon Pain of Displeasure.

Hereupon the Question ariseth, Whether by this Edict and Ordinance so made by the King himself by his Letters Patents, of his own Will and Power absolute, without Assent of Parliament, he be so lawfully intituled to that he doth impose, as that thereby he doth alter the Property of his Subjects Goods, and is enabled to recover these Impositions by Course of Law.

I think he cannot; and I ground my Opinion upon these four Reasons:

I. It is against the natural Frame and Constitution of the Policy of this Kingdom, which is *Jus Publicum Regni*, and so subverteth the Fundamental Law of the Realm, and induceth a new Form of State and Government.

II. It is against the Municipal Law of the Land, which is, *Jus Privatum*, the Law of Property and of private Right.

III. It

III. It is against divers Statutes made to restrain our King in this Point.

IV. It is against the Practice and Action of our Common-wealth *contra morem Majorum*; And this is the modestest Rule to limit both King's Prerogatives and Subjects Liberties.

Upon the *First* and *Fourth* of those principal Grounds I will more insist than upon the *Second* and *Third*, both for that they in their own Nature are a more proper Matter for a Council of State; to the Judgment of which I apply my Discourse (and they have not been enforced by others); as also for that the other two (as more fit for a Bar and the Courts of ordinary Justice), have by some Professors of the Law been already most learnedly and exquisitely discussed.

For the *First*, it will be admitted for a Rule and Ground of State, that in every Common-wealth and Government, there be some Rights of Sovereignty, *Jura Majestatis*, which regularly and of common Right belong to the Sovereign Power of that State, unless Custom, or the provisional Ordinance of that State do otherwise dispose of them: Which Sovereign Power is *Potestas Suprema*, a Power that can controul all other Powers, and cannot be controuled but by itself.

It will not be denied, that the Power of imposing hath so great a Trust in it, by reason of the Mischiefs may grow to the Commonwealth by the Abuses of it, that it hath ever been ranked among those Rights of Sovereign Power.

Then is there no farther Question to be made, but to examine where the Sovereign Power is in this Kingdom: For there is the Right of Impositions.

The Sovereign Power is agreed to be in the King.

But in the King is a Two-fold Power:

The one in Parliament, as he is assisted with the Consent of the whole State:

The other out of Parliament, as he is sole and singular, guided merely by his own Will.

And of these two Powers in the King, one is greater than the other, and can direct and controul the other, That is *Suprema Potestas*, the Sovereign Power; and the other is *Subordinata*.

It will then be easily proved, That the Power of the King in Parliament is greater than the Power out of Parliament, and doth rule and controul it.

For if the King make a Grant out of Parliament, it bindeth him and his Successors; he cannot revoke it, nor any of his Successors: But by his Power in Parliament he may defeat and avoid it; and therefore that is the greater Power.

If

IF a Judgment be given in the *King's Bench*, by the King himself (as may be, and by the Law is intended,) a Writ of Error to reverse this Judgment may be sued before the King in Parliament, which Writ must be granted by the Chancellor; upon Bill endorsed by the King himself, as the Book is 1 *Henry VII.*

And the Form of the Writ of Error is, that it being directed to the Chief Justice of the *King's Bench*, *Quia in Recordo & Processu, ac etiam in redditione Judicii Loquelæ, quæ fuit in curia nostra coram nobis, error intervenit manifestus ad grave damnum, &c. Nos errorem (si quis fuerit) modo debito corrigi, & partibus prædictis plenam & celerem Justiciam fieri volentes in hac parte, vobis mandamus quod Recordum & Processum Loquelæ illius cum omnibus ea tangentibus in præsens Parliamentum nostrum sub Sigillo tuo distincte & aperte mittas. Et hoc breve, ut inspectis, &c. Nos de consilio & advisamento Dominorum Spiritualium & Temporalium ac Communitatis in Parlamento nostro prædicto existentis ulterius pro errore illo corrigendo fieri faciamus, quod de Jure & secundum Legem & Consuetudinem Regni nostri Angliæ fuerit faciendum.*

Lib. Intrad.
fol. 303. c. 1.

So you see the Appeal is from the King out of Parliament, to the King in Parliament.

The Writ is in his Name.

The rectifying and correcting the Error is by him, but with the Assent of the Lords and Commons, than which there can be no stronger Evidence to prove that his Power out of Parliament is subordinate to his Power in Parliament.

The Book is not
so that the Com-
mons should
meddle.

For in Acts of Parliament, be they Laws, Grounds, or whatsoever else, the Act and Power is the King's; but with the Assent of the Lords and Commons, which maketh it the most Sovereign and Supreme Power above all, and controulable by none; beside this Right of imposing, there be other in the Kingdom of the same Nature:

- As the Power to make Laws;
- The Power of Naturalization;
- The Power of erection of Arbitrary Government;
- The Power to judge without Appeal;
- The Power to legitimate.

All which doth belong to the King only in Parliament.

Others there be of the same Nature, that the King may exercise out of Parliament, which Right is grown unto him in them more than those others, by the Use and Practice of the Common-wealth; as Denization, Coynage, making War.

Which Power the King hath, Time out of Mind, practised, without the gainfaying and murmuring of the Subjects.

U u u u

But

But these other Powers beforementioned have ever been executed by him in Parliament, and not otherwise, but with the Reluctation of the Whole Kingdom.

Can any Man give me a Reason why the King can only in Parliament make Laws?

No Man ever read any Law whereby it was so ordained, and yet no Man ever read that any King practised the contrary.

Therefore it is the original Right of the Kingdom, and the very natural Constitution of our State and Policy, being one of the highest Rights of Sovereign Power.

So it is in Naturalization, Legitimation, and the rest of that Sort before recited.

It hath been alledged, that those which in this Cause have enforced their Reasons from this Maxim of ours (that the King cannot alter the Law) have diverted from the Question.

I say, under Favour, they have not; for that in Effect is the very Question now in Hand, for if he alone out of Parliament may impose, he altereth the Law of *England* in one of these two fundamental Points :

He must either take his Subjects Goods from them without Assent of the Party, which is against the Law; or else he must give his own Letters Patents the Force of a Law to alter the Property of his Subjects Goods, which is also against the Law.

That the King of *England* cannot take his Subjects Goods without their Consent, it need not be proved more than a Principle.

It is *jus indigena*, an old home-born Right, declared to be Law by divers Statutes of the Realm;

As in 34 *Edward III*, *cap. 2*, That no Officer of the King's, or of his Heirs, shall take any Goods of any manner of Person, without the Assent and Good-will of the Party to whom the Goods belonged.

The same is declared in many other Statutes made against Prefages and Purveyances.

Neither have any Kings attempted to go plainly and directly against that Right, but have devised certain legal Colours and Shadows for their wrongful doing in that Kind, which I find were of three Sorts; by way of Commission, by way of Benevolence, by way of Loan:

*Commissions,
Loans, or Privy
Seals, Benevo-
lence.*

Commissions of all other were the most insolent, for they went out as it were by Authority, to levy Aids of the People upon great Necessity of the Common-wealth.

These were condemned in Parliament 21 *Edward III*, *Numb. 16*, upon a grievous Complaint made of the Use of them by the Commons unto the King in Parliament, wherein the People do pray the King that he would be pleased to remember how at the Parliament held the 17th Year of his Reign, and at the last Parliament, it was then accorded

and granted by their said Lord the King and his Council, that there should go out no Commission out of the *Chancery* for Hobbler, Archers, and other Charges to be levyed upon the People, if they were not granted in Parliament, which Ordinances were not observed; That is the Parliament.

By Reason whereof the People were impoverished and decayed, for which they prayed the King that he would be pleased to take Pity of his People,

And the Ordinances and Grants made to his People in Parliament to affirm and hold.

And that if such Commissions go without Assent of Parliament, that the Commons which are grieved thereby may have Writs of *Superfedeas*, according to the said Ordinance,

And that the People be not bound to obey them.

To this the King's Answer is,

Si un tiel Imposition soit fait par grande necessite, & ceo del Assent des Preletz, Counts, Barons, & autre Grandes, & autre Homes des Communs, adonque presentz, neantmoins nostre Seigneur le Roy, que voet que tiel Imposition non duement soit fait treit en consequence eins voet que les Ordinances d'ont c'est petition fait mencion, soit bienment gardez.

The last Time that ever King attempted that Exaction was *Henry VIII*, upon taking the *French King at Pavia*, by the Forces of *Charles V*. Stow's Annals, 17 Hen. VIII.

Cardinal Woolsey having a Purpose to put the King into a War about that Quarrel, and finding his Coffers empty advised this Way, to send out Commissions, and by them to levy Aid of the People, according to the Value of their Estate.

But that gave such Discontent to the whole Realm, that it caused in many Places an actual Rebellion; and the Cardinal being called to give an Account of this bad Advice, did justify this Fact by Example of *Jeseph*, who advised *Pharoah* to take the fifth Part of his Subjects Goods:

But when he saw that would not serve the turn, he falsely laid it upon the Judges, informing the King he did it by their Advice, being resolved by them of the Lawfulness of the Fact.

So that you see that great Churchman found more Safety in Matter of Government of our Common-wealth, in making a false Report of a Point of the Common Law, than in a true Text of the Scripture.

And if any Churchmen will endeavour by Application of the Text of Scripture to overthrow the ancient Laws and Liberties of the Kingdom,

I would

I would advise them to be admonished by the ill Success of the Cardinal in this particular Action, and by the miserable Catastrophe of his whole Life and Fortunes.

Loans and Privy Seals.

Loans and Apprests were those which we call Privy Seals; which though they were more moderate in shew, yet, being made against the Good-will of the Parties, were as injurious indeed as the other.

Rot. Parl.
25 Edw. III.
No. 16.

The Commons in Parliament, 25 *Edward III*, *Numb.* 16, made a grievous Complaint to the King against the Use of them, and prayed that none from thenceforth should be compelled to make Loans against their Will, and they gave this Reason in their Petition:

For that it is against Reason, and the Franchise of the Land, and prayed that Restitution might be made to those that have made such Loans.

To this the King's Receipt was:

“ It pleaseth our Lord the King it be so.”

Benevolences.

Lastly, Came in these kind of Exactions, which were termed by the fair Name of Benevolences, but they became so odious, as they gave the Occasion of a good Law to be made against themselves, and against all other Shifts and Devices, by what new Terms soever imposed upon the Subjects:

The Law is 1 *Richard III*, *cap.* 2, and is thus:

The King remembering how the Commons of this his Realm, by new and unlawful Inventions, and inordinate Covetise against the Law of this Realm, have been put to great Servitude, and important Charges and Exactions, and especially by a new Imposition called a Benevolence, enacteth by the Advice, &c.

That the Subjects and Commons of this Land, from henceforth, shall in no wise be charged by any such Charges or Impositions called a Benevolence, nor by any such like Thing.

But if you will deny that the King doth in this Case take the Goods of his Subjects without his Assent, then you must fall upon mine other alternative Proposition:

That the King's Patent hath in this Case the Power of a Law to alter Property.

For how can he recover the imposed by a legal Course of proceeding, and by Judgment in this Court; but upon a Title precedent him, before the Action brought, which Title must be a Property in the same imposed?

And how cometh he by that Property, but by his own Letters Patents, by which he declareth he will have that same as an Imposition?

I

For

For the Judgment giveth not the Right, but only doth manifest and declare it, and giveth execution of it.

So in this Point the Question is, whether the King's Patent hath the Force and Power of the Law, or not.

For if it be not maintained that it hath, it can never be concluded that he can transfer the Property of his Subjects Goods to himself, without the Assent of them.

For, *quod meum est, sine facto meo alterius fieri non potest.*

And if you give this Power to the King's Patent, you subject the Law, and take away all Rules and Bounds of settled Government, and leave in the Subject no Property of his own :

Neither do you by this advance the King's Power and Prerogative, but you make him no King.

For, as *Bracton* saith,

Rex est ubi dominatur Lex, non Voluntas.

*Bracton, lib. 1,
2. cap. 8.*

So that we see the Power of imposing and Power of making Laws are *convertitia* and *coincidentia*; and whosoever can do the one, can do the other.

And this was the Opinion of Sir *John Fortescue*, that Reverend and Honourable Judge, a learned Professor of the Common Law, and Chief Justice of the *King's Bench*, in the Time of *Henry VI.*

His Words are these, in his Book *De Laudibus Legum Angliæ*, Fortescue de Laudibus Leg. Angliæ, cap. 9. *cap. 9. Non potest Rex Angliæ ad libitum Leges mutare Regni sui, Principatu namque nedum regali, sed & politico ipse dominatur. Si Regali tantum præesset, iis Leges mutare posset, tallagia quoque, & cætera onera imponere, ipfis inconsultis; quale dominium Leges civiles indicant, cum dicunt, quod Principi placuerit, Legis habet vigorem; sed longe aliter potest Rex politicis imperans, quia nec Leges ipse sine subditorum assensu mutare poterit, nec subjectum populum renitentem onerare peregrinis impositionibus.*

In which Place I must interpret unto you, that *peregrinæ impositiones* be not strange and unheard of Impositions, as was urged by the worthy Gentleman that last spake :

But Impositions upon Traffick into and out of foreign Countries, which is the very Thing in question.

Further in the 36th Chapter he saith of the King of *England*, ibid. cap. 36. *Neque Rex ibidem per se aut ministros suos, tallagia, subsidia, aut alia quævis onera imponit Ligeis suis, aut leges eorum mutat, vel novas condit, sine concessione vel assensu totius Regni sui in Parlamento.*

So he maketh those two Powers of making Law, and opposing, to be concomitant in the same Hand :

And that the one of them is not without the other.

He giveth the same Reasons for this as we do now, but in other Words, because (as he saith) in *England* it is *Principatus mixtus & politicus*.

The King hath his Sovereign Power in Parliament assisted and strengthened with the Consent of the whole Kingdom.

And therefore these Powers are to be exercised by him only in Parliaments.

In other Countries they admit the Ground of the Civil Law, *quod Principi placuerit, legis habet vigorem*;

Because they have an absolute Power to make Law.

They have a Power to impose, which hath the Force of a Law in transferring Property.

Ph. Comines,
lib. 4. cap. 1.
lib. 5. cap. 8.

Philip Comines, that lived in that Time, in his fourth Book, the first Chapter, and the fifth Book, the eighth Chapter, taketh notice of this Policy of *England*, and commends it above all other States, as settled in most Security.

And further to our Purpose layeth this Ground, that a King cannot take one Penny from his Subjects without their Consent, but it is Violence; and you may there note the Mischiefs that grew to the Kingdom of *France* by the voluntary Imposition first brought in by *Charles VII*, and ever since continued, and increased to the utter Impoverishment of the common People, and the Loss of their free Council of the Three Estates:

And if this Power of imposing were quietly settled in our Kings, considering what is the greatest Use they make of assembling of Parliaments, which is the Supply of Money, I do not see any Likelyhood to hope for often Meetings in that Kind, because they would provide themselves by that other Means.

And thus much for my first Reason, grounded upon the natural Constitution of the Policy of our Kingdom, and the publick Right of our Nation.

Common Law.

Secondly, For the Point of Common Law, which is my second Reason, it hath been well debated, and nothing left unspoken that can be said in it, and therefore I will decline to speak of that which other Men have well discussed:

And the rather for that there is nothing in our Law Books directly and in point of this Matter:

Neither is the Word *Imposition* found in them, until the Case of my Lord *Dyer*, 1 *Eliz.* 1605. For we shall find this Business of an higher Strain, and always handled elsewhere, as afterwards shall appear.

Yet I will offer some Answers to such Objections as have been made on the contrary in Point of Common Law, and have not been much stood upon by others to be answered.

The Objections that have been made are these :

That from the first Book of the Law to the last, no Man ever read any thing against the King's Power of imposing :

No Judgment was ever given against it in any of the King's Courts at *Westminster* :

Other Points of Prerogative, as high as this, disputed and debated, his Excess in them limited, as in the Book of 42 *Aff. Pl.* 5. where the Judges took away a Commission from one that had Power given by it to him under the Great Seal, to take one's Person, and to feize his Goods before he was indicted. ^{42 Aff. Pl. 5.}

So Mr. *Scrogg's Case*, 1 and 2 *Eliz. Dier* 175, the Power of the King in making a Commission to determine a Question of Right depending between two Persons notably debated and ruled against the King, that he could not grant it. ^{1 & 2 Eliz. Dier 175.}

To this I answer,

That Causes of this Nature (of which the Question now handled is) have ever been taken to be of that extraordinary Consequence in Point of the common Right of the whole Kingdom, that the State would never trust any of the Courts of ordinary Justice with the deciding of them :

But assumed the Cognifance of them into the High Court of Parliament, as the fittest Place to decide Matters so much concerning the whole Body of the Kingdom, as 2 *Edw. III.* 7.

It appears that *Edward I.* had granted a Charter to the Men of *Great Yarmouth*, That all the Ships of Merchants coming to the Port of *Yarmouth*, should land their Goods at their Haven, and not at any other Haven at that Port, as at *Garneston* and *Little Yarmouth*, which were Members of that Port.

This was very inconvenient for the Merchants, and a great Hurt to Traffick; and therefore the Charter was questioned in the Time of *Edward II.*, and adjudged good by the Council.

But the Parties not contented with this Judgment in the 2^d Year of King *Edward III.*, by another in Parliament made upon a Petition there exhibited against this Grant, brought a *Scire Facias* out of the *Chancery*, returnable in the *King's Bench*, to question again the lawfulness of the Patent, and in that Suit the Cause was notably debated, and those Reasons much insisted upon that have been enforced in this Case :

As that of the King's Power in the Custody of the Ports.

But the Matter so depending in the ordinary Court of Justice, a Writ came out of the Parliament, and did adjourn it thither again, where it gave Occasion of a good Law to be made to prevent the like Grants, and to make them void, notwithstanding any Judgment given upon them,

them, and to make such Judgments also void, the Statute is 9 *Edw.* III, *cap.* I.

9. *Edw.* III,
cap. I.
Alien and De-
nizen may car-
ry his Merchan-
dize where is
pleaseth him,
notwithstanding
any Charter
granted, or
Judgment
thereupon.

And in the Parliament *Rolls*, 2 *Henry* IV, N^o. 109, we find a notable Record which gives Warrant for the Proceeding in Parliament in this Manner, as hath been in this Case, notwithstanding the Judgment in the *Exchequer*, and declares to the Kingd^om, That notwithstanding the great Clamour made by some Men, nothing hath been done in this Business by those that serve in the Parliament, but in Imitation of their worthy Predecessors in the very like Case.

In the second Year of King *Henry* IV. the Commons shew, That in the Time of *Richard* II, by the means of *John Waltham*, Bishop of *Salisbury*, then Treasurer of *England*, wrongfully, without Authority of Parliament, and by Reason of a Judgment given in the *Exchequer* 16 and 17 *Richard* II, by the Barons there, against certain Merchants of *Bristol*, and other Places, Prifage had been taken for Wines, otherwise than in ancient Times had been; and therefore they prayed they might pay their Prize Wines in the manner they had used to pay, notwithstanding any Judgment given in the *Exchequer* contrary to the ancient Usage:

Which Petition the King granted, and the Judgment thereupon became void, and the prifage Wine hath been paid, contrary to the Judgment ever since.

1 *Eliz.* Dier
165.

In 1 *Eliz.* Dier 165, upon the Complaint made by the Merchants of the Impositions set upon Cloth by Queen *Mary*, by her absolute Power, without Assent of Parliament,

The Cause was thought to be too weighty to be decided in any one Court:

But (as it appeareth in the Book) it was referred to all the Judges of *England*, who divers Times had Conference about it:

So it may well be, there is nothing against it in our *Year Books*, for there is nothing of it.

Another Objection was this, which was made in the last Argument, *viz.* That Custom is originally due by the Common Law of *England*: It can then have no other Ground or Cause, but merely the King's Royal Prerogative, as a Right and Duty originally belonging to his Crown:

Which if it be, it must necessarily follow he may impose, for that is but the exercising of that Right;

To prove this was alledged the Case 39 *Edward* III, 13, by which Case it appeared that King *John* had a Custom of Eight Pence on a Ton of Wine in the Port of *Southampton*.

ANSWER.

But the Book doth not tell you, that the King had it by Prerogative: And he might have it otherwise as well, as by Prescription, or Convention; which should the rather be intended by reason of the Certainty of the Sum paid.

For if it were by Prerogative, he might take sometimes more, sometimes less at his Will, the Right being indefinite, and the Quantity limited only by his own Discretion.

A common Person may have such a Custom certain, as 18 *Eliz.* ^{18 Eliz.} *Dyer* 352. The Mayor of London hath the twentieth Part of Salt brought into the City by Aliens, which is a great Imposition, but is good by Prescription originally, and hath received greater Strength since by Acts of Parliament made for the Confirmation of the Liberties and Customs of the City of London. ^{*Dyer* 152.}

So it appeareth, that *John of Britain* had Custom of the Ships that arrived at his Port of *Little Yarmouth*, worth Twenty Pounds per Annum. ^{*Dyer* 43.}

And these Instances do infer, that a Custom may be otherwise than by Prerogative.

And therefore it is no good Argument to conclude, The King had such a Custom, therefore he had it by Prerogative.

The Book in 30 *Hen. VIII.* *Dyer* 43. was much pressed on this Point, which sayeth, That Custom belongeth unto the King at Common Law; and doth instance in Wools, Wool-fells, and Leather, begun at the Common Law, but abridged by the Statute 14 *Edw. III.* ^{14 Edw. III. cap. 21. Stat. 1.} *cap. 21, Stat. 1.* But this appeareth to be a great Error and mistaking in the Book. ^{*Dyer* 43.}

For we do find, that that Custom of Wools, Wool-fells and Leather, was begun by a Grant in Parliament, as appeareth in the Statute 15 *Edw. I. cap. 7.* The Words be, *Granted to us by the Commonalty aforesaid*; and the last mention before was, *That the King had granted to the Bishops, Earls, Barons, and all the Commonalty of the Land, &c. Novem. 3. Edw. I.* the King recited in his Letters Patents, that *Prælati, Magnates, ac tota Communitas Mercatorum Regni*, granted this new Custom.

And so the Ground and Motive of that Opinion being false, all grounded upon that must needs be erroneous.

It was objected, that the King holdeth at this Day the Increase of four Pence in the Pound over due Custom paid by Merchants Aliens, according to the Purport of *Carta Mercatoria*, 31 *Edw. I.* by mere Right of Prerogative at the Common Law. ^{Rot. Char. 31 Edw. I. N^o 44. in Turri London.}

For by that Grant of the Merchants he cannot hold it, they being no Body Politick at the Time of the Grant.

Y y y y

And

And therefore the Grant is merely void, to bind in Succession :
And yet the Merchants Aliens do pay it at this Day.

ANSWER.

It is agreed by the Common Law, that a Contract with a Number not incorporate, bindeth not Succession.

But we must take notice, that they by whom the Grant was made of the Augmentation of Custom by Three Pence in the Pound, and other Increases 31 *Edw. I.* were Merchants Aliens, who by the Law of Merchants and Nations may contract to bind their Successors in Matters of Traffick.

For their Contracts are not ruled by the Common Law of the Land, but by the Law of Nations, *Et per Legem Mercatoriam*, as the Book Case is 13 *Edw. IV.* 10.

And there was a good Consideration given them by the King, for this Increase of Custom ;

As Discharge of Prize Wines for Two Shillings the Ton, and other Immunities which all Merchants Aliens hold and enjoy at this Day by Force of that Contract made 31 *Edw. I.*

For a Stranger payeth now but Two Shillings the Ton for Prifage, whereas it standeth an *Englishman* in much more.

So, as the Rule of commutative Justice maketh the Contract available to the King against the Merchants, because he parteth with Part of his Prifage to the Merchant, and maketh it available to the Merchant against the King, because he giveth him Increase of Custom above that is due by Law.

27 *Edw. III.*
cap. 26.

But the Statute of 27 *Edw. III. cap. 26.* heretofore cited, doth make this Point clear without Scruple, which confirmeth the Charter 31 *Edw. I.* entirely ; and by that the Increase of Custom by Three Pence in the Pound, which is by Name mentioned in the Statute, is now due by Act of Parliament.

If you will have the King hold this Increase of Custom by Prerogative, you go directly against his Meaning : For it appeareth by that which presently followed this Grant, that the King took this Increase of Custom by way of Contract only, and not by Prerogative :

For the same Year following, he directeth his Writs to the Officers of his Ports, reciting the Contract made with the Aliens by *Charta Mercatoria* ; adding farther, that some Denizens were willing to pay the like Custom upon the same Immunities to them to be granted, and doth assign his Officers to gather it ; but with this Clause, *Si grantanter & absque Coercione solvere voluerint, ita quod aliquem Mercatorem de Regno & Potestate nostra ad Præstationes & Costumas hujusmodi* ;

modi invitè solvendas nullatenus defringatis. Nothing can more plainly express, that the King's Intention was not to demand this by way of Prerogative, but by Force of the Contract. If there were such a Prerogative in the Crown; as of Right to have Custom, how cometh it to pass that this Prerogative never yet had Fruit or Effect?

For this I can maintain, that the King of *England* hath not one Penny Custom or Imposition upon Merchandizes elder than the fourth Year of *Queen Mary*, that he holdeth not by Act of Parliament, and by the People's Grant.

The eldest that he hath is that of Wools, Wool-fells, and Leather, ^{25 Edw. I.} and that is by Act of Parliament, as appeareth in the Statute ^{cap. 7.} 25 *Edw. I. cap. 7.* The Tonnage and Poundage by Parliament in the first Year of every King's Reign.

The Aliens Increase of Custom by Parliament, *27 Edw. III. cap. 26.* Then this Prerogative hath been much neglected, that it was never called on to be put in Execution 'till now of late Years.

Concerning the Statutes made for restraining our Kings from the Exercise of his intended Prerogative, which is the third Matter I stand upon; Statutes.

Those that have maintained the King's Prerogative in this Point, have endeavoured to interpret those Statutes to extend only to restrain him from imposing upon Wool, Wool-fells, and Leather, which are Staple Commodities.

And the Reason they give for this Restraint, more than for other Good, is because the King by Statute is restrained to a Custom certain for those Commodities, as the half Marc a Sack of Wool, and half a Marc three hundred Wool-fells, and thirteen Shillings and four Pence a Last of Leather.

And therefore great Reason he should not exceed this Custom in those Commodities.

ANSWER to this Objection.

This Objection receiveth many Answers.

First, It appeareth both by the express Letter of divers of the Laws made in this Point by the Occasion that induced the making of the Laws, and by the Execution of them, that all other Wares and Merchandizes, as well as those of the Staple, were within the Purpose and Intent of those Laws.

Secondly, The Reason alledged why there should be Restraint for the Staple Commodities rather than for the other, is mistaken.

For the Lords and Commons did grant to *Edw. I.* by Act of Parliament, the Custom of the half Marc for Wool, Wool-fells, and Leather, which was Matter of mere Grace and Liberality, and includeth

cludeth no Restraint in it, but rather a favourable Extension, quite contrary to the Sense of the Objection; according to that Rule of Interpretation, *Gratiosa ampliata, decet odiosa restringi.*

And admit some Laws be made expressly to restrain Impositions upon Wool, Wool-fels, and Leather; by reason that the Occasion of making such Laws, which was the actual imposing upon those Goods at that Time, shall we not by good Construction, *secundum mentem extensivam Legis*, extend this Law to other Wares and Merchandizes, that are within the same Mischief?

If we look to the Reason of the Law, we shall make no doubt of it; for that is because the Impositions were without the Assent of Parliament, not because they were upon such and such Commodities.

Besides, those Laws so made are *Declarativa Juris antiqui, non introductiva novi.*

In the Enumeration of those Statutes, which I conceive make directly for this Purpose,

I will endeavour rather to answer the Objections made against them, than to enforce the Sense and Meaning of them; which is very plain and open, and needs no Interpretation.

The First Statute enforced is *Magna Charta, cap. 30.* made in the 9th Year of *Henry III.* by which it is enacted, That all Merchants shall have free Regress and Egress out of and into this Realm, with their Goods and Merchandizes, to buy and sell, *sine omnibus malis Tollentis, per antiquas & rectas Consuetudines.*

In which Words we may infer, that both the Use and Right of imposing are absolutely excluded and debarred:

For *Consuetudo*, which in this Case is to be taken for Usage, which is *Mos* (not improperly for *Portorium*, a Duty paid in Money, as our *English* Word Custom in one Sense doth signify) implieth a Beginning and Continuance by Power and Enforcement, which cannot be a Custom:

And therefore it cannot be an Imposition: For that ariseth merely out of the Will and Power of their Imposer, and is against the Will of him upon whose Goods it is set.

But take *Consuetudo* either for *Mos* or *Portorium*, the Epithets with which it is qualified, *Antiquum & Rectum*, do describe it to be of that Nature, that it cannot be an Imposition:

For *Antiquum* in legal Construction is that, which is time out of mind, that is, not an Imposition: For then, by Continuance of Time, it should grow a Right by Prescription, and were justifiable.

Rectum

Rectum implieth a limited Right, which inferreth there may be a Wrong, and Exceeding of that Right which is not in Impositions :

For if there be a Right in the King to impose, the Quantity, Time, and other Circumstances are in his Discretion :

The Right is illimited ;

And if he set on never so great an Imposition, there is as much Right in it as if it be never so small.

The Excess maketh it a Burthen, but not a Wrong.

We may farther observe, That in the Statute, *Malum Tolnetum*, which is Evil Toll, is set down by way of Antithesis to *Antiqua* and *Recta Consuetudo* ; by which is inferred, that Exactions upon Wares and Merchandizes not qualified, with these two Properties, *Antiquum* and *Rectum*, are evil and unjust.

This is made more evident by a Record in the Tower of the 16th Year of *Henry III.* which was a Mandate sent by the King to the Customers of his Ports for the Execution of this Law made in the 9th of *Henry III.*

Whereby it is commanded, *Quod omnibus Mercatoribus in Portum suum venientibus cum Vinis & aliis Merchandizis scire faciant, quod salvo & securè in terram Angliæ veniant cum Vinis & Merchandizis suis faciendo inde rectas & debitas Consuetudines, nec sibi timeant de malis Tolnetis, quæ iis faciat Rex, vel in terrâ suâ fieri permittat.*

By this Record the Word *Consuetudo* is interpreted to be *Mos*, not *Portorium* ; otherwise it should have been *solvendo Consuetudines*, not *faciendo*.

Also these Words *Antiquum & Rectum* in the Statute, in this Writ are *Rectum & Debitum*, which doth more enforce a Certainty of Right and Duty, which by no means can be intended in Impositions.

Objections were made against this Law in the last Argument :

First, That it was made for Aliens.

This is true : The Words of the Law do plainly shew it was made for Aliens :

But if the State was so careful to provide for them, Shall we not judge that with Denizens it was so already ? and that this Statute was made to extend that Liberty by Act of Parliament to Aliens, which Denizens had by the Common Law ?

Succeeding Times did so conceive of it ; as appeareth by the Statute 2 *Edw. III. cap. 9.*

The Words are, That all Merchants, Strangers and Princes may go and come with their Merchandizes in *England*, after the Tenor of

Z z z z

the

the Great Charter; and that Writs be thereupon sent to all the Sheriffs in *England*, and to Mayors and Bailiffs of good Towns, where need shall require.

A *Second* Objection was made in the last Argument out of these Words of the Statute of *Magna Charta* :

That Merchants might freely Traffick, *nisi publicè antea prohibiti fuerint*:

By which was enforced, that the King had Power to restrain and prohibit Traffick, therefore to impose. It is agreed, there may be a publick Restraint of Traffick, upon respects of the Common Good of the Kingdom :

But whether that, which is called *Publica Prohibitio* in the Statute be intended by the King alone, or by Act of Parliament, is a Question.

For such Restraints have still been by Parliament.

But admit the King may make a Restraint of Traffick in part for some publick Respect of the Common-wealth, he doth this in Point of Protection, as trusted by the Common-wealth to do that which is for the Publick Good of the Kingdom : But if he use this Trust to make a Gain and Benefit by imposing, that is a Breach of the Trust, and a Sale of Government and Protection.

But more of this shall be hereafter spoken in the answering of the main Objections.

25 Edw. I.
cap. 7.

The next Law is, that notable Statute of *Edward I.* in the 25th Year of his Reign, made upon the very Point in Question.

The Words are these :

And for so much as the more Part of the Commonalty of this Realm find themselves sore grieved with the Male Toll of Wools; that is, to wit, a Toll of Forty Shillings for every Sack of Wool; and have petitioned to us for to release the same : We, at their Request; have clearly released it, and have granted for us and our Heirs, that we shall not take such Things without their common Consent and Good-will; saving to us and our Heirs the Customs of Wools, Skins and Leather granted before by the Commonalty aforesaid.

Against the Application of this Law to the Question now in hand, many Objections were made ;

Some out of Matter precedent to the Law ;

Some out of the Law itself ;

Some out of Matter subsequent and following after the Law.

I. For

I. For Matter precedent, it was objected out of *Thomas Walsingham*, an Historiographer of good Credit, that writ of that Time when the Statute was made.

Tho. Walsingham in Edw. I. fol. 71, 72, 73. edit. per W. Camden, impress. Francofurti, 1603.

That in the Petition of Grievance made to King *Edward I.* by the People the 25th Year of his Reign; upon which Petition the Statute was made, that they found themselves not grieved in Point of Right, but in Point of Excess.

The Words are,

Communitas sentit se gravatam, de vectigali Lanarum quod nimis est onerosum, videlicet, de quolibet Sacco 40 Solidos, & de Lana fracta septem Marcas.

So they express the Cause of their Grief, that it was too heavy; which is to be applied to the Point of Excess, not of Right.

To this I answer,

That if the Words had been, *Quia est nimis onerosum*, this Construction might have been made out of them; because the Word *quia* had induced a Declaration of the Cause of that, which was formerly affirmed.

But the Words are, *Quod nimis onerosum*, which doth only positively affirm, that the Imposition *de facto* was intolerable for the Greatness of it; which doth not therefore admit, that it is tolerable, in respect of the Right the King had to impose.

But this is made clear by the general Word *Precedent* in the Preamble of the Petition, which doth evidently infer, they grounded their Complaint upon Point of Right, not upon Point of Excess.

The Words are these:

Tota Terræ Communitas sentit se valde gravatam, quia non tractantur secundum Leges & Consuetudines Terræ, secundum quas tractari Antecessores sui solebant habere, sed voluntarie excluduntur.

After which Preamble, among the Particulars, this of forty Shillings upon a Sack of Wool is ranked; but with a Dependency of that expressed in the Preamble for the Point of Right.

But seeing we light upon History, which though it be of small Authority in a Law Argument, yet being the History of our own Realm, hath fit and proper Use in the Common Council of the Realm, I will pursue it a little farther.

Out of *Matth. Westm.* a Writer that lived much nearer the Time than *Thomas Walsingham*.

Matth. Westm. fol. 430. edit. per H. Savile. Mil. Francofurti, 1601.

He saith, that the Commons by their Petitions required, *Ne Rex de cætero tallagia usurparet, & voluntarias super bis inductas exactiones de cætero quasi in irritum revocaret.*

By

By which it appeareth, that the Point of the Complaint was, that the Exactions laid on them were voluntary, that is, at the King's Will, without Assent of Parliament.

II. Second Objection, out of the Law itself: It hath much been pressed:

As *First*, the Commons made Petition to the King.

Whereupon they infer out of the Nature of the Word *Petition*, That their Proceeding was by way of Grievance for the Excess and Inconvenience, as a Matter of Grace, not in Course of Justice for the Wrong.

To this I answer,

That considering the Qualities of the Persons to this Action, it being between the King and the Subject;

Duty and Good Manners doth induce Gentleness and Humility of Terms, without Blemish or Diminution of the Force of Right.

It is according to the Demeanour of *Job ix. 15. Though I were just, yet would I not answer; but I would make Supplication to my Judge.*

But in our Forms of Law, be the Right of the Subject never so clear, manifest, and acknowledged by all; yet if his own be detained from him by the King, he hath no other Writ or Action to recover, but a mere Petition: *Supplicat Celsitudini, &c.* So that if the Word *Petition* to the King infer Defect of Right in the Petitioner, there can be no Case where the King can do the Subject Wrong.

2. A *Second* Objection out of the Body of the Law is,

That the King doth release that Imposition of forty Shillings, which implieth a Right settled in him.

But to this I answer,

That it is no necessary Inference, That wheresoever a Release is, there a Right is: For it is used for Claim only, or where Possession was, though wrongful, and that in *majorem Securitatem, quia abundans Cautela non nocet.*

But in this Case a Release was very expedient, and for some Respect necessary to extinguish a Right the King had in this Imposition against Merchants themselves.

For this Imposition, though it were not set on by Assent of Parliament, yet was it not set on by the King's absolute Power;

But was granted to him by the Merchants themselves, who were to be charged with it.

So the Grievance was the Violation of the Right of the People in setting it on without their Assent in Parliament.

Not

Not the Damage that grew by it: For that did only touch the Merchants, who could not justly complain thereof, because it was their own Act and Grant.

This appeareth by two notable Records:

The one 22 *Edw. I.* A Writ to the Treasurer and Barons of the *Excbequer* in Ireland, to discharge the Merchants there of Imposition on Wools: In which the King reciteth, 22 *Edw. I.*
Orig. in
Scacc. Rem.
Thef.

Licet in Subsidium guerræ Regis pro recuperanda terra Vasconia Mercatores gratanter concesserunt per biennium vel triennium, si tantum duraverit Guerra, de Sacco Lanae, &c.

The other Record is the Writ of Publication, that of 26 *Edw. I.* went out after the Statute of 25. In which Writ the King reciteth thus: 26 *Edw. I.*
Mem. Scacc.
Rem. Thef.

Cum nos ad instantiam Communitatis Regni nostri remiserimus Custumam 40 s. nobis nuper in subsidium Guerræ nostræ contra Regem Franciæ concessum, &c.

3. A *Third* Objection made out of the Body of the Statute by those which have argued on the contrary Part, was upon these Words, That the King would take *no such Things* without common Consent. By which Words they conceived the Intention of the Law was limited precisely to Impositions set upon Wool, and not upon their Commodities, which are not *such Things*, but other.

And for this they alledge this Reason, That it was not probable when the Complaint was only for an Imposition on Wool, That the King would give a Remedy for other Things not spoken of, for which there was no Cause of Complaint.

To this a full Answer is given many Ways:

First, Out of the Saying in the Act, which extends to other Things than to Wool, as to Wool-fels and Leather.

Therefore the Purview of the Act by these Words *such Things*, extendeth to more than the Wool:

For there needs no saying, but for that which is contained in the Purview.

Secondly, The Reason alledged, That no more, by likelihood should be remedied but for Wool, because that only was complained of, is false:

For the Complaint of the Commons was not only for this Imposition on Wool, but divers other Burthens and Grievances of the like Nature.

And this will appear, if we compare all Parts of the Law; the one with the other:

For this Law is in the Form of a Charter, written in *French*, and beginneth thus:

Edward, by the Grace of God, &c.

And is an entire Grant and Instrument without Fractions, Sections, and Chapters, as it is now printed; and containeth in it, next before this last Clause concerning the Impositions on Wools, which in the printed Books is *Cap. 6.*

“That the King, for no Business from thenceforth, will take no manner of Aids, Mises nor Prizes, but by common Assent.”

This Word *Mises* signifieth properly in *French, Impositions*; derived of the Word *mitto*, in *Latin, to put*. So the Words *such Things*, is a Conclusion to all the Premises, and hath a Relation not only to that which is made *cap. 7.* by the Printer, and concerneth the Male Toll of Wools; but to that preceding which is, *all other Aids, Impositions, and Takings.*

Mem. Stat.
in 26 Edw. I.
spud Rem.
Thef.

The Writ of Publication of this Statute sent out to all Parts in 26 *Edw. I.* maketh plain this Construction.

The Words of it are,

Concedentes, quod Custumam illam vel aliam sine voluntate, vel communi Assensu non capiamus.

These Words *vel aliam* are indefinite, and extend to any other whatsoever, besides that of Wools.

The Writ doth farther discharge Merchants for the Commodities of Wools, Wool-fels, and Leather, which are not complained of by Name in the Statute:

And therefore the Law was intended to other Impositions, as well as to those upon Wools.

III. The Objection made out of Matter subsequent to the Statute was this:

That notwithstanding the Law of 25 *Edw. I.* Impositions, that before the Statute had been set on other Merchandize than Wools, were still answered after the Statute.

16 Edw. I.
Orig. Rem.
Thef.

And for Instance of this was alledged, That whereas 16 *Edw. I.* an Imposition of four Shillings the Ton was set upon Wines brought into the Kingdom, an Account was made of this in the *Encbequer* in 26 *Edw. I.* as by the Records there appeareth. By which it seemeth that the Law 25 *Edw. I.* was not taken to extend to Wines and such other Commodities, other than Wool named in the Statute.

ANSWER.

It is true, such an Imposition was set on by *Edward I.* in the 16th Year of his Reign, and an Account made of it in the 25th and 26th.

But it appeareth by the Record of the Account, that it was made for the Time ended before the Statute was made.

As

As from the 18th of *May*, 16 *Edw. I.* to the 23^d of *July*, 22 *Edw. I.* But there is no Record that ever any Account was made for any Money received for that Imposition for the Time after the Statute was made.

Neither was it very willingly answered before :

For it appeareth by the Record, that it was ten Years after the setting of it.

The Third Statute alledged on the behalf of the Subject, is that of 34 *Edw. I. cap. 1.*

The Words are these :

“ No Tallage or Aid shall be taken or levied by us or our Heirs in our Realm, without the Good-will and Assent of our Archbishops, Bishops, Earls, Barons, Knights, Burgeses, and other Freemen of the Land.”

Against this was objected, That this Statute was intended only upon the Taxes and Impositions of Things.

The Word *Auxilium* makes it clear, that it is to be intended farther than of Things within the Realm :

For *Tallagium* is intended commonly of domestical Taxes ; but *Auxilium* is the most usual Word for Impositions upon Goods imported and exported ; as by the Acts of Parliament by which such Impositions are given to the King ; in which they are most commonly called by the Name of *Aids*, as proceeding of Good-will and Benevolence.

The Fourth Statute alledged on this Part, is that of 5 *Edw. II. cap. 14.* just in Point of the Matter in Question :

5 *Edw. II.*
cap. 14. Rot.
Ordination.

And therefore I will set it down, as I find it *verbatim* in the Record in the *Tower* :

Ensement nouvelles Custumes font leviez & ancientez enbaunces, come sur levies drapes, vine avoir du pois & autre choses pur quoy les Merchants veynent plus richement & meynes de bien, meignont en la terre, & les Merchants estranges demurront plus longement que ils soloient faier, pur le quel demeure les choses sont le plus enbaunces que ils ne soloient estre, au damage de Roy & de son people ; Nous ordenauns que toutz maneres des Custumes & Maltolls levies puis de Coronement le Roy Edward fitz de Roi Henry soient entierment oustes & de tout esteintz par toutz jours, nient contristant de Chartre que le dit Roi Edward fist as Merchants aliens, pur ceo que il fust fait contre le grand Chartre, & encountre le Franchise de la Citee de Londres, & santz assent de Baronage, &c.

Savant neqgedent au Roi les Custumes de Leymes, peaulz & de quirs &c. si aver le doct.

By this Law is recited, that by the levying of new Customs, and by raising of the old, Traffick was destroyed, and all Things made dear.

And therefore all new Impositions and Customs were discharged *Charta Mercatoria*, by which Custom increased on Aliens was taken away, and the Reason alledged, because it was *sans Assent de Baronage*, and against the great Charter:

And this is farther with this Clause, Saving to the King his Custom of Wool, Wool-fels, and Leather, *si aver les doet*.

Great Wars have been raised against the Credit of this Law in the Parliament House;

And Three Things have been especially objected against it:

First, That it is no Law: For it was enforced upon the King by some of the Nobility that were too strong for him; the Realm being then in Tumult and Mutiny about the Quarrel of *Pierce Gaveston*; so never had the King's free Consent: But he gave way unto it for fear of greater Mischiefe.

Secondly, That in itself it is unjust, as in taking away the Custom granted to the King by *Charta Mercatoria*, 31 *Edw. I.* and in making Doubt, whether the King should have the Custom of Wools, &c. as by those Words, Saving it to him, *si aver les doet*.

The *Third* Objection is, That if it were a Law, it is repealed.

To these I give particular Answers.

To the *First*, That this Statute was made both at the Instance of the King and People, with a Purpose and Intention on all Parts to settle Things in a Stay and Order, both in the King's House and Common-wealth;

The King and his Nobles standing in good Terms when this Business was taken in hand.

And it was begun and ended with great Solemnity and Ceremony:

For the King, in the third Year of his Reign, gave Commission under his Great Seal to thirty-two Lords Spiritual and Temporal;

Of which there were eleven Bishops, eight Earls, and thirteen Barons; they being as Committees of the Higher House, to devise Ordinances for the good Government of his House and his Realm.

In which Commission he doth, for the Honour of God, the Good of him and his Realm, of his Free Will grant to the Prelates, Earls, and

and Barons, and others elected by the whole Kingdom, full Power to ordain the State of his House and Realm, by such Ordinances as by them should be made, to the Honour of God, the Honour and Profit of Holy Church, the Honour of himself, the Profit of Him and his People, according to Right and Reason, and the Oath he made at his Coronation.

These joining with others of discreet Commons in Parliament, and taking every of them a solemn Oath for their sincere Demeanor in the Business, did make this and other Ordinances, which were so well liked by the King, that after they were made he took an Oath to observe them;

And caused them to be published in *Paul's Church-yard* by the Bishop of *Salisbury*, by denouncing Excommunication against all that should willingly infringe them:

And by his Letters Patents dated 5^o *Octob.* 5^o *Regni sui*, did send them through the Realm to be published, and from thenceforth to be observed:

Thereby signifying his great Liking and Approbation of them.

After which they had the Force and Power of Laws given unto them in Parliament, in the fifth Year of his Reign.

The *Second* Objection, which is the Unjustness of the Law, instanced in two Points;

The taking away of *Charta Mercatoria*, and the doubting of the King's Right to the Custom of Wools, Wool-fels, and Leather, &c.

ANSWER:

To the *First* of these I deny it to be unjust, but according to the Law of *England*, and the Liberty of the Kingdom.

For that Charter did contain in it divers Grants of Things, which were not in the Power of the King to grant, without Assent of Parliament.

As the Tryal *per medietatem Linguae*, and other Things tending to the Alteration of the Law, and burthening of the People.

And therefore that Charter never had its undoubted and settled Force, until it was confirmed by Act of Parliament, but lay asleep almost twenty Years together without being put in Execution, between 5 *Edward II.* and 27 *Edward III.* when it was confirmed.

For the Doubt that is supposed to be made in the Statute of the King's Right, to the Custom of Wool, Wool-fels, and Leather, I take it there is no such Doubt made; for the Words (saving the King's Right to the Custom of Wools, Wool-fels, and Leather, *à ever les doit*) hath this Construction, that is, at such Times as he ought to have it:

So the Word *ſi* hath the Signification of *quando*, for it had been a Folly to have made a Saving of that, of the Right whereof they had doubted :

Neither is it likely but that they would have taken it away if it had not been lawful ; but there was no Colour to doubt of the Right of it :

For it was given by Act of Parliament, and ever continued in Force, without Challenge or Exception in the Lawfulness of it.

The *Third* Objection is, That this Statute is repealed.

To this I plead, *nullum tale recordum* :

If it be repealed, it must be by Act of Parliament, for *unumquodque diffolvitur iisdem modis quibus est colligatum*.

I and others have searched the Records of the Realm, and endeavoured by all means to inform ourselves of the Truth therein, and we can find no Act of Parliament of repeal.

The Truth is, some Kings finding those Laws not to sort to their Wills and Humours, have endeavoured to suppress them ; but they did never yet obtain a Repeal of them by Act of Parliament.

But it is further urged, That although there were no formal Repeal of the Law, yet it was never put in Execution as a Law, but even presently upon the making was rejected, and Use and Practice went quite against it.

And for Instance hereof a Record was vouched, that *Edward II.* held himself so little bound by it, as that in the eleventh Year of his Reign he set an Imposition without Assent of Parliament upon Wool, Wool-fels, and Leather, Wine, Cloth, *Aver du Pois*, and divers other kind of Merchandizes.

To this I answer,

That if it were true, that a weak and impotent King as he was did contrary to the Law, doth this make the Law void, and no Law ?

But if we look into the whole Record, and scann this Action of *Edward II.* from the Beginning of it unto the End, we shall find a very good Instance to prove the Practice and Execution both of this Law of 5 *Edward II.*, and of that in 25 *Edward I.*

For it is true that *Edward II.*, in the eleventh Year of his Reign, did borrow of the Merchants a certain Sum of Money above the due Customs of Wool, Wool-fels, Wine, *Aver du Pois*, Leather, and other Goods imported and exported.

But it appeareth by the Record he took it but for one Year, he took it by the Advice and Counsel of the Merchants, and he took it *per viam mutui*, as a Loan :

Rot. Claus.
11 Edw. II.

The Discretion of the Writ is, *Collectoribus mutui nobis per Mercatores Alienigenas, & Indigenas, de certis rebus & Merchandiziis usque ad certum tempus faciendi.*

This

This was done in good Terms; he did not claim it as his Right, but did borrow it, which I think is a good Evidence against his Right: But what became of this?

The State would not abide it for all these fair Shews.

And therefore the King sendeth out other Writs, by which he dischargeth all Merchandizes of this Loan, save only Wool, Wool-fels, and Leather, and for the same Loan taken upon those Commodities, it was limited to continue but till *Michelmas* after; and good Security was given to the Merchants by the Customers to pay themselves by way of Defalcation out of the Customs, which should be due after *Michaelmas*, those Sums which were so borrowed of them.

The Words of the Record are worth the observing:

Cum pro expeditione guerræ Scotiæ & aliis arduis & urgentibus necessitatibus nobis multipliciter incumbentibus, pro quarum exoneratione quasi infinitam pecuniam refundere oportebit, pecuniæ plurimæ indigemus in præsentibus, & nuper pro eo quod exitus Regni & Terrarum nostrarum simul cum pecunia nobis in subventionem præmissorum tam per Clerum quam per Communitatem Regni nostri concessa ad sumptus prædictos cum festinatione qua expediret faciendos, non sufficiunt, exquirentes vias & modos quibus pecuniam possemus habere commodius & decentius pro præmissis, de consilio & advisamento quorundam Mercatorum tam Alienigenarum quam Indigenarum, viam invenimus infrascriptam, videlicet:

Rot. fin:
11 Edw. II.

And so setteth down the Manner of the Loan, and the Security for the Payment of it.

This, I take it, was neither an Imposition, nor a Wrong in any respect.

Also by the first Record it appeareth that the Loan set on Wine, *Aver du Pois*, and such other Commodities besides, Wool, Wool-fels, and Leather were presently discharged by *Edward II*, which sheweth they were taken to be within the Extent of the Statute of 25 *Edward I*.

The First Statute alledged on Behalf of the Subject, is that 14 *Edw. III. Stat. 1. cap. 21.* by which the Commons pray the King to take no more than the old Custom of the half Mark.

The King prayed Aids of the Commons for a Time above the Custom upon his Necessity of Wars:

And the Conclusion is, That by that Act the King doth grant that after the *Feast of Pentecost* twelve Months following, he will take no more of Wools, Wool-fels, and Leather, but the old Custom; and doth promise to charge, set, or assess upon the Custom, but in manner as aforesaid.

The Sixth Statute is 14 *Edward III. Stat. 2. cap. 1.* the King doth grant by way of Charter, to the Prelates, Bishops, Barons, Commons, Citizens,

Citizens, Burgeſſes, and Merchants, that they be not from thenceforth charged nor grieved to make any Aid or ſuſtain Charge, if it be not by the common Conſent of the Prelates, Earls, Barons, and other great Men and Commons of the Realm, and that in Parliament.

Theſe two Statutes grew upon Occaſion of an Impoſition ſet on Wool by the King, without Aſſent of Parliament.

Little hath been objected againſt them, but only to the firſt, that it was obtained of Grace, and not upon Inſtance of Right, which they gather out of the Words of the Law, which are,

The Commons pray the King that he would ſtabliſh, that from thenceforth no more but the old Cuſtom be taken.

The like Reaſon may be made againſt the King, out of the ſame Words in the ſame Law; for the King in the ſame Act prayeth the Commons to give him an Impoſition upon Wools for a Time above the old Cuſtom, but the Record of the Petitions exhibited in Parliament, upon which thoſe two Laws are made, cleareth the Objection.

The firſt was delivered by the Lords in this Form :

Rot. Parl.
13 Edw. III.
No. 5.

Les Grandes volunt, That the Mal-Toll ſet on Wools newly, be altogether abated, and that the old Cuſtom be held, and that they may have this in point of Charter, and by Inrollment in Parliament.

This Word *volunt* had been too high for a Suit of Grace, and therefore muſt be intended of Right.

The Commons Petition in Form is ſomewhat humble, but in Effect and Purpose is rough and ſtern.

The Words are theſe :

The Commons pray that the Mal-Toll of Wools be taken as it was uſed in ancient Time, which is now enhanced without the Aſſent of the Commons and Grandees, as we conceive, and that, if it be otherwiſe demanded, that every one of the Commons may arreſt them without being challenged.

According to theſe Petitions, the firſt of theſe two Laws is by Enrollment in Parliament.

The ſecond is in Form of a Charter.

The firſt doth expreſs ſome ſpecial Commodities.

The ſecond doth reach generally at all.

The ſeventh Law directly touching this Point is that 14 *Edw. III. Stat 2. cap. 2.* the King doth grant, according to the great Charter, That all Merchants, Denizens, and Foreigners, may without lett ſafely come into the Realm of *England* with their Goods and Merchandizes, and ſafely tarry and ſafely return, paying the Subſidies, Cuſtoms, and other Profits reaſonably due.

Upon the Words of this Law was great Advantage taken in this, that beſides Cuſtom and Subſidies, which concern all the certain and ordinary

ordinary Duties, the King hath upon the Wares and Goods of Merchants, there are other Profits spoken of to be due :

These they affirm cannot be understood but of Imposition by the King, without Assent of Parliament.

To this I answer,

If there were not Duties due to the King besides Custom and Subsidy, which might satisfy the Intention of these Words, this Objection might have had some Colour in it :

But it is plain, that besides these two, there are other Profits due to the King upon Merchant's Goods, as Scavage, Tonage, and the like.

And you shall find a Petition in Parliament, 50 *Edward III.* against raising of these above the old Rate. Rot. Parl;
50 Edw. III.
N^o. 163.

The Eighth Law is 15 *Edward III. Stat. 2. cap. 5.* whereby it is enacted, That every Merchant may freely buy and sell; and pass the Sea with their Merchandizes of Wool, and all other Things, paying the Custom of old Time used, according to the Statute made the last Parliament in *Mid-Lent*, which was the Statute 14 *Edward III. Stat. 2. cap. 2.*

This Law doth expressly exclude the Novelty of Impositions.

The Ninth Law is that 18 *Edward III. Stat. 1. cap. 3.* whereby it is enacted, That the Sea be open to all manner of Merchants to pass with their Merchandizes where it shall please them.

The Tenth is 27 *Edward III. Stat. 2. cap. 2.* For the Assurance of Merchant Strangers, and others :

The King doth will and grant for Him, and his Heirs, that nothing shall be taken over the due Custom, nor taken of them to his Use by Colour of Sale, nor in any other Manner against their Wills.

The Eleventh is 38 *Edward III. cap. 2.* That all manner of Merchants, Aliens, and Denizens, may buy and sell all manner of Merchandizes, and freely carry them out of the Realm, paying the Customs and Subsidies thereof due.

The last is 22 *Henry VIII. cap. 8.* by which it was enacted, That Tables should be set up in Ports, by which the Certainty and very Duty of every Custom, Toll, and Duty, or Sum of Money to be demanded and required of Wares and Merchandizes; shall and may plainly appear and be declared, to the Intent that nothing be exacted otherwise than in old Times hath been used and accustomed.

By this Law it appears that the Judgment of the Parliament was at that Time that nothing was due upon Wares and Merchandizes, but that which was certain, and had been anciently due, by which Impositions are excluded, whose Qualities were Novelty and Incertainty, as being set on as present Occasion moveth, and proportioned

for Quantity and other Circumstance, as the Will of the King directeth.

These are the Laws which I conceive most directly tend to the restraining the Kings of *England* from the Exercise of that irregular Power of imposing, at the first offered by them to be put in Execution, yet not pressed as their Right, and never practised but upon Opposition of the whole State, and at last deserted and given over until of late, as by that which followeth in the fourth Place will appear.

Custom 4.

My fourth and last Assertion is, That this Practice of imposing, without Assent of Parliament, is *contra morem majorum*.

In this I will make an Historical Perlustation of the Times past, whereby I will discover and make known what Passages have been in this Business in this Kingdom, and especially in the High Court of Parliament, for the Space of three hundred Years and more last past, since the Beginning of the Reign of *Edward I*, since which Time, and not before, this Kingdom hath grown into the Glory and Reputation of foreign Traffick :

And as a worthy Gentleman of the King's learned Council made certain Considerations upon the Question, framed and strengthened out of the Greatness of his Wit and Reason,

So I, grounding myself upon the Practice of former Times, which is the safest Rule whereby to square the Right both of King and People, in this Common-wealth, where their Right is *Jus Consuetudinarium*, a Right that groweth by Use and Practice,

Will propose unto you certain Observations out of the Action and Experience of former Times, until the Reigns of the two late Queens, by which you may the better ground and frame your Judgments in the Determination of the Right in this Question.

I. My *First* Observation is in Point of Circumstance, That there was never any Imposition set but in Time of Actual War, and *duplicatis vexillis* :

They are set on very rarely and sparingly, but for a short Time, and that certain and definite, and upon some few Commodities, and that by the Assent of the Merchants that were to bear the Burthen.

In our Time the Occasion not so sensible, the Continuance to be perpetual, the Number many Hundreds, almost no kind of Country spared.

I will give you some few Instances of these Circumstances out of the Records themselves.

INSTANCE

INSTANCE I.

The Mal-Toll of Wool, fet on by King *Edward I*, which gave the Occasion of the Statute in the 25th Year of his Reign, was given by Merchants.

22 Edw. I.
Orig. Scacc.
Rem. Thef.

The Record saith *Mercatores gratanter concefferunt in subsidium guerra Regis.*

It further sheweth it was for his Necessity of War, which then was great also.

INSTANCE II.

For the Time of *Edward III*, there need not many Instances, for his whole was almost an actual Warfare;

Rot. Parl.
17 Edw. III.
No. 28.

As in the sixth Year of his Reign, for his War in *Scotland* and *Ireland*.

In the thirteenth Year of his Reign for his War in *France*, several Impositions were fet on.

INSTANCE III.

In the seventeenth Year of *Edward III*, the Record in the *Tower* mentioneth that Forty Shillings was on a Sack of Wool by the Grant of Merchants, and it was in the Time of War.

INSTANCE IV.

In the twentieth Year of King *Edward III*, it appeareth in the Record that the Imposition then put on Wool was by the Assent of the Merchants for two Years, for the Necessity the King had in the Passage over the Sea to recover his Right, and to defend the Realm.

Rot. Parl.
17 Edw. III.
No. 18.

II. My *Second* Observation is, Never any Imposition was fet on by the King out of Parliament, but Complaint was made of it in Parliament, and not one that ever stood after such Complaint made, but Remedy was afforded for it.

Et quod Rex inconsulto fecit, consulto revocavit :

His Sovereign Power controlled his Subordinate.

In which it is a thing very notable, that the King in no one Case ever claimed, or so much as ever named his Right or Prerogative, which no doubt he would have done, if it had been thought due, but gave Satisfaction to the Complaint by one of these three Ways :

First, Either by discharging them quite, and making some good Law against them. Or,

Secondly,

Secondly, By entreating the People to hold them some short Time by their Favour. Or,

Thirdly, by waving his present Possession, and taking that of their Gift by Act of Parliament, as in Aid, which he had set on by his absolute Power as an Imposition.

Instances of the first 25 *Edward I.*, the Imposition of Wool taken off, and a Law made against it;

And the King undertook for him and his Successors to do so no more, 38 *Edward III. cap. 36.*

The Imposition of Three Shillings and Four Pence on a Sack of Wool put off upon Complaint, and a Law made against it, 38 *Edward III. cap. 2.*

The like Statute 45 *Edward III. cap. 4.* on Wools, made in Parliament 45 *Edward III. Numb. 42. Rot. Parl.*

Instances of the second Kind, 21 *Edward III. cap. 11.* A Petition upon an Imposition of Two Shillings upon a Sack of Wool, Two Shillings upon a Ton of Wine, and Six Pence upon *Averdupois.*

All discharged presently, saving the Two Shillings upon a Sack of Wool, and for that intreated that it might stay till *Easter* following, and so it did, and was then taken away.

Instance of the third 25 *Edward III. N^o. 22.* The Commons made Petition against an Imposition of Forty Shillings upon a Sack of Wool granted to the King by the Merchants, shewing that they ought not to be bound by their Act.

The King doth not claim Right or Justify, but because his Wars were great, upon his Request had it granted unto him for two Years by Act of Parliament; and pretended no Title of Prerogative, neither was it ever spoken of.

III. My *Third* Observation is, That our Kings have acknowledged that it is not in their Right:

Edward I. in the Writs he sent to the Officers of his Ports to levy Three Pence on the Pound over the old Custom of the Denizens, to enjoy those Privileges the Aliens did enjoy by the Payment of the Increase of Custom, doth give this Expression directly, That they should not take it of Denizens against their Will:

The Words of the Record express it very fully.

Cum Mercatores Extranei & Alienigenæ, pro quibusdam libertatibus eis per nos concessis & prius nostris quibuscumque remissis, nobis de Bonis & Mercandizis suis quibuscumque infra regnum & potestatem nostram adducendis, ultra antiquas Custumas dare conceperint Præstationes & Custumas subscriptas, videlicet, &c.

And so setteth down the Increases, and among the rest this Three Pence upon the Pound, and so proceedeth.

Ac

Ac quidem Mercatores de Regno nostro & Potestate nostra, ut ipsis dictis libertatibus & immunitatibus. uti & gaudere, & quod de prisis quieti esse possint, Præstationes & Custumas hujusmodi de Bonis & Mercandizis suis nobis solvere velint, ut accepimus, assignavimus vos, &c. ad Custumas & Præstationes prædictas de Mercatoribus de Regno nostro & Potestate nostra colligendas, qui eas gratanter & sine coercione solvere voluerint.

Ita tamen, quod aliquem Mercatorem de dicto Regno & Potestate nostra ad Præstationes & Custumas hujusmodi nobis invito solvendas nullatenus distringatis.

Surely if *Edward I.* had claimed the Prerogative of imposing, he would never have given these Cautions in requiring of that which he had taken as his Due, as that they should not exact it of any of his Subjects that were not willing to pay it, nor trouble them nor distrain them for it.

In the twelfth Year of *Edward III.*; we find the Record of certain Letters written from the King, being then at *Berwick* in the *Scottish* Wars, unto the Archbishop of *Canterbury*; in which Letter the King seemeth to have a great Confidence in the Devotion of the Archbishop, and therefore earnestly entreateth him to farther his Enterprizes with his Prayers to God; and then addeth further, *Ad hoc, pater, cum populus Regni nostri variis oneribus, tallagiis & impositionibus hætenus prægravetur (quod dolenter referimus, sed inevitabili necessitate compulsi de eisdem oneribus ipsum adhuc relevare non valemus) dictum populum, ut tantam necessitatem nostram humiliter & benigne patiatur & caritive sustineat, & priorem, quam penes nos concepit, de cætero instanter in orationibus & eleemosynis suis (oneribus prædictis, quæ non ex malitia vel præsumptione voluntaria ipsum gravant, non obstantibus) exhibeat caritatem, indulgentiarum muneribus & aliis modis, quibus secundum Deum æquum videbitis, piis exhortationibus inducat, & nos penes eundem excusetis; speramus namque per Dei gratiam, cujus manus cunctis indigentibus sola sufficiens, & largiflua comprobatur beneficiis compensandis, dum populum visitare & consolari pro loco & tempore opportunis dignetur, &c.*

Rot. Alem.
12 Edw. III.
dor. 22. in
Turr.

The principal thing I note out of this Record, upon the very Point of this my *Third* Observation is, That the King intending to excuse himself of the Burthens by him laid upon the People, and to avoid the Blemish of Wrong and Injustice in laying thereon, saith, they were not *onera ex præsumptione voluntaria*, that is, Burthens that he presumed to lay on at his own Will, whereby he condemneth Impositions without Assent of Parliament, which are (*onera ex voluntate Regis*) to proceed of Presumption, which doth clearly exclude Claim of Right, and disproveth the Lawfulness of the Act.

But there are divers other notable Passages in the Record worthy remarking ;

As out of the Word *prægravantur* used by the King, we may gather he did account these Impositions a grievous Burthen to his People, which sheweth his own Pity of them :

He saith further *dolentes referimus*, shewing his Grief and Remorse at it, and *inevitabili necessitate compulsi*, he did it constrained by inevitable Necessity, shewing he was forced to it against his Will, by that which violateth and breaketh all Law, which inferreth he would not maintain his Action by Law.

Adbuc releware non valemus:

This insinuates, he would ease them in good Time. *Caritatem exhiberent*, they should afford him Charity in the bearing of them, as if so be in Point of Justice or Right they need not. *Penes eundem excusatis*, the Bishop should excuse him to the People.

By this he did clearly leave the Point of Justification, and so of Right.

Lastly, He promiseth he would visit and comfort them, *beneficiis compensativis*, he would give them Recompense for those Sums he had raised of them, which shewed that he claimed them not as due, for then he needed not give Recompense for them.

Rot. Parl.
21 Edw. III.
No. 16.

In the twenty first Year of *Edward III*, a Petition was exhibited in Parliament, That Levies be not made by Commission (so they be in this Case) nor other things laid upon the People, unless they be granted in Parliament :

The King's Answer is,

“ If any such Impositions were made, it was by great Necessity, and with the Assent of the Prelates, Barons, and some of the Commons present.”

Yet he will not that such Impositions, not duly made, be drawn in Consequence.

Here the King acknowledgeth an Imposition not to be duly made though with the Consent of the higher House, and some of the Commons, because it was not in full Parliament, much rather he would have thought so, if it had been by the King alone.

King *Edward IV*. who was a rough and warlike Prince, and was more beholden to his Sword in the Recovery of his Right to the Crown, than to the Affection of his People, at a Parliament held the seventh Year of his Reign, made a Speech to the Commons, Sir *John Say* being then Speaker, in which Speech is contained very notable Matter, and very pertinent to our Purpose ; and because the Record is not in Print, I will set down the King's Speech *verbatim*, as it is entered upon the Parliament *Roll*, and then I will make a Paraphrase upon it.

J O H N

JOHAN SAY, and ye Sirs, come to this my Court of Parliament for the Commons of this my Realm:

Rot. Parl.
7 Edw. IV.
*The Record be-
gins Memo-
randum quod
die Veneris 3
die Parliament.*

The Cause why I have called and summoned this my present Parliament is, that I purpose to live upon my own, and not charge my Subjects but in great and urgent Causes, concerning more the Weal of themselves, and also the Defence of them, and of this my Realm, rather than my own Pleasure, as heretofore by Commons of this Land have been done and born unto my Progenitors in Time of Need, wherein I trust that ye, Sirs, and all the Commons of this my Land, will be as kind and tender me in such Cases, as heretofore any Commons have been to any of my Progenitors.

And for the Good-will, Kindness, and true Hearts that ye have born, continued, and shewn to me at all Times heretofore, I thank you as heartily as I can:

Also I trust ye will continue in Time coming, for which by the Grace of God I shall be to you as good and gracious a King, and reign as righteously over you as ever did any of my Progenitors upon Commons of this my Realm in Days past; and shall also in Time of Need, apply my Person for the Weal and Defence of you and of this my Realm, not sparing my Body nor Life for any Jeopardy that might happen to the same.

Out of this we observe *First*, The King's Protestation to live of his own, and not to charge his Subjects; by which we gather he did acknowledge a certain and distinct Property of that which was his Subjects, from that which was his own, which excludeth the Right to impose all his Will; for if that be admitted, the Subjects Property is *proprietas precaria*, not certain how much of his is his own:

For that is his which the King will leave him, for there is no Limit or Restraint of the Quantity, the Right being admitted, but only the King's Will.

The *Second* Thing I observe is this; That in charging of his Subjects, he would confine himself between these two Bounds;

The *one*, it should be in great and urgent Causes, concerning more the Weal of them, and the Defence of them and his Realm, than his own Pleasure, wherein he condemneth those Occasions that grew upon Excess of private Expence by over great Bounty, or otherwise, and admitteth only such as grew by reason of Wars, or other such publick Causes, concerning the whole State:

The *other* Bound or Limit is, That these Burthens should be *secundum morem majorum*, as heretofore had been done and born by the Commons to his Ancestors in Time of Need.

The

The *Third* Thing I observe is, That he acknowledged these Burthens did proceed out of their Good-will and Kindness, not out of his Right and Prerogative, out of these Words, That he trusted they would be as tender and kind to him in such Cases, as heretofore any Commons had done to his Progenitors.

And lastly, We may note the Recompense promised by the King to his Subjects for their Good-will and Kindness, his Goodness and Grace, his just and righteous Government, the Jeopardy of his Body and Life for their Weal and Defence.

Did this King assume to himself a Right to lay Burthens on his Subjects at his own Will, without their Assents, that offered to buy them at their Need with the Price of his Blood, the most sacred Relick in the Kingdom?

IV. My *Fourth* Observation is, That in all Petitions established by the Commons in Parliament against the Impositions, the very Knot of their Grief, and the principal Cause of their Complaint has been expressed in those Petitions, that the Impositions have been without Assent of Parliament, by which is necessarily inferred, that their Grief was in Point of Right, not of Burden.

In 21 *Edward III.* N^o. 11. The Complaint of the Imposition of Two Shillings upon a Sack of Wool, Two Shillings upon a Ton of Wine, Six Pence upon *Aver du Pois*, the Cause of Grievance expressed, because it was *sans assent de Comuns*.

25 *Edward III.* N^o. 22. in a Petition the Commons complain that an Imposition upon Wools was set by the Consent of the Merchants, they pray, That Commissions be not made upon such singular Grants, if they be not in full Parliament; and if any such Grants be made, they may be held as void.

17 *Edward III.* N^o. 28, the Commons in their Petition inform the King it is against Reason they should be charged with Impositions set on by Assent of Merchants, and not in Parliament.

V. My *Fifth* Observation is, That whensoever any Petition was exhibited against Impositions, that there was never any respect of the Quantity, but they were ever entirely abated, as well where they were small as where they were great.

No Request ever made to make them, less where they were great, no Excuse made of their Ease when they were exceeding small, which sheweth that it was not the Point of Burden or Excess that was respected in their Complaint, but the Point of mere Right.

25 *Edward III.* N^o. 22. Forty Shillings, set an Imposition upon a Sack of Wool, upon Complaint all taken off, and no Suit to be eased of part, because it was too great.

26 *Ed-*

26 *Edward III.* N^o. 26. Three Shillings and Four Pence upon a Sack of Wool, all taken off, and no Excuse made for the Smallness:

For 21 *Edward III.* N^o. 11. Two Shillings a Sack, Two Shillings Tonnage, and Six Pence Poundage.

50 *Edward III.* N^o. 163. A great Complaint was made in Parliament by the Commons; that an Imposition of a Penny was set upon Wools for Tonnage, over and above the ancient Due, which was but a Penny.

And the Subject was charged with Two Pence.

Also that a Penny was exacted for Mesonage, which was but an Half Penny; which Impositions the Record doth express, did amount to an Hundred Pounds a Year.

This petty Imposition was as much stood upon in point of Right, as the other great one of Forty Shillings, and was taken off upon Complaint in Parliament, without Justification or Excuse for the Smallness of it.

VI. My *Sixth* Observation is, That those which have advised the setting on of Impositions without Assent of Parliament, have been accused in Parliament for giving that Advice, as of a great Offence in the State, and have suffered sharp Censure and great Disgrace by it.

Neither do I find that the Quality of the Person hath extenuated the Blame, as 50 *Edward III.* *William* Lord *Latymer*, Chamberlain to the King, and of the Privy Council, was accused by the Commons in Parliament of divers Deceits, Extortions, and Misdeeds, and among other things, that he had procured to be set upon Wool, Wool-fels, and other Merchandizes, new Impositions; to wit, upon a Sack of Wool Eleven Shillings, which the Lord *Latymer* sought to excuse, because he had the Consent and good liking of the Merchants first.

But Judgment was given against it, That he should be committed to Prison, be fined and ransomed at the King's Will, and be put from being of the Council:

And this procuring of Impositions to be set on without Assent of Parliament, is expressly set down in the Entry of the Judgment for one of the Causes of his Censure.

Richard Lyons, a Farmer of the Customs in *London*, the same Year was accused in Parliament for the same Offence.

Rot. Parl.
50 Edw. III.
N^o. 17, 18,
19, 20.

He pleaded he did it by the King's Command, and answered the Money to the King's Chamber.

Yet was condemned and adjudged in Parliament to be committed to Prison, and all his Lands and Goods were seized into the King's Hand, and at last the Hate against the Authors of Impositions grew so, that 50 *Edward III.* in the same Parliament, a Petition was exhibited in

Parliament to make this a capital Offence. The Record is very short, and therefore I will set it down *verbatim*.

Item, prie le dit Comun, qe soit ordeine per Statut encest present Parlement, que toutz ceux queux cy enavant mittont ou font pur leur singular profite novelx Impositions par leur auctoritee demesne, Accrochantz al eux en y al pour de riens que soit establi en Parlement sanz assent de Parlement, que ils eyent Juggement de vie & membre & de foris facture.

To this rough Petition the King gave a mild Answer :

Cour la Commune Ley, come estoit a lavant use.

VII. My *Seventh* Observation is the Cessation between 50 *Edw. III.* after this Censure in Parliament, and 4 *Maria*, almost two hundred Years, during which Time no King did attempt to impose without Assent of Parliament, and yet we find in the Parliament *Rolls*, that there was not one of those Kings that reigned in that Time, but had Impositions granted them upon fit Occasions by Act of Parliament upon all Goods and Merchandizes, and at divers Times during their Reigns, sometimes more, sometimes less, upon the Ton and Pound, but ever for a Time certain and definite :

So the Use of them was not given over, but the Power of imposing was so clearly and undoubtedly held to be in the Parliament, as no King went about to practice the contrary.

But to this Cessation that was of great Weight and Credit in our Evidence, a Colour was given by the other Side to avert the Inference made upon it against the King's Right ; that is, that during that Time there was so great a Revenue grew to the Crown by double Custom paid for all Merchandizes both in *England* and at *Calais*, by reason of an Act of Parliament made 8 *Henry IV.* which was that no Goods should be carried out of the Realm but to *Calais*, and by reason that Merchants payed Custom both there and here for the same Goods, that in the 27th of *Henry VI.* the Custom of *Calais* was Eight Thousand Pounds the Year ; a great Sum, if you consider the Weight of Money then, what Price it bare, and by reason hereof Princes not delighting to charge their murmuring Subjects but when need is, being so amply supplied otherwise, did not put that Prerogative in Practice.

To this I answer, that if that were true that was urged, there might be some probable Colour of the Forbearance of imposing.

But I find it to be quite contrary, and that by Record ; for there was no such Restraint of all Commodities not to be transported to any Place

Place but *Calais*, but only Wools, Wool-fels, Leather, Tin, and Lead, that were Staple Wares; which by the Statute 37 *Edward III.* were to be transported thither, and not to any other Place.

And the Staple continued at that Place for the most part from that Time, until long after 27 *Henry VI.* But there was no double Custom paid both here and there by the same Owner:

But the yearly Profits of the Customs of *Calais* at those Times were so far short of that which hath been alledged in 27 *Henry VI.*, that it appeareth in an Act of Parliament 27 *Henry VI. cap. 2.* printed in the Book at large, that the Commons do complain, That whereas in the Time of *Edward III.* the Custom of *Calais* was Sixty Eight Thousand Pounds by Year; at that Time, which was 27 *Henry VI.* by reason of the ill Usage of Merchants, it was fallen to be but Twelve Thousand Pounds the Year.

So then there was great Cause in that respect to have set on Impositions by reason of that great Abatement of Customs, and yet it was not then offered to be done without Assent of Parliament.

But if you look a little further into the extreme Necessities of those Times, you will find there was never greater Cause to have strained Prerogatives.

For it appeareth in an Act of Parliament 28 *Henry VI.*, that it was then declared in Parliament by the Chancellor and Treasurer, who demanded Relief of the People for the King, both for Payment of his Debts, and for his yearly Livelyhood. Three Hundred Seventy Two Thousand Pounds, which now by the Weight of Money amounteth to Eleven Hundred Thousand Pounds, and that his ordinary Expences was more than his yearly Revenue by Nineteen Thousand Pounds yearly.

So that if ever there was Cause to put a King to his Shifts it was then:

Yet we see they did not venture to put in Practice this supposed Prerogative.

It further appeareth in that Statute, that the People among those Reasons they alledged why they were not able to retain the King, gave this for one, that they had so often granted him Tonnage and Poundage upon Merchandizes.

By which it appeareth he took nothing of Merchants by Imposition without Grant, for if he had, no doubt they would not have stuck to put him in Mind of it.

But pray consider what became of this Motion of the Chancellor and Treasurer.

The Proposition had depended in Parliament many Years, the Effect was, the People intreated the King to resume all Grants he had made from the Beginning of his Reign, except such as were made upon

upon Consideration valuable, that he might so enable himself by that means by which he had impoverished himself and the whole Kingdom.

This took effect, and the Statute of Resumption was thereupon made the same Year.

Which Record, because it is not in print, and declareth these things with great Gravity and Authority, I will set down the very Text of it, so much as is material to our Purpose, which is this :

28 Hen. VI.
in Turri Lon-
don, not print-
ed.

“ Praying your Commons in this your present Parliament assembled,
“ to consider, that where your Chancellor of your Realm of *England*,
“ and many other Lords of your Council, by your high Command-
“ ment to your said Commons at your Parliament holden last at *West-*
“ *minster*, shewed and declared this the State of your Realm, which
“ was that ye were indebted 372000 *l.* which is grievous, and that
“ your Livelyhood in yearly Value was but 5000 *l.*

“ And forasmuch as the 5000 *l.* to your high and noble Estate, to
“ be kept and to pay your said Debts, will not suffice :

“ Therefore that your high Estate may be retrieved :

“ And furthermore it was declared that your Expences necessary
“ to your Household, without all other ordinary Charges, come to
“ 24000 *l.* yearly, which exceedeth every Year in Expencc necessary
“ over your Livelihood 19000 *l.*

“ Also pleaseth it your Highness to consider that the Commons of
“ your said Realm be as willing to their Power for the relieving of
“ your Highness, as ever was People to any King of your Progeni-
“ tors, that ever reigned in your said Kingdom of *England*; but your
“ said Commons being so impoverished, what by taking Victual to
“ your Household, and other things in your said Realm, and nought
“ paid for it, and the Quinzieme by your said Commons so often
“ granted, and by the Grant of Tonnage and Poundage, and by the
“ Grant of Subsidy upon Wools, and other Grants to your Highness,
“ and for lack of Execution of Justice that your said Commons be
“ full nigh destroyed, and if it should continue longer in such great
“ Charge, it would not in any wise be had nor born.

“ Wherefore pleaseth it your Highness the Premisses graciously to
“ consider, and that ye be by the Advice of your Lords Spiritual and
“ Temporal, and by the Authority of this your present Parliament,
“ for the Consideration of your high Estate, and in Comfort and Ease
“ of your poor Commons, would take, resume, seize, and retain in
“ your Hands and Possession all Honours, &c.”

This was very plain dealing by the People with their King :

And this is the Success of the Demand of Supply and Support had in those Days, being required in Point of Gratification, without any Recompense or Retribution for it.

Thus

Thus then we have cleared this Point, that between 50 *Edward III.* and 4 *Mary*, there was not one Imposition set without Assent of Parliament.

Queen *Mary* in the fourth Year of her Reign upon the Wars with *France*, set an Imposition upon Clothes, for the Consideration that the Custom of Wools was decayed, by reason for the most part they were made into Clothes, which afforded little Custom :

For that which in Wool payed for Custom and Subsidy Forty Shillings, made into Cloth paid but Four Shillings and Four Pence.

To recompense this by an indifferent Equality, there was set upon a Cloth Five Shillings and Six Pence, which Imposition did not make up the Loss sustained in the Custom of Wool by Thirteen Shillings and Four Pence in Forty Shillings.

This was *justum*, but not *juste*.

This religious Prince, environed with infinite Troubles in the Church and Common-wealth, and much impoverished by her Devotion in renouncing the Profits of the Church Lands that were in the Crown by the Suppression, was the first that made Digression from the Steps of her worthy Progenitors, in putting on that Imposition without Assent of Parliament; for that very Consideration of the Loss of Custom, by turning of Wool into Clothing, came into Treaty the twenty fourth Year of *Edward III.*; when the Act of Clothing begun first to be much practised in this Kingdom, and then in the Recompense of the Loss sustained in the Decay of Custom of Wools, there was set upon a Cloth by Act of Parliament, above the old Custom, One Shilling and Four Pence.

This is recited in a Record in the *Exchequer*, 48 *Edward III. Rot. 2. Rem. Thes. in Origin.*

But I pray you examine how this Supposition of Queen *Mary* was digested by the People :

We see in the Case in my Lord *Dyer*, 1 *Eliz. fol. 165. a. No. 5.* that the Merchant found great Grief at it, and made Exclamation and Suit to Queen *Elizabeth*, to be unburdened of it.

The very Reason of their Grief expressed in that Case, is because it was not set on by Parliament, but by the Queen's absolute Power; so that was the Ground of that Complaint, the very Point of Right.

This Case was referred to all the Judges, to report whether the King might set on this Imposition without Assent of Parliament :

They divers Times had Conference about it, but have not yet made Report for the King, which is an infallible Presumption that their Opinions were not for him.

For it is a certain Rule among us, that if a Question concerning the King's Prerogative, or his Profits, be referred to the Judges, if their

Opinion be for the King, it will be speedily published, and it were Indiscretion to conceal it; but if there be no Publication, then we make no doubt but either their Opinions are against the King, or at least they stick and give none for him.

The same Queen *Mary*, upon Restraint of bringing in *French* Commodities, occasioned by the then Wars with *France*, set an Imposition on *Gascoign* Wines, which continueth yet.

So the Kingdom of *England*, by the Injustice of that Prince, was charged with these two heavy Impositions contrary to the Right of the Kingdom, and the Acts of her Progenitors.

Queen *Elizabeth* set on that upon Sweet Wines, which grew also upon the Occasion of the Troubles with *Spain*.

That upon Allom was none, it was rather a Monopoly to Mr. *Smith*, the Customer of *London*, for the ingrossing of all Alloms into his own Hands, for which Privilege he gave a voluntary Imposition upon that Commodity.

It was like the Privilege granted to *John Pechey* of the Sweet Wines by *Edward III*, for which the Patentee was called into the Parliament House 50 *Edward III*, and was there punished, and his Patent taken away and cancelled.

What Impositions have been set on in the King's Time I need not express; they are set down particularly in the Book of *Rates*, that is in Print, they are not easily numbered.

The Time for which they are raised is not short;

The Patent prefixed to that Book bearing Date 28 *July*, 6 *Jacobi*, will instruct you sufficiently in that Point; they be limited to the King, his Heirs and Successors, which I suppose is the first Estate of Fee Simple of Impositions that ever Man read of.

VIII. My *Eighth* and last Observation is upon Tonnage and Poudage given to the King of this Realm upon Wares and Merchandizes exported and imported, which is an Imposition by Act of Parliament, and as it will appear was given out of the Peoples Good-will, as a very Gratification to the King, to enjoin him thereby from the Desire of voluntary Impositions, and to conclude him by that Gift in Parliament from attempting to take any other, without Assent of Parliament.

For after the ceasing of voluntary Impositions, these Parliamentary ones were frequent in the Times of the Kings that succeeded; but they were never given but for Years, with express Caution how the Money should be bestowed, as towards the Defence of the Seas, Protection of Traffick, or some such other publick Causes, sometimes special Sequestrators made by the Act of Parliament, by whose Hands
the

the Money should be delivered, as 5 *Richard II. cap. 3.* in a printed Statute.

The Rates that were given were very variable, sometimes Two Shillings Tonnage, and Six Pence Poundage; as 7 *Rich. II.* Three Shillings Tonnage, and One Shilling Poundage, 10 *Rich. II.* which Grants were not to endure the longest of them above a Year; One Shilling and Eight Pence Tonnage and Six Pence Poundage, granted to *Henry IV.* in the 13th Year of his Reign for a certain Time: In which Statute there is this Clause:

Rot. Parliam.
7 Rich. II.
N^o 13.
10 Rich. II.
N^o 12.
17 Rich. II.
N^o 12.

That this Aid in time to come should not be taken in Example; to charge the Lords and Commons in manner of Subsidy, unless it be by the Lords and Commons, and that by a new Grant to be made in full Parliament in Time to come.

This Clause in good and proper Construction may be taken to be a very Convention between the King and his People in Parliament, that he should not from thenceforth, nor any of his Successors, set on Impositions without Assent of Parliament.

The like Imposition was granted to *Henry V.* in the first Year of his Reign for a short Time, towards the Defence of the Realm, and Safeguard of the Sea, upon Condition expressed in the Act, That the Merchants, Denizens, and Strangers coming into the Realm with their Merchandizes, should be well and honestly used and handled, paying the said Subsidy, as in the Time of his Father and his noble Progenitors Kings of *England*, without Oppression or Extortion:

Rot. Parliam.
1 Hen. V.
N^o 17.

In the End of which Act the Commons protested, being bound by any Grant in Time to come for the Purposes aforesaid.

Henry VI. in the thirty-first Year of his Reign, had Tonnage and Poundage given him for his Life.

Rot. Parliam.
31 Hen. VI.

Edward IV. had it given him the third Year of his Reign, as it appeareth in a Statute 12 *Edw. IV. cap. 3.*

12 Edw. IV.
cap. 3.

Henry VIII. in the sixth Year of his Reign, and all since in the first Year of their Reigns; and have it given them for Term of their Lives: And being now so certainly settled in it, do reach farther at that from which they are in Conscience and Honour excluded by this voluntary Gratification.

6 Hen. VIII.
cap. 22.
1 Edw. VI.
cap. 13.
1 Ma. cap. 18.
1 Eliz. cap. 19.
1 Jac. cap. 32.

For can any Man give me a Reason why the People should give this Imposition of Tonnage and Poundage upon the due Custom upon all Commodities, if the King by his Prerogative might set on Impositions without Assent of Parliament:

And were not that a weak Action in a King, to take that of his People as a Benevolence from them, with Limitation of the same, and in what it should be employed, and how they will be used for it, and for what Time he shall have it; which he might justly take

take

take without their Consents unlogged of these unpleasing Incumbrances.

The Statute of Tonnage and Poundage made in our Times that are altogether inclined to Flattery, do yet retain in them certain Shews and Rumours of those ancient Liberties, although indeed the Substance be lost; as in the Statute 1 *Jac. cap.* 33. “ We declare that “ we trust and have sure Confidence of his Majesty’s Good Will towards us, in and for the keeping and sure defending of the Seas; “ and that it will please his Highness, that all Merchants, as well “ Denizens as Strangers, coming into this Realm, be well and honestly treated and demeaned for such Things whereof Subsidy is “ granted, as they were in the Time of the King’s Progenitors and “ Predecessors, without Oppression to them to be done.”

By this Clause, as it now continueth, the true Intent of this Statute appeareth to be, that there ought to be no other Imposition laid upon Merchants, besides these given by this Statute; and this Intention hath been well interpreted by Use and Practice, from the Time of *Edward III.* to the Time of *Queen Mary*, as is before declared.

Thus much of the last Reason made from Observation, and the Action of our Nation.

I will answer now such main Objections as have been made against the People’s Right, and have not been touched by me *obiter* in my Passage through this Discourse.

That which hath been most insisted upon is this, That the King by his Prerogative Royal hath the Custody of the Havens and Ports of this Island, being the very Gates of this Kingdom: That he in his Royal Function and Office is only trusted with the Keys of these Gates: And that he alone hath Power to shut them and to open them; when and to whom he in his Princely Wisdom shall see good.

That by the Law of *England* he may restrain the Persons of any from going out of the Land, or from coming into it.

That he may of his own Power and Discretion prohibit Exportation and Importation of Goods and Merchandizes, and out of this Prerogative and Preheminence, the Power of imposing, as being derivative, doth arise and result: For,

Cui quod majus est licet & ei quod est minus licitum est.

So their Reason briefly is this, The King may restrain the Passage of the Person and of the Goods; therefore he may suffer them not to pass, but *sub modo*, paying such an Imposition for his Sufferance as he shall set upon them.

For

For the Grounds and Propositions laid in this Objection, I shall not be much against any one of them; others must be qualified e'er they be confessed; but the Inference and Argument made upon them I utterly deny.

For in it there is *Mutatio Hypothefis*, and a Transition from a Thing of one Nature to a Thing of another.

As the Premisses are of a Power in the King only fiduciary, and in Point of Trust and Government, the Conclusion infers a Right of Interest and Gain.

Admit the King hath *Custodiam Portuum*, yet he hath but the Custody, which is Trust, and not *Dominium utile*.

He hath Power to open and shut upon Consideration of publick Good to the People and State, but not to make Gain and Benefit by it:

The one is Protection,

The other is Expilation.

The Ports in their own Nature are publick, free for all to go in and out, yet for the common Good. Portus sunt publici.

This Liberty is restrainable by the Wisdom and Policy of the Prince, who is put in Trust to discern the Times when this natural Liberty shall be restrained.

In 1 *Henry VII. fol. 10.* in the Case of the *Florentines*, for their Allom, the Lord Chief Justice *Huffey* doth recite a Case, that in the Time of *Edward IV.* a Legate from the Pope being at *Calais* to come into *England*, it was resolved in full Council (as the Book sayeth) before the Lords and Judges, that he should not have Licence to come into *England*, unless he would take an Oath at *Calais*, That he would bring nothing with him that should be prejudicial to the King and his Crown.

The King may send his Writ *Ne exeas Regnum* to any Subject of the Realm; but the Surmise of the Writ is, *Quia datum est nobis intelligi, quod tu versus partes externas absque licentia nostra clam destinas te divertere, & quamplurima nobis & coronæ nostræ præjudicia prosequi*, *Fitzh. Nat. Br. 85 b.* So in Point of Government and common Good of the Realm, he may restrain the Person: But to conclude therefore he may take Money not to restrain, is to sell Government, Trust, and common Justice, and most unworthy the divine Office of a King.

But let us compare this Power of the King in Foreign Affairs, with the like Power he hath in Domestick Government;

There is no Question but the King hath the Custody of the Gates of all the Towns and Cities in *England*, as well as all the Ports and Havens; and upon Consideration of the Weal Publick, may open and shut them at his Pleasure: As, if the Infection of the Sicknes be dan-

gerous in Places vicine to the City of *London*, the King may command that none from these Places shall come into the City.

May he therefore set an Imposition upon those that he suffereth to come into the City?

So if, by reason of Infection, he forbid the bringing of Wares and Merchandizes from some Cities and Towns in this Kingdom to any great Fair or Mart,

Shall he therefore restrain the bringing of Goods thither, unless Money be given him by way of Imposition?

The King in his Discretion, in Point of Equity, and for qualifying the Rigour of the Law, may enjoin any of his Subjects by his Chancellor, from suing in his Court in Common Law;

May he therefore make a Benefit by restraining all from Suits in his Courts, unless they pay him an Imposition upon their Suits?

In the 2^d of *Edward III.* in the Case of the Earl of *Richmond* before cited, the King had granted unto the Men of *Great Yarmouth*, That all the Ships that arrived at the Port of *Yarmouth*, which consisted of three several Ports, *Great Yarmouth*, *Little Yarmouth*, and *Gerneston*, should arrive all at *Great Yarmouth*, and at no other Place within that Port.

The Lawfulness of this Patent being in Question in the King's Court, it was reasoned on the King's behalf, for the upholding of the Grant, as it is now, that the King had the Custody of the Port, he might restrain Merchants from landing at all in this Kingdom; therefore out of the same Power might appoint where and in what Haven they should land, and in no other.

This Patent was demurred on in the *King's Bench*, as being granted against the Law; but the Case depending was adjourned into Parliament, for the Weight and Consequence of it: And there the Patent was condemned, and a Law made against such and the like Grants.

9 Edw. III.
cap. I.

The Precedents that were vouched for the Maintenance of this Power of Restraint in the King, were Four, produced almost in so many Hundred Years; whereof Two were in the second Year of *Edward I.* One in the tenth Year of *Edward III.* another in the seventeenth Year of *Henry VI.*

Rot. Parliam.
2 Ed. I. m. 16.
Rot. Fin.
2 Ed. I. No 17.
Rot. Claus.
10 Edw. III.
dors 31.
Rot. Claus.
17 Hen. VI.
dors.

Since which Time we hear of none, but by Act of Parliament, as they had been usually and regularly before.

To these I will give Answer, out of themselves, out of the Common Law, out of divers Statutes, and out of the Practice of the Common-wealth.

The Restraint in the Time of *Edward I.* the one of them was to forbid the carrying of Wool out of the Realm; the other was to forbid all Traffick with the *Flemings*.

That

That of 10 *Edward III.* was to restrain the Exportation of Ship Timber out of the Realm :

That of 17 *Henry VI.* to prohibit Traffick with the Subjects of the Duke of *Burgundy.*

These Precedents are rare, yet they have in them Inducements out of publick Respects to the Common-wealth.

For the Rule of Common Law in this Case, I take it to be as the Reverend Judge Sir *Anthony Fitzberbert*, *N. B.* 85. holds it in his Writ of *Ne exeas Regnum in Nat. Br.* That by the Common Law any Man may go out of the Kingdom.

But the King may, upon Causes touching the Good of the Common-wealth, restrain any Man from going, by his Writ or Proclamation ; and if he then go, it is a Contempt.

This Opinion of his is confirmed by the Book 1 *Eliz.* fol. 165. *Dyer.* 12 and 13 *Eliz.* *Dyer* 296.

In like manner, if a Subject of *England* be beyond Sea, and the King send to him to repair Home, if he do it not, his Lands and Goods shall be seized for the Contempt.

And this was the Case of *William de Bretaine* Earl of *Richmond* : 19 *Edward II.* he was sent by the King into *Gascoigne* on a Message, and refused to return ; for which Contempt his Goods, Chattels, Lands and Tenements were seized into the King's Hands.

The Record is cited in the 2^d and 3^d of *Philip* and *Mary*, in my Lord *Dyer*, fol. 128. *b.* and the Law there held to be so at that Time upon a Question moved in the Queen's behalf, against divers, that being beyond the Seas refused to return upon Commandment sent unto them to that Purpose.

The same is again for Law confirmed in the Case of the Duchess of *Suffolk*, 2 *Eliz.* *Dyer* 176.

But the Common Law was altered in this Point by the Statute of 5 *Richard II.* by which the Passage of all People is defended, that they may not go without Licence, except the Lords and other great Men of the Realm, Merchants and Soldiers.

So for the Merchants, which are the People dealt withal in the Business in hand, the Common Law remaineth as it did before the Statute. And so it was held 12 *Eliz.* *Dyer* 196. where the Case was,

An *English* Merchant, being a Papist, went over Sea, and being there, did settle himself to remain there for enjoying the Freedom of his Conscience :

It was moved here in *England*, that his going without Licence should be a Contempt, because he went not to traffick as a Merchant, but for the Cause of Religion.

It

It was resolved that no such Averment would be taken in this Case; for that the very Calling and Vocation of being a Merchant did give him Liberty to go out of the Kingdom when he would: And therefore his secret Intent of going away was not to be enquired after; *Sed Lex inspicit quod verisimile.*

Therefore in this Case it was held no Contempt; but at this Day the Law is as it was before 5 *Richard II.* For that Statute is repealed 4 *Jac. cap. 1.*

And all Men whatsoever are now at Liberty by the Common Law to pass out of the Realm.

There is only against this inconvenient Liberty a Proclamation dated at *Westminster, 19 Jul. 5 Jac.* to the very same Effect in Point of Restraint of Passage with the Statute of *Richard II.* So the Subject is in this much the more at Ease and Liberty than he was before.

That his going over Sea without Licence, doth not incur any Forfeiture, but only incurreth the Censure of a Contempt; and therefore it were to be wished, that some firm Law might be made in the Case, both for the Execution of so good a Point of Policy, and for the more Quiet of the State, in knowing the Certainty of the Punishment for the Offence.

This Liberty and Freedom of Merchants hath been strengthened and confirmed by many notable Laws recited; as, 14 *Edw. III. Stat. 2. cap. 2.* 15 *Edw. III. Stat. 2. cap. 5.* 13 *Edw. III. Stat. 1. cap. 3.* and divers other.

And therefore, though it be admitted, that the King may restrain Persons and Goods, yet it may well be denied, that he hath Power of himself alone, without Assent of Parliament, simply and indefinitely to restrain all Traffick in general, or to shut up all the Havens and Ports, and to bar the Vent and Issuing of Wares and Merchandizes of the whole Kingdom, as it appeareth plainly, that this hath been done these three hundred Years or near thereabouts, by Act of Parliament only:

And that the Kingdom of *England* made this Matter of Traffick so tender a Case to deal in, as that it hath ever held it a Matter fit for the Consultation of the Great Council of the Kingdom, and for no other.

In the 11th of *Edward III.* the Exportation of Wools was prohibited by the Act of Parliament, in which Statute there was this Clause: *Until that by the King and his Council it be thereof otherwise provided.*

Which Power so given to the King to be used for the Good of the Common-wealth, gave occasion to him to abuse it to his Profit and Commodity, by giving Licences of Transportation to all that would

would give Forty Shillings upon a Sack of Wool above the due Custom.

This appeareth in the Records in the *Exchequer*, 13 *Edward III.* Rot. 2. Rem. Tbes.

I will describe the Record, that you may perceive the Ground of it the better :

Rex Collectoribus Custumæ in Portu Magnæ Jermouth, salutem. Quia concessimus dilecto & fideli nostro Hugoni de Wriotbesley, quod ipse viginti & septem saccos Lanæ & dimid. de Lanis suis propriis in Portu prædicto cariare, & eos usque Antwerp ad Stapulam nostram ibidem ducere possit, solvendo ibidem dilecto Clérico nostro Willielmo de Nortbwell, custodi Guarderobæ nostræ 40 s. pro quolibet sacco pro Custumæ & Subsidio inde nobis debitis, &c. Vobis mandamus quod prædictum Hugonem dictos viginti septem saccos Lanæ & dimid. in Portu prædicto cariare permittatis, &c. 13 Edw. III.
Rot 12.R.Th.

And another the same Year :

Rex Collectionibus Custumæ, &c. Cum nuper ordinaverimus quod passagium Lanarum, &c. apertum existeret, & quod Sigillum nostrum quod dicitur Coket, quod prius claudi & sub sera custodiri mandavimus, aperiretur & apertum teneretur : Ideo vobis mandamus quod Sigillum prædictum in Portu prædicto aperiri & apertum teneri faciatis ; & omnes illos qui hujusmodi Lanas cariare & ducere velint permittatis, receptis prius ab iisdem, videlicet, de Mercatoribus & aliis Indigenis, 40 s. de quolibet sacco Lanæ.

Divers other such Sales of Traffick, occasioned by this Parliamentary Restraint, were made between 11 *Edward III.* that the Restraint was made ; and 14 *Edward III.* that this Inconvenience being espied, the Sea was opened by Statute, and the Restraint removed, 14 *Edward III.* Stat. 2. cap. 2. 15 *Edward III.* cap. 5. Stat. 2.

And this Forty Shillings so exacted was complained of as an Imposition in Parliament ; and the Occasion and the Effect were both taken away together by Act of Parliament 14 *Edw. III.* Stat. 1. cap. 21. and Stat. 2. cap. 1.

It followed in all Kings Times since the Death of *Edward III.* that this opening and shutting of the Havens, restraining and enlarging of Traffick, was done by Act of Parliament.

I will give one Instance in the Reign of every King :

5 *Rich. II.* cap. 2. Stat. 2. For the Passage of Wool, Wool-fels, and Leather.

6 *Hen. IV.* cap. 4. For the Traffick and Commerce with Merchants Aliens.

2 *Hen. V.* cap. 6. Stat. 2. For the Restraint of Staple Commodities to Places certain ; and for the Traffick of the Merchants of the West.

27 *Hen. VI.* cap. 1. That is enacted in Parliament, which is contained in the Proclamation, 17 *Hen. VI.* cited for a Precedent ; that is,

5 H

Because

Because the Duke of *Burgundy* made an Ordinance whereby the Traffick of the *English* Nation was restrained, That therefore the *English* Men should not traffick with the Subjects of the Duke of *Burgundy*.

The same enacted upon the like Occasion, 4 *Edw.* IV. *cap.* 1.

19 *Hen.* VII. *cap.* 21. The Importation of divers Commodities forbidden, as being prejudicial to the Manufactures within the Realm.

6 *Hen.* VIII. *cap.* 12. The Exportation of *Norfolk* Wools out of the Realm forbidden.

26 *Hen.* VIII. *cap.* 10. Power is given to the King to order and dispose of the Traffick of Merchants at his Pleasure: And the Reason is given, because otherwise the Leagues and Amities with Foreign Princes might be impeached by reason of Restraint made by divers Statutes then standing on foot; whereby it appeareth, that it was not then taken for Law, that the King had not an absolute Power in himself to order and dispose of the Course of Traffick without Help of a Statute.

2 *Edw.* VI. *cap.* 9. Exportation of Leather restrained.

1 and 2 *Phil. & Mar.* The Exportation of Herring, Butter, Cheefe, and other Victuals forbidden.

18 *Eliz.* *cap.* 8. The Exportation of Tallow, raw Hides, and Leather.

So in all Times no use of Proclamations in Matters of this Nature, but Acts of Parliament still procured.

Wherefore, in mine Opinion, it behoveth them that do so earnestly urge this Argument, *The King may restrain Traffick, therefore may impose*, to prove better than they have done, that the King may restrain Traffick of his own absolute Power.

For as the natural Policy and Constitution of our Common-wealth is, we may better say, That is Law which is *De more Gentis*, than that which followeth from the Reason of any Man guided by his general Notion and Apprehension of Power Royal, *in genere*, not *in individuo*.

The last Assault made against this Right of the Kingdom was an Objection grounded upon Policy and Matter of State; as, that it may so fall out, that an Imposition may be set by a Foreign Prince, that may wrong our People; in which Case the Counterpoise is to set on the like here on the Subjects of that Prince; which Policy, if it be not speedily executed, but stayed until a Parliament, may in the mean time prove vain and idle, and much Damage may be sustained, that cannot afterwards be remedied.

This Strain of Policy maketh nothing to the Point of Right: Our Rule is in this plain Common-wealth of ours, *Oportet neminem esse sapientiores Legibus*.

If

If there be an Inconvenience, it is fitter to have it removed by a lawful Means than by an unlawful.

But this rather a Mischief than an Inconvenience, that is a Prejudice in present to some few, but not hurtful to the Common-wealth: And it is more tolerable to suffer an Hurt to some for a short Time, than to give way to the Breach and Violation of the Right of the whole Nation:

For that is the true Inconvenience; neither need it be so difficult or tedious to have the Consent of the Parliament, if they were held as they might or ought to be.

But our surest Guide in this will be the Example of our Ancestors in this very Case, and that in the Time of one of the most politick Princes that ever reigned in the Kingdom, 7 *Hen. VII. cap. 7.* you shall find an Act of Parliament, in which it was recited, That the *Venetians* had set upon the *English* Merchants that laded Malmesies at *Candia*, four Duckets of Gold upon a Butt, which in Sterling was Eighteen Shillings the Butt:

It was therefore enacted, That every Merchant Stranger that brought Malmesie into this Kingdom, should pay Eighteen Shillings the Butt, over and above the due Custom used:

This Imposition to endure until they of *Venice* had set aside that of Four Duckets the Butt upon *Englishmen*.

Much hath been learnedly uttered upon this Argument in the Maintenance of the People's Right, and in answering that which hath been pressed on the contrary: But my Meaning is not to express in this Discourse, all that hath or may be said on either Side; but only to make a Remembrance somewhat larger of that which I myself offered as my *Symbolum* towards the making up of this great Reckoning of the Common-wealth; which, if it be not well audited, may in time cost the Subjects of *England* very dear.

My Hope is of others that laboured very worthily in this Business, that they will not suffer their Pains to die; and therefore I have foreborn to enter into their Provinces.

I will end with that Saying of that true and honest Counsellor *Philip Comines*, Book 5. Chap. 18.

“ That it is more honourable for a King to say, *I have so faithful and obedient Subjects, that they deny me nothing I demand*; than to say, *I levy what me list, and I have Privileges so to do.*”

“ And those Courtiers (adds he) that preach any other Doctrine, do not a little mistake the Interests of their Masters; and are so far from exalting their Grandeur and Prerogative, that they make them indeed no Kings.”

Now he that shall well consider this Argument, will observe two Things:

First,

First, That it justifies the Truth and Legality of the Commons Remonstrance against Impositions.

Secondly, And whosoever will fairly compare this Argument with the Report of *Bates's Case*, adjudged by the Barons in the *Exchequer* for the King, must be sufficiently convinced of the Truth of what that excellent and learned Person and my honoured Friend the late Lord Chief Justice *Vaughan* observed in *Sheppard and Gosnold's Case*.

Vaughan's
Reports,
fol. 161.

His Words are these :

“ Upon a Question raised upon occasion of a new Imposition laid
“ by Queen *Mary* upon Clothes, the Judges being consulted about it
“ 1 *Eliz.* the Book is,

“ *Nota*, That *English* Merchants do not pay at Common Law any
“ Custom for any Wares or Merchandizes whatever, but Three;
“ that is, Wool, Wool-fels, and Leather: That is, *pro quolibet Sacco*
“ *Lanæ continente 26 pierres & chescun, pier 14 pound un demy Mark;*
“ and for three hundred Wool-fels, half a Mark; and for a Last of
“ Leather, Thirteen Shillings and Four Pence: And that was equal
“ to Strangers and *English* Merchants.”

This was in those several Reigns the Opinion of all the Judges of the Times :

Whence we may learn, how fallible even the Opinion of all the Judges is, when the Matter to be resolved must be cleared by Searches not common, and depends not upon Cases vulgarly known by Readers of the Year Books.

For since these Opinions, it is known these Customs called the *Old* or *Antiquæ Custumæ*, were granted to King *Edward I.* in the third Year of his Reign by Parliament, as a new Thing; and was no Duty belonging to the Crown by the Common Law.

But the Act of Parliament itself, by which this Custom was granted, is no where extent now, but undeniable Evidence of it appears.

Thus spake the Reverend Chief Justice of the *Common Pleas*, whom none can deny to have been a great Master of the Knowledge of ancient Records and Historians, as of the general Law itself, and by Consequence a proper Judge to determine what was, and what was not, the Prerogative of the Crown, both by the Common and Statute Laws of the Kingdom.

F I N I S.

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