THE

TRYAL

OF

John Hambden, Esq;

(Of *Stoke-Mandeville* in the County of BUCKS)

In the Great CASE of

SHIP-MONEY,

BETWEEN

His Majesty K. *Charles* I. and that Gentleman.

Wherein are Inserted,

The whole RECORD in *Latin* and *English*: The Several Arguments of COUNCIL Learned in the Law, on both Sides, in that most remarkable CASE at the Bar; with the Opinions of all the Judges on the Bench in the *Exchecquer-Chamber*, &c.

AS ALSO

Mr. *St. John*'s SPEECH in the HOUSE OF LORDS, *Jan.* 7. 1640. concerning SHIP-MONEY.

WITH

Mr. *Waller*'s SPEECH to the HOUSE OF COMMONS, *April* 22, 1640. on the Same Subject: And,

His Famous SPEECH in Parliament, at a Conference of Both HOUSES, in the Painted-Chamber, *July* 6, 1641. on the Exhibiting ARTICLES, by the COMMONS, against Mr. Justice CRAWLEY, one of the Judges who gave Judgment for the KING in that Cause.

To which is Added,

The TRYAL of THOMAS HARRISON, Clerk, for Words spoken against Mr. Justice HUTTON (when upon the Bench) Accusing him of High-Treason, and the Proceedings thereupon, and his Sentence by the Court.

The Whole being Printed from Authentick Manuscripts.

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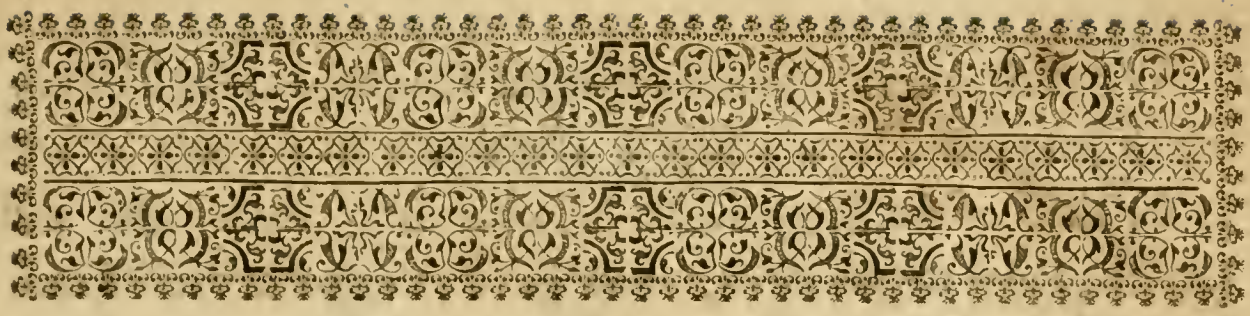

THE

PREFACE.

THE Collection of STATE-TRYALS in Four Volumes in *Folio*, being a Work ſo very uſeful and neceſſary, to make it more compleat, it was thought fitting (at the Deſire of Several Perſons of Eminency and Diſtinction in the Law) to add to it the Remarkable Tryal of Mr. *Hambden*, in the Great Caſe of SHIP-MONEY (between His Majeſty King *Charles* I. and that Gentleman.) For that Reaſon therefore we cauſed it to be Printed of the ſame Size, and on the ſame Paper: Tho' it would have been inſerted in the Collection, could the Proprietors of this Copy have been prevailed upon to have parted with their Property to the Undertakers, on their Terms, which were unaccountably unreaſonable.

IT is is true, there are ſome of the Speeches in *Ruſhworth*, (a Book very ſcarce, and in few Hands) but then their Number is but very ſmall, and of one Side only, without the Records and other material Proceſs herein contained, which are carefully Printed from ſuch Authentick Manuſcripts, that Envy itſelf cannot detract from their Intrinſick Worth and Value: And thoſe who would vainly endeavour to Impoſe on Mankind, That this TRYAL is in *Ruſhworth*, not only diſcover their Folly and Ignorance, but ſhew themſelves guilty of Impotent Malice, and moſt Scandalous and Invidious Reflections.

WE ſhall therefore ſay nothing of the Excellency of this Work, which is ſo uſeful for all *Engliſh* Gentlemen in general, as well as for thoſe of the Long Robe in particular; thoſe who will take the Pains to peruſe it, will be convinced of this Truth. The Twelve Judges, before whom this Caſe was Argued in the *Exchecquer-Chamber*, and the Council on both Sides unanimouſly agreed, that no Caſe like this ever was Argued in any Court of Judicature; they all declared it to be a Matter of the higheſt Concern and Importance, and there was ſuch a Multitude of *Caſes*, *Precedents*, and *Records*, (above 300) quoted on both Sides, and ſo many excellent Arguments made, of the greateſt Learning, that the whole would ſeem almoſt incredible, but to thoſe who will read them with Attention.

HOW this Great Caſe went is well known to every one who has the leaſt Acquaintance with Hiſtory: The Times were then troubleſome, and ſome People took hence occaſion to blow up the Coals of Diſſention, which at laſt broke out into that Dreadful Conflagration, as ended in the Deſtruction of an Unfortunate Monarch, and compleated the Ruin of the beſt Conſtitution in the World.

ALL the Judges (long before this Caſe was Argued in the *Exchecquer-Chamber*) gave their Opinions in Writing under their Hands for the KING; but whether, in this Affair, thoſe Sages in the Law acted like Faithful Counſellors, muſt be left to the Learned in that Profeſſion to determine. Every Man will think as he is inclined; however, moſt certainly, it is of the greateſt Concernment and Importance, for a Prince to have about him Faithful Counſellors; for after all, let him be never ſo Wiſe, Good, and Juſt, it is an undoubted Truth, that *Princes* See with others Eyes, and Hear with others Ears.

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The

ERRATA.

PAg. 62. Lin. 21. being the Second Line in the Third Paragraph, *read,* in *May* last. p. 65. l. 48. r. *Bicorne Argumentum.* p. 120. l. 16. r. it could not but have proceeded. p 152. l. 21. *dele* not. p. 214. l. 5. r. *premissis.* p. 219. l. 18. r. *ad pejus,* and speak. p. 220. l. 26. r. because.

THE

THE TRYAL OF John Hambden, Esq; IN THE Great CASE of *SHIP-MONEY*, &c.

The SPEECH of THOMAS *Lord* Coventry, *Lord-Keeper of the* Great Seal *of* ENGLAND; *by Command from His Majesty, to all the Judges of Assize of* England, *in the* Star-Chamber, JUNE 17th, 1635.

My Lords the Judges,

THE Term being done and ended, the Assizes are at hand: You are to divide your selves for your several Circuits. Circuits are for the Service of the King and the Good of the People; they are the Execution of the King's Laws and Administration of Justice. In the Term, the People follow and seek after Justice, but in the Circuit, Justice followeth and seeketh after the People. So gracious is the Frame and Constitution of the King's Government, that twice a Year, at the least, Justice followeth the Subject home to their own Doors, which, as it is a great Ease to the Trouble, Charge, and Travail of the Country, so it giveth the People a better Knowledge of Justice; and the End of it, that they may bless God and the King for the same.

It hath been the Custom, that before your Circuit you should receive some Directions as the King, or his Council, thinks seasonable to impart unto you, for the Service of the King and Weal of the People: In the declaring whereof, I shall say little of the just Act you are to do between Party and Party, only that you do equal Right between Poor and Rich; the Particulars are left unto your selves as they happen in your Circuits: But since you are sent by the King to hear the Causes of the People, it is his Majesty's Pleasure, that you so hear and order the same, that they may have no Cause to complain to his Majesty either for Denial or Delay of Justice.

Of the Trial of Capital Offenders, I shall say as little; that Part of Justice moveth in a Frame, and if all Officers under you did their Parts, you should walk in so strait a Path, that you would find it very hard to tread awry; therefore you had need to heed them narrowly, least they pervert Justice: Look to the Corruptions of the Sheriffs and their Deputies; the Partiality of Jurors; the bearing and siding with Men of Countenance and Power in their Country: When you meet with any such, your Proceedings ought to be severe and exemplary against them, otherwise Justice shall be overborn, howsoever in your own Persons you bear your selves with never so much Uprightness.

And because the Time of Assize is very short, and expireth in a few Days, it is necessary that you afford as much Time as may be unto those Businesses that are most general, and most concern the Publick; the Trials of *Nisi prius*, and particular Causes, they are in the Number of those things that are not to be left undone; but those things that concern the general and publick Good, you are to account them as the weightier Matters of the Law; and therefore you are to take them into your prime and chief Care and Cogitation. Now amongst those, I shall commend unto you in the first Place, The presenting and convicting of Recusants; for as it concerneth Religion, so it hath Relation to his Majesty's Profits, which are two great Motives, to which

you may add a third, because the King hath many Years since assigned these Forfeitures to the Publick Defence.

In the next Place, I do require you, that you make a strict Inquiry after Depopulations and Inclosures, a Crime of a crying Nature, that barreth God of his Honour, and the King of his Subjects, Churches and Houses go down together: His Majesty knoweth and taketh Notice that according to former Directions given you in this Place, you have given it in Charge to the Grand Inquests to inquire of, but to little Effect; and without doubt the Freeholders of *England* do hate and detest them: Depopulation is an Oppression of an high Nature, and commonly done by the greatest Persons, that keep the Jurors under and in Awe, and that is the Cause there are no more presented and brought in question; but however, your Charge and Inquiry, touching this Point, hath not taken effect worthy his Majesty's Care and your Pains, yet his Majesty willeth, that you do not cease, but inquire on still; for it is his Resolution, against all Opposition, to make all Men see he hath a Care of this overspreading Evil, and of the Means of his People to have Churches and Towns demolished, and his People eaten up like Bread, to satisfy the greedy Desires of a few, who do waste as profusely, as they do gather together unconscionably, and bring unto their Posterity that Woe which is pronounced against those that lay House to House, and Field to Field, to dwell alone in the midst of the Earth.

The next Thing that I shall mention unto you, is, the rectifying and reforming of Alehouses and Tippling-houses, and those I account one of the greatest Pests of the Kingdom. First, therefore, Let none be enabled to set up or continue without Licence: There are a kind of People that do take upon them Licences, Recognizances, or Laws, or what you will, and who have been a great deal the worse, because they see a great Multitude tolerated that have no Licence; and therefore I give it in charge, to take a Course that none be permitted unless they be licensed: And for the licensed Alehouses, let them be but a few, and in fit Places; if they be in private Corners and ill Places, they become the Dens of Thieves, they are the publick Stages of Drunkenness and Disorder. In Market-Towns, or in great Places or Roads, where Travellers come, they are necessary.

Next unto this, let those that be licensed be held strictly to it, according to the Law. It hath been observed, and very truly, that in the Taverns, Inns, and Ale-houses in *England*, by the Falshood of their Measure, and their unjust Prices, they have drawn more Money from the Guest, than out of the Excise of Ale and Beer are drawn out in *Holland*; a strange thing that People for a publick Work, for any thing that is good, should be loath to part with any thing, and yet, with open Eyes, to see themselves deceived by such base and lewd People.

Next unto this, let Care be taken in the Choice of Alehouse-keepers, that it be not appointed to be the Livelihood of a great Family; one or two is enough to draw Drink and serve the People in an Alehouse, but if six, eight, ten, or twelve, must be maintained by Alehouse-keeping, it cannot choose but be an exceeding Disorder, and the Family by this Means is unfit for any other good Work or Employment. I have not Skill enough to understand all the Inconveniencies that come from this one ill Fountain, and my Memory will not contain what I have so many Times observed of them my self; but your Lordships have a Knowledge and Experience of them, therefore I will leave them unto you; only this, that because in many Places these swarm by the Default of the Justices of the Peace, that set up too many, and there are none (except your selves at the Assizes) all the Year long can meet with this Evil, but the Justices of the Peace. And if the Justices of Peace will not obey your Charge herein, certifie their Default and Names, and I assure you they shall be discharged. I once did discharge two Justices for setting up one Alehouse, and shall be glad to do the like again upon the same Occasion.

In the next place, I will commend unto you the Punishment of Vagabonds and Wanderers: To beguile the Alehouses of such unruly Guests, it would make some Way of Amendment to those Alehouses; and it cannot be deny'd, but the Law hath appointed hands enough to do this Work; the Constable, Headborough, Tything-men, and the rest of the inferior Officers, and the Watchmen, who may do all with a particular Warrant from the Justices of Peace, and the Justices of the Peace are bound to call them to an Account, and to punish them for their Neglect. If this were done, and other Officers were chosen as they ought to be, not People of little Wealth, and as little Understanding, but that they were elected out of the better Sort of Yeomanry, and the Watches kept by able Men, I am sure that these loose People that wander up and down will quickly be gone; therefore you may do well to let it be known in the Country, that the Lords of Leet, and those that have the Elections of Constables and Officers, they are, by the Law, answerable for their Choice. There hath been Presidents, that where an insufficient Coroner hath been chosen by a County, the whole County hath been answerable to the King for the Coroner's Fault. And if the Lords of Leet, and their Homagers, and those that make choice of the Constables and Officers, were sometimes awakened by soon seizing of their Leets, or Fine, or *Quo warranto*, I make no doubt, but the Country would be better served many Years after, for some such Service done; therefore I could wish that this were made known unto the Country, that the Lords, and those that choose them were answerable for their Defaults.

Now for bringing loose People in Order, the House of Correction hath need to be looked unto, and be put in Readiness, that those that are Idle may not want Work. *Ducere volentes trahere nolentes.* And the House of Correction, as it is in some Countries, that it were placed near the Goal; and not idle Persons only, but the Prisoners of the Goal also might be made to work, and eat the Labour of their own Hands; this, as it hath been formerly, so it is now

now commended by his Majesty to see it effected so soon as may be.

The binding out of Apprentices is a thing fit to be pressed throughout all your Circuit; Opposition hath been made against it by some, though without any Ground or Law: Sometimes the Parents are not willing to leave their Children, though they have not Meat to feed them at Home; sometimes the Parishioners are not willing to give them Cloaths, and those that bind them are negligent; and all these must be over-ruled and made smart for their Opposition and Neglect.

In a word, you are to call upon all to whom it belongeth, but especially to the Justices of the Peace, to see his Majesty's printed Order be put in Execution. You are to satisfie your selves, what Justices of the Peace are diligent in it, and who neglect, and so to certifie to the Lords of the Council.

I have but one Thing more to give you in Charge, and it is a Thing of great Weight and Importance; it concerneth the Honour of his Majesty and the Kingdom, and the Safety of both: Christendom is full of War, and there is nothing but Rumours of War: What hath been done of late Years abroad by Fire and Sword, it were a Pity and Grief to think of; yet we have, by the Goodness of God and his Majesty's provident Care, all this while enjoyed a most happy Peace and Plenty. As it is a good Precept in Divinity, so it holdeth in Policy too; *Nunc tua res agitur, jam proximus ardet;* which if we observe, to defend our selves, it would be a Warning to all Nations, and we should be the more assured to enjoy our Peace, if the War Abroad do make us stand upon our Guard at Home; therefore no question it hath ever been accounted the greatest Wisdom for a Nation to Arm, that they may not be enforced to fight; which is better than not to Arm, and to be sure to fight. Therefore his Majesty in these doubtful Times, hath not only commanded, that all the Land-Forces of the Kingdom should be set in order and readiness, but to set to Sea a Royal Fleet at his Majesty's great Charge, but with the Assistance of the Maritime Places of this Kingdom.

The Causes and Occasions, and Times of War, with the Preparations and Ordering of them, is proper to the King; and dutiful Obedience in such Things do best become the Subject. And yet his Majesty hath vouchsafed, even by his Writ, to declare enough to satisfie all well-minded Men, and to express the Clearness of his Princely Heart, in aiming at the general Good of his Kingdom.

The Dominion of the Sea, as it is an ancient and undoubted Right of the Crown of *England*, so it is the best Security of the Land; for it is impregnable so long as the Sea is well guarded; therefore, out of all question, it is a Thing of absolute Necessity, that the guarding of the Sea be exactly looked unto; and those Subjects whose Minds are most fixed upon the Honour of their King and Country, will with no patience endure to think of it, that this Dominion of the Sea, which is so great an Honour, should be either lost or diminished; besides, for safety sake, the Dominion of the Sea is to be kept, and the Seas guarded. The Wooden Walls are the best Walls of this Kingdom, and if the Riches and Wealth of the Kingdom be respected for that Cause, the Dominion of the Sea ought to be respected; for else, what would become of our Wool, Lead, and the like, the Prizes whereof would fall to nothing if others should be Masters of the Seas. There is a Case in the Book of Assize, *Fol.* 43, which putteth me in mind of certain Men that went down into the Country, and carried a Report, that no Wool should pass over the Sea that Year; upon this Wool fell to so low Prices, that the Men that carried the Report were question'd and fined. And now if a Report alone, and that a false one too, wrought such an Effect upon the Wools in *England*, think what would be wrought by a real Loss of the Dominion of the Sea in all our Commodities, if our Trade should be at the Command of other Princes and States. Therefore, as his Majesty, out of his great Wisdom, hath found it expedient to set to Sea that Fleet that is now upon the Sea, so his Majesty being engaged both in his Honour, and the Honour of the Kingdom, he findeth it to be of absolute necessity to strengthen this with a greater Strength and more Shipping the next Year. Therefore, upon Advice with his Council, he hath resolved, that he will forthwith send forth new Writs for the Preparation of a greater Fleet the next Year, and that not only to the Maritime Towns, but to all the Kingdom besides: For since that all the Kingdom is interessed both in the Honour, Safety and Profit, it is just and reasonable that they should all put to their helping Hands.

Now that which his Majesty requireth from you, and doth command, is, That in your Charges at the Assizes, and in all Places else where Opportunity is offer'd you, take an occasion to let the People know how careful and zealous his Majesty is to preserve his Honour, and the Honour of this Kingdom, and the Dominion of the Sea, and to secure both Sea and Land by a powerful Fleet, that foreign Nations may see, that *England* is both able and ready to keep it self, and all its Right: And you are to let them know how just it is, that his Majesty should require this for the common Defence, and with what Alacrity and Cheerfulness they ought, and are bound in Duty, to contribute unto it, that foreign Nations may observe the Power and Readiness of this Kingdom, which will make them slow to contend with us either by Sea or Land, and that will be the best way to confirm unto us a firm and sure Peace.

This is the Substance of all that which I received in Commandment from his Majesty; there are many Things else that concern the Publick, but your Judgments are well versed in them. These are the Particulars I had command to mention unto you, so I will trouble you no further, but leave them to your grave Considerations.

The

The SPEECH *of* THOMAS *Lord* Coventry, *Lord-Keeper of the* Great Seal *of* ENGLAND, *to all the Judges of Assize of* England, *by Command from the King in the* Star-Chamber, Feb. 14*th*, 1636.

Together with the King's Letter and Case, touching Ship-Money, *and the Judges Opinions thereupon.*

My Lords the Judges,

THE Term being now at an end, and the Assizes at hand, his Majesty hath commanded, That according to the Custom in former Times, so now in this Place you should receive some Directions for the Execution of Justice in all Parts of the Kingdom whereto you resort. This (as it may justly be) is a great Comfort to his Majesty's Subjects, to see his Majesty's Care herein, which as it is a Testimony of their own Happiness, in receiving Justice from the King himself, the Fountain of Justice, so it may as justly add Strength and Encouragement to you when you go your Circuits, not only to be armed with your own Authority by Commission, but with your Prince's Instructions.

In the doing of Justice, you will find Things of several Natures and Degrees: In some Places before you, Communicative Justice beareth sway, as in that which concerns *Meum & Tuum*: In other, Distributive Justice, as in *Præmium & Pœnam*; some concern one and a few, others concern the Multitude; others concern the King and all the the King's People. In some Pleas Things are brought before you that are *ad nocumentum*, of this or that particular Town; some *ad nocumentum totius Regni*. Some Things are brought before you that are *Contra pacem Regis*, and others *contra coronam & dignitatem Regis*; and in this variety of Business, as there are many of a lesser and lower Degree, yet not to be omitted, so you have *Graviora Legis*, upon which you ought to pitch your Mark, *hæc opportet fieri, illa non omitti*.

In that Justice which you are to do between Party and Party, his Majesty doth require you, as in all his Courts here, so in your Circuits you administer impartial Justice, and repress vexatious and wrangling Suits, not worthy the Dignity of your own Persons, and the Court where you sit; for those Actions, as they empty the Spleen on the one side, so they never fail to empty the Purse on both sides.

But besides the doing of Justice between Man and Man, there is much more expected from your Lordships; for the publick Business of the Country is of much more Importance than the Trial of a *Nisi Prius*, and fitting you should esteem them so: And therefore it is his Majesty's Command, That those Services which concern himself and the Publick, may be timely thought of, and not posted off to the End of the Assize.

Now before all Things, the Advancement of Religion and Piety towards God, the Peace of the Church, and the Execution of those Laws that tend to those Ends, ought to have the first Place. As oft as I have had occasion to speak to you here, I have seldom spared to give you a Charge of the Laws against Recusants; and I must reiterate it now; for if you Convict them not in the Country, there is likely to be little Reformation or Profit to his Majesty; and whosoever they be that will not be found in the Church, it behoveth you that you take order they be found in the *Exchequer*.

In the next Place, that you proceed roundly against Capital and Felonious Offenders, especially Robbers on the High-ways, who now march in Troops after a high hand. As a good Judge ought in Court to shew Severity to those in the Goal, so the ablest and activest Men in the County, ought to do their utmost Endeavours for the apprehending of those Offenders as are Abroad; that when you are there or here in the Term, the Service may proceed in a good Way, and you be made a Terror to Malefactors, as some of your Predecessors have been; for if your Care be not great, Malefactors will abound; therefore you must shew a severe and constant way of Justice when they are found, and it will soon abate their Pride, wherewith they now bear up themselves; and fit it is with an unanimous Consent you agree of one Course; for if there be a Remissness in any one Circuit, it leaveth a way to Malefactors to overthrow all Reformation, and Justice is thereby discouraged.

In the next place, Care must be had of those Laws which concern Luxury and Idleness, the suppressing and punishing of Vagabonds, the ordering and employing of Houses of Correction, the suppressing of Ale-houses and Tippling-houses, and binding out of Apprentices. If these were well and constantly observed, they would save many able Bodies that die miserably at the Gallows, and cut off a multitude of Enormities that pester the Common-wealth, and lessen the Number of Thieves and Robbers; and therefore your Lordships should do well to have a special Care of the Execution of those Laws. And this giveth me occasion to put you in mind of those printed Orders, published by his Majesty in the Year 1630, wherein at first there was a Direction given for an Account to be made by the Sheriff and Justices of the Peace; this same was orderly kept in divers Places, in others not so well. It was afterwards advised by your selves, that the way of Account should be changed, and that you should receive it at the Assizes, and present it to the Council-Board; yet it is my part to tell you, that it hath not so appeared by the Account that is come to the Council-Table, and it is expected a better be given by you the next Term.

Now

Now in respect the publick Service dependeth much upon the Justices of the Peace in the County, it will be necessary that you cast your Eye upon them, that they give due attendance at the Assizes; it is their Duty to do it, and yours to inforce it upon them. An Assize lasteth but a few Days, but the Instructions that they may receive from you in that short time, may be of great use for the County for the whole Year: Also that you examine whether they give due attendance at the Quarter-Sessions, although there is an express Article in their Oath that they should give it; I hear many neglect it: Therefore it is a Thing very fitting, and well worthy your Labour, that at the Beginning of every Assize, you trust not to the Clerk of the Peace his Information, but that your selves do cast an Eye upon his Book, and command him to return the Names of such Justices of Peace as you find by his Book were absent at the Quarter-Sessions. Fit it will be that you let them know, that to prefer a Riding, or Bowling, or Hunting-match before their Attendance at the Quarter-Sessions, is little less than Perjury; and if your Admonition will not serve the turn, a Remedy shall be taken. In the third Place it is necessary for you to inquire how they attend the Monthly Meetings, or other times of publick Service; for this I am sure of, they are all within one Commission, and have the same Oath, and the same Attendance is imposed upon all, and why the greatest Number exempt themselves, and leave the publick Service upon a few I know not, but if I may know the particular Men (of which I hope I shall henceforward by your Lordships) I shall rid them out of Commission, and put others in their Places.

My Lords, I have but one Particular more, and that is of great Importance; whereof by special Direction and Command from his Majesty, I am to speak unto you at this time. All of you are the Witnesses of his Majesty's Proceedings, though the Candor and Clearness of his own Heart, exceedeth your Testimony, and your Testimony is not only fit to be declared in this Place, but in all the Places of this Realm.

His Majesty hath now the third time sent forth Writs to require the Aid of his Subjects for the guarding of the Dominion of the Sea, and safety of the Kingdom. This his Majesty did upon great Deliberation and Advice, and upon important and weighty Reasons. In the First Year when the Writs were directed to the Ports and Maritime Places, they received little or no Opposition; but in the Second Year when they went generally throughout the Kingdom (though by some well obeyed) have been refused by some, not only in some Inland Counties, but in some of the Maritime Places; and Actions have been brought against some that have been imployed in the execution of these Writs. I suppose that no Man will expect that *Arcana Regni*, the private Reasons of a Prince, should either upon this or other Occasions be made publick; but so many Reasons as were fit to be opened, were formerly declared by me in this place to you the Judges of this Realm.

The *First* was, that the whole Kingdom is concerned in point of Safety; for admitting there were no other Council or Attempt against us, but only to interrupt us in the Dominion of the Seas, our most secure and safe Defence, better either than Castles or Forts; which if it be commanded by others, it lays us open to much Peril and Danger.

Secondly, The whole Kingdom is concerned in point of Honour; for it is one of the most ancient and honourable Rights of the Crown of *England*, even the Dominion of the Sea. And all Records do shew, how the Kings and People of *England* have ever been careful that this Honour should never perish; and certainly the whole Kingdom is concerned in point of Trade and Profit; for the Traffick does not only inrich the Maritime Parts, but the Inland Towns; and if Trading fail, the Inland Places will find it in the fall of the Prices of Wool, Lead, and other Staple Commodities. This, Experience sheweth daily, when upon every Stop of the vent of Cloth, there comes such Outcries by the Weaver, the Fuller, the Spinner and Wool-growers themselves; and the Authority of the Law sheweth the same 43. in the Book of Assize, which your Lordships know better than I, it appears that certain Men went into the Country, and cast out a Fame, that for that Year no Wool should be transported beyond the Seas; presently upon this the price of Wool fell, and those Men were called in question, and were adjudged in a Fine for it. Now if a Rumour did so much abate the Trade in the Heart of the Kingdom, what would the loss of the Dominion of the Sea do, which exposeth us, and all our Trade, to the Mercy of our Neighbours? Therefore since the whole Kingdom is concerned in point of Honour, Safety, and Profit, what Reason is there but that all should contribute to the Maintenance of it. This or to the like Effect, I did formerly declare to you the Judges, by his Majesty's Command; and his Majesty received Satisfaction, in that you made a full Declaration thereof in your Circuits; and this I may say, for the most part the Subjects have shewed themselves most Dutiful and Obedient in this Service of his Majesty; and this Year the Sum imposed upon the County of *York*, being twelve thousand Pounds, is brought in already by the Sheriff, and so is most part of *Lancashire*, and other Shires; but when his Majesty heard of some Refusals, tho' he had Cause to be sensible of it, yet he was far from being transported with Passion, but thought good to resort to the Advice of you his Judges, who are sworn to give him faithful and true Council in that which pertaineth to the Law; and this his Majesty, as well for the Direction of his own Course, as for the Satisfaction of his Subjects, required you to deliver your Opinions herein, to which you returned an answer under your Hands. And because the Command which you received from the King, is expressed in a Princely Letter under his own Signature, I shall not take upon me to repeat it, you shall hear it read.

Which being delivered by my Lord Keeper to one of the Clerks in Court, was read in hæc Verba.

CAROLUS *Rex,*

TRusty and Well-beloved we greet you well. Taking into our Princely Consideration, that the Honour and Safety of this our Realm of *England*, the Preservation whereof is only intrusted to our Care, was, and is now more nearly concerned than in former Times, as well by divers Councils and Attempts, to take from us the Dominion of the Sea, of which we are sole Lord and rightful Owner; the Loss whereof would be of greatest Danger and Peril to this Kingdom, and other our Dominions; we for avoiding these and the like Dangers, well weighing with our selves, that where the Good and Safety of the Kingdom in General is concerned, and the whole Kingdom in Danger, there the Charge and Defence ought to be born by all the Realm in general; did for prevention of so publick a Mischief, resolve with our selves to have a Royal Navy provided, that might be of Force and Power, with Almighty God's Blessing and Assistance, to Protect and Defend this our Realm and our Subjects therein, from all such Perils and Dangers; and for that purpose We issued forth Writs under our Great Seal of *England*, and directed to all our Sheriffs of all our several Counties of *England* and *Wales*, commanding thereby, all our said Subjects, in every City, Town, and Village, to provide such a Number of Ships, well furnished, as might serve for this our Royal Purpose; and which might be done with the greatest Equality that could be. In Performance whereof, though generally throughout all the Counties of this our Realm, we have found in our Subjects great Chearfulness and Alacrity, which we graciously interpret as a Testimony, as well of their Dutiful Affections unto us, and to our Service, as the Respect they have to the Publick, which well becometh every good Subject. Nevertheless finding that some few, happly out of Ignorance what the Laws and Customs of this our Realm are, or out of a Desire to be eased and freed in their Particulars, (how general soever the Charge ought to be) have not yet paid and contributed the several Rates and Assessments that were set upon them, and foreseeing, in our Princely Wisdom, that from hence divers Suits and Actions, are not unlikely to be commenced and prosecuted in our several Courts at *Westminster*: We desirous to avoid such Inconveniences, and out of our Princely Love and Affection to all our Subjects, being willing to prevent such Errors as any our loving Subjects may happen to run into, have thought fit, in a Case of this Nature, to advise with our Judges, who we doubt not are all well studied and informed in the Right of our Sovereignty. And because the Trials in our several Courts, by the Formality in Pleading, will require a long Protraction, we have thought it expedient, by this our Letter directed to you all, to require your Judgments in the Case, as it is set down in the inclosed Paper, which will not only gain Time, but also be of more Authority to over-rule any prejudicate Opinions of others in the Point. *Given under our Signet, at our Court at* Whitehall, *the Second Day of* February, *in the Twelfth Year of Our Reign.* 1636.

This being thus Read, the Lord-Keeper commanded the Case inclosed to be read, being as followeth.

CAROLUS *Rex,*

WHEN the Good and Safety of the Kingdom in general is concerned, and the whole Kingdom is in Danger: Whether may not the King, by Writ under the *Great Seal* of *England*, command all the Subjects of this Kingdom, at their Charge, to provide and furnish such Number of Ships, with Men, Victuals and Munition, and for such Time as he shall think fit, for the Defence and Safeguard of the Kingdom, from such Danger and Peril; and by Law compel the doing thereof in Case of Refusal or Refractoriness? And whether, in such a Case, is not the King sole Judge, both of the Danger, and when and how the same is to be prevented and avoided?

The Judges Answer.

May it please Your Most Excellent Majesty,

WE have according to your Majesty's Command, every Man by himself, and all of us together, taken into Consideration, the Case and Question, signed by your Majesty, and inclosed in your Royal Letter: And We are of Opinion, That when the Good and Safety of the Kingdom in general is concerned, and the whole Kingdom in Danger, Your Majesty may by Writ, under the *Great Seal* of *England*, command all the Subjects of this your Kingdom, at their Charge, to provide and furnish such Number of Ships, with Men, Munition, and Victuals, and for such Time as your Majesty shall think fit, for the Defence and Safeguard of the Kingdom from such Danger and Peril: And that by Law your Majesty may compel the doing thereof, in case of Refusal or Refractoriness: And we are also of Opinion, That in such Case, Your Majesty is the sole Judge, both of the Danger, and when, and how the same is to be prevented and avoided.

Jo. Brampston,	*Rich. Hutton,*	*Geo. Vernon.*
Jo. Finch,	*W. Jones,*	*Fra. Crawley,*
Hump. Davenport,	*Geo. Crooke,*	*Rob. Berkley,*
Jo. Denham,	*Tho. Trevor,*	*Fra. Weston.*

The said Case, with the Judges Opinions thereunto, (formerly in private deliver'd to his Majesty) being thus publickly made known by my *Lord-Keeper*, who, withal, caused their several Names to be read, as they were in order subscribed; (all the Judges being present save only Judge *Crooke*) the *Lord-Keeper* spake as followeth.

My Lords,

This being the Uniform Resolution of all the Judges of *England*, with one Voice, and set under their own Hands, I say, this being so resolved, as they do here express upon every Man's particular studying the Case, and upon a general Conference amongst themselves, it is of very great Authority; for the very Lives and

Lands

Lands of the King's Subjects, are to be determined by these Reverend Judges; much more a Charge of this Nature, which God knows cannot be burthensome to any, but is of singular Use and Consequence, and for the Safety of the whole Kingdom. The Command from his Majesty, is, that I should publish this, your Opinion in this Place, and give Order, That it should be entered in this Court, in the High Court of *Chancery*, and in the Courts of *King's-Bench*, *Common-Pleas*, and *Exchequer*; for this is a Thing not fit to be kept in a Corner: And his further Command is, that You the Judges do Declare and Publish this general Resolution of all the Judges of *England*, thro' all Parts of the Kingdom, that all Men may take Notice thereof, and that those his Subjects which have been in an Error, may inform themselves, or be reformed; you have great Cause to declare it with Joy, and you can hardly do it with Honour enough to the King, that in so high a Point of his Sovereignty, he hath been pleased to descend, and to communicate with you his Judges; which sheweth, that Justice and Sovereignty, in his Majesty, do kiss each other. His further Pleasure is, That you let all know it is not his Purpose by this Resolution to stop, or check, the Actions or Suits which any have brought, or shall bring, concerning this; for it is his Majesty's Command, that all such as proceed in any Action about the same, have equal and meet Justice, and that they be suffered to proceed in Course of Law, so as you call the King's Learned Counsel unto their Proceedings, that they may not be surprized.

Now, my Lords, I have little more to say, but this I am sure of, that if any contrary Opinion shall yet remain amongst Men, it must proceed from those that are Sons of the Law. (*Felices essent artes*, &c.) And you the Judges of the Realm, have been accounted the Fathers of the Law; then, in good Faith, it will ill become the Son to dispute against the Father. Having thus delivered unto You, what I received in Command from His Majesty, as his Majesty doth, so do I, leave it to your Judgments.

Per

Per Breve. De Termino Sanctæ Trinitatis.

Anno xiij° Regis CAROLI.

Dominus Rex *versus* Johannem Hambden.

MEmorand' *quod Brev' Domini Regis nunc sub Sigillo hujus Scaccar' per Concess' Baron' hic emanavit in hæc verba.*

ſſ. C A R O L U S *Dei gratia, Angliæ, Scotiæ, Franciæ, & Hiberniæ Rex Fidei defensor,* &c. *Vic.* Bucks *salutem. Cum diversæ & seperal' denar' summæ in schedul' huic brevi annex' spec' virtute brevis nostri sub magno sigillo nostro Angliæ geren' dat' quarto die* Augusti *Anno Regni nostri undecimo, assessat' & onerat' fuer' super seperal' person' in ead' schedul' nominat' in & versus provision' Navis pro guerra una cum apparat' & al' eid' pertin' in eod' brevi particular' mentionat' quibus quid' seperal' denar' summis sic assessat' & onerat' & non solut' & satisfact' existen' per breve nostrum de certiorand' geren' dat' nono die* Martij *Anno regni nostri duodecimo sub mag' sigillo nostro præd' emanat' nominat' earund' seperal' person' una cu' seperal' denar' summis super ipsos onerat' in Cur' Cancellar' nostræ certificat' fuer'. Ac per breve nostrum de Mittimus sub eodem sigillo geren' dat' quinto die instant' Mensis* Maij *in Scaccar' nostr' miss' fuer' pro ulterior' process' super inde habend' prout per tenorem prædicti brevis geren' dat' quarto die* Augusti *Anno regni nostri undecimo ac per prædict' breve de certiorar' & certificat' super inde fact' in dictum Scaccar' nostrum miss' & ibid' de Record' in Custode Rememerat' nostri remanen' plenius apparet tibi præcipimus quod non omitt' propter aliqu' libertat' quin ea ingr' & per probos & legales homines de Bal' tua scir' fac' presat' seperal' person' in dict' schedul' nominat' & Spec' quod sint coram Baron' de Scaccar' nostro apud* Westm' *in Octab. sanctæ Trinit' proxim' futur' ad ostendend' & proponend' siquid pro se habeant vel dicere sciant quare ipsi de pred' seperal' denar' summis super ipsos modo & forma predict' assessat' & non solut' in schedul' il' spec' onerari & inde satisfacere non deb' & ad ulterius faciend' & recipiend' in præmissis quod Cur' nostra tunc ibidem duxerit ordinand' & habeas ibi tunc hoc breve & nomina eor' per quos eis sciri feceris Teste* Humfr' Davenport *Mil' apud* Westm' *vicesimo secundo die* Maij *Anno Regni nostri decimo tertio per Rotulum.*

De eodem Anno Regis hujus Paschæ Recordo Rotulo & per Barones Fanshawe *& tenor' schedul' præd' in brevi prædict' mentionat. quoad* Johannem Hambden *sequitur in hæc verba.* ſſ *Schedul' de nominibus certar' personar' in Com'* Bucks *& cert' denar' summar' super ipsos assessat' & onerat' in & versus provision' Navis de Guerra una cum apparat' & al' eid' pertin' virtute cujusd' brevis sub magno sigillo Angliæ geren' dat' quarto die* Augusti *Anno Regni Domini Reg' nunc* Caroli *undecimo & in Cur' Cancellar' Dom' Regis virtute brevis de certiorand' sub sigillo præd' eman' geren' dat' nono die* Martij *Anno Regni sui duodecimo certificat' esse insolut' ac per breve de Mittimus sub eod' sigillo in Scaccar' dict' Domini Regis nunc missis pro ulterior' process' super inde fiend' prout per tenor' prædict' brevis geren' dat' quarto die* Augusti *Anno Regni dicti Domini Regis nunc undecimo supradict' ac per breve de certiorand' & certificat' superinde fact' in dictum Scaccar' nostr' miss' & ibidem de Record' in custod' Rememerat' Dom' Regis reman' plenius apparet.*

Stoake Mandivile, ſſ John Hambden, *Esq; Ad quem diem* Anthonius Chester, *Baronet' vic' Com' prædict' quoad præfat'* Johannem Hambden *retorn' quod per* Nicholaum Aris, Robertum Alexander, Richardum Harrison, & Willum Heyborne, *probos & legales homines de ball' sua sciri fecit prefat'* John Hambden *inter al' quod sit coram Baron' infra script' ad diem & locum infra content' ad ostendend' & proponend' si quid pro se habeat vel dicere sciat quare ipse de prædict' summa super ipsum assessat' & non solut' in schedul' prædict' spec' onerari & inde satisfacere non debeat prout ulterius sibi precipitur: Et modo scilicet a die sanctæ Trinitatis in tres septiman' venit hic præd'* Johannes Hambden *in schedul' præd' nominat' in propria persona sua & petit audit brevis de Sciri facias præd' retorn' ejusdem ac præd' schedul' eid' annexat' & ei leguntur, petit etiam audit præd' brevis geren' dat' quarto die* Augusti *Anno regni dicti Domini Regis nunc* Caroli *undecimo in brevi de Sciri facias mentionat' & ei legitur in hæc verba.*

ſſ *Carolus, dei gratia, Angliæ, Scotiæ, Franciæ & Hiberniæ Rex, Fidei Defensor,* &c. *Vic' Com' nostri* Bucks *Ball' & Burgens' Burgi & Paroch' de* Buckingham *Majori Ball' & Burgens' Burgi de* Chipping-Wiccombe *alias* Wiccombe *ac probis hominibus in eisdem Burgis & Paroch' & membris corund' & in villis de* Agmondesham, Wendover, & Marlow magna *ac in omnibus aliis Burgis villat' Hamlet & al' locis in dicto Com'* Bucks *salutem: Quia dat' est nobis intelligi quod Prædones quid' Pirati & mar' Grassatores tam nominis christiani hostes Mahumetani quam alii congregati Naves & bona ac mercim' non solum subditor' nostr' verum etiam subditor' amicor'*

nostror'

nostror' in Mari quod per Gent' Anglican' ab olim defend' consuevit nefarie diripientes & spoliantes, ac ad libitum suum deportavere hominesque in eisd' in captivitate miserrima mancipantes. Cumq; ipsos conspicimus Navigium in dies preparantes ad Mercatores nostros ulterius molestand' & ad regnum gravand' nisi citius remedium apponatur eorumque conatui virilius obvietur. Consideratis etiam periculis quæ undique his guerrinis temporibus imminent ita quod nobis & subditis nostris defension' maris & Regni omni festinatione qua poterimus accelerare convenit. Nos volentes defensioni regni, tuitione maris, securitati subditor' nostr' salva conductione Navium & Merchandizar' ad Regnum nostrum Angliæ venien' & de eod' Regno ad partes exteras transeun' auxiliante Deo providere maxime Cumq; nos & Progenitores nostri Reges Angliæ domini Maris præd' semper hactenus extiter' & plurimum nos tenderet si honor iste regius nostris temporibus depereat aut in aliquo minuatur Cumq; onus istud defensionis quod omnes tangat per omnes debeat supportari prout per legem & consuetudinem Regni Angliæ fieri consuevit vobis præfat' Vicecomiti Ball' Burgens' Majori probis hominibus & omnibus aliis quibuscunq; supra mentionat' in Burgis Villis Villat' Hamlet' & locis supradict' eorumq; membris in fide & legiantia quibus nobis tenemini, & sicut nos & honorem nostrum diligitis, nec non sub forisfactur' omnium que nobis forisfacere poteritis firmiter injungend' mandamus, quod unam Navem de guerra portagii quadringint' & quinquagint' dolior' cum hominibus tam Magistris peritis quam Marinar' valentioribus & expertis cent' & octogint' ad minus. Ac etiam tormentis tam majoribus quam minoribus pulvere tormentario ac hastis & telis aliisque armaturis necessar' pro guerra sufficien' & cum duplici eskippamento, nec non cum victualibus usque ad primum diem Martij *jam proxime sequente ad tot homines competen' & abinde in vigint' & sex septiman' ad Custag' vestra tam in victualibus quam in hominum salariis & al' ad guer' necessar' per tempus illud super defensionem Maris in obsequio nostro in Comitiva Custodis Maris cui Custod' maris ante præd' primum diem* Martij *committemus & prout ipse ex parte nostra dictaverit moratur' parari & ad portum de* Portsmouth *citra dictum primum diem* Martij *duci faciatis ita quod sint ibid' eod' die ad ultimum ad proficiend' exinde cum navibus nostris & navibus alior' fidelium subditor' nostr' pro tuitione maris defensione nostrum & nostrorum repulsioneque & debellatione quorumcunq; mercatores nostros & alios subditos fideles prædict' in dominia nostra ex causa mercature se diversantes, vel abinde ad propria declinantes super mare gravare seu molestare satagentium. Assignavimus autem vos vic' Com' nostr'* Bucks *Ball' & Major' Burgor' & Paroch' prædict' aut aliquos duos vel plures vestrum quor' te prefat' vic' Com' nostri* Bucks *unum esse volumus infra trigint' dies post receptionem hujus brevis ad assidend' quantum de custag' prædict' super præd' Burgos de* Buckingham *&* Chipping-Wiccombe *alias* Wiccombe *cum membris eorund' separatim poni aut assideri debeat. Et si hujusmodi assessament' infra prædict' triginta dies per vos duos vel plures vestrum fieri non contigerint Tunc assignavimus te prefat vic' Com' nostri* Bucks *ad assessamen' hujusmodi super prædict' Burgos & Paroch' & membr' eorund' faciend' prout rationabiliter vides faciend' Et volumus quod de toto facto tuo prefat' vic'* Bucks *sub sigillo tuo prædict' Majorem & Ballivos reddas certiores. Assignavimus etiam te prefat' Ball' Burgi & Paroch' de* Buckingham *ad assidend' omnes homines in eodem Burgo & Paroch' & membris ejusd' & terr' tenentes in eisdem Navem vel partem Navis prædict' non habentes vel in eadem non deservientes ad contribuend' expensis circa provision' præmissor' necessar' Et super prædict' Burgum & Paroch' cum membris ejusd' (sic ut prefertur) assidend' & ponend'* viz. *quemlibet eor' juxta statum suum & facultates suas & portiones suas ipsis assessat' per districtiones, aliosve modos debitos levand' & Collectores in hac parte nominand' & constituend' & omnes eos quos rebelles & contrarios inveneris in præmissis carcere mancipand' in eodem moratur' quosque pro eod' deliberatione ulterius duxerimus ordinand' Assignavimus etiam te præfat' Major' Burgi de* Chipping-Wiccombe *alias* Wiccombe *ad assidend' omnes homines in eod' burgo & membris ejusdem & ter' tenentes in eisd' navem vel partem Navis præd' non habentes vel in eadem non deservientes ad contribuend' expensis circa provision' præmissor' necessar' Et super prædict' Burg' cum membris ejusd' sicut prefertur assidend' & ponend'* viz. *quemlibet eorum juxta statum suum & facultates suas & portiones super ipsos assess' per districtiones aliosve modos debitos levand' & Collectores in hac parte nominand' & constituend' & omnes eos quos Rebelles & contrarios inveneris in præmissis in Carcere mancipand' in eod' moratur' quousque pro eor' deliberatione ulterius duxerimus ordinand' Et ulterius assignavimus te prefat' Vicecomitem Com' nostr'* Bucks *ad assidend' omnes homines in præd' villis de* Agmondesham, Wendover, *&* Marlowe Magna, *& in membris eorund' & in omnibus aliis villis villat' Burgis Hamlet' & aliis locis in prædict' Com'* Bucks *& terr' tenentes in eisd' navem vel partem navis præd' non habentes, vel in eadem non deservientes ad contribuend' expensis circa provisionem præmissor' necessar' & super prædict' villas, villat' burgos, hamlet' et locos cum membris eorund' sic ut perfertur assidend' & ponend'* viz. *quemlibet eor' juxta statum suum & facultates suas & portiones super ipsos assessat' per districtiones aliosve modos debitos levand' & Collectores in hac parte nominand' & constituend' Et omnes quos Rebelles & contrarios inveneris in præmissis carcere mancipand' in eod' moratur' quosque pro eor' deliberatione ulterius duxerimus ordinand' Et ulterius vobis mandamus quod circa premissa diligenter intendatis, & ea faciatis & excequamini cum effectu sub periculo incumbente. Nolumus autem quod colore prædict' mandat' nostr' plus de eisd' hominibus levari faciatis quam ad præmissor' sufficiet expensas necessar' aut quod quisquam qui pecuniam de contributionibus ad prædict' Custag' faciend' levaverit eam vel partem inde aliquam penes se detineat vel ad al' usus quovis quæsito colore appropriare presumat volentes quod si plusquam sufficia: collect' fuerit hoc inter solventes pro rata portionis ipsis contingen' exsolvatur teste me ipso apud* Westm' *quarto die* Augusti *Anno Regni nostri undecimo. Petit etiam audit' prædict' brevis geren' dat nono die* Martii *Anno Regni dicti domini Regis* xij° *in prædict' brevis de* Sciri facias *mentionat' & ei similiter legitur.*

Carolus dei gratia Angliæ, Scotiæ, Franciæ, & Hiberniæ Rex Fidei defensor, &c. *Vic' Com' nostri* Bucks *qui fuer' inter quartum diem* Augusti *Anno Regni nostri undecimo & primum diem* Martii *tunc proxime sequent' Ball' Burg' & Paroch' de* Buckingham *& Major' & Ball' Burg' de* Chipping-Wiccombe *alias* Wiccombe *in dicto Com'* Bucks *qui fuer' inter tempus prædict' salutem Per breve nostrum sub magno sigillo nostro Angliæ confect' geren' dat prædict' quarto die* Augusti *Anno undecimo supradict' pro defensione Regni tuitione maris, securitate subditor' nostr' ac salva conductione Navium &*

Merchandizarum ad regn' nostr' Angliæ venien' & de eodem ad partes exteras transeun' Vic' Com' nostri Bucks *Ball' Burgi & Paroch' de* Buckingham *necnon Burgens' ejusd' Burgi Major' & Ball' de* Chipping-Wiccombe *alias* Wiccombe, *nec non Burgens' ejusd' Burgi & probis hominibus in eisdem Burgis & Paroch' & eisdem Burgis & Paroch' & Membris eorund' & in villis de* Agmondesham, Wendover, *&* Marlow magna *ac in omnibus aliis Villis, Burgis, Villat' Hamlet' & aliis locis in dicto Com'* Bucks *mandavimus quod unam navem de guerra portagii quadringent' & quinquagint' dolior' cum hominibus tam Magistris peritis quam Marinar' valentioribus & expertis centum & octogint' ad minus Ac etiam tormentis tam majoribus quam minoribus pulvere tormentario ac hastis & telis aliisque Armaturis necessar' pro guerra sufficien' & cum duplici eskippamento nec non cum victualibus ad certum diem in eodem brevi content' ad tot homines competen' & abinde in vigint' & sex septiman' ad Custag' hominum & ter tenen' Burg' Paroch' Vill' Villat' & al' locor' supra mentionat' in dicto Com'* Bucks *tam in victualibus, quam in hominum sallariis & al' ad guer' necessar' per tempus illud super defensionem maris moratur' parari, & ad portum de* Portsmouth *citra tempus in eod' brevi limitat' duci faceretis cumque etiam per idem breve assignaverimus vic' Com' nostri* Bucks *præd' Ball' Burgi & Paroch' de* Buckingham *præd' & Major' Burgi de* Chipping-Wiccombe *præd' aut aliquos duos vel plures eorum quor' vic' dicti Com' nostri* Bucks *unum esse volumus infra certum terminum proxim' post receptionem brevis illius ad assidend' quantum de custag' præd' super præd' Burg' & Paroch' de* Buckingham, *& super præd' Burg' de* Chipping-Wiccombe *alias* Wiccombe *cum Membris eorund' separatim poni seu assideri deberet. Cumque etiam per præd' breve nostrum. Assignaverimus Ball' Burgi & Paroch' de* Bucking' *& Majorem de Burgo de* Chipping-Wiccombe *alias* Wiccombe *separatim & respective ad assidend' omnes homines in eisd' seperal' Burg' & Paroch' & Membr' eorund' & terr' tenentes in eisdem Navem vel partem Navis præd' non habentes, vel in eadem non deservientes ad contribuend' ad expens' circa provisionem præmissor' necessar' Et super præd' Burg' & Paroch' de* Buckingham *& super præd' Burg' de* Chipping-Wiccombe *alias* Wiccombe *cum membris eorund' sic ut prefertur ad tunc separatim & distinctive ponend'* viz. *quemlibet eorum juxta statum suum & facultates suas, & portiones super ipsos assessat' per districtiones aliosve modos debitos levand' & Collectores in ea parte nominand' & constituend' modo & forma prout in eodem brevi precept' fuit. Cumque per idem breve nostrum ulterius assignaverimus vic' dicti Com' nostri* Bucks *ad assidend' omnes homines in præd' villis de* Agmondesham, Wendover, Marlow magna *& in membris eorund' ac in omnibus aliis villis, villat' burgis, hamlet' & aliis locis in præd' Com'* Bucks *& terr' tenentes in eisdem ad contribuend' expensis circa provisionem præmissor' necessar' & ad cetera faciend' & exequend' modo & forma quibus per breve illud preceptum fuit. Et quia non nulli homines & terr' tenentes in prædict' Com' Burg' Paroch' Vill' Villat' Hamlet' & aliis locis per separal' taxationes & denar' summas per vos super ipsos respective erga contribution' oneris præd' juxta exigen' brevis præd' posit' & assessat' nondum solverint nec satisfecerint, sed eas solvere recusaver' & adhuc contradicunt prout informamur. Cumq; nos nuper volentes certiorari tam de nominibus hominum & ter' tent' qui ad contribuend' expensis supradict' assess' fuissent ac denar' sic assess' non solvissent quam de separal' portionibus vel denar' summis super ipsos imposit. Vos tamen nihil in return' ejusd' brevis nostri limitat' misistis in nostrum contemptum vobis igitur prefat' nuper vic' Com' nostri* Bucks *mandamus sicut al' mandaverimus quod tam de nominibus hominum & ter' tenen' in Com' præd' per vos respective virtute dicti brevis nostri assessat' quas denar' summis super ipsos sic assessat' quam nondum solver' nec satisfec' sed eas solvere recusant quas de separal' portionibus & denar' summis per vos præfat' nuper vic' Com' nostri* Bucks *super ipsos assessat' in script' reduct' cum omnib' ill' tangen' nos in Cancellar' nostram sub sigillis vestris distincte & aperte sine delatione vel ad ultimum ante vicesimum sextum diem* April' *proxime futuro ubicunq; tunc fuerit' reddat' certiores una cum hoc brevi. Ac vobis prefat' nuper Ball' Burgi & Paroch' de* Bucking' *& Major' Burg' de* Chipping-Wiccombe *al'* Wiccombe *mandamus sicut aliis mandaverimus quod tam de nominibus præd' hominum & terr' tenen' in Burg' & Paroch' de* Buckingham, *& Burg' de* Chipping-Wiccombe *alias* Wiccombe, *per vos respective virtute dicti brevis nostri superius primo mentionat' assess' quam de separal' denar' summis super ipsos assess' quas nondum solver' nec satisfecer' sed eas solvere recusant quam de separal' portionibus & denar' summis per vos super ipsos respective assess' in scriptis fideliter reduct' cum omnibus illis tangen' nos in Cancellariam nostr' præd' sub sigillo nostro distincte & aperte sine delatione vel ad ultim' ante præd' vicesimum sextum diem* Aprilis *proxime futur' ubicunque tunc fuerit' separatim reddatis certiores una cum hoc brevi teste me ipso apud* Westm' *nono die* Martii *Anno Regni nostri duodecimo.* Eyre. *Ad quem diem* Petrus Temple, *&* Heneagius Proby *return' brev' præd' dors' sic.* ſſ *Executio hujus brevis patet in quibusd' Schedul' huic brevi annexat. Quarum quidem schedul' tenor quoad prefat'* Johan' Hambden *per præfat'* Petrum Temple *[retornat' sequitur in hæc verba.* ſſ *Ego* Petrus Temple *Mil' & Baronet' qui fui vic' Com'* Bucks, viz. *inter quartum diem* Augusti, *Anno Regni Domini nostri* Caroli *nunc Regis Angliæ,* &c. *undecimo, & vicesimum secundum diem* Februarii *tunc proxime sequen' quo die exivi ab officio meo vic' Com' præd' dicto domino Regi in Cancellar' suam virtute brevis ejusdem Domini Regis huic schedul' annex' certifico quod virtute & secundum exigen' brevis ipsius domini Regis e Cancellar' sua emanat' & ibidem de Record' irrotulat' & vic' dicti Com'* Bucks *inter al' direct' geren' dat' quarto die* Augusti *Anno undecimo supradict' assessavi,* anglicè, have assessed, *super separal' homines & ter' tenentes Com'* Bucks *præd' quor' nomina subscribuntur separal' portiones & denar' summas ad eor' particular' inferius posit' ad contribuend' expensis circa provisionem Navigii in eod' brevi mentionat'. Quas quidem portiones & denar' summas sive aliquam inde parcell' ante exitum ab officio meo vic' Com' prædict' ad manus meas vel ad manus Collector' in ea parte virtute brevis ult' mentionat' per me constitut' præd' homines & ter' tenentes aut eor' aliquis quor' nomina subscribuntur non solverunt, sed eas solvere recusaver'* viz. Stoake Mandivile *ſs Mr.* John Hambden, *Esq; Et tenor al' Schedul' per prefat'* Heneag' Proby *fidelit' return' & eid' Brevi annex' sequitur etiam in hæc verba.* viz. There is to be accounted upon by the Assessors, high Constables, petty Constables within the said County in general, which cannot be accounted for by *Sir* Peter Temple, being as it is conceived short, Four Pounds.

Ego

Ego Heneagius Proby, *Arm' qui fui vic' Com'* Bucks *inter vicesimum secundum diem* Februar' *Anno Regni Dom' nostri* Caroli *nunc Reg' Angliæ, &c. undecimo, & ab eodem die & anno usque primum diem* Martij *tunc proxime sequen' dicto domini Regi in Cancellar' suam virtute brevis ejusdem Domini Reg' hujus schedul' annex' certifico quod homines & ter' tenentes Com'* Bucks *præd' aut eor' aliquis quor' nomina in quibusd' schedul' huic brevi annex' exprimuntur qui assess' fuer' per* Petrum Temple *Mil' & Baronet' nuper vic' Com'* Bucks *præd' dum in officio vic' ejusd' Com' steterit in separal' denar' portionibus & denar' summis ad eor' separal' nomina superius posit' ad contribuend' expensis circa provisionem Navigii virtute & secundum exigen' brevis ipsius domini Regis e Cancell' sua emanat' & ibidem de Record' irrot' vic' dicti Com'* Bucks *inter alios direct' geren' dat' quarto die* Augusti *Anno undecimo supradict'* Heneag' Proby *existen' vic' prædict' Com'* Bucks *proxime post exitum dicti* Petri Temple *Mil' & Baronet' ab officio vic' ejusd' Com' vel ad manus Collector' in ea parte virtute brevis ultimo mentionat' constitut' non solver' sed eas solvere recusaverunt. Et ulterius prefat'* Johannes Hambden *petit similiter audit' præd' brevis de Mittimus de quo in brevi de* Sciri facias *præd' fit mentio & ei legitur in hæc verba.*

Carolus dei gratia Angliæ, Scotiæ, Franciæ, & Hiberniæ Rex, Fidei Defensor, &c. Thesaur' & Baronibus de Scaccario suo salutem, tenore cujusdam brevis nostri sub magno sigillo nostro Angliæ consect' geren' dat' quarto die Augusti *Anno Regni nostri undecimo in Rotulis Cancellar' nostræ irrotulat' per quod vic' Com' nostri* Bucks *Ball' & Burgens' Burgi & Paroch' de* Buckingham *Major' Ball' & Burgen' Burgi de* Chipping-Wiccombe *alias* Wiccombe *ac probis hominibus in eisd' Burgis & Paroch' & membris eorund' & in villis de* Agmondesham, Wendover, *&* Marlow magna, *& in omnibus aliis Burgis, Villis, Villatis, Hamlet' & aliis locis in dicto Com'* Bucks *mandavimus quod pro defensione Regni, tuitione Maris, securitate subditorum nostrorum, ac salva conductione Navium & Merchandizarum ad Regnum nostrum Angliæ venien' & de eod' ad partes exteras transeun' pararent unam Navem de guerra portagij quadringentor' & quinquagint' dolior' cum hominibus tam Magistris peritis quam Marinariis valentioribus & expertis centum & octogint' ad minus, ac etiam tormentis tam majoribus quam minoribus pulvere tormentario ac hastis & telis aliisque armaturis necessar' pro guerra sufficien' & cum duplici eskippamento, nec non cum victualibus ad certum diem in eod' brevi content' ad tot homines competen' & ab inde in vigint' & sex septiman' ad custag' hominum & terr' tenen' Burgor' Vill' Villat' Hamlet' & al' locor' supra mentionat' in dicto Com'* Bucks, *tam in victualibus quam in hominum salar' & al' ad guerram necessar' per tempus illud super defensionem Maris in obsequio nostro in Comitiva Custod' Maris moratur' & ad portum de* Portsm' *circa tempus in eod' brevi limitat' duci facerent. Quodq; respective assiderent omnes homines in præd' Burg' & Paroch' de* Buckingham *& Burg' de* Chipping-Wiccombe *alias* Wiccombe, *& ceteris Burgis, Villis, Villat' Hamlet' & aliis locis in dicto Com'* Bucks *& membris eorund' & terr' tenentes in eisdem ad contribuend' expensis circa provisionem præmissor' & ad cetera faciend' & exequend' modo & forma prout per idem breve precept' fuit vobis mittimus presentibus inter claus' breve pro eo quod salus Regni nostri Angliæ & populi nostri ejusdem periclitabatur quod e dicta Cancellar' nostra emanari narravimus inter al' brevia ad hujusmodi provisionem & assessament' faciend' per singulos Com' Civitat' Burg' Vill' Villat' Hamlet' & locos Regni nostri Angliæ & Walliæ, & membris eorund' è Cancellar' nostr' præd' nuper emanat' & ibidem similiter irrot' Ac etiam quod dictum al' breve nostrum ad certificand' nobis in eand' Cancellar' tam de nominibus hominum & terr' tenen' in præd' Burg' & Paroch' de* Buckingham *& Burg' de* Chipping-Wiccombe *alias* Wiccombe, *& in cæteris Burgis Villis, Villat' Hamlet' & locis dicti Com'* Bucks *qui de mandato nostro præd' ad contribuend' erga provisionem premissor' assess' fuerint ac denar' super ipsos sic assess' non solver' quam de separal' portionibus & denar' summis super homines & terræ tenen' illos sic onerat' & imposit' necnon Certificationes quasdem in scriptis virtute Brevis illius reduct' & in dictam Cancellar' nostram miss'. Vobis etiam mittimus præsentibus interclaus'; mandantes quod inspectis Brevibus & Certificat' præd' ulterius inde pro levatione, collectione & receptione omnium & singularum præd' denar' summar' de præd' contributionibus adhuc non solut' fieri fac' prout de jure & secundum legem & consuetudinem Regn' nostri Angliæ fuerit faciend' Teste meipso apud* Westm' *quinto die* Maij *Anno Regni nostri tertio decimo,* EYRE. *Sicut in eisdem Brevibus & Schedulis eisd' annex' in Scaccar' dicti Dom' Regis certificat' & ibidem in custod' Rememerator' ejusd' Dom' Regis de Record' remanen' plenius continetur. Quibus lectis, auditis & per ipsum intellectis, idem* Johannes *queritur se colore separal' Brev' Return' eorund' & Schedul' eisdem annexat' graviter vexat' fore & inquietat' & hoc minus juste. Quia dicit quod præd' separal' Brevia superius mentionat' Return' eorund' & Schedul' eisdem annexat' Materia in eisd' content' minus sufficien' in lege existunt ad onerand' ipsum* Johannem Hambden *de aut cum solutione præd' summ' vigint' solid' super ipsum in Schedul' præd' modo & forma præd' taxat' & assessat' aut alicujus inde parcell' ad quæ ipse necesse non habet, nec per legem terr' tenetur respondere. Unde ob insufficien' præd' separal' Brevium superius mentionat' Return' eorund' Schedul' eisdem annex' ac Materiæ in eisdem Brevibus ac Schedul' content' Ipse idem* Johannes Hambden *petit judicium, Si dictus Dominus Rex nunc ipsum de præd' vigint' Solid' aut aliqua inde parcell' ulterius impetere, seu onerare debeat aut velit.*

ROBERT HOLBORNE.

Et Johannes Banks *Mil' Atturn' Dom' Regis nunc General' qui pro eodem Domino Rege sequitur præsens hic in Cur' ad eund' diem in propria persona sua, dicit quod præd' separal' Brevia & Return' eorund' ac Schedul' præd' eisdem annex' Materiaq; in eisdem content' sufficien' in lege existunt ad præd'* Johan' Hambden *de præd' vigint' solid' super ipsum in forma & ex causa præd' assessat' onerand' Quam quidem materiam ipse dictus Atturnat' dicti Dom' Regis General' pro eodem Dom' Rege paratus est verificare. Quamq; materiam præd'* Johannes Hambden *non dedicit, nec ad eam aliqualiter respondit, sed verificationem illam admittere omnino recusat, pro eodem Dom' Rege idcirco petit judicium, & quod præd'* Johannes Hambden *de eisd' vigint' solid' oneretur, & inde satisfaciat &c.*

JOHANNES BANKS.

Thus

Thus in ENGLISH.

BY WRIT.

Of the Term of the Holy Trinity, *in the* 13th *Year of King* CHARLES.

'MEMORANDUM; that the Writ of our Lord the King under the Seal of the *Exchecquer*, by the consent of the Barons here, issued out in these Words.

'ff *Charles* by the Grace of God, of *England*, *Scotland*, *France*, and *Ireland*, King, Defender of the Faith, *&c.* To the Sheriff of *Bucks* Greeting. Whereas several and divers Sums of Money specified in the Schedule to this Writ annexed, by virtue of our Writ under our Seal of *England*, bearing date the fourth Day of *August*, in the eleventh Year of our Reign, were assessed and charged upon several Persons in the said Schedule named for and towards the providing of a Ship of War, together with the Rigging, and other Things thereunto belonging in the said Writ particularly mentioned; which said several Sums of Money being so assessed and charged, and unpaid and not satisfied, the Names of the said several Persons, together with the several Sums of Money charged upon them, were certified into the Court of our *Chancery* by our Writ of *Certiorari* bearing date the ninth Day of *March*, in the twelfth Year of our Reign, issuing under our great Seal aforesaid. And by our Writ of *Mittimus* under the said Seal, bearing date the fifth Day of the Month of *May* Instant, were sent into our *Exchecquer* for further Process thereupon to be had, as by the tenor of the said Writ, bearing date the fourth Day of *August*, in the eleventh Year of our Reign, and by the Writ of *Certiorari*, and Certificates thereupon made, sent into our said *Exchecquer*, and there of Record, remaining in the Custody of our Remembrancer, more fully doth appear: We command you, that you do not, by reason of any Liberty, omit entring thereupon; and by good and lawful Men of your Bailiwick, make known to the several Persons aforesaid, named and specified in the said Schedule, that they appear before the Barons of the *Exchecquer* at *Westminster* on the *Octave* of the Holy Trinity ensuing; to shew and propose, if they have or know any thing to say for themselves, why they ought not to be charged with the aforesaid several Sums of Money upon them assessed in manner and form aforesaid, and not paid in the said Schedule specified, and to satisfie the same; and further, to do and receive in the Premisses, what our Court shall then there think fit to be ordered; and there bring then this Writ, and the Names of those by whom you have so made known unto them. Witness *Humphry Davenport* Kt. at *Westminster*, the twenty second Day of *May*, in the thirteenth Year of our Reign. *By the Roll.*

'Memorandum of the same Year of the King in the Record-Roll of this *Easter*, and by the Barons *Fanshawe*, and the Tenor of the aforesaid Schedule in the aforesaid Writ mentioned as touching *John Hambden*, followeth in these words, *viz.* A Schedule of the Names of certain Persons in the County of *Bucks*, and of certain Sums of Money upon them assessed, and charged for and towards the providing of a Ship of War, together with the Rigging and other things thereunto belonging; by the virtue of a certain Writ under the Great Seal of *England*, bearing Date the fourth Day of *August*, in the eleventh Year of *Charles* our now Lord the King, and certified into the Court of *Chancery* of our said Lord the King to be unpaid, by virtue of a Writ of *Certiorari*, issuing out under the Seal aforesaid, bearing Date the ninth Day of *March*, in the twelfth Year of his Reign; and by Writ of *Mittimus* under the said Seal sent into the *Exchecquer* of our said now Lord the King, for further Process thereupon to be made as by the Tenor of the aforesaid Writ bearing Date the fourth Day of *August*, in the above-said eleventh Year of our said now Lord the King, and by the Writ of *Certiorari*, and the Certificates thereupon made sent into the said *Exchecquer*, and there of Record remaining in the Custody of the Remembrancer of our Lord the King, more fully doth appear: ff. *Stoake Mandivile*, ff. Mr. *J. Hambden*, Esq; 1 *l.* At which Day *Anthony Chester*, Bar. Sheriff of the County aforesaid, as touching the aforesaid *John Hambden*, returned, that he by *Nicholas Aris*, *Robert Alexander*, *Richard Harrison* and *William Heyborne*, good and lawful Men of his Bailiwick, made known to the aforesaid *John Hambden* amongst other Things, that he appear before the Barons within written, at the Day and Place within contained; to shew and propose, if he hath or knoweth of any thing to say for himself, why he ought not to be charged with the aforesaid Sum upon him assessed, and not paid in the said Schedule specified, and to satisfie the same, as it is further commanded him. And now, that is to say, from the Day of the Holy Trinity, upon three Weeks the aforesaid *John Hambden* in the aforesaid Schedule named here cometh in his proper Person, and prayeth *Oyer* of the Writ of *Sciri Facias* aforesaid, the Return of the same, and the Schedule unto the same annexed, and they are read unto him. He likewise prayeth *Oyer* of the aforesaid Writ, bearing date the fourth Day of *August*, in the eleventh Year of *Charles* our said now Lord the King in the Writ of *Sciri Facias* mentioned, and it

'is

'is read unto him in these Words, If *Charles*, 'by the Grace of God, of *England*, *Scotland*, '*France* and *Ireland*, King, Defender of the Faith, '*&c.* To the Sheriff of our County of *Bucks*, 'the Bailiff and Burgesses of the Burrough and 'Parish of *Buckingham*, the Mayor, Bailiff, and 'Burgesses of the Burrough of *Chipping Wiccombe* alias *Wiccombe*, and the good Men in 'the said Burroughs, Parish, and their said 'Members; and in the Towns of *Agmondesham*, '*Wendover*, and Great *Marlowe*, and in all other 'Burroughs, Villages, Hamlets, and other Places in the said County of *Bucks*, Greeting. 'Because We are given to understand, that 'certain Thieves, Pirates, and Sea-Robbers, 'as well *Turks*, Enemies of Christianity, as 'others confederated together, wickedly take 'away and despoil the Ships, Goods, and 'Merchandizes, not only of our Subjects, but 'also of the Subjects of our Allies upon the 'Sea, which of old used to be defended by the '*English* Nation; and at their Pleasure have 'carried away the Men therein, enslaving them 'in a most wretched Captivity: And whereas 'we see them daily preparing Shipping further to annoy our Subjects, and to aggrieve 'the Kingdom, unless a more speedy Remedy 'be applied, and their Endeavours more 'vigorously obviated: Considering also the 'Dangers which every where in these times 'of War hang over us; so that it behoves us 'and our Subjects, to hasten the Defence of 'the Sea and Kingdom with all possible Expedition: We being willing by the help of 'God, in the highest Degree to provide for the 'Defence of the Kingdom, the Protection of 'the Sea, the Security of our Subjects, the safe 'Convoy of Shipping and Merchandize coming to our Kingdom of *England*, and going 'from the said Kingdom to foreign Parts: 'And since We and our Progenitors, Kings of '*England*, have hitherto been Lords of the Sea 'aforesaid; and it would in the highest manner concern us, if this Royal Honour should 'in our Days be lost, or any ways diminished; 'since also this Burden of Defence which touches 'all, ought to be born by all, as hath been accustomed to be done by the Law and Custom 'of the Kingdom of *England*: We firmly enjoin 'and command you the aforesaid Sheriff, Bailiffs, Burgesses, Mayor, good Men, and all 'others whomsoever above-mentioned in the 'Burroughs, Towns, Villages, Hamlets and 'Places aforesaid, and their Members in the 'Faith and Allegiance whereby you are bound 'to us, and as you love us and our Honour, 'as also under the forfeiture of all Things you 'can possibly forfeit to us, that you cause to be 'fitted out one Ship of War of the Burthen of 'four hundred and fifty Tuns, with Men, as 'well skillful Officers as able and experienced 'Mariners, a hundred and fourscore at least; 'as also with a sufficient quantity of Cannon, 'Muskets, Gunpowder, Pikes and Spears, and 'other Arms necessary for War, with double 'Tackling; as also with competent Victuals for 'so many Men, until the first Day of *March* 'now next ensuing; and from thence for six 'and twenty Weeks at your Costs, as well in 'Victuals, as the Men's Wages, and other things 'necessary for War by that time, on account 'of defending the Sea at our Command in 'Company with the Admiral; to whom we 'shall before the aforesaid first Day of *March*, 'commit the custody of the Sea, to be and 'remain where he on our behalf shall appoint; 'and that you cause the same to be brought into the Port of *Portsmouth* before the said first 'Day of *March*, so that they may be there that 'Day at farthest; thence to proceed with our 'Ships, and the Ships of other Loyal Subjects 'for the Protection of the Sea, the Defence of 'you and yours, to repel and vanquish all those 'whosoever they are, that endeavour to molest and annoy on the Sea our Merchants and 'other Loyal Subjects aforesaid, coming into 'our Dominions on account of Traffick, or returning thence to their own Country. We 'have also appointed you the Sheriff of our 'County of *Bucks*, the Bailiff and Mayor of 'the Burroughs and Parish aforesaid, or any 'two or more of you, of whom our will is, 'that you the aforesaid Sheriff of our County 'of *Bucks* be One, within thirty Days after 'the Receipt of this Writ, to assess as much of 'the Charges aforesaid upon the aforesaid Burroughs of *Buckingham* and *Chipping Wiccombe* alias *Wiccombe* with their Members, as ought 'severally to be laid on or assessed. And if 'such Assessment within the aforesaid thirty 'Days shall not happen to be made by you, 'two or more of you; Then we have appointed 'you the aforesaid Sheriff of our County of '*Bucks*, to make such Assessment upon the 'aforesaid Burroughs, and Parish, and Members, as you shall see reasonable to be done. 'And our Will is, that of your so doing, you 'the aforesaid Sheriff of *Bucks*, wholly certifie 'under your Seal the Mayor and Bailiffs aforesaid. We have also appointed you the aforesaid Bailiff of the Burrough and Parish of '*Buckingham*, to assess every Man in the said 'Burrough and Parish, and in the Members 'thereof, and the Land-Tenents in the same, 'not having the Ship aforesaid or any share 'thereof, or not serving therein, to contribute 'to the Expences about the Provision of the necessary Premisses; and to assess and lay upon 'the aforesaid Burrough and Parish, with the 'Members thereof, so as aforesaid, that is to 'say, every one of them according to their 'Estates, Goods and Employment; and the Portions upon them assess'd by Distresses, or other 'due Ways and Means to levy, and Collectors 'in that behalf to nominate and appoint. And 'all those whom you shall find Rebellious and 'Refractory in the Premisses to imprison, there 'to remain till for their Delivery we shall further think fit to direct. We have also appointed you the aforesaid Mayor of the Burrough of *Chipping-Wiccombe* alias *Wiccombe*, to 'assess every Man in the same Burrough, and 'in the Members thereof, and the Land-Tenents in the same, not having the Ship aforesaid, or any Share thereof, or not serving 'therein, to contribute to the Expences about 'Provision of the necessary Premisses; and to 'assess and lay upon the aforesaid Burrough with 'the Members thereof, so as aforesaid, that is 'to say, every one of them according to their

'Estate and Goods, or Employment, and 'the Portions on them assessed by Distresses, or other due Ways and Means to levy, 'and Collectors in that behalf to nominate and 'appoint; and all those whom you shall find 'Rebellious and Refractory in the Premisses 'to imprison, there to remain till for their 'Delivery we shall further think fit to order 'and direct. And moreover, We have appointed you the aforesaid Sheriff of our 'County of *Bucks*, to assess every Man in the 'aforesaid Towns of *Agmondesham*, *Wendover*, and '*Great Marlowe*, and in the Members thereof 'and in all the other Towns, Villages, Burroughs, Hamlets, and other Places in the 'aforesaid County of *Bucks*, and the Land Tenents in the same not having the Ship aforesaid or any Share thereof, or not serving in the 'same to contribute to the Expences about the 'Provision of the necessary Premisses, and to 'assess and lay upon the said Towns, Villages, 'Burroughs, Hamlets and Places, with the 'Members thereof, so as aforesaid, that is to 'say, every one of them according to their 'Estate and Goods, or Employment; and the 'Portions on them assessed by Distresses or 'other due Ways and Means to levy, and Collectors in that Behalf to nominate and appoint, and all those whom you shall find Rebellious and Refractory in the Premisses to 'imprison, there to remain till for their Delivery we shall further think fit to order and 'direct. And further, We command you all, 'that you diligently apply your selves to the 'Premisses, and effectually do and execute the 'same as you shall answer the contrary at your 'Peril. But our Will and Pleasure is, not 'that under Colour of our Mandate aforesaid, you cause to be levied from the said 'Persons, more than shall suffice for the necessary Expences of the Premisses; or that any 'one who shall levy any Money of the Contributors to the Charges aforesaid, detain the 'same or any Part thereof in his own Possession, or presume to appropriate it to other 'Uses under any Pretence or Colour whatsoever. It being our Will, that if more shall 'be collected than is sufficient, that the same 'be paid back again to those who shall have so 'paid the same, according to every Man's respective Share and Proportion. Witness my 'self at *Westminster* the fourth Day of *August* in 'the Eleventh Year of our Reign. He prayeth 'also *Oyer* of the aforesaid Writ of *Sciri facias* 'abovementioned, and it is in like manner read 'unto him. 'II *Charles*, by the Grace of God, of '*England*, *Scotland*, *France*, and *Ireland*, King, 'Defender of the Faith, *&c.* To those who 'were Sheriffs of our County of *Bucks* between 'the fourth Day of *August*, in the Eleventh Year 'of our Reign, and the first Day of *March* then 'next ensuing, to those who were Bailiffs of the 'Burrough and Parish of *Buckingham*, and the 'Mayor and Bailiffs of the Burrough of *Chipping-Wiccombe* alias *Wiccombe*, in the said County of '*Bucks* within the Time aforesaid, Greeting. 'Whereas by our Writ made under our Great 'Seal of *England*, bearing Date the aforesaid fourth 'Day of *August* in the Eleventh Year above-'said, for the Defence of the Kingdom, the 'Protection of the Sea, the Security of our 'Subjects, and the safe Convoy of the Ships 'and Merchandize coming to our Kingdom 'and passing thence to foreign Parts; We commanded the Sheriff of our County of *Bucks*, 'the Bailiff of the Burrough and Parish of '*Buckingham*, as also the Burgesses of the said 'Burrough, the Mayor and Bailiffs of *Chipping-Wiccombe* alias *Wiccombe*, as also the Burgesses 'of the said Burrough, and the good Men in 'the said Burroughs and Parish, and in the 'said Burroughs and Parish and Members 'of the same, and in the Towns of *Agmondesham*, *Wendover*, and *great Marlowe*, and in 'all other Places, Towns, Burroughs, Villages, Hamlets, and other Places in the said 'County of *Bucks*, that you should cause to be 'fitted out one Ship of War of the Burden of 'four hundred and fifty Tuns, with Men as 'well skilful Officers, as able and experienced 'Mariners a Hundred and fourscore at least, 'as also with a sufficient Quantity of Cannons, 'Muskets, Pikes and Spears, Gunpowder, and 'other Arms necessary for War, with double 'Tackling, as also with competent Victuals 'for so many Men, at a certain Day in the 'said Writ contained, and from thence for 'six and twenty Weeks at the Costs of the 'Men and Land-Tenants of the Burroughs, 'Parish, Towns, Villages, Hamlets, and other 'Places abovemention'd in the said County 'of *Bucks*, as well in Victuals, as the Mens 'Wages, and other Things necessary for War, 'by that Time, for defending the Sea; and 'that you should cause the same to be brought 'into the Port of *Portsmouth* within the Time 'in the said Writ limited. And whereas by the 'said Writ, we appointed the Sheriff of our County of *Bucks* aforesaid, the Bailiff of the Burrough and Parish of *Buckingham* aforesaid, and 'the Mayor of the Burrough of *Chipping-Wiccombe* 'alias *Wiccombe* aforesaid, or any two or more 'of them, of whom our Will was, that the 'Sheriff of our said County of *Bucks* should be 'one, to assess as much of the Costs aforesaid, 'upon the aforesaid Burrough and Parish of '*Buckingham*, and upon the aforesaid Burrough 'of *Chipping-Wiccombe* alias *Wiccombe*, with their 'Members, as ought severally to be laid on, 'or assess'd. And whereas we appointed the 'Bailiff of the Burrough and Parish of *Buckingham*, and the Mayor of the Burrough of '*Chipping-Wiccombe* alias *Wiccombe*, severally and 'respectively to assess every Man in the said 'several Burroughs and Parish, and the Members thereof, and the Land-Tenents in the 'same, not having the Ship aforesaid or any 'Share thereof, or not serving therein, to contribute to the Expences about the Provision 'of the necessary Premisses. And upon the 'aforesaid Burrough and Parish of *Buckingham*, 'And upon the aforesaid Burrough of *Chipping-Wiccombe* alias *Wiccombe*, so as aforesaid, then 'to be severally and distinctly laid, that is to 'say, Every one of them according to their 'Estate and Goods, or Employment, and the 'Portions upon them assessed by Distresses, or 'other due Ways and Means to levy, and Collectors in that behalf to nominate and appoint, 'in Manner and Form as in the said Writ was 'com-

commanded. And whereas, by our said Writ we moreover appointed the Sheriff of our said County of *Bucks*, to assess every Man in the aforesaid Towns of *Agmondesham*, *Wendover*, *great Marlowe*, and in the Members thereof, and in all the other Towns, Villages, Burroughs, Hamlets, and other Places in the aforesaid County of *Bucks*, and the Land-Tenants in the same, to contribute to the Expences, about the Provision of the necessary Premisses and the other things to do and execute in Manner and Form as by the said Writ was commanded. Add because some Men and Land-Tenents in the said County, Burroughs, Parish, Towns, Villages, Hamlets, and other Places, by several Taxations, and Sums of Money, by you upon them respectively laid and assessed towards the Contribution of the Burthen aforesaid, according to the Exigency of the Writ aforesaid, have not yet paid and satisfied the same, but have refused and yet gainsay to pay the same, as we are informed. And whereas our late Will was to be certified as well of the Names of the Men and Land-Tenants who had been assessed towards the Contribution of the Expences abovesaid, and had not paid the Money so assessed, as also of the several Portions or Sums of Money laid upon them. You nevertheless in Contempt of Us, have sent nothing upon the Return of our Writ limited. We therefore command you, the late Sheriff of our County of *Bucks*, as we heretofore have commanded you, that you certific to us, as well of the Names of the Men, and Land-Tenants, in the aforesaid County, by Virtue of our said Writ by you respectively assessed, as the Sums of Money on them so assessed, which they have not yet paid, nor satisfied, but refuse to pay the same; as also of the several Portions and Sums of Money, by you the aforesaid late Sheriff of our County of *Bucks* upon them assessed, reduced into Writing, with all things touching the same into our *Chancery*, distinctly and openly, under your Seals, without Delay, or at fartheſt before the six and twentieth Day of *April* next ensuing, wheresoever you shall then be, together with this Writ. And we command you the aforesaid late Bailiff of the Burrough and Parish of *Buckingham*, and the Mayor of the Burrough of *Chipping-Wiccombe* alias *Wiccombe*, as we heretofore have commanded you, that you severally certify Us, as well of the Names of the aforesaid Men and Land-Tenants in the Burrough and Parish of *Buckingham*, and Burrough of *Chipping-Wiccombe* alias *Wiccombe*, by virtue of our said Writ first abovemention'd by you respectively assessed, as the Sums of Money on them so assessed, which they have not yet paid, nor satisfied, but refuse to pay the same; as also of the several Portions and Sums of Money by you upon them respectively assessed, reduced in like manner into Writing, with all things touching the same, into our *Chancery* aforesaid, distinctly and openly without Delay, or at fartheſt before the six and twentieth Day of *April*, next ensuing, wheresoever you shall then be, together with this Writ. Witness my self at *Westminster*, the ninth Day of *March*, in the Twelfth Year of our Reign. *EYRE*. At which Day, *Peter Temple* and *Heneage Proby* returned the aforesaid Writ, by Indorsement, thus, ſſ The Execution of this Writ appears in certain Schedules to this Writ annexed. The Tenor of which Schedules as to the aforesaid *John Hambden* returned by the aforesaid *Peter Temple*, follows in these Words. ſſ *Bucks*, ſſ I *Peter Temple* Knight and Baronet, who was Sheriff of the County of *Bucks*, that is to say, between the fourth Day of *August*, in the eleventh Year of the Reign of our Lord *Charles* now King of *England*, *&c.* and the twenty second Day of *February* then next following; on which Day I went out of my Office of Sheriff of the County of *Bucks* aforesaid; by virtue of the said Writ of our Lord the King to this Schedule annexed, do certifie unto our said Lord the King into his *Chancery*; that by virtue, and according to the Exigency of the Writ of our said Lord the King issued out of his *Chancery*, and there inrolled of Record, and, amongst others, directed to the Sheriff of the said County of *Bucks*, bearing date the fourth Day of *August*, in the eleventh Year aforesaid; have assessed upon several Men and Land-Tenents of the County of *Bucks* aforesaid, whose Names are underwritten, the several Portions and Sums of Money at their particulars placed below, to contribute to the Expences about the providing of the Ship in the said Writ mentioned; which said Portions and Sums of Money, or any parcel thereof, before my going out of my Office of Sheriff of the County aforesaid, the said Men and Land-Tenants, or any of them whose Names are under written, have not paid, but have refused to pay the same to my Hands, or the Hands of the Collector by me in that behalf appointed, by virtue of the Writ last mentioned, *viz.* *Stoake Mandiville*, ſſ Mr. *John Hambden*, Esq; 1 *l.* And the Tenor of the other Schedule by the aforesaid *Heneage Probey* in like manner returned, and to the said Writ annexed also follows in these words: ſſ *There is to be accompted upon by the Assessors, High-Constables, Petty-Constables within the said County in General, which cannot be accompted for by Sir* Peter Temple, *being as it is, conceived short four Pounds.* I *Heneage Probey*, Esq;, who was Sheriff of the County of *Bucks*, between the twenty second Day of *February*, in the eleventh Year of the Reign of our Lord *Charles* now King of *England*, *&c.* and from the said Day and Year, to the first Day of *March* then next following; by virtue of the Writ of our said Lord the King to this Schedule annexed, do certific unto our said Lord the King into his *Chancery*, that the Men and Land-Tenents of the County of *Bucks* aforesaid, or any one of them whose Names are expressed in certain Schedules to this Writ annexed, who were assessed by Sir *Peter Temple* Knight and Baronet, late Sheriff of the County of *Bucks* aforesaid, whilst he was in the Office of Sheriff of the County aforesaid, in the several Portions and Sums of Money placed at their several Names above, to contribute to the Expences about the providing

'viding of the Ship; by virtue, and according 'to the Exigency of the Writ of our said Lord 'the King issued out of his *Chancery*, and there 'inrolled of Record, directed amongst others to 'the Sheriff of the said County of *Bucks*, bear-'ing date the fourth Day of *August*, in the 'eleventh Year aforesaid, have not paid, but 'have refused to pay the same to *Heneage Pro-'bey* being Sheriff of the said County of *Bucks*, 'next after the going out of Sir *Peter Temple* 'Knight and Baronet, from the Office of She-'riff of the said County, or to the Hands of the 'Collector in that behalf appointed by virtue 'of the Writ last mentioned. And further, 'the aforesaid *John Hambden* in like manner 'prayeth *Oyer* of the aforesaid Writ of *Mittimus* 'of which mention is made in the Writ of *Sciri 'Facias* aforesaid, and it is read unto him in these 'Words; ſſ *Charles* by the Grace of God, of '*England*, *Scotland*, *France* and *Ireland*, King, 'Defender of the Faith, *&c.* To the Treasu-'rer and Barons of his *Exchequer*, Greeting; By 'the tenor of a certain Writ of ours made un-'der our Great Seal of *England*, bearing date 'the fourth Day of *August*, in the eleventh 'Year of our Reign, inrolled in the Rolls of 'our *Chancery*; by which we commanded the 'Sheriff of our County of *Bucks*, the Bailiff and 'Burgesses of the Burrough and Parish of *Buck-'ingham*, the Mayor or Bailiff and Burgesses of 'the Burrough of *Chipping-Wiccombe* alias *Wic-'combe*, and the good Men in the said Bur-'roughs, Parish, and the Members thereof, and 'in the Towns of *Agmondesham*, *Wendover*, and '*Great-Marlowe*; and in all other Burroughs, 'Towns, Villages, Hamlets, and other Places 'in the said County of *Bucks*; that for the De-'fence of the Kingdom, the Protection of the 'Sea, the Security of the Subjects, and safe 'Convoy of the Ships and Merchandize com-'ing to our Kingdom of *England*, and thence 'going to foreign Parts, they should fit out 'one Ship of War of the Burden of four hun-'dred and fifty Tuns, with Men, as well skilful 'Officers, as able and experienced Mariners an 'hundred and fourscore at least; as also with a 'sufficient quantity of Cannons, Muskets, Gun-'powder, Pikes and Spears, with other Arms 'necessary for War, and with double Tack-'ling; as also with competent Victuals for so 'many Men, at a certain Day, and from thence 'for six and twenty Weeks at the Costs of the 'Men and Land-Tenents of the Burroughs, 'Parish, Towns, Villages, Hamlets, and other 'Places above-mentioned in the said County of '*Bucks*, as well in Victuals as the Mens Wages, 'and other things necessary for War for that 'time, on account of the Defence of the Sea 'under our Command, in Company of the Ad-'miral to be and remain; and that they should 'cause the same to be brought into the Port of '*Portsmouth* about the time limited in the said 'Writ; and that they should respectively assess 'every Man in the said Burrough and Parish of '*Buckingham*, and Burrough of *Chipping-Wic-'combe* alias *Wiccombe*, and in the rest of the Bur-'roughs, Towns, Villages, Hamlets, and other 'Places in the said County of *Bucks*, and the 'Members thereof, and the Land-Tenents in 'the same to contribute to the Expenses about 'the Provision of the necessary Premisses, and 'other things to do and execute in Manner 'and Form as was commanded by the said 'Writ: We send to you being present the in-'closed Writ; for that the Safety of our King-'dom of *England*, and our People thereof were 'in Danger, which we have taken care to have 'issued out of our *Chancery* amongst other Writs, 'to make such Provision and Assessment through 'every County, City, Burrough, Town, Vil-'lage, Hamlet, and Places of our Kingdom of '*England*, and of *Wales*, and the Members there-'of, out of our *Chancery* aforesaid lately issuing, 'and there in like manner inrolled. And also 'a certain other Writ of ours to certifie us into 'our *Chancery*, as well of the Names of the 'Men and Land-Tenents in the aforesaid Bur-'rough and Parish of *Buckingham*, and Burrough 'of *Chipping-Wiccombe* alias *Wiccombe*, and in the 'rest of the Boroughs, Towns, Villages, Ham-'lets, and Places of the said County of *Bucks*, 'who by our Command aforesaid, were asses-'sed to contribute towards the Provision of 'the Premisses, and have not paid the Sums of 'Money upon them so assessed; as also of the 'several Portions and Sums of Money so 'charged and laid upon the said Men and 'Land-Tenents; as likewise certain Certificates 'by virtue of the said Writ reduced in writing, 'and sent into our *Chancery*. We also send you 'being present the inclosed, commanding you, 'that having inspected the Writs and Certificates 'aforesaid, that you further cause to be done 'thereupon for the Levying, Collecting, and 'Receiving, all and singular the aforesaid Sums 'of Money of the aforesaid Contribution as 'yet unpaid, as by Right, and according to the 'Law and Custom of our Kingdom of *England* 'hath been used to be done; Witness my self 'at *Westminster* the fifth Day of *May*, in the thir-'teenth Year of our Reign. *EYRE*. As in 'the said Writs and Schedules thereunto annex-'ed, certified into the *Exchequer* of our said Lord 'the King, and there in the Custody of the Re-'membrancer of our said Lord the King re-'maining of Record, more fully is contained. 'Which being read, heard, and by him under-'stood, the said *John Hambden* complaineth, that 'by colour of the several Writs, their Returns 'and Schedules to them annexed, he hath been 'grievously vexed and disquieted, and that un-'justly; because he saith, that the aforesaid seve-'ral Writs above mentioned, their Returns and 'Schedules to them annexed, and the Matter 'in them contained are not sufficient in the 'Law to charge the said *John Hambden* on or 'with the payment of the aforesaid Sum of 'twenty Shillings on him in the Schedule afore-'said, in the manner and form aforesaid taxed 'and assessed, or any Parcel thereof; to which 'he hath no necessity, or is obliged by the 'Law of the Land to make Answer; Where-'upon by reason of the Insufficiency of the 'aforesaid several Writs above-mentioned, their 'Returns, the Schedules to them annexed, and 'the Matter in the said Writs and Schedules 'contained, he the said *John Hambden* prayeth 'Judgment. If our said now Lord the King

'ought,

' ought, or is willing further to assess or charge ' him with the aforesaid twenty Shillings, or ' any Parcel thereof.

ROB. HOLBORNE.

' And *John Banks* Knight, Attorney-General ' of our now Lord the King, who sueth for ' our said Lord the King, being present here in ' Court, the same Day in his proper Person, ' saith, that the aforesaid several Writs, and their ' Returns, and the Schedules aforesaid to the ' same annexed, and the Matter in the same ' contained, are sufficient in the Law to charge ' the aforesaid *John Hambden* with the aforesaid ' twenty Shillings upon him assessed in the ' Form, and for the Cause aforesaid; which ' said Matter, he the said Attorney-General of ' our said Lord the King, for and in behalf of ' our said Lord the King, is ready to verifie; ' and which Matter the aforesaid *John Hambden* ' doth not deny, nor any wise make Answer ' thereunto, but wholly refuseth to admit the ' Verification thereof, and therefore prayeth ' Judgment; and that the aforesaid *John Hamb-* ' *den* be charged with the said twenty Shillings, ' and satisfie the same.

JOHN BANKS.

The ARGUMENT *of Mr.* ST. JOHNS, *on the Behalf of Mr.* HAMBDEN, *before all the Judges in the* Exchequer-Chamber, *in the Great Case of* Ship-Money.

May it please your Lordships,

PASCH' *xiijo* Car' a *Sciri Facias* issued to the Sheriff of *Bucks*, reciting, that whereas several Sums of Money mentioned in a Schedule to that Writ annexed, by a Writ under the Great Seal of *England*, dated *4to Augusti* 11 *Car'* sessed upon several Persons for providing of a Ship of War, were not paid: And that upon a *Certiorari* dated *9no Martij* 13 *Caroli*, these Sums and the several Persons upon whom they were assessed, were certified into the *Chancery*, and from thence by *Mittimus* dated *5to Maij*, were sent into the *Exchequer*, that Process might be issued against these Defaulters: Thereupon the Sheriff is commanded, *Quod sciri faceret* to those several Persons to appear in the *Exchequer Octab' Trinitat'* 13 *Caroli*, to shew Cause why they should not pay those Sums assessed upon them.

The Sheriff returns, *Quod sciri fecit John Hambden*, Esq; who was assessed at 20 *s.* and he hath not paid it. Mr. *Hambden* hath appeared and demanded *Oyer* of the *Scir' fac'* of the Schedule of the Writ dated *4to Augusti*, the *Certiorari* and the *Mittimus* and of their several Returns, and hath thereupon demurred in Law.

The Writ dated *4to Augusti* 11 *Car'* because it is the Ground of the issuing forth the *Sci' fa'* and so by necessary Consequence, as that which first occasioned any Process against him, it will be the Subject from whence will be fetch'd all that shall be said either for or against my Client. I will endeavour by breaking it into Parts, more clearly to present it to your Lordships View.

The Thing commanded is, that this County should provide a Ship of War of 450 Tuns, with 180 Men, Guns, Gun-powder, double Tackling, Victuals, and all other Things necessary, and to bring her to *Portsmouth* by the first of *March* following and from that time to provide her of Victuals, Mariners Wages, and all other Necessaries for six and twenty Weeks. For effecting this, there is Power given to assess each Person within the County *secundum Statum & Facultates*, and to bring in these Sesses by Distress, *& quos Rebelles invenirent* to imprison their Persons.

My Lords, if the Writ had staid here, and gone no further, the Command though full in Word, it had been void in Law, because as yet it appears not for what End this Ship was to be provided. 40 *Ass. Plow.* A Commission to seize Mens Goods notoriously suspected of Felony, before Conviction, adjudged void, because therefore the Command, without Cause shewn, and that sufficient in Law too, would be void.

In the second Place therefore they are set down to be these: *Pro Defensione Regni, Tuitione Maris, Securitate Subditorum, & salva Conductione Navium*, both outward and inward, the Sea being infested with Pirates, and more Shipping being daily prepared *ad Regnum gravandum*; these are the Ends.

In the third Place the Legality of it, that every Man *secundum Statum & Facultates* should be hereunto assessed, is thus inforced. *First* from Custom and continued Use, in these Words, That the Sea *per Gentem Anglicanam ab olim defendi consuevit.* And *Secondly*, this Use proved to be from a common Ground of Equity; *Onus defensionis, quod omnes tangit, per omnes debet supportari:* And the Rule of Equity back'd by the Common Law in these Words, *Prout per legem & consuetudinem Regni Angliæ fieri consuevit.* The Argument stands thus; All have Benefit by Defence of the Realm, and therefore by Law the Charge ought to be born by all.

Then it is further inferred, that every Man, even by his Allegiance, is bound to contribute to this Charge, the Command being *in fide & legiancia quibus nobis tenemini.* Of these Parts the Writ consists, which all being put together, in brief declare the Scope and End of the issuing forth thereof to be the Defence and Safety of the Kingdom; a Thing so necessary, that it must needs be legal: For it is too near and too narrow a Conceit of the Wisdom and Policy of the Law to think, that whilst the Care thereof should be confined only to the Preservation of the general Members of the Body Politick from the Wrongs and Pressures that might be offered from others to the Fellow-Members, that in the

mean time it will leave the whole to the Violence and Will of Enemies: so that whilst each Subject, considered as a Part of the Whole, hath a known and sure Estate in Lands, and real Property in his Goods, not to be impeached by any whatsoever within the Realm; yet considered all together as they make the *Unum Compositum*, they should have in them only *precariam Possessionem*, or Tenancy at Will in regard of Foreigners. My Lords, this cannot be; for the Law is so careful herein, that even afar off it foresees and prevents all Dangers in this kind; and that is the Reason that an Alien, though a Friend, hath not Capacity to purchase any Land in the Realm. And if the Law be so quick-sighted, as that to prevent but Possibility of Danger, as it keeps such Strangers from having any Land within the Realm, which desire to come by it peaceably and for valuable Considerations; by this we may easily see the great Care it hath to prevent apparent Dangers, which usually proceed from open Force and Violence, which further appears by the Greatness of the Punishment which the Law inflicts upon Offenders in this Kind, which is High Treason of all other the greatest. 13 *Eliz. Dyer.* 298. *Story* conspired beyond Sea with a Foreign State to invade the Realm, and though nothing was attempted, yet it was adjudged High Treason. And 21 *Ed.* 3. *fo.* 23. and 45 *Ed.* 3. 25. a Man killed a Captain that was going with twenty Men at Arms to the King in his Wars, and it was adjudged to be High Treason. And so by some Opinions in Print it is, to burn or sink any of the King's Ships. By the Greatness of the Punishment for the Breach of the Negative part of the Law, we might understand the Peremptorineſs and Force of the Affirmative part. So that, my Lords, in this Case the Question is not *de Re*, for by the Law the Safety of the Realm is to be provided for; *Salus Populi suprema lex:* Neither is the Question *de Personis*, either in respect of the Persons who are to bear the Charge of it, or of the Persons whom the Law hath intrusted with the Care and Power of this common Defence.

For the first, that is, the Persons that are to bear this Charge, that in the Writ *Quod omnes tangit per omnes debet supportari.* The Reasons of the Writ are weighty, and agreeable to the Rule both of the Civil and Common Law, *Qui sentit commodum sentire debet & onus:* So that I conceive the Burthen lies upon all. In respect of our *Bona Naturæ*, our Lives and Persons be equally as dear to one as another. In respect of our *Bona Fortunæ*, so *secundum Statum & Facultates;* because the greater the State and Means of Livelihood, the greater the Benefit by the Defence. The Law in this Case of Defence against the Invasion of living Enemies, being the same with that against our Soil and Ground by the Innundations and Outrages of the Sea and fresh Water; for by the Law, as appears by the Commission of Sewers, as well before the Statute of 28 *Hen.* 8. as since, to the repairing of a Bank or Causey, River, or other Sewer, all are chargeable that have *Defensionem, Commodum, vel Salvationem qualitercunque.* All that have Defence must be assessed, the Assess must be equally distributed, and therefore laid upon every Man within the Level, *Pro rata portionis Tenuræ suæ, seu pro quantitate Communis Pasturæ vel Piscariæ;* The more Land, Common, or Benefit of Fishing each Man hath, according to the Proportion thereof the Assess must be. So that, my Lords, in the second Place, the Question will not be, Whether my Client by Law be exempted from the Charge of the Defence of the Realm; for with other his Majesty's Subjects he ought to help to bear the common Burthen, and more or less may be laid upon him proportionably to his Estate and Means of Livelihood.

Neither, *Thirdly*, is there any Question to be made, but the Law hath intrusted the Person of his Royal Majesty with the Care of this Defence. The Defence and Protection which we have in our Bodies, Lands, and Goods, against any within the Realm, we know it is from him; for all Jurisdiction legal, both Ecclesiastical and Civil, which defends us in them, is wholly in his Majesty. The same it is in case of Foreign Defence, even by the *Jus Gentium*, as appears in the Text, by the Peoples desiring that they might be like other Nations, by having a King that might go in and out before them, and fight their Battles. That the King, and that legally, calleth the Kingdom *Regnum nostrum*, and every City and great Town *Civitatem & Villam nostram: Quoad Proprietatem* it cannot be, because they are the several Land-Owners; it must be so therefore principally in this respect, *Quoad Protectionem & Defensionem.* Neither hath the Law invested the Crown with this Height of Sovereignty only as a *Honorarium*, for the greater Splendor of it, but likewise as a Duty of the Crown, or *Pars Ministerii* for the Good and Safety of the Realm, which in many of the ancient Commissions of Sewers, before the Statute of 28 *Hen.* 8. is thus expressed, The King *ratione Regiæ Dignitatis & per Juramentum est astrictus ad providendum Salvationi Regni undiquaque;* so that both in Honour and by his Oath he is bound to provide for the Safety of the Realm, and that *circumquaque.*

My Lords, by the Law the King is *Paterfamilias*, which by the Law of Oeconomiques is, not only to keep Peace at Home, but to protect his Wife and Children, and whole Family from Abroad. It is his Vigilancy and Watchfulness that discovers who are our Friends and who are our Foes, and that after such Discovery first warns us of them, for he only hath Power to make War and Peace.

Neither hath the Law only entrusted the Care of Defence to his Majesty, but it hath likewise, secondly, put the *Armat' Potestat'* and Means of Defence wholly into his Hands; for when the Enemy is by him discovered and declared, it is not in the Power of the Subject to order the Way and Means of Defence, either by Sea or by Land, acording as they shall think fit; for no Man without Commission or special Licence from his Majesty, can set forth any Ships to Sea for that purpose; neither can any Man without such Commission or Licence, unless upon sudden coming of Enemies, erect a Fort, Castle, or Bulwark, though upon his own Ground; neither, but upon some such emergent Cause is it lawful for any Subject, without special Commission, to arm or draw together any Troops or Companies of Soldiers, or to make

make any general Collections of Money of any of his Majesty's Subjects, though with their Consent.

Neither, in the third place, is his Majesty armed only with his Primitive Prerogative of *Generallissimo* and Commander in Chief, that none can advance towards the Enemy until he gives the Signal, nor in other manner than according to his Direction; but also with all other Powers requisite for the full Execution of all things incident to so high a Place, as well in Times of Danger as of actual War. The Sheriff of each County, who is but his Majesty's Deputy, he hath the *Posse Comitatus*; and therefore it must needs follow, that the *Posse Regni* is in himself.

My Lords, not to burn Day-light longer, it must needs be granted that in this Business of Defence, the *Suprema Potestas* is inherent in his Majesty, as Part of his Crown and Kingly Dignity. So that as the Care and Provision of the Law of *England* extends, in the first Place, to Foreign Defence; and. secondly, lays the Burthen upon all; and, for ought I have to say against it, it maketh the Quantity of each Man's Estate the Rule whereby this Burthen is to be equally proportioned upon each Person: So likewise hath it, in the third Place, made his Majesty sole Judge of Dangers from Foreigners, and when and how the same are to be prevented; and, to come nearer, hath given him Power by Writ under the Great Seal of *England*, to command the Inhabitants of each County to provide Shipping for the Defence of the Kingdom, and may by Law compel the doing thereof.

So, my Lords, as I still conceive, the Question will not be *de Persona*, in whom the *Suprema Potestas* of giving the Authorities or Powers to the Sheriff, which are mentioned in this Writ, doth lie, for that is in the King: But the Question is only *de Modo*, by what Medium or Method this Supreme Power, which is in his Majesty, doth infuse and let out itself into this Particular; and whether or no in this case such of them have been used, as have rightly accommodated and apply'd this Power unto this Writ in the intended Way of Defence: For the Law of *England*, for the applying of that Supreme Power which it hath settled in his Majesty, to the particular Causes and Occasions hath set down a Method and known Rules, which are necessarily to be observ'd.

In his Majesty there is a twofold Power, *Voluntas* or *Potestas Interna* or *Naturalis*, and *Externa* or *Legalis*, which by all the Judges of *England*, 2 *Ric.* 3. *fo.* 11. is expressed *Per Voluntatem Regis in Camera*, and *Voluntatem Regis per Legem*.

My Lords, the Forms and Rules of Law are not observed in this Case; this Supreme Power not working *per Media*, it remains still in himself as *voluntas Regis interna*, and operates not to the Good and Relief of the Subject that standeth in need. To instance; His Majesty is the Fountain of Bounty; but a Grant of Lands without Letters Patents transfers no Estate out of the King, nor by Letters Patents, but by such Words as the Law hath prescribed. His Majesty is the Fountain of Justice, and though all Justice which is done within the Realm, flows from this Fountain, yet it must run in certain and known Channels. An Assize in the *King's-Bench*, or an Appeal of Death in the *Common Pleas*, are *Coram non Judice*, though the Writ be by his Majesty's Command; and so of the several Jurisdictions of every Court. The Justice whereby all Fellons and Traytors are put to Death, proceeds from his Majesty; but if a Writ of Execution of a Traytor or a Felon be awarded by his Majesty without Appeal or Indictment preceeding, an Appeal of Death will lie by the Heir against the Executioner. If the Process be Legal and in a right Court, yet I conceive that his Majesty alone, without Assistance of the Judges of the Court cannot give Judgment. I know that King *John*, *Henry* III, and other Kings, have sat in the *King's Bench* and in the *Exchequer*, but, for ought appears, they were assisted by their Judges: This I ground upon the Book, Case 2 *Ric.* 3. *fo.* 10, 11. where the Party is to make Fine and Ransom at the King's Will and Pleasure. This Fine by the Opinion of the Judges of *England*, must be set by the Judges before whom the Party was convicted, and cannot be set by the King: The Words of the Book are thus: *In Terminis & non per legem per se in Camera sua, nec aliter coram se, nisi per Justiciarios suos, & hoc est voluntas Regis scilicet per Justiciarios suos & per legem suam* to do it.

And as without the Assistance of his Judges, who are his settled Council at Law, his Majesty applies not his Laws and Justice in many Cases; neither is this sufficient to do it without the Assistance of his great Council in Parliament. If an Erroneous Judgment was given before the Statute of 27 *Eliz.* in the *King's Bench*, the King could not relieve his grieved Subject any way but by Writ of Error in Parliament: Neither can he out of Parliament alter the old Laws, or make new, or make any Naturalizations or Legitimations, nor do some other Things: And yet is the Parliament his Majesty's Court too, as well as other his Courts of Justice: It's his Majesty that gives Life and Being to it, for he only summons, continues and dissolves it, and he by his *le Veut* enlivens all the Actions in it; and after the Dissolution of it, by supporting his Courts of Justice, he keeps them still alive, by putting them in Execution. And although in the Writ of Waste, and in some other Writs, it is called *Commune Concilium Regni*, in respect that the whole Kingdom is representatively there; And, secondly, that the whole Kingdom have Access thither in all things that concerns them, other Courts affording Relief but in special Cases; And, thirdly, in respect that the whole Kingdom is interested in, and receive Benefit by the Laws and Things there passed: Yet it is *Concilium Regni* no otherwise than the Common Law is *Lex Terræ*, that is, *per modum Regis*, whose it is, if I may so term it, in a great Part, even in point of Interest, as he is the Head of the Commonwealth, and whose it is wholly in Trust for the Good of the whole Body of the Realm; for he alone is trusted with the Execution of it. The Parliament is the King's Court, and therefore in the Summons the King calls it *Parliamentum nostrum*. So the Returns of the Knights and Burgesses, *Quod sint ad Parliamentum Domini Regis*. *Fleta Lib.* 2.

Cap.

Cap. 2. *Habet Rex curiam suam in concilio suo in Parliamentis suis*; and therefore the Pleadings there anciently were usually wont to begin for the most part, *Queritur Domino Regi*; of Petitions by private Persons, *Supplicavit Domino Regi*, though for Relief against others. Inquisitions and *Venire fac'* returnable there sometimes *Coram Domino Rege & Concilio suo*, as appears by infinite Precedents in the Parliament-Pleas of *Edward* the First and *Edward* the Second's Time, both in the *Tower* and many Cases adjourned into the *King's-Bench*.

The Patents pass'd by Authority of Parliament, and likewise the Acts of Parliament, had anciently so much of the King's Name and Stile in them, that as it appears in the Prince's Case in the Eighth Report, it was a hard matter, otherwise than by Circumstances, to know whether they had any thing of the Parliament in them or not. And from those Times even until now, the Alteration is nothing in Substance, for the Acts for the most part are thus: *It is Enacted by our Sovereign Lord the King, with the Assent of the Lords Spiritual and Temporal, and Commons.* The King both then and still is *Pars agens*, the rest are but *Consentientes*.

My Lords, to apply all to the Case in question: By the Cases before cited it appears, that what was done in Parliament by the Law-Phrase and Dialect, is said to be done by the King; for as the Civilians say of the Senate, that it is *Pars Corporis Cæsaris*, so we of the Parliament, that it is *Pars Corporis Regis*. The Maxim of *Justinian Quod Principi placet legis vim habet*, is agreed by *Bracton* and all the Civilians. And yet both he and many of them say, that those must pass the Senate, and though done in the Senate, yet they be *Placita Principis*. So it is, although when we speak *ut Vulgus*, we say Fines are said to be set by the King's Court; yet the Law, when it saith that they be done and set, saith they be done and set by the King. By the same Reason therefore, though when we speak *ut Vulgus*, we say such a Thing is done by the Parliament, yet in the Legal Account these are done by the King; the *Medium*, or Way of doing of them, with the Assistance or Consent of his great Council in Parliament.

The second thing which I observe is this: By the Cases before cited it appears, that without the Assistance in Parliament, his Majesty cannot in many Cases communicate either his Justice or his Power unto his Subjects.

Hence, thirdly, it necessarily follows, as I conceive, that the Kingly Dignity doth most appear and manifest it self there, which was the Opinion of all the Judges of *England*, declared in a Parliament 34 *Hen.* 8. as appears by *Crompton's* Jurisdict. *fo.* 10. who by the King's Commandment meeting together about point of Privilege of Parliament, the King afterwards in declaring of their Opinions, doth it in part of the Case in these Words: *Further, We be informed by our Judges, that we at no time stand so highly in our Estate Royal, as in time of Parliament, wherein we as Head, and you as Members, are conjoined and knit together in one Body Politique.* Which Declaration of it shews likewise that it was the King's own Opinion, that he at no time stood so highly in his Estate, as in the Time of Parliament.

It appears not by the Record, that this Writ, which giveth Power to sell and alter the Property of the Defendent's Goods, issued from his Majesty sitting in his Estate Royal in Parliament, and therefore cannot be intended by your Lordships and the Court so to do. If therefore it hath issued from his Majesty in the *Chancery*, otherwise than in Parliament, where he stands in the Height of Sovereignty and Perfection, that he hath not so much as a *Posse nocere*; the Question is, Whether it be erroneously issued, yea or no.

My Lords, I have now put the Case, which although in this particular Case it concerns the Defendent only; yet in Consequence, as it appears, it concerns both his Majesty and the whole State, and that in Matters of the greatest and highest Nature possible. His Majesty is concerned in the Way and Manner of Execution of the highest and greatest Trust which the Law hath reposed in him, the Safety and Preservation of the Kingdom; the Subject is concerned in that, wherein he is most tender, in the Property of what he hath.

My Lords, the Greatness and Weight of the Case puts me in this *Dilemma*; Not to argue it, were to deny that full Submission to the Command of some of your Lordships that are sitting in the Court, neither should I do my Client that Service which he expects. If I proceed, the Case is too weighty and too great for me to argue. But I know the safest way is Obedience, and that the Court cannot expect much from me. Having therefore already put the Case, I will go on in the next Place to state it, and afterwards to argue it.

The Question being concerning the Validity of the Command in the Writs, which extends so far as to the altering of the Property of the Subjects Goods without their Consent; and yet this being for a Thing so necessary as the Defence of the Kingdom both at Land and Sea; for the Ends of issuing forth of the Writ are, *Pro Defensione Regni, Tuitione Maris, Securitate Subditorum, salva Conductione navium*, both outward and inward.

In the stating of this great Question, I will in the first place endeavour to present your Lordships those known and undoubted Ways and Means, whereby the Law hath provided for the Defence of the Realm both at Land and Sea, without the Way in the Writ.

The first whereof is by Tenure of Lands. The Services which hereby grow due are of two sorts; Service in Kind, which tends immediately to Action in Times of War, some whereof are for Land-Service, and some for Sea-Service. The second are such as supply his Majesty for that purpose.

The second Way is those many Prerogatives which the Law hath settled in the Crown, and made peculiar unto it for the Defence of the Kingdom in general.

The third is the particular Supplies of Money for the Defence of the Sea alone in Times of Danger, both ordinary and extraordinary, the Thing principally intended in the Writ. These, my Lord, will be the Materials, whereupon afterwards I shall state the Question.

In

In that of Tenure, I shall begin with the Service, and those which tend immediately to Action in Times of War.

The Kings of this Realm, as they are the Head of the Common-wealth in General, so are they the Head and Root from whence all Tenures spring; for as our Books agree, all the Lands within the Realm are held mediately or immediately of the Crown. As therefore the Law hath appropriated the Defence of the Kingdom to the Kings thereof, so hath it, as one of the principal Ways for effecting thereof, trusted them with the Reservation of such Tenures, as might serve for that Purpose.

Amongst which, intending first to speak of Land-Service, I will begin with the Tenures of Knights-Service; every Man that holds by this Service, from a whole Knight's Fee to any part thereof, ought to find a Man compleatly armed for the War. Neither doth the finding of Arms satisfie this Tenure, for he that holds by a whole Knight's Fee, ought to be forty Days in the Service; and he that holds by a Moiety of a Knight's Fee twenty Days; and so in proportion in the Books of the Knight's Fee of *Hen.* the Second, *Ed.* the First, and *Hen.* the Sixth's times in the *Exchequer* it appears, that there were many thousand Knight's Fees held of the Crown. And in the red Book it is said, that it was *in ore omnium*, that in the Conqueror's time there were thirty Thousand held of him, some since have computed them to threescore Thousand, which perhaps may be with the Addition of those that were held of common Persons which are not of those upon which I shall insist.

But it may be objected, that in Respect that these Services are reserved by the King, that therefore they were not instituted only for the Defence of the Realm, but may be exacted for foreign Wars, or other where for his Majesty's peculiar Service, as he shall think fit, which may be inferred both from the Name which our old Books and Deeds stiles this Service by, when due to the Crown, that is, *Forinsecum servitium*; and Secondly, from the Use thereof, it having been performed in *Normandy*, *Gascoyne*, *Tholouse*, and *Ireland*, as appears by the Red Book, and many Cases put together in the Institutes in the Chapter of Escuage.

To the first Objection of the Name, the Answer is clear; for anciently, when those that held immediately of the Crown by this Service, did infeoff others of the Land so held, desiring to free themselves of the Burthen of this Service, besides the Service which they reserved to themselves; they likewise commonly in the Conveyance, made Provision for their own acquittal against the King, and the Feoffee took the whole Burthen thereof upon himself; and therefore in the Book of Knights Fees of *Hen.* the Second's time, in so many hundred Certificates of those that held immediately of the King *William London* of *Wilts* certifies thus; *Quod nullum Militem habeo Feofatum sed debeo defendere feodum meum per servitium Corporis mei*; of this Nature are three or four others. All the rest after certifies, by how many Knights Fees he holds, then likewise he certifies that *Defendit, &c.* of the King by such and such *Milites Feofatos*. And in these Deeds of Feoffment after the Reservation to the Feoffor, was this Clause; *& faciend' inde*, sometimes, *Forinsecum servitium*, sometimes *Regale servitium*, Bract. lib. 2. fol. 36, 37; and *Fleta*, Lib. 3. cap. 14, saith that it is called *Regale servitium, quia est servitium Domini Regis*; and by them *Regale servitium*, and *servitium Domini Regis*, are all one and the same thing; to that therefore I shall need to give no further Answer. By the same Authors it is called *Forinsecum, quia capitur foris sive extra servitium, quod fit Domino Capitali*, and that is the meaning of the Word, and that it is called *Forinsecum*, in regard the Service is to be done *Foris*, that is out of the Kingdom, is cleared to your Lordships by these Cases, *P' 49. Hen. 3. Com. 31. Ed. 1. Rot. 32. Dorf. Com. Hill. 33. Ed. 1. Rot. 52. Dorf.* Cornage, which we know is to wind a Horn within the Realm, in all those three Cases is called *servitium Forinsecum Domini Regis Cornagij*; and *Castleguard* in the County of *Northumberland*, at the Castle of *Bamburgh*, called *Forinsecum servitium Domini Regis*.

To the Second Part of this Objection, that this Service hath been often performed beyond Sea; for the present I shall give Answer thereunto but in Part, by telling your Lordships without making Proof thereof, that Escuage, which is all the Penalty that lies upon the Tenent for his Default, cannot be assessed but in Parliament; which, if it be so, proves that the King cannot command this Service, otherwise than for the Good and Defence of the Realm, in regard that if it be otherwise, no Escuage can be assessed without consent in Parliament; which by intendment, according to the good the Kingdom is likely to receive by the Service, will proportionably lessen or increase the Escuage.

My Lords, That this Service was instituted for the Defence of the Realm, appears by the care the Law hath always taken for the Increase and Preservation of these Services; so that if the Lord purchase part of the Land, yet the whole Service remains, which being entire, and to be done by the Body of a Man; in that of being a Steward or Bailiff, or other private Service, makes an Extinguishment of the whole. The Authorities in Point are many; the Statute of *Mortmaine 7 Ed. 1*, the Mischief by conveying Lands to Houses of Religion is there expressed to be, *Quod servitia quæ ex hujusmodi feodis debentur & quæ ad defensionem Regni ab initio provisa fuerunt indebite subtrahantur*; and besides the Declaration that they are for the Defence of the Realm, that Statute likewise promises for the Increase of them; for if the Lord enters not within a Year and a Day after the Feoffment, the King is to enter; and as the Words of the Statute are *alios inde Feoffavimus per certa servitia nobis inde ad defensionem Regni nostri facienda*; the words are observable, *per servitia nobis inde facienda*; for though the Service be to be done to the King, it is to be done *ad defensionem Regni*. This explains the Charter of *Henry* the First, inrolled in the Red Book in the *Exchequer*, and cited in *Math. Paris*, in the first Leaf of *Hen.* the First's Reign; where the King frees Knights-Service Lands from all Gelds and Taxes; that being eased of this Burthen, *apti & parati sint ad Servitium meum & ad defensionem Regni mei*. In the Black Book in the *Exchequer*, *Fo.* 3, Scutage is thus de-

fined, *ut inveniente in Regnum hostium machinatione*, it is then due; See *Bracton* in his Second Book *Fol.* 36, and 37, that they are so, *Propter exercitum & Patriæ tuitionem*, and to be perform'd *certis temporibus cum casus & necessitas evenerit.* Bract. *fo.* 162. *Les Fees de chartre fuerunt purveans ad defence de noire Realme*, the Books are express the 35 *Hen.* 6. 41. 8 *R. fo.* 105. *Talbott's* Case 6 *Rep. fo.* 2. *Bruerton's* Case, *Institut. pl.* 103. *Co.* Preface to the 9*th* Report.

For the further clearing of what is said already, and what I am to add it is observable, that these Services are not created *ex provisione hominum*, but *ex provisione legis*; for as it is in 33 *Hen.* 6, 7. and 6th *Rep. fo.* 7. *Wheeler's* Case: If the King grants Land without reserving any Service at all, or *absque aliquo inde reddendo*, the Patentee shall hold the Land by Knights-Service *in Capite.* The Book of 24 *Ed.* 3. 65. *Stamford Prerogat. fo.* 10. *Institut. Pl.* 73, it's said, the first Kings of this Realm had all the Lands of it in their own Hands, which appears likewise by this, that all the Lands within the Kingdom are held mediately or immediately of the Crown. In the transferring of these Lands to the several Inhabitants, we see, by the Cases before cited, that the Care and Provision of the Law was, that all should by Tenure of the Crown be made liable to the Defence of the Kingdom. I shall briefly therefore shew how the Kings of this Realm have executed the Trust for the Defence both of Land and Sea.

And first, a little further to prosecute the Land-Service, because the Tenure by Knights-Service ties the Tenent only to forty Days Service, and that for the Defence of the Realm only in general, they therefore reserved diverse other Tenures for particular and certain Services; as Grand Serjeancies, some whereof, as in the *Institutes, fo.* 106. is observed were for Service of Honor in times of Peace; and some for Military Service, of which last sort, as appears in the Book of Serjancies in the *Exchequer*, and many Rolls of them in the *Tally-Office* were very many; some whereof were to carry the King's Banner, some to summons the Tenents *ad exercitum*, some to be of the Vanguard, some of the Rear; some to serve in *Wales*, some in *Scotland*, some *infra quatuor maria*, some *infra Cinque Portus Angliæ*; of these are Services of all sorts necessary for an Army, and in respect of the multitude of these Military Serjancies over others as forgetting them; *Brit. fo.* 164. in his Definition of Grand-Serjeancy, saith, that they are *Pur defence del Roylme*, and *Fleta lib.* 3. *cap.* 16. *Magna Serjencia Regem tantum respiciunt & Patriæ defensionem.* Besides the Grand-Serjancies, of this Nature likewise are the tenure of Cornage, to give warning of the Enemies coming into the Kingdom, and the tenures by *Castle-Gard*: These by *Littleton* were eleven Thousand to defend the Castles when the Enemy enters the Realm, within Forts and Bulwarks of the Realm; Mr. *Cambden p.* 515. observes, there were 1115 in *Henry* the Second's time, whereof a great part, and especially such as were upon the Sea-Coasts and Frontiers of *Scotland* and *Wales*, the Places of greatest danger were the Kings. And besides these Grand-Serjancies that were to be perform'd by the Bodies of Men, there are Petty-Serjancies for finding of Armour of all sorts for the War.

My Lords, That the former Kings did execute this Power of Tenures for the Defence of the Realm, according to the Trust the Law reposed in them, appears further in this; that in the Places of greatest Danger, there ever were most of them. All along the Sea-Coasts of *Kent* and *Sussex*, nearest of all others to *France*, are the Cinque-Ports, who for their Sea-Service have all the Jurisdiction within themselves, that the Inhabitants for weakening these Parts, might not be compelled to travel out of them for any Matters of Justice, and divers other Privileges; both to invite the People to live there, and to incourage them to the Defence of those Parts. And *Dover* Castle, the Key of the Kingdom, as of greatest Consequence, so hath it two hundred Tenures by *Castle-Gard*, wanting very few; besides divers Tenures for the repairing of the Castle, which appears by the Record called the Quire of *Dover* remaining in the *Exchequer*; which that it is a Record, and determines the Service of the Cinque-Ports, as *Domesday-Book* doth the Tenures of ancient Demesn, appears in *Comm'* 27 *Ed.* I. *Rot.* 35. and by another Record added to that Quire of *Dover*, 20 *Ed.* 4. it likewise appears, that in the time of War the King is to maintain in that Castle, one thousand Foot, and one hundred Horse. Next to come to the Borders of *Scotland*, there we find the Franchisement of the Bishoprick of *Durham*, instituted likewise for that Purpose, for the Defence of those Parts, which *William* the Conqueror as *Malms. fo.* 157. observes, first made a County Palatine, and *Walther* Bishop thereof, *ducem pariter & Episcopum ut refrenaret Rebellionem Gentis gladio, & reformaret mores eloquo*; and besides all this, in all the Counties of *Cumberland*, *Northumberland*, and *Westmorland*, are more such Tenures for the Defence of the Realm, than in any of the Inland Counties, and those likewise most proper for Bodies; *Comm' Pa.* 31 *Ed.* 1. *Rot.* 32. —Its there found by Inquisition returned into the *Exchequer* out of Parliament, that every Lord of a Town, within the County of *Northumberland* held by Cornage when the *Scots* entred the Realm. Mr. *Cambden* in his *Britannia*, *pag.* 794, and 799, mentioning the great Number of Petty-Baronies and Castles all along those Marches, which *Brit. fol.* 87, and *Instit. fol.* 73. say were instituted for the Defence of the Realm; observes here likewise the Policy of the Law, and likewise in the many Serjancies there in advanceing of the King's Army, to be of the Vanguard; and in the Retreat in the Rear, those People best knowing the Ways and Passages of the Country.

Whence, my Lords, when we come to the Marches of *Wales*, there we find another County *Palatine*, I mean that of *Chester*, and the Care of *Chester* and his Barons to oppose the *Welsh* Invasions upon these Marches; besides, the like Services, as upon the Borders of *Scotland*, there were likewise many Lords Marchers of several Baronies, who had Administration of all Justice within themselves, *secundum legem Marchiæ*, and for their Service, to be done against the *Welsh*, they had two special Privileges, that is, the third Penny of all the Spoils in the War, as

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was adjudged in Parliament, the 20 *Ed* I. *Banc. Regis Rot.* 123. in that great Case between the Earls of *Glocester* and *Hereford*, and in the Parliament Book, 20 *Ed.* I. And, *Secondly*, all the Prisoners that they took in the Wars, *per consuetudinem Marchiæ*, belonged to the Takers of them. *Trin.* 25 *Ed.* I. *Rot.* 28. *Co.* Roger de Kownwell, *in partibus Montgomery, in guerra Walliæ*, 23 *Ed.* I. had taken three *Welsh* Prisoners, and because, by the King's Command, they were released of their Imprisonment it is there adjudged, that the King should pay him Forty Pounds in Recompense thereof. And so it was adjudged. *Com'. Hill.* 25 *Ed.* I. *Rot.* 11. *dorf.*

My Lords, His Majesty is in the actual Possession of these Military Services, by taking the Profits of Wards, Marriages, Releases, Licenses, Forfeitures for Alienations, and *primer seisin*, as Fruits of them.

That the Profits of Wards and Marriages are to be spent in Wars, for the Defence of the Realm as well as for the bringing up the Ward, the Books are, 35. *Hen.* 6. 41. *Britt.* 162, That the King receives the Profits because he is not able to do the Service. If the King's Ward was within Age, when the Tenents were summoned *ad exercitum*, he paid no Escuage, as is adjudged, *M.* 20 *Ed.* I. *Rot.* 9. & 20, *Comm'* and *M.* 23 *Ed.* I. *Br. irrot.* So it is for Reliefs and Licenses, and Forfeitures of Alienation of the King's Tenent without his Consent might not be altered; and for *primer Seisin*, the King was to receive the Profits till the Tenent, by his Homage, had assured the King of his Service; the Summons always commanding him to be at the Place of Rendezvous, *in fide & homagio quibus nobis tenemini.* All these things being but Fruits that fall from these Military Services.

My Lords, Now to come to the Sea-Service, the Care and Execution of this Trust by Tenures, was extended likewise to the Defence of the Sea. The Town of *Lewis* in *Sussex*, holds by this Service, *quod si Rex ad mare custodiend' suos mittere voluisset*, they paid so much Money, *& hos habebant qui in navibus arma custodiebant.* This, my Lords, in *Doomesday-Book*, in *Colchester* every House to pay 6 *d. per ann. ad victum Soldior' Regis, ad expeditionem terræ vel maris.* Warwick, *Si Rex per mare contra hostes ibat*, the Town was to find four Boatswains. *Salisbury*, then to pay so much Money, *ad pascendum Bestecorles Domini Regis*, which, as *Florentius* explains the Word, *Ministeros Nauticos. Glocester*, and other Places, such a Weight of Iron, and *Claves navium Regis.* Others, to find Horses to carry Armour and Weapons to the Ships. My Lords, Of this Nature are many in that Book, which particulary to mention, to gain Time, I will omit.

That the Tenures of this kind after the Conqueror's Time, continued in Use, and were well known, appears by the Register, *fo.* 2. where, amongst other Services, is this of Shipping also instanced in these Words; *Quod clamat tenere de nobis per liberum servitium inveniendi nobis quinque Naves per annual' Servitium.* In the Iter-Roll of *Essex*, 13 *Ed.* I. *Rot.* 7. it is presented that the Town of *Malden tenet per Serjanciam inveniendi unam navem quandocunque Rex necesse habuerit ire vel mittere propter negotium Regni.* And from the Time they came to the Place of their Rendezvous, to stay in the Service forty Days, *sumptibus propriis.* And being there presented, that they made Default at the *Welsh* War they plead they had no Summons.

So, my Lords, in the Book of *Serjancies* of *Edward* the First's Time, in *Kent*, the Town of *Killingborne* is to find one Ship; and in the County of *Berks*, *Fulke Caudry* holds the Mannor of *Padworth, per serjanciam inveniendi servientem* to perform Sea-Service, *Bract.* 20. 8 *Ed.* II. *Rot.* 40. *William Dier*, in the County of *Sussex*, to find a certain Proportion of Cordage. *Iter Kancie*, 21 *Ed* I. *Rot.* 46. *Solomon de Campis* holds *per sergianciam tenendi Caput Domini Regis*, when he is at Sea, *si necesse fuerit*, and so *Rot.* 30. another in the same Iter Roll. The *Cinque Ports* and their Members are to find twenty Men, a Master, *bene armatos & bene ariatos*, from the Time that they come to their Rendezvous, they are to continue in the Service Fifteen Days, at their own Charge, and afterwards so long as the King pleaseth, but after the Fifteen Days, the King is to pay the Master 6 *d.* a Day, and the rest 3 *d.* a Day for their Wages: This Service appears by the Record of the Quire of *Dover* beforemention'd, and the Patent Roll. 7 *Hen.* VII. both which Records imply, that this Service of theirs cannot be exacted, otherwise than for the Defence of the Sea, for it cannot be demanded but once in a Year, nor then neither, *nisi necesse fuerit. Parl. Pet.* 1 *Ed.* III. *Rot.* 4. the Barons of the Ports, in Consideration of this Sea-Service, pray a Confirmation of their Liberties, *pro salvatione dicti Navigii & Regni*, and commonly when the Land-Service was summoned, these were likewise summoned to the same Service at Sea, as appears by the close Rolls, 28 *Ed.* I. *M.* 15. 31 *Ed.* I. and 34 *Ed.* 1. *M.* 15, 16. In all which Years the Land-Service was summoned for *Scotland*, and the Summons both for the one and the other, run in the same Words, commanding them to be at the Place, *cum toto servitio vestro quod nobis debetis*, which shews it to be a Service by Tenure. That these Services of theirs, are for the Defence of the Realm, and likewise, that there are many other of the like Nature, besides these, which, by a superficial Reading of two or three Iter-Rolls, I have cited, appears by the Parliament Roll, 13 *Ed.* III. *pars* 1. *M.* 11. where is declared in these Words, That the *Cinque Ports* and other great Towns and Havens are franchised, *pur estre & mure inter nous & Aliens*, if it shall fall out that they shall endeavour, *notre enter & assay & sunt tenus a ceo faire.* My Lords, a fuller Declaration than this there cannot be, that both the Ports, and Havens, and Sea-Towns, are bound to the Service of Shipping, for the extraordinary Defence of the Realm, as well as the ordinary. I have now done with the Service in kind, and because these which immediately tend to action alone, were not sufficient to defend the Realm: And this in the Frame and first Constitution of the Common-wealth, being foreseen, and that the Land, or *Fundus Regni*, the most visible and constant Supplier of our Wants, was best able to supply this likewise; therefore besides them, there were diverse other Tenures created for that Purpose,

Purpose, those which I am next to speak of, are such as supply his Majesty with Money for that Purpose.

In the *Black Book* in the *Exchecquer*, lib. 1. cap. 7. it is said, that in particular *Regni statu ad stipendia & donativa Militum & alia necessaria & castellis*, and other Lands *in quibus agricultura non exercebatur pecunia numerata successebat.* It might from hence be colourably inferr'd, that in respect *ex provisione Legis*, upon the King's passing of Lands, a Tenure for Knight's Service for the Defence of the Realm was to be reserved, that in case upon such Grants, Rents only, without any such Tenure, were reserved, that yet that Money should be imploy'd for Soldiers Wages, and other necessary Affairs of the Common-Wealth, *ad stipendia Militum & alia necessaria*, but not to press this further. It is plain, That all Men within the Kingdom were not equally inheritable, either to the Body or Propriety of Lands or Goods, but that there are Degrees and Ranks, and each differing from other in all these. *First*, Villains. *Secondly*, Freeholders, either by Knights Service, or Free Soccage. *Thirdly*, Tenents of ancient Demesne, and that held by Burgage within Cities and Burrough-Towns.

First, For the Villain, we know, that as to his Lord he had Freedom in neither, in respect of his Body, he could not *ire qua voluit*; but the Lord, at his Will might imprison him, and in respect of his Land and Goods he might tax him *de hault & de bas.*

Secondly, The Freeholders, the greatest Part of the Realm always had an absolute Freedom in them both.

The third Sort, and those are the Tenents in Ancient Demesne and Burgers, they had an absolute Freedom in their Persons, but qualified in the other of Property not taxable at the Will, as Villains, but for the Defence and other necessary Affairs of the Realm, they might be taxed without Consent in Parliament. My Lords, That these had a divided Estate from other Free Tenents, is clear. And first, for Tenents in Ancient Demesne; It is to be questioned whether such Land be Ancient Demesne, Yea or no, the Issue is in these Words, whether it be ancient Demesne or Frank Fee. By this it appeareth they have not a frank and free Estate as the others have, as all our Books agree, they have no Vote in Parliament, for they have no Voice in the Election of Knights, nor pay to the Expences of the Knights that serve in Parliament, nor Soldiers granted in Parliament, *Na. Brev.* 79. and 14. it is often disputed in our Book, whether Acts of Parliament extend to them unless they be especially named; neither can they sue at Common-Law for any thing that concerns the Freehold, but only by a Writ of Right close within themselves. And therefore *Bracton*, fo. 209. calls them *villanos Privilegiatos.* The same it is of Burgesses within Cities and Burroughs, and therefore the Statute of *Merton*, makes it a Disparagement for the Lord to marry his Ward, *villanis & aliis sicut Burgensibus*, *Na. Br.* 7. and other Books. No Assizes will lye for such Lands, but they are impleadable without Original Writ, by a Bill of fresh Force, and as a Chattel, they may devise their Land. By the Statute 1 *Ed.* II. *de militibus*, for such Land and Ancient Demesne, no Man is compellable to take the Order of Knighthood. Much more might be brought in Proof of this, which I omit.

My Lords, all our Books agree, the Tenents in Ancient Demesne, were to plow and manure the King's Lands, being his Demesne. In a Manuscript that I have seen, the Author saith, that he hath an ancient Manuscript which saith, "That the Corn, and other Victuals, "arising hereby, was to store the King's Gar-"risons and Castles, and considering the Num-"ber of those Garrisons, there being above a "Thousand of them in the King's Hand, at "the Conquest, as appears by *Doomesday-Book*, "and that those Mannors, for the most part "are great, and the greatest Part of the Soc-"cage-Tenures, till *Henry* the Second's Time, "as appears by the *Black Book*, lib. I. cap. 23. "were to find Victuals of all Sorts, in kind, for "the Provision of the King's Houshold, and "were in his Time turned into Rents." Although this may seem probable, yet because I have not seen the Manuscript, I will insist no more upon it.

That for which these, and the Tenures of Burgage, in the King's Cities and Burroughs, were mentioned in the raising of Monies for the necessary Affairs of the State; that these were anciently talliable without their Consent in Parliament, is so plain and frequent in the *Exchecquer* Rolls, as that I intend to cite nothing in Proof thereof, it will be admitted by them that argue on the other Side. That which I shall endeavour to prove is, That these were not Talliable at the King's Will and Pleasure, but only for the Defence and other Necessities of State, *Na. Br.* fo. 15. 49 *Ed.* III. 22. They be not Talliable, *de hault & bas*, as Villains are, and therefore *Bracton*, fo. 209. calls them *villanos Privilegiatos*, lib. Parl. fo. 112. *talliare & rationabile auxilium dare pro necessitate. Na. Br.* 14. *talliable pur grand Cause.* Rot. Parl. 6 *Ed.* III. Commissions to tax Cities and Burroughs, and ancient Demesne, upon Petitions of the Commons revoked, and Writs in due Form to be sent, and for the Time to come, the King shall not assess, but in such a Manner, *come ad estre fait en temps de seux Ancestors & come il denera pur reason.* The Occasion not requiring it I shall say nothing of it, when these Taxes were disused. My Lords, I have now done with the Tenures, the first Way whereby the Law hath provided for the Safety of this Realm, which of themselves not enabling the King's intrusted therewithal, sufficiently to do it; The Law therefore, besides the Honours, Castles, Mannors, and other constant Revenues of the Crown, for the Supportation of the ordinary Charges, thereof, hath appointed unto it divers Prerogatives, for the Extraordinary, and for this of the Defence of the Realm, as one of the chiefest of them; these Prerogatives then have an Influence into the States of all the Subjects in the Realm and are so many, that to gain Time, I will omit to mention any of them.

That

That which I will insist upon, will be to prove, that the Things coming to the Crown by this Prerogative way, are to be imployed for the Defence, and other publick Affairs of the Realm.

In his Majesty there is a double Capacity, Natural and Politick. All his Prerogatives are *Jure Coronæ*, and of all such Things he is seised *Jure Coronæ*; and therefore, as in other Corporations, such Things are *Patrimonia & bona publica*, to be imployed for the common Good, so likewise by the same Reason here. The Reason why the King hath Treasure Trove, and Gold and Silver Mines in the Earth in the Case of Mines, is declared to be, because the King is hereby to defend the Kingdom, and in the *Institut.* in the Title of *Soccage fo.* 28. 137. the reason of many of the rest, *Quia thesaurus Regis est fundamentum belli & Firmamentum Pacis*; this I conceive to be the Reason, that by the Statute 14 *Ed.* 3. *cap.* 1. Escheats, Wardships, Customs and Profits arising of the Realm of *England*, should be declared to be spent for the Safeguard of the Realm, more than the Profits of the Kings Mannors and Lands, and of the Difference made in the *Comm' M.* 3. *Rich.* 2. *London*, between *Rectas promissiones Regni*, which by the Advice of the Lords of the Council, were to be spent in the Houshold; and the other Profits of the Crown to be spent *Circa salvationem & defensionem Regni.* In the Parliament Roll 6 *Rich. N.* 42. the Commons petition that the King will live of his own Revenues, and that Wards, Marriages, Releases, Escheats, Forfeitures, and other Profits of the Crown, may be kept to be spent upon the Wars for the Defence of the Kingdom; which sheweth, that there was always a Difference made between the Profits arising of the Kings Mannors and Lands, and that which rose by the Prerogative, casual and accidental Ways. My Lords, I have now done with these.

The third Way the Law hath provided for the Defence of the Kingdom, is particular Supplies of Money for the Defence of the Sea alone in times of Danger, both ordinary and extraordinary; for besides the Supplies of Money before mentioned, which are to be imployed for the Good and Defence of the Realm in General, as in the other Cases where the Law putteth the King to any particular Charge for the Protection of the Subject, it always inables him thereunto, and yields him particular Supplies of Money for the Maintenance of the Charge. So here the Courts of Justice for the Preservation of us in our Rights, are supported at his Charge; and that is the Reason why he hath all Fines and Amerciaments, the Goods of Out-Law'd Men in personal Actions, *Bract. Lib.* 3. *cap.* 13. *fol.* 129, and Fines for purchasing of Original Writs, *& pro licentijs concordandi*, which in Supposition of Law, are paid for not proceeding, and troubling the Court without Cause. The King's Justices who are maintained in their Places at the King's Charge, these are the *vectigal' Justiciar'*. The Defence of the Realm extends it self to many Particulars of the Church, and of Religion; and therefore in the Summons of Parliament, the Cause of the calling the Parliament is always declared to be *Pro defensione Ecclesiæ Angliæ* in particular, as well as *Totius Regni.* His Majesty therefore hath the Temporalties of Bishopricks, *Sede vacante*, a great Prerogative, and that which Patrons have not; with an Addition of the First-Fruits and Tenths of them, and all other Ecclesiastical Promotions and Benefices in *Henry* the Eighth's time, and likewise the Tythes of all Lands which lies not within any Parish.

For Defence of the Land alone, besides those Military Services before mentioned, the Profits of Wards and Marriages, which as I have read, no other Christian Prince hath as a Fruit of them, or received for that purpose. So it is for the Sea in *Rot. Sco.* 10. *Ed.* 3. *M.* 16. it is said that the King and his Ancestors are *Domini Maris Anglicani & Defensores contra hostium invasiones ante hoc tempus existentes*; for the supporting of this Charge therefore, they have not only had the Grand Customs of the Mark and Demy-Mark upon the Wool, Wool-Fels and Leather, and the Prisage; that is, one Tun of Wine before the Mast, and another abaft the Mast of every Ship, which were even due by the Common Law, as appears by the Book of my Lord *Dyer*, 1 *Eliz.* 165, and Sir *John Davies* Reports, *fo.* 8, *&* 9, and implyed by *Mag. Char. cap.* 30, that Merchants may *per Rectas & antiquas Consuetudines*; but likewise divers other Things were afterwards granted by Act of Parliament in Addition to them. As First, the Petty-Customs began 31 *Ed.* 1, and were made Perpetual by the Statute of 27 *Ed.* 3. *cap.* 26, and likewise divers Aids and Subsidies, which are an increase of Custom upon the Staple Commodities of Wool, Wool-fells, *&c.* Leather, and Tonnage upon Wines and Poundage, and Increase upon all other Things either imported or exported, either by Denizens or Aliens. That which in this kind was taken by his Majesty in the eleventh Year of his Reign, when this Writ issued forth, was three hundred thousand Pounds and upwards. The Aids and Subsidies, and likewise the Tonnage and Poundage anciently granted upon particular occasions only, and afterwards to the late Kings and Queens for their Lives by Act of Parliament; and being now taken by his Majesty, and likewise the new Imposition, which altogether makes up the aforesaid Sum of three hundred thousand Pounds. Of the Legality thereof I intend not to speak, for in case his Majesty may impose upon Merchandize what himself pleaseth, there will be less Cause to tax the Inland Counties; and in case he cannot do it, it will be strongly presumed, that he can much less tax them; the proving these two Things herein will serve my turn:

That his Majesty *de facto* takes them; and that this judicially appears to your Lordships in the Court; and Secondly, that these and the ancient Customs, are for the Defence of the Sea.

For the First, it was declared by his Majesty in the last Parliament, and annexed to the Petition of Right as part of it; that his Majesty took them, and could not be without them; whereof he likewise desired the Judges to take notice, and that they might so do, it is inrolled both in this and other the Courts of *Westminster-Hall.*

For the Second, that the Grant of Customs is principally for Protection of Merchants at Sea against the Enemies of the Realm, and Pirates, the common Enemies of all Nations, Sir *John Davies* Reports, *fo.* 9, & 12; and that those, and likewise the Impositions are for that purpose, was held by many of the Judges in the Argument of *Ball's* Case 7 *Jac.* in the *Exchequer* in the Case of Impositions upon Currans, and likewise by the King's Council, when the same Case afterwards became to be debated in Parliament, and was one of the main Reasons urged by them for the Maintenance of that Judgment; that the Aids and Subsidies, and likewise Tonnage and Poundage, before they were granted for Life, were not only for the Protection of Merchants, and the ordinary Defence of the Sea, but also for the Defence thereof in times of extraordinary Danger, and from Invasion from Enemies, appears by the several Grants of them in the Parliament Rolls, *Rot. Parl'* 1 *Rich.* II. *pars* 2. *M.* 9, & 27, the Kingdom being in Point to be lost by the Enemies of *Spain* and *France*, and divers others there mentioned, who made War against us both at Land and Sea. A Subsidy upon the grand Customs was granted as the Words are, *pur le defence & rescous del Kingdome*; this was for two Years, and Persons assigned to receive and expend the Money, *Comm' Mich.* 3 *Rich.* II. *London: William Wallworth* and *John Philpot* Citizens of *London*, appointed the Treasurers of it, upon their Accompt, shew the Particulars how this Money was expended, *circa salvationem & defensionem Regni*, and were discharged. *Rot. Parl.* 3 *Rich.* II. *M.* 16, & 17, the same Cause continuing, Enemies intended to blot out the Name of the *English* from under Heaven, the Subsidie continued for a Year longer; *Rot. Parl.* 5 *Rich.* II. *pars* 2. *M.* 14, & 15, Tonnage and Poundage granted *essint pre foit apply sur safegard del Mers*, and the King at the Petition of the Commons appoints Receivers. 6 *Rich.* II *M.* 13, the Commons complain, that notwithstanding the Grant of Tonnage and Poundage the Sea is not kept, and therefore Persons named and assigned in Parliament to receive the Money, and to do it. 10 *Rich.* II. *M.* 1, Tonnage and Poundage for a Year. 11 *Rich.* II. *M.* 6, & 12, Tonnage and Poundage and Subsidy for a Year. 12 *Rich.* II. *M.* 20, both for a Year. 14 *Rich.* II. *M.* 16, both for a Year. 17 *Rich.* II. *M.* 12, both for three Years. 20 *Rich.* II. *M.* 28, Subsidy for five Years, and Tonnage and Poundage for three Years; 2 *Hen.* IV. *M.* 9, both for two Years; 6 *Hen.* IV. *M.* 9, & 10, both for two Years, upon condition to cease if the King before St. *Hillary* provide not a sufficient Army for the Sea; 8 *Hen.* IV. *M.* 9, and 9 *Hen.* IV. *M.* 16, both for two Years for the common Commodity and Defence of the Realm; 13 *Hen.* IV. *M.* 10, & 11, for one Year, so as the same be confessed to proceed out of their own good Will, and not out of Duty; 5 *Hen.* V, for four Years upon many Conditions; 1 *Hen.* VI. *M.* 9, for two Years; 3 *Hen.* VI. *M.* 17, Subsidy for three Years, Tonnage and Poundage for one Year; 4 *Hen.* VI. *M.* 22. 6 *Hen.* VI. *M.* 11, for two Years Tonnage and Poundage; and 6 *s.* 8 *d.* upon every Man within a Parish-Church that hath twenty Nobles, and 6 *s.* 8 *d.* upon every Knights-Fee held immediately of the King; 8 *Hen.* VI. *M.* 15, Tonnage and Poundage to continue until the next Parliament; 9 *Hen.* VI. *M.* 14, both, and for two Years; 10 *Hen.* VI. *M.* 21, for two Years; 23 *Hen.* VI. *M.* 16, for four Years, and double upon Strangers; 27 *Hen.* VI. *M.* 20, & 23, for five Years; 37 *Hen.* VI. *M.* 8, & 42, Tonnage and Poundage first granted for Life, and *M.* 41, assigned into the Subjects Hands for three Years for the good of the Seas.

My Lords, either by the Grant it self of them, or by the Declaration of the Cause of the calling of the Parliament, it appears, that these were all granted upon extraordinary Occasions, and when they come to be granted for Life, as appears by the Rolls and printed Statutes of 12 *Ed.* IV. *cap.* 13, they were not only granted for the ordinary Defence of the Realm, and principally of the Sea; but likewise that the Kings might always have in readiness a Stock of Money in their Hands to withstand an Invasion, as is declared by the very words of those Statutes.

My Lords, his Majesty is in Possession of them, and was pleased by his Proclamation, printed 1626, declaring the Cause of the Dissolution of the last Parliament, as appears Page 17, to declare that they were always granted to his Progenitors, for the Guarding of the Seas, and Safety and Defence of the Realm; and Page 18, is graciously pleased in these Words, to declare that he doth, and must still pursue those Ends, and undergo that Charge for which they were first granted to the Crown; and Page 44, that he receives them for the Guarding of the Seas, and Defence of the Realm.

My Lords, I have now done with the Ways which I first propounded, whereby the Law hath provided for the Defence of the Realm. I shall add this only, That by the Statute of *Winchester*, which was made in the 13 *Ed.* I, every Man *secundum statum & facultates*, for the words of the Statute are according to the quantity of his Lands and Goods, is to find Horse and Armour for the Defence of the Realm; for that the Statute in this Particular, extends not only to the keeping of the Sea, but likewise to the Defence against Foreigners, is declared in the Parliament Roll of 3 *Rich.* II. *M.* 36; and by the Statute of 5 *Hen.* IV. in the Parliament Roll *M.* 24. not printed, *juxta quantitatem terrarum & bonorum*, against Invasions each Man is to find Armour. And by the Statute 1 *Ed.* III. *cap.* 5, these Men upon suddain coming of strange Enemies into the Realm, may be compelled to march out of their own Counties where they live: whether they may be compelled so to do without Wages, I shall have occasion afterwards to speak; how far the Statute of *Winchester* and 5 *Hen.* IV. for Arms upon the Statutes of 4, & 5 *Philip. & Mariæ cap.* 2. and 1 *Jac. cap.* 25. are in force, I shall not speak.

My Lords, I shall now proceed to the stating of the Question, *Bracton*, in the Beginning of his Book saith, That *in Rege necessaria sunt hæc duo, Arma & Leges, quibus utrumque tempus Bellorum & Pacis recte possit gubernare.* *Glanvill*, in the Beginning of his Book, saith, *Reg' Majestatem Armis contra gentes sibi regnoque insurgentes opportet esse decorat'*; His Majesty, as he is Lord of Sea and Land

Land, so by that which hath been said, it appears that he is armed for the Defence of both.

My Lords, The Reasons in the Writ, as they are weighty, so from these known Supplies, whereby the Law hath provided for the Safety of the Realm, they will all of them be confessed; and yet thereby receive Answer, and that the Law hath foreseen and provided the Supplies accordingly without the Way in the Writ.

First, The Command in the Writ being *In fide & legiancia quibus nobis tenemini*, its thence inferred, that each Subject's Allegiance binds him to contribute to the Defence of the Realm. In the old Customs of *Normandy*, cap. 43, Allegiance binds *ad concilii & auxilii adjumentum*; this tho' it be principally performed by the Parliament, both in Advices and Aids, yet besides these extraordinary, by that which hath been said, we see both by the Tenures in kind, and Pecuniary Supplies, that without the Assistance thereof, our Persons, Lands, and Goods, by his Majesty's Command alone, are made Contributary thereunto, and that in a large Proportion. *Secondly*, The Rule whereby this Contribution must be regulated, as in the Writ, *secundum statum & Facultates*, that likewise is satisfied, and that both for Sea and Land.

For Land, in Case either the Statute of *Winchester*, or 5 *Hen.* IV, be on foot, then in Words that of finding Arms, *juxta quantitatem terrarum & bonorum*. So, *Secondly*, in respect of the Tenures, by Knights Service, by the Wards, Marriages and Reliefs; these, I confess, concern the Tenent only, but those other Tenures in *Capite* and *Grand Serjeancy*, these concern all others, in respect of the Licenses, of Alienation, and of the Wardships of Lands, held of other Lords, and that all the Tenents are become hereby wardable. And, *Thirdly*, in respect of the Prerogatives before mentioned, for the greater the Subjects Estate is, the greater Influence they have into it, and proportionably raise more profit out of it.

In respect of the Sea, This is so by the Customs, Aids, Subsidies, Tonnage and Poundage, before-mentioned; for the Charge of these is not born by the Merchants alone, but by each Subject within the Kingdom, and that *secundum statum & Facultates suas*.

For, *First*, in respect of the Export; The greater the Estate, the more Wool and Wool-Fells, and Leather, Lead, and other Commodities, if that be done by the Owner, he bears the immediate Charge; if by the Merchant, according to that Proportion is his Abatement in Price unto the Owner. So it is for Goods imported, For the greater the Estate and Means of Livelihood are, the more each Person buys of these and at a dearer Rate. This is cleared by the Petition of the Commons in Parliament in the 22d Year of *Ed.* III. *Rot.* 22. *M.* 41, that the Merchants had granted to the King Forty Shillings upon a Sack of Wool, *en charge del people & nemy des Marchants*. And by the Statute 36 *Ed.* III. cap. 11. that no Subsidy or Charge be granted to the King, by the Marchants, upon Wool, without assent in Parliament.

Hence likewise that other Ground of Equity in the Writ, *quod omnes tangit ab omnibus debet supportari*, receives answer: For as all have benefit by by the Defence, so is the *Compensatio publica*, we see it comes from all. The fuller Answer is the Parliament Summons of 23 *Ed.* I. for Provision against the *French*, who intended *Linguam Anglicanam omnino delere*. Rot. Claus. 23 *Ed.* I. *M.* 14. *Lex justissima provida & circumspectione sacrorum principum stabilita*, statut' *Quod omnes tangit ab omnibus approbatur*, the Charge must be born by all, so it must be approved by all.

If His Majesty be intrusted with the Defence of the Realm, as in the great Case between the Earls of *Hereford* and *Glocister*, it is said, that *incumbit Domino Regi salvatione populi sibi commissa*; and that *per jurament' est astrictus ad providendum ad salvationem Regni circumquaque*, because no Man goeth to War at his own Charge; we see by that which is already said, that the Law hath provided *Stipendia Manstrii*, which that they do bind his Majesty to the Defence and Safety of the Kingdom, not only in Point of Care and Vigilancy, but even in point of Charge too, I shall endeavour to prove to your Lordships and the Court.

Allegiance we owe as an Act of Reciprocation, for as it binds the Subject to Tribute and Subjection, so therefore the King to the Charge of Protection by the Expence of these, *Rex ad tutelam corporum & bonorum erectus*; the Supplies he hath, for these Purposes, tie him to the Supportation of the Laws, and the Execution of Justice. 20 *Ed.* I, in the Case before-mention'd between the Earls of *Gloucester* and *Hereford*, it is said, that *Dominus Rex est omnibus singulis de regno suo Justitiæ dilator*, which that he is so, even in Point of Charge, appears in His Majesty's Supportation of the Courts of Justice, and the Salaries not only to your Lordships, and other the inferior Ministers of Justice, and anciently to the Sheriffs, but likewise many other Ways. 4 *Hen.* VII. cap. 12, the King shall not let for any Favour of Charge, but that he shall see his Laws fully executed. *Parl.* 23 *Ed.* I. *Rot.* 12. *Exchecquer*, A Clerk that attended a Committee of Grievances recover'd Salary from the King, although the Commission was for the Relief of that County; this I conceive to be the Reason of the Declaration in the Statute of 14 *Ed.* III. cap. 1, and other Statutes, That Aids, tho' granted in Parliament, for Defence, shall not be brought into Example; in that it might be conceived, that the Commons were to bear that Charge which principally belonged to the King. *Pat.* 48 *Hen.* VII. *M.* 8. it is recited, That whereas a late Parliament *in Articulo necessitatis pro defensione regni contra hostilem adventum alienigenarum*, the Commons granted him a large Subsidy, *ultra quam retroactis temporibus facere consueverant*, now the King *eorum indempnitati prospicere volens*, grants, that *non cedat in præjudicium nec in posterum trahatur in consuetudinem*; in *Wiseman's* Case, in the second Report, *fo.* 15, it's resolved that a Covenant to stand seized to the Use of Queen *Elizabeth*, that she is the Head of the Common-Wealth, and hath the Care of repelling foreign Hostility, is not good, because, saith the Book, the King is bound to do that *ex Officio. Com.* 315. One Reason why the King is to have Royal Mines, alledged by all that argued for the King, is, because he is at his own Charge to provide for

for the Defence of the Realm, which he cannot do without Money. In the Earl of *Devon*'s Case, *Co.* 11. 91. 6 *Institut.* fo. 28, & 131, *Thesaurus Regis*, is called, *Nervus Belli.* For the Practice, the Proof of the particular Charges, the several Kings have been at for Defences of all Sorts, would be so tedious, that I will omit the citing of any thing in this kind. Sir *John Davies* Reports, *fo.* 12. many Authorities, and in the Treatise *de Regalibus*, pag. 81. *Principes totam Navigationem pro vectigalibus præstare coguntur.*

But because his Majesty, in the forementioned Proclamation, *pag.* 18, and 44, is graciously pleased to profess, that he holds himself obliged to undergo the Charge of the Defence of the Realm, and of the Sea in particular, I shall spare any further Proof in this.

If that in the Writ, that the Sea *per Gentem Anglicanam ab olim defendi consuevit*, be not answered by the *Scottish* Roll of 10 *Ed.* III. before-recited, which says, that the King and his Ancestors *Maris Anglicani defensores antehac constiterunt*; nor by what is now said, if it be admitted, yet that even the Charge of this Defence is born *per gentem Anglicanam*, is before proved.

The next, and one of the main things whereupon I shall state my Question, is this. His Majesty is in the actual Possession, not only of the Service in kind, for the Defence of the Land, by taking of the Benefit of the Wardships, Marriages, Reliefs, Fines, and Licenses of Alienations, and *primer Seisin*, and of the Prerogatives before-mention'd, but likewise of the Services of the *Cinque Ports*, unless they be released since the 7 *Hen.* VII. (for then their Services were summoned,) and of the Tonnage and Poundage, and other Duties, for the Defence of the Sea, it appears not by any part of the Writ, nor by any thing in the Record, that either the Services of the *Cinque Ports* were summoned, or that any Money at all of His Majesty's was expended, either for this Service, or at any other Time for the Defence of the Sea. My Lords, I desire to be understood, I do not affirm that none was expended, only this appears not to your Lordships and the Court, all that can be inferred from the Writ to this Purpose is, that this Ship for *Bucks*, is commanded to be at *Portsmouth* by such a Day *ad proficiscend' exinde cum Navibus dicti Domini Regis & Navibus alior' fidelium subditorum suorum*, by this it appears not to the Court, that though the Ships are the Kings, that they are to be set forth at the King's Charge, for the Charge may be born by the Subject for ought appears.

Neither, *Secondly*, doth it appear, how many these Ships were, whereby the Charge, in case it were born by the King, might in any Proportion appear to be answerable to the Supply before-mention'd. Those other Ships, *aliorum fidelium subditor' nostror' Regis*, as in truth they were not those of the *Cinque Ports*, neither can they be so intended unless it had been so expressed.

The Service of the *Cinque Ports*, and Tonnage and Poundage, and other Duties are the ordinary settled and known Ways by the Law appointed for the Defence of the Seas; the Way in the Writ by setting and altering the Property of the Subjects Goods without their Consent, as in the Writ, must needs be granted to be a Way more unusual and extraordinary; against the Legality of it, I shall thus frame my Argument by Way of Admission: *First*, That in Case the Service of the Ports had been summoned, and the Money by the forementioned Ways raised had been expended upon the Defence, and they had not been sufficient, that though in this Case the Writ had been legal; yet, as now it is, it is not. *Rylie*'s Case in the 10th *Report*, fol. 139. and *Trin.* 18 *Ed.* II. *Banc. Regis*, 174, adjudged that so long as he that is bound by Tenure, or Prescription, is able to do it, the whole Level cannot be assessed to the repairing of a Wall or Bank. It's a Maxime, *Lex non facit Salutem*, nor that we are to run to extraordinary, when the ordinary Means will serve the Turn; these rules are often put in our Books, I intend to instance but in one or two Cases.

The Common Law is the common Reliever of Persons wronged, that in *Chancery* is extraordinary, and therefore no Man can sue there, when he may have Remedy at the Common Law. The ordinary Way of Trial for Life is by Indictment and a Jury, when therefore this may be done, and that the Sheriff, with the *Posse Comitatus*, is able to keep the Peace, it cannot be done by Martial-Law, or by Judgment of the King and Peers in Parliament without Indictment, as was adjudged in the Case of the Earl of *March*, *Trin.* 28 *Ed.* III. *Banco Regis Rot.* 21. My Lords, the Reason of this Maxime of Law is, as I conceive, these Actions extraordinary, are done *extra ordinem*, and done only in Times of Necessity, when we are not tied to any Rules of Law, and therefore not to be brought into Example, nor have any Warrant but only that of Necessity; nor any Rule to guide them but what, *pro hic & nunc*, shall serve for the bringing of them about; the same Power then that may once do them, in the omitting of the ordinary Way, may, by the same Rule, always do them, and so by Consequence how far such Power is tied at any Time or in any thing to any Rules of Law I shall humbly submit to your Lordships Consideration. My Lords, I have now done stating the Question, those things whereupon I shall spend the rest of my Time are these.

First, Admitting that the ordinary Means above-mentioned had been all used, and that they had not been sufficient; whether in this Case his Majesty without consent in Parliament, may in this Case of extraordinary Defence, alter the Property of the Subjects Goods for the doing thereof?

In the next Place, I shall endeavour to answer some Objections which may be made to the contrary.

In the Third Place for qualifying of this, I shall admit, that in some Cases the Property of the Subjects Goods for the Defence of the Realm, may be altred without consent in Parliament, and shall shew what they are in Particular, and compare them and the present Occasion together.

In

In the Fourth Place, becauſe of ſome Precedents of the Matter of Fact, and likewiſe of all Authorities that may ſeem to prove a Legality in this Particular of Shipping for Defence of the Sea, whatever it be in the General, I ſhall therefore endeavour to anſwer to ſuch of them as I have met withal.

For the *First*, that to the altering of the Property of the Subjects Goods, though for the Defence of the Realm, a Parliamentary Aſſiſtance is neceſſary. In this it muſt be granted in the firſt place, that the Law ties no Man, and much leſs the King to Impoſſibilities: And *Secondly*, that the Kingdom muſt be defended.

As therefore the Law hath put this Great Truſt upon his Majeſty, ſo when the Supplies which by the Ways before-mentioned it hath put into his Hands fail therein, it hath provided other Ways for a new Supply.

The firſt Thing that I ſhall preſent unto your Lordſhips and this Court, are the Aids and Subſidies granted in Parliament. That amongſt the *Ardua Regni negotia*, for which Parliaments are called, this of the Defence not only is one of them, but even the chief, is cleared by this; that of all the reſt none are named in particular in the Summons, but only this; for all the Summons of Parliament ſhew the Cauſe of the calling them to be, *pro quibuſdam arduis negotiis nos & defenſionem Regni noſtri Angliæ & Eccleſiæ Anglicanæ concernentibus*; and in the Concluſion the Party ſummoned to be there, *Sicut honorem noſtrum & ſalvationem & defenſionem Regni & Eccleſiæ diligit*. And in all the ancient Summons of Parliament when Aid was demanded, the particular Cauſe of Defence, and againſt what Enemy in ſpecial was mentioned.

My Lords, to gain time I will Inſtance but one or two of each King's Reign. *Clauſ.* 23 *Ed.* I. *M.* 4. *dorſ.* that the *French ad expugnandum Regn' noſtr' Claſſe Maxima & bellatorum copioſa multitudine Regn' noſtrum invadunt & linguam Anglicanam omnino proponunt*, &c. *Clauſ.* 3 *Ed.* II. *M.* 3. *dorſ.* and 7 *Ed.* II. *M.* 8. *dorſ.* that the *Scots* had entred, burnt and deſtroyed the Marches, and put them to a Tribute. *Clauſ.* 1 *Ed.* III. *pars* 2. *M.* 6. and 22 *Ed.* III. *M.* 31. *dorſ.* that the *Scots* and *French* had invaded the Realm. *Clauſ.* 7 *Hen.* IV. *M.* 29. *dorſ.* that the *French* were with a great Fleet, *Quaſi in ore Thameſis* to invade the Kingdom, and the King to go in Perſon; after this King's Reign, the Summons was as now it is.

That theſe *Ardua defenſionem Regni concernen'*, are the Aids and Means of Defence, and not the Way and Manner of doing of it, as their Council therein, is clear. In the Parliament Roll 6 *Rich.* II. *M.* 9, this of the Manner and Way and Proſecution of the War being given in Charge to the Commons to adviſe upon, they anſwer this *Nec doit, nec ſoluit appertaine al eux mes al Roy. Rot. Parl'* 13 *Ed.* III. *pars.* 1. *M.* 11. the ſame being given in Charge to the Commons, they pray *que ils ne ſont charge al Councel doner al choſes del queux ils n'ont pas conuzance:* and ſo *Rot. Parl.* 21 *Ed.* III. *M.* 5, they excuſe themſelves, and ſay, that this belongs to the King and his Council.

And that theſe *ardua circa defenſionem*, were the Aids is expreſſed in words in ſome of the Summons. *Clauſ.* 7 *Ed.* II. *M.* 8. *dorſ.* the cauſe of the Parliament the *Scots*, and that in *tam arduis debetis extendere manus adjutrices opportun' auxil' faciendo. Clauſ.* 31 *Ed.* III. *M.* 21. *dorſ.* that *circa neceſſariam defenſionem Regni quam ad dictum negotium expediend' auxilium neceſſar' nos habere oportet. Clauſ.* 5 *Rich.* II. *M.* 2. *dorſ.* the King being to make a Voyage *pro defenſione Regni*, which could not be done without borrowing great Sums of Money; therefore the Parliament was called to adviſe about the aſſurance. So that, my Lords, it is clear, that the Law hath provided this Parliamentary Way for ſupplying of the King's Wants for the extraordinary Defence, and hath likewiſe put the Power of uſing of it into his Majeſty's own Hands, for he may call Parliaments when, and ſo often as he pleaſeth.

My Lords, as the Parliament, *First*, are beſt qualified and fitted to make this Supply; (for ſome of each Rank, and that through all the Parts of the Kingdom being there met, his Majeſty having declared the Danger, they beſt know the States of all Men within the Realm, and are fitteſt, by comparing the Danger and Mens Eſtates together, to proportion the Aid accordingly;) And *Secondly*, are fitteſt for the Preſervation of that Fundamental Propriety which the Subject hath in his Lands and Goods; becauſe each Subject's Vote is included in whatſoever there is done: So that it cannot be done otherwiſe, I ſhall indeavour to prove to your Lordſhips both by Reaſon and Authority.

My Firſt Reaſon is this, that the Parliament by the Law is appointed as the ordinary Means of Supply upon extraordinary Occaſions, when the ordinary Supplies will not do it. If this in the Writ therefore may, without reſorting to that be uſed, the ſame Argument will hold as before, in reſorting to the Extraordinary by way of the Ordinary, and the ſame Inconveniency will follow.

My Second Reaſon is taken from the Actions of former Kings in this of the Defence. The Aids demanded by them, and granted in Parliament even for this purpoſe of the Defence, and that in times of imminent Danger are ſo frequent, that I will ſpare the citing of any of them. Its rare in a Subject, and more in a Prince, to ask and take that of Gift, which he may and ought to have of Right.

The ſecond way was Loans and Benevolences demanded by them, with promiſe of repayment both for the ordinary and extraordinary Defence of the Realm. And that as well of all the Subjects equally, as of ſome few. *Pat.* 48 *Hen.* III. *M.* 16. a Commiſſion to the Earl of *Leiceſter* and others, *contrahendi mutuum in nomine noſtro de denariis & victualibus*, and other things *in munitionem Navium ponendis & Nautarum ſtipendiis contra hoſtile adventum Alienigenar' in Regnum noſtrum, & ad defenſionem & tuitionem ejuſd' Regni*, and promiſeth repayment. *viſis computis* in the *Exchequer*, 26 *Ed.* I. *Rot.* 100. the King borrows of the Merchants 28966 *l. pro defenſione Regni*, and promiſeth Repayment. *Hill.* 31 *Ed.* I. *Rot.* 4. and *Trin.* 31 *Ed.* I. *Rot.* 41. divers Sums borrowed *pro Defenſione*, and repayment promiſed. *Br. irrot.* 34 *Ed.* I. *Rot.* 82. ten thouſand Pounds paid by the King at one time for Money borrowed, this I confeſs is *Arduis Regni negotiis. Br. irrot.* 11 *Ed.* II. *Rot.* 1. the *Scots* having entred

the Kingdom *diversa homicidia incendia & depredationes perpetrantes*, the King being in Person to go against them, writes to his Council to provide Money, they *diversas vias pro denariis proponendis exquirentes* resolve to borrow. *P.* 12. *Ed.* II. *Commun'* for the same a Loan upon all Merchants Strangers. *Rot. Scot.* 1 *Ed.* III. *M.* 3. the *Scots* having entred the Realm and taken divers Castles, and threatned a Conquest of *England*, and *Quam crescit sumptuum multitudo in tantum quod Thesaurus noster ad sustentationem exercituum nostr' nequaq' sufficit* he borrows. *Claus.* 14 *Ed.* III. *M.* 8. the King had borrowed 3333 *l. pro salvatione & defensione Regni & vult promptam solutionem fieri prout decet*, and now assigns it to be paid out of the Customs. *Walsingham* Pag. 179. 44 *Ed.* III. the King *Sinistro usus concilio magnas summas pecuniæ* of all Sorts *mutuo petiit asseverens quod in defensionem Ecclesiæ & Regni illas expenderet*, but the People would not lend. *Claus.* 5 *Rich.* II. *M.* 12. *dors.* the King *pro defensione Regni*, being to make a Voyage to Sea, desired to borrow Money, and a Parliament called to give Assurance. 7 *Hen.* IV. *Rot. Franc.* Money borrowed *pro defensione, volens promptam & securam solutionem fieri. Rot. Parl.* 11 *Hen.* VI. *M.* 13. ten thousand Pounds borrowed *pro defensione* and spent, and the Parliament order the Security. *Rot. Parl.* 15 *Hen.* VI. *M.* 3. ten thousand Pounds borrowed *pro defensione* by the King. *Stat.* 11 *Hen.* VII. *cap.* 10. it appears that a Benevolence had been desired by *Hen.* VII. for the Defence of the Realm, and wherein he went in Person. The known Commission to Cardinal *Wolsey* for the Benevolence in *March*, 16 *Hen.* VIII. it was to withstand *Infestissimos hostes* of *France* and *Scotland*, who intended to Invade the Realm; and that the King's Coffers were now empty, and therefore they have Power *Communicandi & inducendi persuadendi & practicandi cum subditis Regis super amicabilem pecuniarum concessionem.* 2 pars. Pat. 37 Hen. VIII. *cum pro sustentatione ingentis oneris nostrarum Copiarum quas in presenti tam per mare quam per terram conficere & in promptu habere cogimur ad resistend' propellend' hostem nostrum Francorum Regem in defensionem tutelam & securitatem dilectorum subditorum nostrorum quorum ill' damnum & interitum omnibus viis & modis molitur Statut' & ex consensu & scientia concilii nostri decrevimus aliquam opem de dictis subditis nostris petere & eand' cum eorum benevolentia recipien' pro eorum cujuslibet facultate ministrand' nihil dubitans quin sponte & liberaliter quisq; pro sua portione & facultate elargiturus sit eoque Magis & citius quod id totum consumat' & cedat in suam ipsorum defensionem*; and the Power is given to levy it as a Benevolence only. By the Statute of 35 *Hen.* VIII. *cap.* 12. it appears that for the Defence *Hen.* VIII. had borrowed divers Sums of Money.

The third Way was by anticipating their Rents. *Trin.* 29 *Ed.* I. *Rot.* 58. in the *Exchequer*, Writs went to all the Sheriffs of *England*, *Pro salvatione Regni ejusq; incolarum salvatione & Inimicorum depressione*, that all the Profits arising out of their Counties, and the Rents of all the King's Tenents due at *Michaelmas*, be paid at *Midsummer*, and allowance promised in the next half Years Rent, and that this *ad tam ardua negotia necessaria & in consuetudinem non trahatur.*

My Lords, not one or two, but so many Kings, and of such Power and Wisdom as many of them were; and that in a Matter of such Consequence, and in times of Necessity, should so far descend from their Greatness, or so far prejudice their Right, as to borrow that of the Subject, which without being beholding unto them, they might take of Right, and bind themselves to Repayment, and all without any *salvo* of their Right, your Lorships will conceive that it can hardly be imagined.

My third Reason is taken from the Incertainty of the Way intended by the Writ; for the Law delighting in Certainty, to the end that the Subject might be sure of somewhat that he might call his own, hath made all those Things that the King challengeth as peculiar to himself from the Subject, either certain in themselves, or else reduceable to a Certainty either by the Judges, Jury or Parliament, (or some other way than by his Majesty himself,) as indifferent between the King and his People. In this I intend not such Things as are common to the King with the Subject, of which Nature are the Aids for marrying the Kings eldest Daughter, or Knighting his eldest Son; for these are due to several common Persons that are Lords of a Mannor, as well as to the King, as appears by the Statute of *Westm'* 1. 3 *Ed.* I. *cap.* 35. *M.* 28, and are not due by any special Prerogative, but by Tenure; and yet the Common Law for avoiding Excess therein, calls it *Rationabile auxilium*, and yet even this by the Statute of *Westm'* 1. 3 *Ed* I. *cap.* 35. is put into Certainty; and the Cause of making the Statute, as therein is expressed, is, because the People were grieved by paying more than was requisite; and thereby that which was reasonable, became an unreasonable Aid. This Statute was General, and named not the King in Particular, but the Statute, 25 *Ed.* III. *cap.* 11. is only in case of the King, and *Na. Br. fo.* 82, gives the Reason of the making of that Statute, because the King before did distrain for more than was fit, and therefore by reason of the Excess, was restrained to a Certainty as well as the Subject. Neither are the Taxes and Talliages upon Cities and Burroughs, or ancient Demesne against this in respect of the baseness of their Tenures before mentioned. And Secondly, because the Subject that is Lord of such Burrough and Mannor of ancient Demesne, have them as well as the King, as appears by the Case of *New-Salisbury*, 33 *Ed.* I. in the Parliament Book, and in the New Parliament Roll, 8 *Ed.* II. for the Burrough of *Cyrencester*, and *Br. Trin.* 33 *Ed.* I. *Rot.* 22. and *Na. Br.* 97. These things which are peculiar to the King, either they be certain in themselves, as are Treasure-Trove, Deodands, Wrecks, and the like, where the King is to have the thing itself; and so if it be in Money as the Demy-Mark; when in a Writ of Right the Tenent prayeth, that the Seisin may be inquired, Fines *pro licentia concordandi*, it is the tenth Part by the Law comprized in the Writ of Covenant, and the Post-Fine one half so much more, and Fines for purchasing Original Writs ii *s.* viii *d.* where the thing demanded is forty Pounds, or ten Shillings where one hundred Pounds, and so in Proportion. Or else it is reduceable to a Certainty, as in all Cases where the Party is to be amerced,

amerced, though he is in *misericordia dom' Regis*, yet the Jury must find the Amerciament, and when he is to make Fine and Ransom *ad voluntatem Domini Regis*, yet this Fine must be set by the Judges: when the Tenent by Knight-Service makes default in the Summons *ad exercitum*, which is to pay Escuage for the Default; this cannot be set but in Parliament, as I shall prove hereafter.

My Lords, to apply all to the Thing in question, there is a Cause for raising Money for the Defence of the Realm, *non definitur in lege*, what will serve the turn. If his Majesty, as in the Writ, may without Parliament lay xx *s.* upon the Defendents Goods, I shall humbly submit it to your Lordships, why by the same Reason of Law it might not have been xx *l*, and so *ad infinitum*; whereby it would come to pass, that if the Subject hath any thing at all, he is not beholding to the Law for it, but it is left intirely in the Mercy and Goodness of the King.

My Lords, I am now come to the second kind of Proofs, and that is by Authorities; the Cases which in the first Place I will insist upon, will be to prove it by Induction; for if I shall prove that his Majesty without Parliament cannot tax his People for setting forth of Land-Forces for the Defence, for making and maintaining of Forts and Castles for Defence, for Victuals for a defensive Army, for Maintenance of Prisoners taken in a defensive War, for Pledges and Hostages given by foreign States for the keeping of Peace, if it cannot be in all or any of these Particulars, the five Supports of a defensive War; I shall then offer it to your Lordships, whether it can be done at all.

Before I proceed to these Particulars, I shall observe thus much, my Lords, in the General; that if those that hold by ancient Demesne and Burgage, which are but base Tenure, cannot be taxed *nisi sur grand cause*, and that have many Priviledges in point of Ease and Profit in Consideration thereof, as they have; much less then can the Tenents by Knights-Service and Soccage that are free Tenents, and have no Priviledge in support of the Charge, be taxed: And as they are not taxable, but *sur grand cause* in the General, so neither in Particular for this of Defence, as is proved by that of Escuage; for if his Majesty without consent in Parliament, cannot tax his own Tenents, nor proportion the Fine according to his Pleasure, when the Tenent holds the Land *ad exercitum* for the Defence of the Kingdom, much less can he do it where there is no Tenure for that Purpose. That Escuage cannot be set without Parliament is first the Statute of *Rumney* Mead, *Nullum Scutagium vel auxilium ponatur in Regno nostro nisi per commune concilium Regni nostri*, which though it be not printed, yet it is of Record, and inrolled in the *Red Book* of the *Exchequer*, and cited in *Math. Paris Page* 343; and that as well before the Confirmation of it 9 *Hen.* III. as since, it hath been by the Judges reputed to be a Statute and of Force, appears by the Book of 5 *Hen.* III. *Mordam.* 53, where it is pleaded and called by the Name of *Magna Charta*, and allowed, and *M.* 19 *Ed.* I. *Finiente* 20. *incipiente. Banc. Regis Rot.* 56. in the Case of *Ralph de Tonney*, it's pleaded by the Name of *Magna Charta Johannis Regis De Rumney* Meads and allowed.

In the Book of Knights-Fees of *Ed.* the First's time, there is a Writ cited, which went to the Sheriff of *Hereford* thus; *Datum est nobis intelligi quod plures sunt qui tenent per servitium Militarium de nobis qui contradicunt solvere Scutagia quæ nobis sunt concessa per commune concilium Regni nostri*, therefore he is commanded to levy them, *Comm' M.* 8. *Ed.* II. *Rot. dors.* many Processes issued for the levying of Escuage granted in *Ed.* the First's time Superseded, and quite releas'd; the Reason entred on the Roll is *Quia dictum servitium non fuit Communiter factum*, that is as I conceive, that it was not done *per commune Concilium Regni*, the Books are express, 13 *Hen.* IV. *Com. Banc. Na. br.* 83. *Institut. Sect.* 97.

My Lords, that those that held in Soccage or Fee-Farm, are not by so many Knights-Fees as they were distrained for, were always discharged, as appears by infinite Precedents; I shall make no use of it, as the manner of entring these Discharges upon the Roll is observable, that he is distrained *ac si teneret per servitium Militare*, whereas he holds the Lands in Soccage, *pro quibus servitium aliquod Regi in exercitibus suis facere non debet*, and in some Rolls that *Ratione alicujus authoritatis*, he ought not to be Distrained; therefore *Quia Dominus Rex non vult illum in hac parte injurari prout justum est*, the Distresses are released. Amongst divers Precedents for this, I shall cite but one or two, *Br. Trin.* 34 *Ed.* I. *Rot.* 20. the Abbot of *Abington* and *John Arden*, the Iter Roll of *Sussex*, 7 *Ed.* I. *Rot.* 107. of *Gilbert Gifford.* My Lords, if the King might have raised Money, and seised Money for finding of Soldiers, or for their Arms, this manner of Entry as I humbly conceive, would never have been suffer'd.

I am now come to the first Particular that I have instanced; that is, the charging the Subject for finding of Soldiers to go out of their County for the Defence of the Realm: My Lords, in that I shall in the first place admit these three Things.

First, That every Man after the Statute of *Winchester*, *secundum statum & facultates*, was to find all manner of Arms, as well for the Defence of the Realm against Foreigners, as for the Peace; and that I have before proved by that of 3 *Rich.* II. *M.* 16, and after by the Statute 5 *Hen.* IV.

That upon suddain coming of strange Enemies, these are compelled to travel out of their own Counties, is the Statute of 1 *Ed.* III. *cap.* 5, and so for appeasing of any notable Rebellion, when the King for the doing thereof goes in Person, as appears by the Statute 11 *Hen.* IV. *cap.* 1. & 18.

Thirdly, I shall admit, that so long as they remain at Home, and go not out of their Counties, that they are to have no Wages, and that the Maritime Shires, and those that Border upon *Scotland* and *Wales*, were not to be at the King's Charge, so long as they remained at Home in their own Counties for the Preservation of them; but that they were in that case themselves to bear the Charge against foreign Invasion, as of making of Hue and Cry, assisting the Sheriff when he takes the *Posse Comitatus*,

tatus, and all other Things concerning the keeping of the Peace.

But that the Subjects are taxable either for Wages or Victuals, or otherwise for finding of Soldiers out of their Counties, though for Defence of the Kingdom, or that any are compellable to do it at their own Charge, I shall humbly deny. The Statute 1 *Ed.* 3. says, that in this Case it shall be done as usually hath been done in times past, for the Defence of the Realm. My Lords, I shall not deny, but that before *Edward* the Third's Time Commissions have issued out of the Chancery for that purpose; against which Matters of Fact, not only to ballance them, but even to weigh them down, it's as clear that whole Armies, some of them of 30000 at the least, over and above them that were summoned by their Tenure, have been maintained at the King's Charge, from the time that they have departed out of their Counties, during the whole Time of their Service, and that not only with Promises of Payment, but that they were paid *ex Thesauro Regis*, out of the *Exchecquer*; and many times upon Failure of Payment, Victuals, Wages and other Things, upon Suit for them in the *Exchecquer*, full Payment has been made, of which sort in most Kings Reigns there are many Cases.

My Lords, this is the Answer that I give to the Commissions to the Country, That *de facto* the King was at the Charge usually for defensive War. By the Statute 19 *Hen.* 8. *cap.* 1. those that have Annuities of the King, must attend him when the King in Person goes for the Defence of the Realm, or against Rebels: But there is a special *Proviso*, that they shall have Wages of the King from the Time they set out till they come to the King, allowing twenty Miles a Day, and afterwards as long as they shall remain in the Service. Upon a Rebellion in the North 28 *Hen.* 8. against which the King intended to go in Person, Privy-Seals were sent to most of the Gentry to attend the King with the best Retinue that they could make, and likewise to bring the Bills of their Expence, and Payment promised, as appears by many of those Privy Seals remaining in the Palace-Treasury. And besides the Indentures themselves, whereof I have seen many, it appears by the Statute 2 & 3 *Ed.* 6. *cap.* 2. that the Retainer of Soldiers at the King's Charge, was as well for Defensive as Offensive Wars; and also by the Statute of 3 *Hen.* 8. *cap.* 5.

My Lords, in the next Place I shall endeavour the Proof hereof by clear Authorities. The Statute of 25 *Ed.* 3. *cap.* 8. is, that none shall be compelled to find Arms, but such as hold by such Service, if it be not by Grant in Parliament. That this was no *introductivum novæ legis*, appears by a Petition whereupon the Statute is made, that it is *encounter le droit del Roylme.* That the Common Law was so before the Statute, and likewise in case of a Defensive War, appears by the Authorities following: *P.* 26 *Ed.* 1. *Rot.* 35. *dors.* the *Scots* entering the Borders, a Commission issued *Reginaldo de Gray*, to press Soldiers in *Lancashire*; he certified by his Letter inrolled there, *que sans denieres prest* he could not procure them to march out of those Parts, and therefore Order is taken in the *Exchecquer* to send Money. That the *Scots* had now invaded the Kingdom, appears by *Br. irrot' m.* 26 *Ed.* 1. *in Scaccar'* where Commissions are inrolled for many Thousands to be levied for this War at the King's Wages. *Bra. Trin.* 32. *Ed.* 1. *Rot.* 18. *Communia.* the Wardens of the Marches of *Cumberland* and *Westmorland* write to the Barons of the *Exchecquer*, that whereas the *Scots* lay near the Marches with a great Army, and that the People of these Counties would not march out of their Counties without Wages and Victuals, that they would provide for both. 2 *Pars. Pat.* 10 *Ed.* 2. *M.* 26. and 9 *Ed.* 2. *in Parl'* a Grant to find one Soldier for sixty Days at the Charge of the Town against an Invasion of the *Scots*. Now the King grants, *Quod hujusmodi concessio non reddat in prejudicium, nec trahitur in exemplum in futuro.* At the Time when this Aid was granted, the *Scots* had entered the Realm, and wasted the Bishoprick of *Durham*, as appears in 14 *Ed.* 2. *Banc' Reg. Rot.* 60. *Rot. Scot.* 12 & 13 *Ed.* 2. *M.* 7. & 13. the same Indempnity upon the like Occasion of Defence, when they found the Soldiers *ad rogatum Regis*, and the King commanded the Chancellor to declare as much. *Claus.* 13 *Ed.* 3. *M.* 38. *dors. pars* 1. the Abbot of *Ramsey* discharged *pro Custodia Maritima* in the County of *Norfolk*, because he remained in his own County of *Huntington*, *cum equis & armis* for the Defence thereof, with this, that therefore it was not *rationi consonans* to charge him farther. The same it is *Rot. Fra.* 21 *Ed.* 2. *M.* 1. *Pars* 1. *Oxon.* because they were *promptí & parati* at home to defend the County. But the Practice, it seems, not agreeing with the Right in the Parliament, 20 *Ed.* 3. *M.* 12. the Commons complain, that Commissions had issued out of the *Chancery* to charge the People in this Particular and otherwise, without Consent in Parliament, and pray, that they may disobey such Commissions. The Answer is, that the Commons had heretofore promised to assist the King with their Bodies and Goods in the War with *France*, and likewise for the Defence of the Realm; and that the great Lords, considering the Necessity as well for Defence as for the King's Wars, agree thereunto, and yet promiseth that this which is done *in cest Necessity, ne soit troit en consequence nec ensample.* My Lords, this a full Declaration of the Right, even when for the Defence, and yet some practice to the contrary. Before the making of the Statute 25 *Ed.* 3. procured the Complaints in this Particular in the Parliament 21 *Ed.* 3. *M.* 22 *Ed.* 3. *Pat.* 8. *Hen.* 3. *Fulcasius de Brent inimicus publicus & excommunicatus*, that imprisoned the Justices Itinerant in *Bedford-Castle*, and held the Castle against the King; the King, *propter graves & manifestas excessas quibus regnum multipliciter perturbavit*, besieged the Castle; and whereas the Clergy, *de mera gratia*, had granted the King Aid for the doing thereof; *Rex nolens gratiam sic nobis exhibitam ad debitum retorqueri*, declares as much by his Letters Patents. My Lords, it is here declared, that the King cannot *de debito*, or *de jure*, take any Aid against the Subjects Wills for besieging of a Castle, held against the King by a Publick Enemy. *Rot. Inquision'* 3 *Ed.* 1. *Rot.* 4. *Kent. Coram auditoribus querelarum post bellum* Evesham' *& pacem proclamatam.* The Castle of *Tunbridge* being held against the King, the Hundred

Hundred of *Feversham* was assessed at fifteen Pounds *per insultationem* of the Castle: The Jury presents this as a Grievance, which the Justices would never have received, nor suffer'd to be entred into the Roll, if this Assessment might have lawfully been made. My Lords, this Castle and Hundred they were both in the same County, and being before the Statute of *Winchester*, they are not compellable to besiege the Castle; and if they were compellable to go in Person and with Arms, yet no Assessment could be laid for the doing thereof. My Lords, I shall only offer to your Lordships Consideration the *Scotish* Roll of 20 *Ed.* 3. *M.* 6. the Wardens of the Marches of *Scotland* were to appoint *Exploratores & Vigiles*, which were to espie out and give notice of the Enemy's Intendments. By the Commissions in *Henry* the Fourth, *Henry* the Fifth and *Henry* the Sixth's Times, they were *explorandum defensione Regni, & partium sumptibus incolarum:* But how? Only *de assensu & voluntate sua, prout fieri consuevit.*

My Lords, I am now come to that of Victuals. The Statute 14 *Ed.* 3. *cap.* 19. is, That for the Wars the Provision for them shall be done by Merchants without Commission or other Power from the King, or any other Power, that the People may not be compelled to sell against their Wills. That this was as well for Defensive as Offensive War, and that this was not *introductivum novæ legis*, but was so at Common Law, is, by your Lordship's Favour, clear. *Pat.* 29 *Ed.* 1. *M.* 16, 19. *ad reprimendam malitiam Scotorum*, and to repel them, Commissions to most Counties to provide Victuals; and because they refuse to do it, the King then offers them Security. *Br. Trin.* 8 *Ed.* 2. *Rot.* 99. Victuals bought *juxta forum patriæ, pro munitione marchiæ Scotiæ*, and there Payment upon Suit adjudged. Sometimes at *Newcastle*, sometimes at *Carlisle*, sometimes at *Berwick*, as the War required, were Store-Houses, where the Victuals were laid, and Clerks of the Stores to issue them out. That the King not only paid for the Victuals, but for the Houses where they were laid, appears. *Br. Trin. Ed.* 3. about the End of the Roll, *dors.* the Burgesses of *Newcastle* complain in Parliament, that their Houses had been taken up long time for the keeping of those Victuals; this was transmitted into the *Exchecquer* by Writ, which says, *Volumus hiis pro domibus suis prædictis sic occupatis satisfacere prout debet & prout justum fuerit, & prout temporibus Progenitor' nostror' fieri consuevit.*

My Lords, in the next place for the Defence. When those that served with Horse *ad vadia Regis* lost their Horses in the Service, the Owners did not bear the Loss, but they were always paid for by the King; and therefore when they were first entred into the Service, the Marshal, or else the Wardens of the Marches, who had the Command of them, did set down in a Roll the Horse of each Man, and the Mark and Price of each Horse, to the intent that the Owner by this Certificate might be assured of the full Value to be paid him, in case the Horse was lost. This appears *Claus.* 34 *Ed.* 1. *M.* 16. where the *custodes Marchiæ Scotiæ* assigned *pro defensione Marchiæ* were to do it. *Br. irrot.* in the 26 *Ed.* 1. *Rot.* 105, 106. the *Scots* having entred the Realm diverse *homicidia, incendia & alia facinora perpetrantes*, there the Horses *ad vadia* for Defence were to be appraised. 2 *Pars. Pat.* 10 *Ed.* 2. the same; and the *Scotish* Roll of the 21 *Ed.* 3. *M.* 7. the same, *prout jus est.* That thereupon, since, the Subject hath recover'd of the King, are many Cases. I will instance but in two or three. In 24 *Ed.* 1. *Rot.* 16. *dors. Robert Heiham* recover'd twenty Marks in the *Exchecquer, pro equo perdito in conflictu Dover inter homines Regis & inimicos Franciæ*; at which time the *French* had assaulted *Dover*, and burnt the Priory and a great part of the Town. *Br. Hill.* 17 *Ed.* 2. *pro restauratione trium equorum perditor'* at *Carlisle.* 9 *Ed.* 2. *Com. P.* 9 *Ed.* 2. *Richard Waldgrave* recovered for Horses lost at *Carlisle. Com. Hill.* 2 *Ed.* 3. for Wages *pro restauratione equorum perditor'* and burying of the Dead when the *Scots* had entred the Realm at *Stanope-Park*, for one Troop fifty eight thousand Pound allow'd, *habita inde deliberatione*, and adjudged.

For Castles the ancient Forts and Bulwarks for Defence, the Statute 14 *Ed.* 3. *cap.* 13. says, that Merchants without any Commission or Power from the King shall victual them, so that the People shall not be compelled to sell against their Will. That this Statute in this Particular is not *introductivum novæ legis*, is cleared by the Case *Trin.* 16 *Ed.* 1. *Rot.* 93. *Wilts*, in a little Roll, and in a great Roll of the same Year, *Rot.* 19. when in *Trin.* by *John Eveshorne* against *John Flavell, Quia blada & garbas suas cepit*, the Defendent says, he was Constable of the King's Castle of the *Devises*, and that he had *in præceptis Domini Regis, quod mur' faceret* to the Castle *de morturo stauro vel de bladiis*; and of these things, and that by virtue of this Writ, he took an Inquest to know where he might have best these Provisions, *ad minus nocumentum patriæ*; and the Jury found it, that the Defendent might take it *ad minus nocumentum patriæ* of the Plaintiff; and that he came to the Plaintiff's House, and offered to buy *pro Denariis & ad usum Regis*; and that because the Plaintiff refused to sell, they departed from his House; the Issue joined, and found against the Defendent; 100 Marks Damages given the Plaintiff, and adjudged. There were always anciently *visores operationum*, and they upon Oath certified, that they saw the King's Money expended, which was demanded in the *Exchecquer.* And for Victuals, as they were bought with the King's Money, so when they grew stale, or the Danger was passed, they were sold again to the King's Use.

My Lords, that even in the Time of War, when the Frontier Towns and Castles were besieged, and the Borders invaded, that even then the King did bear the Charges, appears by the Allowances in the *Exchecquer, Trin.* 27 *Ed.* 1. *Rot.* 47. *pro tuitione Newcastle contra Scotos qui hostiliter Regnum in partibus illis invaserunt. M.* 31 *Ed.* 1. *Rot.* 2. the *Scots* besieged *Carlisle*, 26 *Ed.* 1. and Allowance now *de exitibus Castr'* which was the King's. And in the 27 *Ed.* 1. 75. ten thousand Pounds allowed *pro ingen'* and *Trin.* 32 *Ed.* 1. *Rot.* 11, 12. *Visis comput.* 28 *Ed.* 1. *Rot.* 71. *prout justum, quia Scoti contra Regem hostiliter insurgunt*, therefore *de thesauro Regis, Berwick* is fortified, *& Rot.* 78. *dors.* it appears that the Sheriff of *Yorkshire* had carried ten thousand Pounds *de thesauro Regis* to those Parts. *Br. M.* 17 *Ed.* 2. *propter*

frequentes egressus Scotorum in Regno, the Castle of *Sandall* at the King's Charge is fortified *prout justum*, and Allowance given. And *Brevia Hill.* that Year the Castle of *Horney* for the same Cause was fortified, the *Scots* having entred *circa prædict' Castrum & apud Lancaster.* 3 & 4 *Phil. & Mar. Dyer.* 162. *b.* One in Execution for Debt in the *Fleet*, who, as the Book saith, was a Man very necessary for the War; and it was moved by the King's Attorney *per mandatum concilii*, If the Prisoner might be licensed with a Keeper by the Queen to go to *Berwick* for the Defence of it, or no; and it was held by all the Judges of the *King's Bench* and *Common Pleas*, that the License was not good; and 4 & 5 the same Case cited accordingly to have been the Opinion of all the Judges.

My Lords, for Prisoners taken in defensive Wars, and likewise for Pledges and Hostages for securing the Peace, that the Charge and Maintenance, and the carrying them to the several Places of their Abode, have been always born by the Kings of this Realm, the Allowances thereof in the *Exchecquer* are so frequent, that I intend to cite none of them, save that for the Prisoners taken in the Conflict at *Dover* before spoken of, which is *Comm'* 4 *Ed.* II. *Rot.* 22. *dors.* neither do I find it at any time stood upon, save only 8 *Ed.* II. amongst the *Br. Trin.* 8 *Ed.* II. *Rot.* 88. *dors.* But the Reason is, because that after the Death of *Ed.* the First, in the Commission of granting the Constableship of the Castle, no mention was made of the Prisoners, and yet even in that Case upon a *Monstravit Regi*, a Writ of Privy Seal is awarded for Allowance *prout Justum.*

My Lords, if in all these Particulars of Soldiers, Victuals, Castles and Forts, Horses, Prisoners and Pledges in case of a Defensive War, the main Supports of them, the Kings could not tax their Subjects, but have born the Charge thereof themselves; I shall then offer it to your Lordships to be so for the Defence in General.

My Lords, the Allowances in the *Exchecquer* in all the Particulars before-mentioned are frequent. In the Case of Mines, the Profits of Silver Mines, that they upon an Accompt in the *Exchecquer* were always answered unto the King, was one of the principal Arguments for the King's Right thereunto; and there *fo.* 320 it is held, that in all Things that concern the Revenue of the Crown, because they are there debated, that the Record of the *Exchecquer* shews not only the course of the Court, but what the Law is through the Kingdom.

My Lords, that in Cases of War and Embassies the *Checquer* made Allowances, and with what great Consideration, appears by the Statute 5 *Rich.* II. *cap.* 10. that they were not allowed by the Court, till the Party brought the Great Seal, or the Privy-Seal for it. And if a Writ of Allowance came to the *Exchecquer* before the Court had examined the Accompt, yet they never made Allowance until the Court had examined it. *Hill.* 25 *Ed.* I. *Rot.* 22. *Licet breve de allocatione pendit de* 1000 l. *allocandis tamen ante allocationem factam opportet inquirend' si pecunia illa ad opus Regis devenit & quod ipsi doceant super hoc Curiam Regis.* And *Trin.* 25 *Ed.* I. *Rot.* 47. the Allowances are never in Gross, but by Particulars.

My Lords, the next Proof that I shall humbly offer unto your Lordships, is in that of borrowing of Money by the King for the Defence of the Realm, which as they have usually done it, so it is as clear, that not only upon Petitions, their own Pleasure, and upon Grace, but likewise upon Suit they have been adjudged so to do in the ordinary Courts of Justice. *Comm' Pasch.* 31. *Rot.* 41. one hundred and forty nine Pounds borrowed of *Henry Tompson, pro defensione totius Regni* was sued for, and repayment ordered. *M.* 10 *Ed.* II. *Rot.* 160. *Grandes pecuniæ summæ* borrowed by the King for that Purpose, and order for Repayment. *Br.* 3 *Ed.* III. *Comm' princip. Rot.* 664 *l.* My Lords, in this Particular I shall cite but this one Case more *Comm' Pasch.* 29 *Ed.* I. *Rot.* 18. the King *pro urgentissimis Regni negotiis & defensione totius Regni*, had seized divers Sums of Money in all the Abbies and Cathedrals, and other Religious Houses in the Realm, & *quo citius commode poterit* promised Payment. In the Parliament 29 *Ed.* I. at *Lincoln* the King is petitioned for Repayment of these Monies, who promiseth Repayment, *Ita quod Regis conscientia super hoc exoneret'* and there, and *Rot.* 19. divers Sums are adjudged to be paid.

My Lords, I shall thus humbly offer this unto your Lordships, that if the King had conceived, that when himself wanted Money for the Defence, that he might have charged his Subjects, he would never have made this Answer of Repayment, *ad exonerandum Conscientiam*, for then in Equity and Conscience the Parliament should have taken Care for the Satisfaction of these Debts, or should at leastwise have distributed part of this Charge upon all his Subjects; neither should the Parties have had full Satisfaction for all their Debts, but should have born part themselves. By the Statute 35 *Hen.* VIII. *cap.* 12. the King for the Defence of the Realm had divers great Loans made to him. Now likewise there being great Cause of new Defence against *France* in *Scotland* in Aid of the King, they release these Assurances given by the King, and likewise Release to the King all Suits and Petitions concerning those Moneys.

My Lords, I am now come to the other Authorities for proof thereof, which is by Acts of Parliament. My Lords, before I come to the Acts of Parliament themselves, I shall humbly offer unto your Lordships, the Summons and Preparatives to them.

First, the *Ardua Regni negotia* for which they are called, are principally *defensionem concernentia*, that these are not the Way and Manner of Defence, and their Advice therein, but the Supplies and Aids for this Defence, I have presented clear Proofs to your Lordships before. That these Aids cannot be raised without their Consents, is strongly inferred in this, that the Knights of the Shires are to have *plenam & sufficientem authoritatem prose & comitate Comitatus pred' ad faciend & consentiend'*, to the Things in *negotiis ante dictis.* If this might be done without consent of the Commons, this in the Writ would be

be needless. But that this cannot be done without their Consents is cleared by the Words following in the Negative, *Ita quod pro defectu potestatis hujusmodi dicta negotia infecta non remaneant quovismod.* This my Lords is the constant form of Modern, and all the ancient Writs, and shews clearly that the Commons without their Consents in Parliament, are not chargeable to a defensive War.

In the Acts of Parliament, I will begin with that of *William* the Conqueror, *Anno quarto* of his Reign; which besides that it is cited in the Preface of the 8*th* Report, and *Instit. fol.* 75. and by *Ingulphus fo.* 519, and Mr. *Selden* in his *Eadmerus, Page* 171. its likewise upon Record, and inrolled in the Red Book in the *Exchecquer.* The words are these, *volumus & firmiter præcipimus & concedimus quod omnes liberi homines totius Monarchiæ Regni nostri Angliæ habeant & teneant terras suas & possessiones suas bene & in pace libere ab omni exactione injusta & ab omni tallagio. Ita quod nihil ab eis exigatur vel capiatur nisi servitium suum liberum quod de jure nobis facere debent & facere tenent' & concessum jure hereditario in perpetuum per Commune concilium totius Regni nostri præd'.*

My Lords, the Words by reason of the Disjunctive *& ab omni tollagio* are plain, that the King shall not exact, nor take any Thing of any Freeman, but what his Tenure binds him unto. As in words by reason of the generality of them, it extends to Cases of the Defence of the Realm; that it doth so in intent, I shall indeavour thus to present it to your Lordships.

The Military Services before mentioned for the Defence of the Realm, they are by *Bracton* attributed to the Conqueror's Institution; for in his second Book *Fo.* 36 speaking of them, he saith, *Secundum quod in Conquestu fuit adinventum. Plowden* in the Argument of Sir *Thomas Tresham's* Case, means, the Conqueror had to do it by reason of the many Attainders of those that took part with *Harold,* and after his Death with *Edgar Atheling*; that he did it in a great part, appears by *Math. Paris fo.* 8, that he put all the Clergy that before held in *Franke Almogne sub servitute Militari* to do Service *tempore hostilitatis,* and by the County Palatine of *Durham* and *Chester* in those Places of Danger. In the Book of Knights Fees in *Henry* the Second's Time, it appears by the Certificates, they had sometimes *de veteri Feoffament'* and sometimes *de novo.* And by some of them it appears, that the Tenures *de novo Feoffament'* were before King *Stephen's* Time, and therefore it's probable that the *Vetera* might be those created by the Conqueror. The Provision for Soldiers Pay by Tenures was likewise of his Institution, as appears by that before cited out of the Black Book, *lib.* 1. *cap.* 27. that *in primitivo regni statu post conquestum ad stipendia & donat' militum* out of the Castles and other Lands *in quibus agricultura non excercebatur pecunia numerata succrescebat.* The Policy and Provision of the Conqueror for the Defence being by Tenures, when in this Act of Parliament he says, *quod nihil ab iis exigatur vel capiatur, nisi servitium suum quod de jure nobis facere tenentur,* I humbly conceive shews plainly, that the Subject was not otherwise to be charged for the Defence, nor further than by their Tenure. This, my Lords, further appears by other Parts of that Act of Parliament, where speaking of any thing of Charge that is to be done according to their Tenures, as that all *bene se teneant in equis & armis ad servitium suum integrum faciend'.* But in the next Place speaking of the Defence it saith, that all within the Realm *sunt fratres conjurati pro viribus & facultatibus* to defend the Kingdom and the Peace, *& ad judicium rectum, & justitiam faciend'* the coupling of the Defence with that of the Peace, and doing Justice, shews the personal Care that all by their Oath of Allegiance ought to bear to the common Peace and Good of the Realm.

The next Statute that I shall present to your Lordships, is that of *Rumney* Mead, 17 *Johannis Regis,* the words are these, *Nullum Scutagium vel auxilium pona' in Regno nostro nisi per Commune Consilium Regni nostri nisi ad corpus nostrum Redimend',* and to Knight his eldest Son, and to marry his eldest Daughter, as in Words these extend to the Defence; because all Supplies for that Purpose from the Subject, they are only in *auxilium,* or in *subventione expensar'* of the King, who, as before is proved, is principally bound thereunto: So may the intent likewise be further gathered, *First* from this, that the Word *auxilium* is joyned with that of Scutage, which is for the Defence; and likewise from this, that particular Satisfaction is made, by other parts of that Statute, to those that had been disseised by *Rich.* the Second, and King *John,* which were things done only for the Increase of their Revenue, without shew of the Common Defence. That both before 9 *Hen.* III, and afterwards 20 *Ed.* I. this was a Statute, and so accompted I have before proved. And in the Book 5 *Hen.* III. it is called by the Name of *Magna Charta sans addition.* So 37 *Hen.* III. in that solemn Confirmation observed by *Matth. Paris* p. 115. this of *Rumney* Mead is confirmed by the Name of *Mag. Char.* and 50 *Hen.* III. *p.* 1220, which I note only to this purpose; that of speaking of *Mag' Chart',* this of *Rumney* Mead is intended as well as that of 9 *Hen.* III. as part thereof, and bodied both together; yet that neither of them were observed either in King *John's* or *Hen.* the Third's time, our Histories are full of it. And by the Pope's Bulls of 12, and 13 *Hen.* III. the Pope absolving the King from his Oath in their Confirmation doth it, because as the words of the Bulls are, *Juramentum peccati vinculum esse non debet,* neither till after 29 *Ed.* I, as I shall hereafter prove, were they at all observed in the things concerning the King's Prerogative.

The next that I shall cite, are the Statutes of 25 *Ed* I, and the Statute *de tallagio non concedendo.* That of the 25 *Ed.* I. *cap,* 5, *&* 6. the Grievance is for Aids, Tasks and Prizes taken thro' the Realm, for the Wars shall not be brought into any Custom for any thing before done, be it by Roll or any other Precedent that may be found; and further grants, that for no Business from henceforth, he will take any such Aids, Tasks and Prizes but by common Consent in the Parliament of the Realm, and for the common Profit, saving the ancient Aids and Prizes due and accustomed. My Lords, though by the Copulative it is clear enough, that there must be a Consent

Consent and common Profit concurring, and although the saving of the ancient Prizes and Aids accustomed, might well enough have been satisfied in the Aid excepted in *Rumney* Mead, and the prizing of Wines and Purveyance; yet to out these and all other Scruples, the Statute *de tallagio, &c.* made aferwards for that purpose is Absolute and General: That no Talliage or Aid shall be taken by the King, nor that any of his Officers shall take any Corn, Leather, Cattel, or any other Goods without the consent of the Party.

My Lords, to bring these Statutes to the Thing in question, that these Things cannot be done though for the Defence, the times of the making of them, and the Circumstances concurring thereunto, I shall present unto your Lordships.

That of the 25*th Ed.* I. by the Date appears, was the 10*th* of *Octob.* 25 *Ed.* I. My Lords the King, the 12*th* of *Aug.* before being at *Odimer* ready to go over into *Flanders*, the Parliament being then summon'd by his Letters Patents, *Rot. pat.* 25 *Ed.* I. *M.* 7. taking notice of the Constables and Marshals departure from the Court in Displeasure, and of the Rumors of the People, that the King refused to seal Articles sent him for the common Profit, for the Redress of divers Grievances done to the People. For the Grievance he saith, that without those things he could not have defended the Realm, and yet saith, that he is sorry for it, and prayeth that this may be his Excuse, as he that hath done those Things, neither to buy Lands nor Tenements, nor Castles, but to defend himself and the whole Realm; and that if he returned again, he would have all know, that he had an Intent to amend all those things, to the Honour of God, and Content of his People; that if he dies in this Service, his Heirs shall make amends. Hereby it appears, that the Grievances that procured this Statute, were for the Defence of the Realm; therefore from hence it follows, that the Aid and Taxes there mentioned were for the Defence. So likewise that the Exception of the ancient Aids extends not to those of the Defence, that being the Thing wholy complained of. This Declaration of the King was the 12*th* of *August*, the *September* after the King being at *Winchelsea* those Articles are sent unto him, to which he deferred for the present to give his assent unto them, because his Council was not there, and so sails over into *Flanders*. This Statute of the 25*th* of *Ed.* I. is past, the King beyond the Sea, the *Teste Edvardo Filio nostro*; at his return as appears by *Wallsingham Page* 42, the King is desired to confirm these Articles, which in *Wallsingham Page* 40, are the same Word for Word as the Statute *De tallagio*, which the King then deferred, 27 *Ed.* I. they desire it again, which the King doth with a *Salvo jure Coronæ nostræ in fine adjecto, quod cum audissent Comites cum displacentia ad propria discesserunt* saith the Author, *sed revocatis ipsis ad Quind' Pasch' omnia sunt concessa.*

That the Statute *De tallagio* was after that of 25 *Ed.* I. is plain in this, by the King's going over into *Flanders* without assenting unto any Articles in *Septemb.* and 10 *Octob.* following, as appears by that Statute 25 *Ed.* I. it self it was made; and likewise by the Statute *De tallagio* it self, the King's releasing all Rancour to the Earl-Marshal and Constable who had most offended him, and first presented these Articles to the King. My Lords, I shall add this only, as I conceive it will not be proved, that this King either before or after the making of this Statute, or any of his Successors since, ever claimed this absolute Power over their Subjects, as to lay Aids and Talliages upon them for the Supportation of their own private Estates abstracted from the common Defence or Good of the Kingdom. This King at this time we see by his own Declaration, was far from it. This last Statute fully satisfied those that desired it; for as *Walsingham* saith, *Ad eorum votum absolute omnia sunt concessa.* If therefore it extends not to that of Defence, I shall humbly offer it by what Construction of it our Ancestors Judgments and Discretions will be freed from a great deal of Censure, that were so well contented with it.

My Lords, *Mag. Char.* being confirmed at the same time when the Statute 25 *Ed.* I. was made, and both that and the Statute *De tallagio*, being only Articles upon *Mag. Char'*, they were all of them as I conceive intended in the Subsequent, and so often Confirmation of *Mag. Char.*

My Lords, the next is the Statute of the 14 *Ed.* III. *cap.* 1, that the People shall not be compelled to make any Aid, or to sustain any Charge but in Parliament. That this cannot be done for the Defence, will as I conceive be inforced from the words; for a great Subsidy having been granted as well for the War on this side the Sea, that is for Defence, as for the *French* Wars: Its declared, that this shall not be drawn into Example, and that out of Parliament they shall not be compelled to sustain any Charge; and then it is further enacted, that that Subsidy and all the Profits of Wardships, Escheats, and other Profits of the Realm, shall be spent for Defence and Safeguard of the Realm, and the Wars in *Scotland* and *France*, and not otherwhere; so that this Statute as I conceive all put together, bears this Sense. That the Subsidies granted in Parliament, and the Wardships being a Fruit of the Tenures created for the Defence of the Realm and other Profits arising to the King by way of Prerogative, are to be spent for the Defence of the Realm, and the King's other Wars; but that no Aid or Charge for any of these, can be laid upon the Commons without consent in Parliament. My Lords, that the Practice of the King, I mean *Ed.* the Third, was contrary to these Statutes, and that they were not kept appears by the Parliament Roll, 15 *Ed.* III. *M.* 9, the next Year after where the Commons shew that their Goods were seized, and their Bodies imprisoned without any Suit commenced against them.

My Lords, the next which I shall cite are the Statutes of 25 *Ed.* III, and 1 *Rich.* III, against Loans and Benevolences, which I shall humbly offer unto your Lordships on this Ground, *Ad ea quæ frequentius acciderint adparantur leges*; as for my part I have seen general Loans and Benevolences, but they were for the Defence; so I conceive if they were otherwise, they were but

but few in respect of the others. The common Grievances therefore being by Loans and Benevolences of that Nature, these Statutes I conceive were made against them; for these not being within the words of any of the former Statutes, that therefore the Kings might with the more Colour put them in Practice, and on the other side being as equally dangerous to the Subjects, because of the Displeasure by denial, procured the Statutes. That Loans for the Defence were after the 25 *Ed.* III counted unlawful, appears by *Walsingham Pag.* 179, that 44 *Ed.* 3. the King *Sinistro Concilio magnas summas pecuniæ* of all Sorts *petiit asserens quod in defensionem Ecclesiæ & Regni illas expenderet*, but that the People would not lend.

My Lords, the next which I shall cite is direct in Words, which though it be not an Act of Parliament, yet the Weight of the Authority by putting of it will appear. In the Second Part of the Parliament Roll, 2 *Ric.* 2. *M.* 3, 4, 5, the King being beset with the Enemies of *France*, and *Spain*, and *Scotland*, who all three by Land and Sea invaded the Realm, the Privy Council not willing in a thing so much concerning the Realm, to take the whole Charge of it upon themselves, nor desiring so soon to call a Parliament, a Parliament but a little before being dissolved; they therefore resolved to assemble a great Council of most of the Bishops, Lords, and other great Men and Sages of the Realm, who meeting and finding the absolute necessity of a Preparation for Defence, and that the King wanted Money to do it; what their full and final Resolution in this Case of Extremity for Defence was, I shall read the words of the Roll, they say *Pur conclusion final quils ne poient ceste mischiefe remedier sans charger les Comm' del Royalme, quel charge ne poient de fait ne grant sans Parliament*; and therefore the Necessity being urgent, the great Men lend Money for the present with advice presently to call a Parliament, as well to provide for the Repayment of this Loan, as for further Supply. Its true, my Lords, that this King was at this time within Age, and it is likely that many of his Council had been *Ed.* the Third his Grandfather's Privy-Council, who well knew his Prerogative, and extended it as far by reason of his great Wars to the charging of his Subjects, as any before him, or since his time. And that not only the Privy Council, but likewise, as the Record saith, almost all the Prelates and others, Dukes, Earls, Barons, Bannerets, and other Sages of the Realm, which I conceive were the Judges, should be so far from putting this in Execution, as that they declare in the Negative upon full Deliberation, that the Commons cannot be charged herein, but in Parliament, themselves likewise thereby being to undergo a present Charge, by lending to supply that Necessity; the Authority must needs be Weighty: And upon second Thoughts afterwards, the same was declared in full Parliament by the Lord Chancellor, and so afterwards entred upon the Roll without any Qualification at all, which adds further to the Authority thereof.

Ult. Feb. 3. *Car.* A Commission issued to divers great Lords, the End, as appears by the words, was for aiding the King's Allies beyond Sea, and for the Defence and Safety of the Kingdom and People. They were, by the Commission, to raise Money by Imposition or otherwise, which without extream Danger to the King, Kingdom, and People, can admit no long delay, wherein Form and Circumstances are to be dispensed with rather than the Substance lost. This my Lords was a Commission to tax the Subjects in time of Necessity for Defence. The last Parliament this Commission as against the Law was condemned by both Houses, and cancelled in his Majesty's Presence.

Phillip Comines in his 5*th* Book, *cap.* 8, observing the same, above all other commends the Policy of the *English* Laws and Government, and both he and *Bodinus Reipublic' lib.* 6. *cap.* 11, and *Pasquerus* Advocate-General in the King of *France* his Chamber of Accompts in his second Book, *cap* 6, and 7, all shew this likewise to be the ancient Law of *France*, and how the Practice comes now to be otherwise there *Pasquerus* shews at large; and that the Kings sometimes endeavouring to the contrary, found so much Difficulty, that they afterwards, especially *Charles* the Fifth, procured by the Consent of the three Estates these Aids for Defence to be granted for three or four Years together; And that this Consent of the People at the first, was afterwards that which gave the occasion to the King to take it without Consent; and therefore he concludes that *France* being *Un Royalme de Consequence*, that they must not easily promise any thing though but once, which they will not be willing to permit for ever.

My Lords, I have now done with the Proofs; in the next place I shall endeavour an answer to some few Objections that are obvious, both from Reason and Authorities.

For those of Authorities 13 *Hen.* 4. 14, 16. *Gascoigne's* Opinion that the King may charge his People without Parliament, to a thing that is for the common Profit of the People; the thing that he applies it to is, that the King may grant Pontage and Murage, *&c.*

My Lords, that the King may grant both these and Tolls upon erection of a new Fair or Market, or Paveage, I shall not deny. The Answer that I shall give to them is, *First*, That these Grants do charge *venalia* only, that is, Goods carried to those Places for Merchandize; but that any Tax may be laid *secundum statum & facultates*, either upon the Hundred or County, I shall humbly deny it.

It is true my Lords, by the Conqueror's Laws it appears, that Cities and walled Towns were for the Defence of the Country, and therefore by those Laws no Fair or Market might be kept but in *Civitate aut Burgo muro walliat'*. There in *Doomesday-Book* in all such Cases it is found, that there are so many *Mansiones Murales*, which by their Tenure, when need was, were bound *ad murum reficiend'*. That no other Land that holds not by that Service is liable, appears by the Parliament Roll, 1 *Rich.* 2. *pars.* 2. *M.* 76. where all the Cities and Burroughs of *England* petition, that in this time of Danger they not being able with their Merchandize to do it, that others that had Lands within the Towns might be made Contributaries, who before were at no part of the Charge.

The Answer is, that all according to their Tenure, as they have anciently done, so shall they still; and if this might be done, there would have been no need of the Statutes of 2, & 3 *Phil. & Mar. cap.* 1. 23 *Eliz. cap.* 4, for giving Power to tax Men *secundum statum & facultates*; to repair Castles and Towns within twenty Miles of *Scotland.*

For the Tolls and Pontages and Paveages, as there is a great deal of Equity that those which receive Benefit by bringing their Goods to the Market, and over the Bridge, should contribute to the Charges that make and maintain the Market Places and the Bridges; so neither are they Compulsory, but voluntary Charges: For as no Man payes, but he that receives the Benefit, so none is compellable thereunto, but is left to his Liberty. Neither is there any Colour in respect of the Town it self, to whom the Murage or Paveage is granted, why they should not be charged, because the Grant cannot be but at their own Suits; for if it be not at the Suit of *tot Burgensium*, the Grant is void, and to be revoked.

It may be further Objected, that as the Law hath intrusted the Way and Manner of managing of Defence wholly and independently unto his Majesty, so likewise of Aids and Means, as the *Causa sine qua non*, and therefore his Majesty should not be dependent upon the Parliament for them.

My Lords, the near Relation between his Majesty and the Parliament, that they are but one Body, hath been presented unto your Lordships, and that his Majesty did exercise the *summum Imperium* there. *Bodin lib.* 1. *cap. ult.* says, *quod ejusd' esset potestat' tributa nova imponere cujus est legem terræ*, but that the Legislative is not in his Majesty out of Parliament will be granted.

The Subjects Interest being as nearly concern'd in the Defence, as his Majesty's is; as there is no Cause to fear that they should not be willing to proportion the Aid to the Occasion; so neither can the Law presume otherwise, which hath so high an Opinion of the Judgment and Integrity of this Court, that as it is in the *Comm'* 398, its unlawful for any Man to conceive any dishonourable Thing of it.

My Lords, my last Answer thereunto is, that by the Law the King hath as independent a Power to make a foreign War, as to make a Defensive. It will as I conceive be granted, that in this Case his Majesty hath not Power to tax the Subject; for then it would follow that as well as to the Conquering of the next adjacent Rea'm, so of all *Europe* the Subject should be at the Charge, and yet the Land Conquered be only his Majesty's; and yet upon this Ground, in respect of the equality of the Powers, it might be done.

Neither, my Lords, as I humbly conceive doth this only answer the Objection, but returns upon the other side; for his Majesty has Power to make an Offensive War, which for the most part causeth a Defensive; by this means it should be in his Majesty's Power to make a Defensive War, and to tax the Subject for the Maintenance of it.

My Lords, the last Objection whereto I shall indeavour an Answer, stands thus. The Parliament is a great Body, and moves slowly; and that the Case may be such, that the Cause may be lost before the Parliamentary Supplies come.

My Lords, how Means of effecting so suddain, and so great a Surprize can be so secretly carried, I shall not examine it in Reason, but shall humbly offer unto it these Answers.

That the Service whereby the Law hath provided for the Defence both for Land and Sea, they have both the same limitation of Time with the Parliamentary Supplies in the Summons of the Tenents by Knight's-Service *ad exercitum*, and of the *Cinque Ports*, forty Days warning is to be given, as is for the Parliament. And so it is probable for that of *Mould*, 13 *Ed.* 1, it was for others that held by Sea-Service. And anciently the Summons *ad exercitum*, to the Ports, and for the Parliament went out together, or much about the same time, that the Parliament might assess the Escuage; and that in case the Tenures and other Revenues were not able to maintain the War, that the Parliament might provide for further Supplies, as appears *Hill.* 28 *Ed.* 1. *M.* 15. 31 *Ed.* 1, and 44 *Ed.* 1. *M.* 15, & 16, & *oportet neminem legibus esse sapientiorem.*

The Tonnage and Poundage when first granted for Life, was, that the King's might always have Money ready upon such suddain Occasions. In the Parliament Roll, 4 *Ric.* 2. *M.* 42, the Commons desire payment of *Edward* the Third's Debts, that they might be incouraged to lend the King in Aid of the Realm, if a suddain Cause of Necessity should fall out. The Answer is, that it shall be done *selon le petition.* My Lords, by this it appears, that this Objection was not then taken to be of Weight, many of the Loans are in *Causa necessitatis in Articulo.* The Authorities that further answer this Objection are great, and full in the Point.

The First is that of the Parliament Roll of 2 *Rich.* 2, before cited; the Business of Defence could not stay so long as for a Parliamentary Supply, yet agreed, that the Commons without Parliament could not be charg'd; and therefore the same Men that gave the Judgment, presently lend Money for that Purpose.

In the Statute 31 *Hen.* 8. for Proclamations, the Cause of making the Statute is expressed in these Words. Considering that sudden Causes and Occasions fortune many times, which do require speedy Remedies; and that by abiding for a Parliament, in the mean time might happen great Prejudice to insue to the Realm: Therefore the King's Proclamation is by that Act made equivalent to an Act of Parliament, but with a full exception of their Lands, Goods and Chattels; which as it shews that before that, by the Common Law, the King could not, in Cases of Exigency that could not stay for a Parliament, take or seize their Goods, so they were careful still to preserve their Rights.

My Lords, after the Statute of 31 *Hen.* 8, the Maxim of *Justinian* was verified in *Hen.* the Eighth, as of the *Roman* Emperors after the *Lex Regia*, whereby the People transferred their Suffrage to the Emperor, *Quod Principi placet legis vim habet*, so all that time was that other

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as true on the Subjects part here, as there in the Digest *lege omnia de Regalis. quod meum est non est universitatis, & quod nostrum est sine facto nostro ad alienos transferri non potest.* The 7 *Prædict.* of *Spain, titul'* 1. *particular'* 2, gives something more to the King, for he may take from the Subject, *pro necessitate Reipublicæ dato primum tali causa dictæ rei bona lambia ejusd' vel majoris pretii bonorum virorum arbitrio*, he may in this Case take, giving a Pawn to the Subject for the assurance of a future full Satisfaction. *Lyme* in his *6th* Book, *cap.* 35. *Bodin* in his *6th* Book, *fo.* 655 affirms, that when *Hannibal* had put *Italy* and *Rome* itself into so great hazard, and that there was not Money left in the common Treasury, that yet the Senate without their Consent could not charge the People, but that *unusquisque* of the Senate *mutuo dabat aliquid in usum publicum.*

My Lords, the last Authority for the answering of this Objection, and the clearing of the whole Business, is the Commission of the Loan. 2 *Car. pars.* 4. *Pat. Roll*, the Words are these. The great and mighty Preparation both by Sea and Land, did daily threaten the Kingdom; that the Safety and Subsistence of the King and People, and the common Cause of Christendom were in apparent Danger of suffering irreparably; that the King's Treasure is exhaust, and the Coffers empty: That the Business of Supply cannot indure so long delay as the calling of a Parliament, and inquiring into all means just in Cases of such unavoidable Danger; the King is now resolved to borrow of the Subject, to enable his Majesty for their Safeties, and promiseth Repayment.

My Lords, the borrowing of Money only is the thing required, that is for Defence, the King had no Money left; the Exigency such, that it would not stay for a Parliament. This Commission afterwards in the Parliament 3 *Car.* was question'd, and upon Debate adjudged by both the Houses of Parliament to be void in Law, by the Petition of Right presented so to the King, his Majesty denies it not.

My Lords, from this Objection of sudden Danger, I come to the next, which is the third Thing before offer'd unto your Lordships, which is an Admittance, that the Danger sometimes may be such, that the Subjects Goods sometimes without their Consent may be taken from them; for Property being both introduced and maintain'd by human Laws, all Things by the Law of Nature being Common, there are therefore some times, like the *Philistines* being upon *Sampson*, wherein these Cords are too weak to hold us, *Necessitas enim* (as *Cicero* saith) *magnum humanæ imbecillitatis patrocinium omnem legem frangit*, at such times all Property ceaseth, and all Things are again resolved into the common Principles of Nature. These times, as sometimes they are only *instanti*, and concern but some few, as in Cases of killing one another in a Man's own Defence; in pulling down Houses in a common Fire, making of Forts upon other Mens Lands, or with their Goods upon sudden Assaults; so sometimes they are longer in Continuance, and larger in Extent, and concern the whole Kingdom, as it is in times of War, *quando agitur pro aris & focis flagrante Bello.* And as on the Particulars before mentioned, which are but for a short time, and that concern some few only, the Law hath no Power for that time, nor maintains any Property, so in the other Case it looseth this Power for a longer time, and over all. A Dissent upon Disseisin in time of War, takes not away the Entry of the Disseisee. *Littl. Sec.* 412. no Plenary after the six Months bars the Patron of his *Quare Impedit* upon a Presentation in time of War. 43 *Ed.* 3. *Quare Impedit.* 135 *Na. Br.* 31. And in a Writ of Right where the Seisin makes the Title the taking of Explees, must be alledged to be done *tempore pacis*, the Law allowing no Estate in such times, but calls it an Occupation in time of War. *Litl. fo.* 12. And as *inter arma leges silent*, so that of *Bract. lib.* 4. *fo.* 240, that *tempus Guerræ est tempus Injuriæ*, is likewise true; for after the War is ended, the Law as not having Cognizance of Things then done, gives no Remedy for Wrongs in that time sustained, as the Case is adjudged in the Roll of *Kent.* 7 *Ed.* 1. *inter placita de querelis* one Parleton *queritur de Petro Randal quod ipse die Mercurii ante festum Sti' Thomæ*, 46 *Hen.* 3, came to the Town of *Cleve*, and took of the Plaintiff's Goods three Oxen, four Cows, and three Heifers, and yet detains them; the Defendent alledgeth the Pardon of *Hen.* the Third of *Omnes transgressiones fact' ratione turbationis tunc in Regno existen'*, and that it was *tempus Guerræ* when the Goods were taken; the Plaintiff replies, that the King Pardons only Offences done to himself, *& non transgressiones aliis illatas*; the Defendent rejoins, that *tempus illud* was *tempus Guerræ, & non tempus pacis*, and upon this the Issue was joined, the Jury finds that when the Defendent took the Goods, *fuit tempus belli, & non tempus pacis*, and therefore it was adjudged for the Defendent. *Tempus Belli*, when Property ceaseth, is not upon every Intestine or Defensive War, but only at such times when the Course of Justice is stop'd, and the Courts of Justice shut up; and this is *tempus belli* in the *Institutes. Sec.* 412. 39 *Ed.* 3. *Banc. Regis Rot.* 49, the Attainder of Treason of *Thomas* Earl of *Leicester* reversed, Error assigned, *Quia tempora Pacis maxime cum per totum tempus præd' Cancellar' & al' curiæ Dom' Regis apertæ fuerunt Et in quibus jus cuicunq; fiebat pro ut fieri consuevit Nec predictus Dominus Rex in tempore illorum cum illis explicatis equitavit*; that there were great Armies on foot on both Sides in this Business when the Earl was taken at *Barrowe-Bridge*, our Histories are full, but yet it was not that *tempus Guerræ* intended by the Law, because the Courts of Justice were open, and the King with Banners display'd was not in Person in the Field.

My Lords, in these times of War I shall admit not only his Majesty, but likewise every Man that hath Power in his Hands, may take the Goods of any within the Realm, pull down their Houses, or burn their Corn, to cut off Victuals from the Enemy, and do all other Things that conduce to the Safety of the Kingdom, without Respect had to any Man's Property. 12 *Hen.* 8. 2 *Br. transf.* 406. 8 *Ed.* 4. 23. that in such times a Subject may make a Bullwark in other Men's Lands, and that the Laws already established are silent in such times. And although in that foreseen and lingring War of

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Hanibal's, whereof I have before spoken, the Senate could not charge the People, yet when there was a *Tumultus Gallicus*, that is, when the *Cisalpini* their Neighbours on the suddain, as sometimes they did, assaulted the City; by the same Author the Case was otherwise.

My Lords, besides this suddain and tumultuous War, which shuts the Courts of Justice, and brings his Majesty in Person into the Field, and wherein Property ceaseth; the Law takes notice likewise of other times of War, as when his Majesty upon just Cause known unto himself by Proclamation proclaimeth War against any foreign State, and likewise the Law taketh notice of the Effects thereof; that is, that no Subject of such Prince or State is capable to prosecute any Suit in any his Majesty's Courts; and likewise, that then it is lawful for any his Majesty's Subjects to seize and keep to their own use, the Goods of the Subjects of any such Prince or State as in the Books are adjudged. 7 *Ed.* 4. 13. 13 *Hen.* 8. *Br. Property.* 38. 22 *Ed.* 3. 16. My Lords, it appears not by any thing in this Writ, that any War at all was proclaimed against any Prince or State, or that if any of his Majesty's Subjects had taken away the Goods of any Princes Subjects in Christendom, but that the Party might have recovered them before your Lordships in any of his Majesty's Courts. So that the Case in the first place is, whether in time of Peace his Majesty may without Consent in Parliament, alter the Property of the Subjects Goods for the Defence of the Realm. The time that will serve the turn for the bringing in of the Supplies and Means of the Defence, as to your Lordships appears judicially by the Writ, that is, seven Months within four Days. For the Writ went out *Aug.* 4. and commands the Ship to be at *Portsmouth*, the Place of Rendezvous the first of *March* following; and thereby it appears, that the Necessity in respect of Time was not such, but that a Parliament might in that time have been called for the effecting of the Supply.

Yet in the next place it is averred, that *Salus Regni periclitabatur*, and that was the cause of issuing forth the Writ; and this by the Demurrer if it should be confessed, yet this is but in General, how, or in what manner *periclitabatur non constat*; by the Law the Defendent may have a Protection when he is in *Negotiis Regni*; but when he will make use of it, its not allowable in that Generality, but he must shew in Particular, in what Town or Castle, or other particular Service he is in, that so the Court may judge whether the Cause be sufficient, yea or no; and yet that is his Majesty's Writ too, as well as that in question. The Books for it are, 36 *Hen.* 6. 39. 28 *Hen.* 6. 1.

Yet in the next place, if your Lordships shall give any to this General, as to the particular of Pirates infesting the Coasts, and Preparations further *ad Regnum gravand'* mention'd in the Writ, the Case then as I conceive is this.

In a time of Peace, his Majesty's Vigilancy foresees a Danger likely to ensue, the Supplies for prevention of this Danger will serve, if brought in in seven Months after within four Days; yet whether in this Case without their Consents in Parliament, his Majesty may alter the Property of the Subjects Goods.

My Lords, I have now done with the Defence in General, and in the last place I shall endeavour to prove, that this of the Sea hath no such Peculiarity in it, but that it will fall within that of the Defence in General; wherein in the first place, I will endeavour an Answer to some Objections both from Authority and Reason, that may seem to prove a Right: And Secondly, to some Precedents concerning the Use and Practice.

Of the first Rank I shall begin with *Danegelt*. It may be said, that the *Danes* infesting the Realm, that *Ethelred* for the resisting of them first by his own Authority, laid this upon the Subject, and made it an annual Charge. That after the Conquest they seldom infesting the Coasts, the Conqueror took it not annually as at first, but at such times only as it is in the Black Book, *lib.* 1. *cap.* 11, when *ab exteris gentibus Bella vel opiniones bellorum fuerunt.* And that after *Hen.* the Second's time, the Kingdom being altogether freed from the *Danish* Invasions, although *Dane-gelt* lost the Name and Use, it never after his time being taken by Hides of Land as before; yet the succeeding Kings by the same Authority, did lay Taxes upon the Subjects for Defence of the Sea.

My Lords, for Answer hereunto I shall in the first place observe this only by the way, that the best and certainest Authorities agree not what it was, I mean the Laws of *Edward* the Confessor, *Cap.* 11, and the Black Book. For the Confessor's Laws say, it was one Shilling upon every Hide of Land, and the Black Book two Shillings, by which it should seem it was little in use in *Hen.* the Second's time, nor much known. That 11 *cap.* in the Confessor's Laws where this is mention'd, was no part of the ancient Laws themselves, but something afterwards added, appears by the words themselves. *First*, it speaks of the Freedom which the Church in the first Institution of it had. Freedom we know was not lost till after the Conquest, and likewise of the granting of it by *William Rufus* in Parliament; and therefore it should seem to be inferred in those Laws afterwards out of the Laws of *Henry* the Second; for this 11 *Cap.* and that of *Dane-gelt* in *Henry* the Second's Laws are the same. *De verbo in verbum*, as appears in *Hoveden fo.* 344.

But admitting the Thing, I shall endeavour Answers to each part of the Objection: As *First*, That the *Dane-gelt* was granted in Parliament; Mr. *Cambden's Britt.* p. 142. observes, that the *Danes* first infested the Coasts *Ann. Dom.* 800, and, as his Words are, with such hurliburlies,, as the like was never heard of, havock was made of all, razing of Cities, and burning of Churches, and for their continual Piracy, had got the Nick-name of *Neccugii*, that is Pirates. The *Dane-gelt* first began in *Etheldred's* time, almost 200 Years after the *Danes* first Invasion; for he began his Reign *Anno Domini* 978; that Provision was made for Sea Defence in the interim, and before *Etheldred's* time, appears by the many Sea-Fights of *Alfred* and other Kings. That this Provision was usually

usually in Parliament, as probable from that of *Ingulphus. London print. fol.* 488, where *Anno Dom.* 833, which was 33 Years after the *Danes* first Invasion, a Deed to the Abbot of *Crowland* is dated thus, *Coram Pontificibus Proceribus & Majoribus totius Angliæ in Civitate London ubi omnes congregati sumus pro concilio capiendo contra Danicas Piratos littora Angliæ assidue infestantes.* If King *Ethelbert* by his own Authority might have imposed this, it is like some of his Predecessors, the Case so necessarily requiring it, in almost two hundred Years space would have done it before this time. That this of *Dane-gelt* was done in Parliament, the Words carry as much; for the Words of the Law are *Danegeldi reddi-tio primitus Statut' fuit*, a Word most proper for the Parliamentary Authority. But fully by the Laws of that King, I mean *Ethelbert's* Laws, in Mr. *Lambert's Saxon* Laws, *fo.* 58, there *ex sapient' suorum Concilio*, Peace is made with the *Danes*, and a certain Sum of Money granted to the Army, as our Historians observe. The *Danes* by Composition were to send away the whole Fleet, saving 45 Ships which were to remain to defend the Kingdom against other Enemies, and the King was to maintain them at his Charge. That the *Dane-gelt* was paid to the *Danes* for this Defence, many of our Historians observe. My Lords, that at the same Parliament this was provided for, appears by the Words of the Law; *Si quis igitur posthac Navalis aspirat' in Anglia prædam fecerit hic nobis auxilium ferat. exercitus nosq; ei quamdiu in fide manserit quæ ad Comitat' suppetent' paramus omnia.* That this was a Parliament as the words shew it, so it is held in the Preface to the *9th* Report, and *Huntingdon fo.* 205. If this was not the *Dane-gelt*, yet this is clear, that in that King's time then Provision *contra Navales apparatus* was made by Parliament. *Primum statuerunt Angl' infausto concilio quod ipsi Danis Censum persolverent; Regibus namq; nostris modo per servitia ex consuetudine quod Danis persolvebatur ex ineffabili terrore.* That *Dane-gelt* which after the Conquest was paid to the King we see by that Author, *Primum statuerunt Angl': statutum Angl'*, must needs be by Parliament. If the *Dane-gelt* in such time of great Danger, was not imposed without Parliament, it must strongly make against those that shall object it.

The *Danes* having quitted the Realm, that the *Dane-gelt* was released by *Edward* the Confessor, as *Ingulphus fo.* 510, and *Hoveden* 253, and all our later Historians That. of *Ingulphus* my Lords, alone is without Exceptions, who lived in those times; he was brought up in *England* in the Confessor's Days, and therefore knew what he wrote; he afterwards went over into *Normandy*, and was the Conqueror's Secretary, came over with him to the Conquest, and at his own Charge maintain'd twelve Horses; he was so great at the Court, that as himself writes, *fo.* 514, *quos voluit humiliavit, quos voluit exaltavit*; and *Pag.* 518, a Charter of the Conqueror's to the Abbey of *Crowland* was made, *ad petitionem Familiaris mei Ingulphi*; and therefore in all likelihood would not report this partially against the King.

My Lords, that we are not to put out our Fires upon ringing of the *Cur Feu Bell*, we have no other Law for it but disuse; and the Testimony of Historians that *Hen.* the First released it. For that of the Black Book, that *William* the Conqueror retained it, *Quando Bellum, vel opiniones bellorum fuerint*, as that Book is mistaken in the thing, saying, it was 2 *s.* every Hide of Land, being in truth but one; so it is possible he might mistake in the other too, that it was released in *eternum* is apparent. That many things were done *de facto*, to the infringing of the Liberty of the Subject, both in his time, and the times of *Hen.* the First, and *Hen.* 2. too, it is clear by our Historians. And if it were not released before, yet that King *Stephen* released it, is, *Huntingdon fo.* 221. *Hoveden fo.* 276. *Hoc deo voluit*, say these Historians, *sed nihil horum tenuit*; and as all our Historians agree, that after *Hen.* the Second's time, in whose Reign the Black Book was compiled, it was never paid; so it may be collected out of the Red Book for all or most of the Aids and Escuages in *Hen.* the Second's time, and King *John's* time, being there mention'd; in 8 *Hen.* 2. 'tis said, *quod danegeldum assessum fuit*, but after that neither in his time, nor in the time of King *John*, or of any other King, is any more mention of it. Sir *Henry Spelman* in his *Glossary* saith, that when it was taken in the Conqueror's time, and since, it was *Consultis magnatibus & Parliamentar' demum authoritat' diminut' sunt.*

My Lords, in the last place, if the succeeding Kings *mutato nomine* only, have in lieu thereof laid other Taxes upon the Subjects, they must hold Proportion with that of *Dane-gelt*, that is, that they have been equally set upon all the Inland Towns throughout the Kingdom, as that was xii *d.* upon every Hide of Land, likewise in time, and that there was no Intermission, but that in *Rich.* the First's time, and King *John's* which were active, that then it was put in Execution. *Claus.* 15 *Joh' M.* 3. *dors.* & 7, and *Math. Paris Pag.* 312, 313. The Pope had granted the Crown of *England* to the *French* King, who was ready to invade the Realm, great provision of Shipping was made, *ad illiberationes Regis & ad stipendia Regis*; so far was this King in this time of Necessity, from imposing any Aid upon the Subjects for the Defence of the Sea, as that he himself bore the Charge.

My Lords, the next Authority that I shall insist upon, is, that in the Terms of the Law, *fo.* 114. in the Title of *Hidage*, the taxing by Hides was used much in old times, and that chiefly in King *Ethelred's* Days, who in the Year 1006, when the *Danes* landed at *Sandwich* in *Kent*, taxed all the Realm by Hides, every 910 Hides of Land should find a Ship.

My Lords, my first Answer to this, is, that this was done, when there was a formidable Enemy, and which soon after conquer'd the Kingdom, was upon the Shoar, as by the Book appears; and therefore likely that the Courts of Justice were shut, and that the King was then in Person in the Field.

Secondly, This was but *Actus unicus*, and even by the Common Law that easily admits of Customs not good, its *Actus binus* that hath any Colour *introducendi consuetudinem.*

Thirdly, It appears not by any thing in the Book, but that this might be done by Parliament, many of the ancient Acts of Parliament are *statuit Rex*; and whereas the Book saith, Taxing by Hidage was much used in old time, that these were by Parliament, appears both by the Use and Authority express in the Point in Print, *Doomsday-Book* in *Berks*, *Quando geldum dabatur*, Matth. Paris, 780. many *Corneagia & Hidagia* recited in Parliament that had been formerly given to that King in Parliament. *Bract.* in his second Book, *fol.* 37. is express in the Point that they cannot be taken but by Grant in Parliament, his Words are these, *Sunt quædam communes præstationes quæ servitia non dicuntur nec de consuetudine veniunt nisi cum necessitas intervenerit sicut sunt Hidagia & Corneagia de necessitate & consensu totius Regni introducta.* Rot. Parl. 8 Hen. III. *M.*4.

My Lords, the next Authority I shall insist on, is the Case of the Abbot of *Robertsbridge* in *Kent*, which because *prima facie* it seems to be to the Point, I will put it at large. *M.* 25. *Ed.* I. *finient l. Banc. Rot.* 77. The Abbot brought a Replevin against *Adam de Bridland* and others, for taking his Cattel; the Defendents avow in these Words, *Dicunt enim occasione turbationis inter Regem & Regem Franciæ suborta assignatus fuit* Willielmus de Leighbourne *ex parte Regis ad Custodiam Maris faciend' ratione cujus custodiæ faciend' terra & tenementa hominum ejusd' Comitatus agistata fuerunt ad custod' faciend'.* And the Abbot was assessed, 22 *Ed.* I. at 7 *s.* the 23 *Ed.* I. at 13 *s.* and 24 *Ed.* I. at 15 *s.* *ad præd' custod' faciend'*, and because he refused to pay, that the Defendents being Collectors for the Town, distrained the Abbot. The Abbot in Bar of the Avowry, says, that for his Lands he was assessed to find a Horse and Man in *subsidium Custod' præd'*, and that he found this Horse and Man accordingly, *ad eand' Custodiam faciend'*, and therefore demands Judgment, *si una & ead' occasione custod' præd'* he ought to find the Horse, *& nihilominus præd' pecuniam solvere.* The Defendents maintain their Avowry, and say, that the Abbot had divers other Lands within the Town, that he was assessed for them, for the Money, and that he was not sessed for those for the Man and Horse; thereon Issue is joyn'd and Day given, without any more thereupon that I have seen.

My Lords, Besides the Authority of it in point, these two things may be further objected from this Case. The County was agisted, *ad Custodiam maris*, and likewise to find Forces. My Lords, For the last, I have before admitted, and by the Statute of *Winchester* that may be done, for the Service was to be performed in *Kent*, the same County where the Land lay.

My Lords, Because this Case *prima facie* hath some shew of Authority in Point, I shall endeavour a full and clear Answer unto it. By the Case it self it appears, that these Sesses were in Time of War, the Words are, *occasione turbationis inter Regem & Regem Franciæ*; neither was the War with *France* only at that Time, but likewise with *Scotland* and *Wales*, and all the Effects of War accompanied it. The *French* had landed in divers Parts of the Realm, and in particular, 23 *Ed.* I. in this County of *Kent*, and had burnt the Priory and the greatest Part of *Dover*, the Havens were shut up for a great Part of that Time, the Goods both of the *French* and *Scottish* Nation were seised through the whole Kingdom, the Lands of all Priors Aliens, were seised, and those that were upon the maritime Parts removed, and Natives put into their Houses, and all Strangers whatsoever, that landed within the Kingdom, to be arrested. All these, if any of them should be denied, will be made good, not only by our Histories, but likewise by the publick Records of the Kingdom. So that my First Answer is, that these Sesses were in the Time of an actual defensive War from the two next and greatest States unto the Realm.

My Second Answer is, That it appears not at all, by any thing in this Case, that these Sesses were made by any Authority from the King, for the Words are only in the general, that the County was agisted, and that the Abbot himself was agisted, but says not by whom or whose Authority. That it was not by the King's Authority, appears by *Leighborn's* Commission appointed *ad custodiam præd' faciend'*, as the Words of the Case are, for by his Commission whereby he was to do this, which is, *Rot.* 22 *Ed.* I. *M.* 8. he was so far from having any Power to tax the County hereunto, that he's commanded for Victuals, Arms, or other things that he shall need in this Business, that he shall pay those from whom he shall have any such thing, which likewise is entred in the *Communia.* 23 *Ed.* I. *Rot.* 77. My Lords, That there were Parliaments in every one of these Years appears by the Summons, and those in Words not usual, for the great Fleet of *France* being mention'd, and that the *French* did intend *Linguam Anglicanam omnino delere*, they were now called *ad tractand' ordinand' & faciend' nobiscum*, and the Lords, *& aliis Incolis Regni qualiter sit hujusmodi periculis obviend'* as it is in the Close Roll. 23 *Ed.* I. *M.* 4. *dors.* and 24 *Ed* I. *M.* 7. *dors.*

My Lords, That accordingly Order was taken, *cum Incolis*; and that the Gentry and other Inhabitants, by way of By-law or Agreement amongst themselves, did make Provision in this Particular: I shall endeavour to prove to your Lordships, that it hath been done at other Times, and that such By-Laws are good, appears, 14 *Ed.* II. *Banc. Regis, Rot.* 60. The *Scots* entring *Durham*, a By-Law was made by the Inhabitants, for the raising of Money, and one that refused it was adjudged to pay it, besides, *Leighborne* who was Admiral of all the *English* Fleet, there were *Custodes maris* in each maritime County, these as appears by *Communia*, 24 *Ed.* I. *Rot.* 78. *dors.* were chosen by the Commonalty of each County; and that these, together with the Sheriff and Inhabitants did make orders for those things appears by the *Communia*, 23 *Ed.* I. *Rot.* 79. where Writs are directed to the Sheriff of *Kent*, and to the Sheriff of other maritime Counties, commanding them that *circa maris custod' visis presentibus Milites & potentiores liberos homines de Balliva tua evoces, & cum ipsis provida circumspectione deliberes*, how he should do it. This I conceive is expressed in Point, and the Practice grounded

grounded upon that in Parliament, *ad ordinand' cum Incolis.*

My Lords, My third Answer to this Case, is, that these Sesses were for Land-Service only, and not for Shipping. And this appears, *First*, by the Case itself, for the Abbot, in Bar of the Avowry, says, that he was sessed to find a Man and Horse *in subsidium custod' præd'* which must be for Land-Service, and therefore demands Judgment, *si una ead' occasione custod' præd'* he ought both to find the Horse and to pay the Sesse. My Lords, This is not denied by the Defendents, but they say that the Abbot had other Lands, and that this Sess was for those other Lands; so that it is admitted, that the Sess for the Horse, which must be for Land-Service, and that for which they avow, were both for the same Use, all the Difference is, whether the Sess were upon the same Land or no.

My Lords, If the Sess, for which the Defendents avow, had been for Shipping, they might have admitted all that the Abbot had said, in Bar of their Avowry, that is, notwithstanding he found Arms for Land-Service, that yet he might, for the same Land, have been sessed again, to the finding of Shipping. Neither do I doubt, but that the Parties, in the Action now before your Lordships, do find Arms, and yet they are sessed for Shipping, and that it will be stood upon by the other Side, that the finding of Arms for Land-Service excuseth not for the Shipping.

But it may be said that the very Words are, that the Sesses were *pro Custod' maris.* My Lords, By divers Records it appears expresly, that the Custody of the maritime Parts of the Land is called *custod' maris. Claus.* 23 *Ed.* I. *M.*4. *dors.* A Writ directed *Collectoribus pecuniæ ad custodiam maris*, in this County of *Kent*, commanding them, that in respect that the *Cinque Ports* were at the Charge of Shipping, *quod quieti sint de custod' maris facienda*, which must needs lye at Land, *Communia* 24 *Ed.* I. *Rot.* 79. A Writ to *William Bonell, & sociis suis ad custodiam Maris in Com'* Suff' *assignatis*, and yet all that they are to do in that Office is for Defence at Land. So *Trin.* 31 *Ed.* I. *M.* 20, *Communia.* This *Custodia Maritima*, how it is to be done, appears, *Rot. Parl.* 46 *Ed.* I. *M.* 49, and by the Statute 5 *Hen.* IV. *cap.* 3. it is to be done as heretofore it hath been done according to the Statute of *Winchester.*

My Fourth Answer to this Case, is, That the Plaintiff was a Clergyman, and the Clergy having denied in Parliament to aid the King, as the Laity did this Year, at this Time they stood in the King's Disfavour, and in *Hill.* Term, 25 *Ed.* I. *Rot.* 17. the King commanded all his Courts of Justice, that if any Clergyman was Plaintiff in any Action *quod nullum ei fiat Remedium.* And therefore *Walsingham*, in his *Annuatis Consiliis* of this Year of 25 *Ed.* I. says, that it was *Clero Angliæ importabilis, quia de Protectione Regia est exclusus & per Regem nihilominus depredatum.*

But, my Lords, if I should let all go that hath been said, yet under your Lordships Favours, the Case is of no Authority at all; for admitting, that the Sesses were for Shipping, and that by the King's Authority: yet had the Plaintiff no Reason to put himself upon the Point of Law when the Matter of Fact would help him; for the Plaintiff says, that he had been sessed before for those Lands, the other Party says no, but that it was for other Lands, and upon this the Issue is joyned.

Nay, my Lords, if there be any Authority at all in the Case, under Favour it is strong the other Way; for if the Sesses were for Shipping, the Abbot says, that before he had found Arms for the Land-Service, and demands the Judgment of the Court, if therefore he ought to pay this Sess too. The other Party; if the Law had been clear, might have demurred thereupon, so that the Authority sways this way, that none for the same Land are chargeable for Arms at Land, and Shipping too.

My Lords, Not only for the Clearing of this Case, but all other things that concern it, either in the mere Right, or Matter of Fact before the 29 *Ed.* I. that before the Parliament at *Lincoln*, 29 *Ed.* I. all things concerning the King's Prerogative, and the Subjects Liberties were altogether upon Incertainties. The Statute of *Romney*-Mead, *Magna Charta, Charta de Forresta*, had been confirmed at least eight times, from 17 *Joh.* unto 29 *Ed.* I. and yet not only the Practice, but likewise the Judges, in the Courts of Justice, went clear contrary to the Plain, both Words and Meaning of them; by the Second Chapter of *Magna Charta*, a Baron, *pro Baronia integra*, was to pay but one hundred Marks for his Relief, the Practice and Process of the *Exchecquer* till 29 *Ed.* I. was always for this Relief one Hundred Pounds. *Michaelis*, 28 *Ed.* I. *Rot.* 34. *Communia* after the Death of *John Gray*, that held *per Baroniam*, the Question was, whether he should pay 100 *l.* as the Record says, *prout antehac onerari solebat*, or 100 Marks, *propter Confirmationem, secundum Magnam Chartam*; and this the Court would not determine, before they had consulted with the King, and yet the Statute of *Magna Charta* had been confirmed by 25 *Ed.* I. and likewise the same Year, as appears by the Statute *de Articulis super chartas, Communia. M.* 23 *Ed.* I. *Rot.* 26. *Philip Mermion* died, and 100 *l.* paid for his Relief. It was now 29 *Ed.* I. it was now in question, whether a 100 *l.* or 100 Marks admittance, *licet hactenus*, they were always 100 *l.* because the King had confirmed *Magna Charta* 29 of his Reign, and by his Writs had commanded his Courts to inrol it, and would have it *de cetero in omnibus suis Articulis observari.* My Lords, Of this kind there be many Cases. The Charter of King *John*, and of the *Forest*, cap. 10. is *Nullus de cetero amittat vitam vel Membrum pro venatione nostra*, and yet against the plain Letter and Meaning, *Communia Trin.* 29 *Ed.* I. *Rot.* 44. *Adam Gower* of *Scarborough*, as appears, had in this King's Reign been beheaded *pro venatione* in the Forest of *Danby*, and now an Inquisition went out to find, what Lands and Goods he had, and then upon the Return, the Question was, whether his Land was forfeited and should escheat upon such an Attainder, and resolved that the Land was not forfeited. *Pasch.* 22 *Ed.* I. *Rot.* 48. The King's Shepherd had put the King's Sheep into a Man's Ground, who had distrained them, and for this Process went out

out of the *Exchecquer* to punish the Man, who there pleads, that he knew not that they were the King's Sheep. And there *Rot.* 51. *dors.* Lessee for Life of a Manor of the King's with an Advowson excepted, the Court declared, that he had forfeited the Manor it self. By these Cases it appears, that neither the Practice, nor the Proceedings in the Courts of Justice in those times in Things between the King and the Subject are so much to be relied upon, as the Words of the Law.

My Lords, it may further be Objected, that at Common Law before the Statute of *Winchester*, the King might compel the Subject to find Arms for the Defence of the Kingdom, and therefore by the same Reason, he may charge them to find Ships for the Defence of the Sea.

My Lords, not granting the Thing, yet for the present admitting it, I shall thereunto give these Answers.

That his Majesty by Tonnage and Poundage, and the other Duties at Common Law mentioned, hath a particular Supply for that of Shipping, but hath nothing in Particular for the other of Arms; and therefore that may with more Reason be laid upon the Subject than the other. And yet for one of the principal things in that Statute of *Winchester*, that is, for Watching and Warding, the King before that Statute, had a particular and certain Farm or Sum of Money of each County for the doing of it, which after that Statute, the County was discharged of, because by that Statute the Counties took the Charge of doing of it upon themselves, as the Cases are. *Comm' Hill.* 20 *Ed.* 1. *Rot.* 10. and *Br. Trin.* 43 *Ed.* 1. *Rot.* 23. *dors.* 18 l. *pro Com' Northumb'* and 16 l. *pro Cumberland.*

My second Answer is, that each Subject and that *secundum statum & facultates*, is already chargeable for that of Shipping, as hath been before proved; and therefore if he be chargeable both in Money and Kind too, the Charge is double in the one, and but single in the other. Neither could it hold Proportion with these Cases of Watching and Warding, where the Counties were discharged of the Money, when they took the thing in kind upon themselves. And therefore this Objection cannot as I conceive be made, unless his Majesty first quit all the before-mentioned Duties laid upon Merchandize.

My third Answer is, that in that of Arms, there is only *Mutatio Speciei*, changing of Money into Arms, for they remain the Subject's still in Property, and are in his own Custody; he may sell them, or employ them at his Pleasure to his own Use; but in this way of Shipping there is *ablatio rei*, in respect of the Victuals and Mariners Wages.

My fourth Answer is, that that of Arms, is not only for the Defence against Foreigners, but in Watching and Warding upon Hue and Cry, and otherwise to keep the Peace within the Realm, and for the Execution of Justice, by assisting the Sheriff when he shall have occasion to use the *Posse Comitatus*, and otherwise, all which do fail in the other. And as the use of Arms is more General, so are they for the more immediate Defence of that Element, wherein we have our most usual and certain Livelihood. And yet the ordering of these for three hundred Years and upwards, was by Authority of Parliament.

Lastly, my Lords, in Respect of the Victuals and Mariners Wages to be found for xxvi Weeks the Case in question as I conceive cannot be compared to that of Arms, but rather to that of taxing the Country for finding of Soldiers to go out of their Counties.

My Lords, the next Objection that I shall indeavour to give answer unto, is, that it is in his Majesty's Power for the Safety of the Realm, to shut up the Ports and Havens of the Kingdom, and thereby to make a general Stoppage of all manner of foreign Trade; and therefore as his Majesty may anticipate Gain, by barring Men from the Exercising of their Callings, so by the same Reason may he take something away.

My Lords, my first Answer is, that the Law therein doth trust the King only with that which being done, is most to his own Loss, as in Respect of the Customs and other Duties this of prohibiting foreign Trade would be.

My second Answer is, that this cannot be done but in time of War, and imminent Danger, and that therefore this Objection will not be seasonable till the other be put in Execution.

The last Objection is, that in divers old Charters of Liberties and Exemptions, the Patentees are freed, *de Danegeldo & Navigio*, hereby is implied a Right.

My Answer is from the same Charter, it may as well be inferred, the Subject is bound to make and repair the King's Parks and Houses, and to make up new Bridges, and divers other Things, these Charters of Exemption freeing them, *ab operationibus omnium Regalium Parcorum Pontium*, and from divers other Things which by Law the Subject is bound unto.

My Lords, for the Precedents that, from Matter of Fact and Charge, may be brought for proof of the Use and Matter of Fact, as I do not profess to know them all, so if I did, yet time would not permit to give a particular Answer to each of them; I shall therefore offer these general Answers to them.

The most of them, or all of them, are for charging of the Sea Towns, and Haven Towns which have Ships, and many great Priviledges, and are infranchised for that Purpose, as is declared in the Parliament Roll of 13 *Ed.* 3. *M.* 11. before cited. These that are to find Ships, besides the main Prescriptions for Wrecks and Benefit of Fishing, are discharged of Arrays and Defence at Land, as appears not only by that Parliament Roll, but by the *Scotch* Roll. 10 *Ed.* 3. *M.* 28. *dors.* The Town of *Shoreham* in the County of *Sussex*, time out of mind had found Ships, and therefore being by the Commissioners of Array taxed to Arms for the Land-Service, a *Supersed'* for that Cause awarded. *Iter Sussex.* 7 *Ed.* 1. *Rot.* 63. *dors. William de Bruce* Lord of *Shoreham*, upon his Claim adjudged, that all the Customs of Merchants at *Shoreham* belonged to him. *Rot. Pat.* 26 *Ed.* 1. *M.* 16. the Town of *Yarmouth*, *Pro servitio Navium impenso & impendendo*, are discharged of all Subsidies granted in Parliament, *pro Corporibus Navium & Communia Trin.* 31 *Ed.* 2. *Rot.* 30.

The

The Town of *Baldsey* in the County of *Sussex*, for the same Cause discharged by Judgment of the Court. *Iter Kanc.* 21 *Ed.* 1. *Rot.* 44. *dors.* Certain Land-holders within the *Cinque-Ports* have Talliage *De quolibet homine applicante* up their Lands. *Petitions* 1 *Ed.* 3. *Rot.* 9. *Office de Pat'*, in Consideration of the Charge of providing Ships, the Town of *Southampton* petition, that their Privileges of having Customs within their Ports be confirmed to them; that they had these appears *Hill.* 13 *Hn.* 4. *Banc. Regis Rot.* 39. where they are indicted for Extortion, for taking more Custom than was due. *Rot. Parl'* 45 *Ed.* 3. The Commons pray, that the Franchises of the Sea-Towns and Havens may be allowed them as heretofore, and that by default thereof, the Navy of *England* is much decay'd, to the disassurance of all the Realm if need should be. That these that are not Maritime Towns ought not to be charged, which is the very Case of the Defendent, I shall cite to your Lordships express Precedents. *Claus.* 13 *Ed.* 3, *M.* 14. *pars.* 2. The Town of *Bodmin* in *Cornwall* discharged of Ships, because in *Dicta villa Portus non est & longe a Mari distat*, and hath not used before-time to find Shipping, and an Inquisition awarded to inquire of these Particulars; whereby it appears, that the Inland Counties had not so much as *De facto* been usually charged with Ships. *Rot. Fra.* 21 *Ed.* 3. *M.* 17. those Towns *Quæ Naves non habent, & quæ aliis Naves habentibus contributoria non existunt*, that they should be discharged, it appears thereby that some Towns that are Members of great Sea-Towns, are contributory to Shipping, and other Inland Towns are not contributory. 2 *Pars. Rot.* 2 *Rich.* 2. *M.* 42, in which 51 *Ed.* 3. is recited, whereby it is likewise recited, that the Burgesses of *Beverly* had by their Petition in Parliament complained, that their Town is in *loco arido & a mari*, that *ad sinistram procurationem quorund' Machinentium ipsos indebite pregravare ad contribuend' hominibus de villa de Kingston super Hull* to the making of a Barge *per Mandatum Regis*, now they pray *de omnibus & singulis hujusmodi oneribus insolitis*, to be discharged by their Charter, and it appears they are discharged accordingly, and this now exemplified 2 *Rich.* 2.

To those of the 48 *Hen.* 3, both for Taxes for Soldiers and for Shipping, I shall give a particular Answer, that it was then *Tempus belli*, when the Courts of Justice were shut; for the Commission went out after *April*, and in the Red Book, *fo.* 241. 6. it was *tempus belli* from 4 *Sept.* 48 *Hen.* 3, until the 10*th* of *Septemb.* 49 *Hen.* 3; and that the Courts of Justice were shut up, appears 49 *Hen.* 3. *Rot.* 4. *Comm' Scaccario non fuer' Barones residentes in Scaccario. ad Pas.* 48 *Hen.* 3. *ad Comm' Pas.* 49 *Hen.* 3. *propter turbationem nuper habitam*, there were no Sheriffs in *aliquibus Comitatibus*, 48 *Hen.* 8, and those that were *non poterint sic facere quæ ad officium vis pertinebant.*

To the Commissions 30 *Ed.* 1. *M.* 9. in the Patent Roll, *de puniendo homines* that refused, it is *quia ad Rogatum mittere non concesserint*, so many Ships. And if a By-Law were good to bind them, as is before proved, as well as their own Promise, it may be so; but I have never seen any legal Proceedings against any of those that refused at that time, save only against the *Cinque-Ports* that are summon'd by their Service *P.* 33 *Ed.* 1. *Banc. Regis Rot.* 82. Against *Seaford* as a Member of the Ports, and the Charge is, that *per servitium tenentur invenire unam Navem.*

For those of *Ed.* the Third's time, his Reign for the most part was a time of War, and that the Offensive, brought a Defensive upon the Kingdom is plain; *Walsingham* saith, *Page* 109, that 10 *Ed.* 3. the *French* burnt and *Page* 137. that they burnt *Southampton.* And *Stowe Page* 234. says, that 12 *Ed.* 3, that they assaulted *Southampton*, and burnt part of *Plymouth.* 13 *Ed.* 3. they assaulted the Isle of *Wight*, *Rot' Parl'* 13 *Ed.* 3. *pars.* 1. *M.* 9, that they had done much Mischief in the *West* Coasts, and conquer'd the Isle of *Guernsey. Rot. Sco.* 10 *Ed.* 3. *M.* 5. *dors.* and *M.* 2, and all the Ports of *England* were shut up.

My Lords, in these Years wherein most of these Writs issued, the great Danger appears, and yet that the Charge laid upon the County was by By-Law and Agreement, I shall cite to your Lordship the *Scottish* Roll. 10 *Ed.* 3. *M.* 3. The *French* riding at Anchor at the Isle of *Wight*, the King sends divers Privy-Councellors to *Dover*, and commanded all the Officers, Masters of Ships, Mariners and Inhabitants from the *Thames* Mouth to the *West*, to come thither, *ad tractand'* with those Lords of the Council for the Defence of the Sea by Ships; and in the Record it is cited, that notwithstanding the King's former Command, *hactenus quicquid non facer' impres'*, the Writs for Shipping issued before, and were not executed; and therefore now a Commission, if so it might be done with Consent. 20 *Ed.* 3, other Writs went out, *Rot. Franc. pars.* 2. *M* 24. 20 *Ed.* 3. a Writ to *Yarmouth propter pericula Maris* to stop up their Haven, and *Rot. Franc. pars.* 1. *M.* 19, that no Fishermen go out to Sea.

I shall endeavour a particular Answer to this; *Claus.* 10 *Ed.* 3. *M.* 23, the Writ says, that *vadia defensionis super Mare solvi non solebant temporibus Progenitorum* of the King. To this I shall give this Answer, that these Wages were demanded before their time of going to the Service, and the Record is *hujusmodi vadia* have not been paid.

My Lords, if this Answer be not sufficient, my Second is by denying the Thing, for besides that of 15 *Johannis* in that time of Necessity, the Ships were to serve, *Ad liberationes & ad stipendia Regis*; and 46 *Hen.* 3. *M.* 4, both in *Ed.* 1. *Ed.* 2, and this King's time before the tenth Year of his Reign Wages for Defence were frequently paid.

My Lords, because I know not how far this will be stood upon, I shall spare the citing of any of them, and to this purpose shall cite to your Lordships only this Case. It is amongst the Parliament Petitions 1 *Ed.* 3, and transmitted into the *Exchequer*, *Hill.* 2 *Ed.* 2. *dors.* the Fishermen upon the Coasts of *Yarmouth*, 20 *Ed.* 2. were daily robbed and killed, and for rescous of them, those of *Yarmouth* were commanded to set out some Ships to Sea. And *Adam Roidlington* the King's Clerk sent with 300 *l.* to set out this Fleet, which the Men of *Yarmouth* intended they should have as Wages for the Voi-

but the Clerk would not let them have above 230 *l.* and that as Money borrowed of the King, and for this they gave their Bond of Repayment thereof; 1 *Ed.* 3, they complain in Parliament, and pray, that they may be discharged of the 230 *l.* and that the Bond may be cancelled, which is adjudged accordingly, and transmitted into the *Exchecquer* for a trial, whether the Service was done or not.

My last Answer to these Precedents is, that the Matters of Fact in these Years, to the Violation of the Subjects Rights procured upon fresh Suits, not only the before-mentioned Statute of 14 *Ed.* 3. *cap.* 1, against any Charge to be laid upon the Subject without Assent in Parliament, but afterwards they complain in Parliament, 15 *Ed.* 3. *M.* 9, that their Goods were seized, and their Bodies taken without any Suit commenced against them, contrary to *Magna Charta*, and the Statutes and Ordinances made thereupon with so much Discretion of their Ancestors; and in Particular in the Parliament Roll of 22 *Ed.* 3. *M.* 4. for the guarding of the Sea, and in 36 *Ed* 3. *M.* 9, and 37 *Ed.* 3. *M.* 2, as before in 15 *Ed.* 3.

My Lords, I now come to the last Thing, which is the Proofs in the Point, which I shall humbly offer to your Lordships. My Lords, the first Authority that I shall offer unto your Lordships, is the Patent Roll, 26 *Ed.* 1. *M.* 21, whereby I shall endeavour to prove to your Lordships these two Things.

The Confession of that King and his Council, that he was so far from having Power to tax the People for the Custody of the Sea, as that he is bound to make Satisfaction for any Thing taken from the People for this Purpose. The Second, that the Charges laid upon the People for the Custody of the Sea, were the principal Grievances that occasioned the making of the Statute of 25 *Ed.* 1. and the Statute of *De tallagio non concedendo.*

For the First, that the King declares that he had a desire to Redress the Grivances made to the People in his Name, and instanceth what they were, *veluti de rebus captis in Ecclesiis & de aliis Rebus captis & asportatis tam de Clericis quam de Laicis sive pro custodia Maris vel alio modo quocunque*; whereby my Lords there's an Acknowledgment that it is a Grievance, and to be Redressed to lay any Tax upon the Subject for the Defence of the Sea.

Commissioners are there named throughout all *England* to inquire of these Grievances, herein they are to proceed according to certain Instructions from the King and the Council, which are these three.

First, Whether the Things were taken without Warrant, and if so, then the Party that took the Goods is to make Satisfaction, and further to be punished for the Trespass. *Secondly*, If there were no Warrant allowed, then the Officer was to make Satisfaction. *Thirdly*, If all were done according to, and in pursuance of the Warrant and no more; then what upon Certificate thereof is, the Words are *& enferra tant que il se fienera appais pur reason*; The King hereby promiseth, that whatsoever Things were taken from the People by any Command of his for the Custody of the Sea, that he will make reasonable Satisfaction to the Party for such Things.

My Lords, for the second Thing, that is, that these Grievances occasioned the making of these Statutes, is clear, from the Words of the Patent; for they were made *post guerram inter Regem & Regem Franciæ*, as appears by the Case of the Abbot of *Robertsbridge*, were from the 22d to and the 25th of *Edward* the First, and by all our Historians, and many Records. It appears likewise by those other Words, That the King, before his going into *Flanders*, intended to have remedied those Grievances; he went over in *September*, 25 *Ed.* I. and the Statute, 25 *Ed.* I. was made the 10th of *October* after. Hence likewise it follows, That the Exception of the King's ancient Aids and Prizes, mentioned in the Statute of 25 *Ed.* I. extends not to this of charging the People to the Custody of the Sea, that being one of the principal Grievances that occasioned the making of it; that the same Grievances caused the making of the Statute *de tallagio*, &c. I have before offered to your Lordships.

My Lords, the next Authority which I shall present, is, the *Communia Hill.* 23 *Ed.* I. *Rot.* 77, there the King commanded thirty Gallies to be made by several great Towns, every Galley was to have six Score Men a Piece, these were *pro defensione Regni & securitate maris.* My Lords, The Cases are many in the *Exchecquer*, where the Money for making these Gallies was recovered against the King. I confess, my Lords, that the King had promised Payment to those that made them, which I shall thus submit to your Lorshipps. That in case the King might have commanded the making of them, at the Charge of the Towns, that then the King's Promise was but *nudum pactum*, for promising of Payment for that which by Law they might have been forced to do, and so the Payment rested only in the King's Grace and good Pleasure. But, my Lords, upon Suits in his own Time, and in the Times of *Ed.* II. and *Ed.* III. the Monies for making these Gallies was received by several Towns. *M.* 29 *Ed.* I. *Rot.* 29. *dors.* for *York*, *M.* 31 *Ed.* I. *Rot.* 77. *Ipswich* and *Dunwich*. *P.* 5 *Ed.* III. *Rot.* 31. for him *prout justum fuer'* nothing having been paid before. *Bract. M.* 16 *Ed.* II. *Rot.* 14. both for the Galley made at *Southampton*, and the bringing her to *Winchelsea*, at their own Charge, *Præcept. P.* 1 *Ed.* III. all the Money from *Southampton* not being paid, now order'd that it should be paid.

My Lords, The next Authority that I shall present to your Lordships, is, the Parliament Roll, 13 *Ed.* III. *pars* 1. *M.* 9, *&* 11. the Causes of calling the Parliament are declared to be these, *First*, The keeping of the Peace. *Secondly*, The Defence of the Marches. *Thirdly*, The Safeguard of the Sea, that the Enemy might not enter the Realm to destroy it, these were the three Points for the Commons to advise on, which are put into Writing and entred upon the Roll. My Lords, By the Articles themselves propounded on the King's Part, it appears, That the Commons are not chargeable to the guarding of the Sea, and they pray, that this Advice of theirs may not be prejudicial to them to bind them thereunto, and that there are

Ship

Ships enough in *England* to do it, if the People were willing *M.* 11. The Commons afterwards in debating of these Articles, when they came to this of the Sea, notwithstanding the Caution before, they are afraid, that if they should debate it, that it might imply, that they are chargeable to do it, and therefore they protest against giving any Advice therein, as a Thing whereof they have no Cognizance, and do further declare, that the *Cinque Ports*, and other great Towns, that have Franchises, are bound thereunto, that they should do it. And therefore the Merchants, Masters of Ships, and Mariners, throughout *England*, are summoned to be at the next Parliament for Advice about Shipping.

My Lords, The next Authority is, the Parliament Roll, 22 *Ed.* III. *M.* 21. The Commons petition in these Words, *que le guard del la mere se face discries Res soit le gard fit mun ad re fait avant vis servis ut semble que le Roy ne fait ne qu'il demeritissent de la sur la guer & par de fair de c'est ter.*

My Lords, The Commons having formerly granted the King divers Aids and Subsidies, upon Wool, Wool-Fells, and Leather and otherwise, for the guarding of the Seas, they now grew weary of it, and desire, that the King himself from thenceforth should bear the whole Burthen, and charge him with his Promise to that Purpose.

My Lords, This Petition though in the Name of the Commons, yet the Lords joined in it, for otherwise all Acts of Parliament of those Times being made upon Petition and Answer, should be without the Lords Assent. Hence it appears, that the whole Kingdom, at this Time, was so far from thinking, that the King could charge them, without their Consents, to the guarding of the Sea, as that they alledge, the King himself ought to bear the whole Charge. Neither doth the King deny his Promise, nor wholly deny the thing; for though he saith, it should be done as it hath been done before, yet it is with a Qualification, because the Sea cannot be better kept than he hath kept it, by reason of his being so often at Sea, in Person, in going and returning from *France*, and diverting the Enemy by his Wars in *France*. If the King had given his absolute Denial, yet here is the Judgment of both Houses of Parliament express in the Point.

Rot. Franciæ 21 *Ed.* III. *pars* 2. *M.* 9 & 11. The Merchants had granted 2 *s.* 8 *d.* upon their Goods, till *Michaelmas*, for providing 120 great Ships *pro secura Conductione Navium & Marchandizarum, & pro defensione ceterarum maritimarum partium Regni & aliis periculis hiis guerrinis temporibus regno imminentibus.* This Grant being made, the King alledging that this was not sufficient for the Service, and to remove the Causes of the stopping of the Trade by reason of the Wars; the King now lengthens out the same from *Michaelmas* to *Easter* following, and to satisfie the People, the King by his Proclamation declares, that the 2 *s.* 8 *d.* shall cease at *Easter*, according to the Grant, which, as it should seem, not satisfying the People, or the King continuing the taking thereof, the Commons in Parliament, 22 *Ed.* III. *M.* 16. pray that it may cease, and that by Procurement of no Merchant, *pluis largent soit continue.* An Imposition but for half a Year, and that upon Merchandize, and by consent of the Merchants for the Defence, yet taken off upon Complaint. The Answer is, that it should cease.

My next Authority is the Parliament Roll, 2 *Rich.* II. *pars.* 2. *M.* 5. before cited, where the great Council and Sages of the Kingdom resolve, that the Commons are not chargeable to the Defence of the Realm without Parliament, which extends to this Particular of the Sea, for the present Preparation whereunto the Commons are not chargeable, was for Defence at Sea, and therefore the Money lent, was to provide an Army for the Sea, *en defence & salvation del Dit Royalme & de la Navy & des costiers del mere.*

My Lords, the next Authority to the Parliament Roll, 2 *Hen.* IV. *M.* 22. Commissions to charge the People to make Ships for the Defence of the Realm without consent of Parliament, repealed by the King and the whole Parliament for that very Cause.

Item pur ceo quere tarde divers Commissions fueront foist an divers Cities Burroughs & Villages du Royalme pur faire certaines Barges & Ballingers sans assent du Parliam' & ont mt' pr' nad estre fast devant ces bents' nr' les Commons pray nr' snr' le Roy que les Ditz Commissions soient repeals & que ils ne soient forces ne fait a quore loir fuit respons' que le Roy vest que in les Commissions soient repeals in tout points mes pur le grand necessity que ad des tiels vessels pur defence du Royalme in case que les Quens sint priment le Roy vost communer de rest matter ouesque les Snrs' & puis apres le mre' al' dits Commons pur intisuner loir Councel & advise tiel party. The first Commissions Repealed, because the Commons were not chargeable without a Parliament. And now the King will put it in a Parliamentary Way, by doing it with the Assent of the Lords and Commons.

My Lords, my next Authority is the Parliament Roll 9 *Hen.* IV. The Cause of the calling the Parliament is for the Safeguard of the Sea, and of the *North* Marches, and *M.* 17. great Mischief shewn for Default of keeping the Sea; and *M.* 21. it is there inrolled by the King's Command, that there was Communication had between the King and the Lords of the Defence of the Realm, and for Resisting of the Enemies, who made Preparation on all Sides, whereunto sufficient Resistance cannot be provided, without that the King have in his Parliament some notable Aid granted unto him. My Lords, the King hereby acknowledgeth, that he cannot without the Parliament, charge the People for the safe keeping of the Sea, that being the principal Part for the Defence there intended, the same with the Summons, that without the Consent of the Commons *negotia pred' infecta remanerent*, and with the Summons in the Close Roll. 23 *El.* 1. before-mentioned, *Quod omnes tangit per omnes debet supportari.*

My Lords, the next Authority is the Parliament Roll 4 *Hen.* 4. *M.* 28. The Lords Spiritual and Temporal, and the Commons, grant the King a Subsidy upon the Staple Commodities, and Tonnage and Poundage, and likewise a Tenth and Fifteenth with this Protestation.

Protestans

Protestant que cest grant in temps avener ne soit poit en example de charger les dits Snrs' ne Commons du Royalme de nul manner del Subsidy ne 10th *ne* xvth *a les guerris descoregates, ou safegard del Mere sans soit per les volents des Seig' & les Commons de Realme & ceo a novel grant faire in pleine Parliament. Rot. Parl'* 6 *Hen.* 4. *M.* 12, and *Rot. Parl'* 1 *Hen.* 5. *M.* 17. the same Protestation as before.

My Lords, that the Charge of the Defence at Sea, and that in a large Proportion, by reason of the before-mentioned Duties is to be born by his Majesty, I conceive that it will not be deny'd, that in *Subsidium* and Aid of his Majesty therein, the Commons are not chargeable without their Consent in full Parliament. In these three Records there is not only these Protestations of the whole Realm being made by the Lords and Commons, but likewise the King's Consent by accepting the Things granted, and that without any Qualification of the Protestations. Those Protestations that they are not chargeable to the guarding of the Sea in a certain Way, as are 10*ths* and 15*th's*, do much more fail in a way uncertain as here.

My Lords, my next Proof is from the Practice of former Kings in their frequent Demands of Aids from Parliaments for the Defence of the Sea, as well before the Statutes of Tonnage and Poundage, as then and since, Monies borrowed by former King's for Ships and Defence at Sea, and Indentures of Retainer for that purpose at the King's Charge, and not only so, but upon Suit allowance in the *Exchecquer* for Victuals, Mariners Wages, Anchors, Prisoners taken in Fights *pro defensione*, and also other Things necessary for Shipping when for Defence of the Realm; whereupon the same Argument may be made in this Particular for the Sea, as was before for the Defence in General.

The First Thing that I shall press, is that of the *Cinque Ports*. Their Service is certain in respect of the Time, but 15 Days in a Year, and in respect of the Charge, but twenty Men and a Master, and the Number of Ships certain; besides, that they are discharged of Arms for the Land-Service, they have likewise divers other Priviledges for the doing hereof, they were free from all Aids and Subsidies granted in Parliament, and are by Privy-Seals discharged thereof. *Hill.* 2 *Ed.* 3. *Comm'* about the end of the Roll. They are freed from all Tolls, Murage and Pontage throughout the Realm, which bringeth a greater Charge upon the rest of the Subjects.

My Lords, I shall thus offer it unto your Lordships: If they that have these Priviledges shall serve but fifteen Days in a Year, how the others that have no Priviledge at all, shall do it for twenty six Weeks as in the Writ?

Secondly, Their Charge is certain in the Number of Men and Ships, how the rest of the Commons that are so far from having Priviledges or Recompence for it, as that they do contribute to this Charge of the *Cinque Ports*, shall, as by the way in the Writ, be altogether uncertain in the Matter of Charge, both in the Number of Men and Ships, and of every other Thing whatsoever.

My Lords, I shall press this further, that when the Ports exceed their Charge in the Number of Men or Ships, Allowance by the King is to be made unto them, this as it appears by the Quire of *Dover*, and *Pat. Roll'* of 7 *Hen.* 7. before cited, that after the fifteen Days they were to be at the King's Charge; so in the *Pat. Roll'* 19 *Hen.* 3. *M.* 14, because they found forty Men in the Ship, the King promiseth payment for all over and above the Number of Twenty. *Banc. Regis Trin.* 33 *Ed.* 1. *Rot.* 22, allowance to Service in *Scotland*. The *Scots* as appears by *Walsingham*, *Pag.* 53, and other where having about that time burnt divers *English* Towns and Ships, and a School-House, with 200 Scholars in it, *Visus Comp. P.* 33 *Ed.* 1. *pro ingenio Ro. Scotland P.* 34 *Ed.* 1. *Rot.* 37. *Comm' la Composition.*

My Lords, if the Ports who are bound to the Defence at Sea, when they have performed their Service, be not compellable to any further Charge, I shall humbly offer it to your Lordships, whether those that be not bound at all from the same Reason, are chargeable at all.

My Lords, I have now done, and shall not further press upon the Patience of your Lordships; I know that *Nullum tempus occurrit Regi*; the disuse thereof, I shall press it no otherwise than that it is an Interpretation of the Statute made against all Aids and Talliages in General; and if the Complaints in the Parliament of 15 *Ed.* 1. *M.* 9. 36 *Ed.* 3. *N.* 19, and 37 *Ed.* 3. *M.* 9, that those Statutes had not been kept; and further, as it is an Interpretation likewise of the before-mentioned Declarations, Petitions and Protestations against this in Particular; and as it is an Execution of them, and putting them into Practice *Praxis Sanctorum*, as the Divines say, *est interpres preceptorum*.

The Claims which anciently the Subjects have made upon the Crown, that none of the great Officers of the Kingdom could be chosen but in Parliament, nor that the King had Power to sell any of the ancient Crown-Lands, the Disuse shews, that those Claims of theirs were not legal. *Br.* in his fourth Book *fol.* 209. saith, that *longa patientia trahitur ad consensum*, the Non-Claims therefore of so many King's and Queen's I shall present unto your Lorships, as so many *Le voéts* and Declarations of their general Consents, that without Assent in Parliament, they could not have laid the like Sess upon any of their Subjects, as is now laid upon my Client.

The

The First Day's Argument of Sir EDWARD LITTLETON, *Knt. His Majesty's* Solicitor-General; *in the* Exchequer-Chamber, *before all the Judges, on the Behalf of His Majesty, in the Great CASE of* SHIP-MONEY.

May it please Your Lordships,

MAY the 22d last, issued a *Sciri facias* out of the *Exchequer*, to the Sheriff of the County of *Bucks*, to warn Mr. *Hambden* to shew Cause why the 20 *s.* should not be charged on him, toward the finding of a Ship of War, with Men, Munition, and Victuals, expressed in a Writ, dated 4 *Aug.* 11 *Car.* And the Sums and the Names of the Defaulters were certified into the *Exchecquer* by a *Mittimus*, dated 5 *May* 13 *Car.* to be there proceeded upon for the Levying of the 20 *s.* according to the Law and Custom of *England:* Mr. *Hambden* appear'd, and desired that all the Writs might be read unto him; they being read, he demurred, and Mr. *Attorney* joyned with him in Demurrer, and adjourned out of the *Exchecquer*, into this Court to have the Advice of all the Judges of *England.*

Before I enter into my Argument, because the true stating of the Question in this and all other things doth exceedingly conduce to the clearing of the thing in Question; I shall, in the first Place, observe the Writ, dated 4 *Aug.* 11 *Car.* the Ground of this Assess, which was directed into *Bucks*, and others into all the Counties of *England*, and this was for raising Aids for Ships, for the Defence of the Kingdom, with a notable Circumstance, *quia salus Regni periclitabatur*, which being expressed in the Record, is confessed by the Demurrer, and not only so, but testified by the King himself under the Great Seal in the *Mittimus*, and in all Matters, especially in Matters concerning the publick Safety, the King is *Recordum superlativum & præexcellens*, as in the great Case of the Earls of *Glocester* and *Hereford*, 20 *Ed.* 1. so that the Question is only this,

Whether the King, in his Judgment, finding the Safety and Preservation of the Kingdom and People necessarily and unavoidably to require the Aid, commanded by the Writ, may not command such Aid by the Writ for saving and preserving the Kingdom and People.

Having stated the Question, I shall now discard many Things as impertinent to the Question; not that I that am sworn Council for the King do agree in those things against the King, but that they are not now in Question.

It is not now in Question, What may be imposed by the King upon the Subject for Defence, at their Charge, for Conquest or Conservation of foreign Countries or Territories beyond the Seas.

Neither is it in Question, what may be laid by the King upon his Subjects, for vindicating Injuries done by foreign Princes or States.

Neither is it in Question, whether arbitrary Impositions or Taxes may be laid at pleasure upon the Subject for the mere Increase of the Revenue of the King's Treasure.

Neither, whether in ordinary and common Defence, for Preservation of the Kingdom tho' necessary it may be thus imposed.

But the Question is, *Quando Salus Regni periclitabatur*; in truth, the Question is, whether we can be charged *pro Salvatione nostr' & nostror'.*

Again it is not in Question, whether the Subject hath a Property in his Goods, or can lose them without Consent in Parliament. I shall shew that his Property shall remain unto him notwithstanding this Assess, and the Argument on the contrary favours more of Malignity, than Reason; to say that by this the Subject shall lose his Property in his Goods.

It was rightly admitted, that the Law of Property must give place to the Law of Nature, for common Defence; the levying of a Debt or Duty Publick or Private, upon any Subject, is so far from destroying the Property, that it doth confirm it. He hath as good Property that payeth Debts to the King, as he that doth not.

We are agreed *de Re*, the Kingdom is to be defended; no Man in his five Senses will deny that *de personis*, according to the equitable Rule in the Writ, *quod omnes tangit per omnes debet supportari*; we are in this as in the Conqueror's Laws, *sumus fratres conjurati ad Regnum defendendum*; *de persona* whom the Law hath intrusted with the Defence of the Kingdom, *viz.* the King, we are likewise agreed.

De modo, whether the right *Media* be observed the King may do it. And whilst we are disputing whether he may do it, I am told he may do it in Parliament; true, he that may do it every where, may do it in Parliament. And I shall be

sorry to hear there shall be no Salvation for the People but in Parliament.

And whilst this was the Question, though a great deal of Care was had, and though it was done with Advantage and Policy, yet the Bulk and Mass of what was said, shall appear to fall quite off as nothing to the Purpose. There were Multiplicity of Particulars, and a pretty Survey of the King's Revenues no ways concerning the Case, and as much mistaken in it, as he that reckoned without his Host. He hath done like a discreet Gentleman, and went as near the Question as his Client would let him; he hath agreed Cases more Prejudicial than this, as thus; It was admitted, that if there be any actual War, though there be but light Skirmishes, the King may do it; nay, if there be but a War denounced, though there be never a Blow strucken, surely then can it not be done when *Salus Regni periclitabatur*? This is the true State of the Question.

Before I go further I am not ignorant, and therefore cannot but be sensible with what Disadvantage I come to argue this Case, every Man being a Party interested that hears me; but I fear not but that I shall satisfie all Parties, I have Truth to conduct me, *Et Magna est veritas & prævalebit.*

The Method whereby I may maintain the Right of my Master, and the Crown, is this; I shall first ground it upon Reason, every human Proposition is of equal Authority, only Reason makes the Difference.

I shall ground my Reasons, *First*, upon the Law of Nature: *Secondly*, of State; and *Thirdly*, of publick Safety, Necessity and Conveniency. Neither shall it be against the Statute Law, Common Law, or any of the Hereditary Rights and Liberties of the Subjects of *England*, but Consonant to, and Warranted by all. I shall not only prove it *ex rationibus cogentibus*, or as Lawyers say, *ex visceribus causæ*, but *De similibus ad similia*. I shall confirm it by a Beadroll of Examples and Precedents of former Ages, and compare them with this, and see if the Case be altered.

First, I shall shew it from the Foundation of the Kingdom, to that which they call the *Norman* Conquest; from the *Norman* Conquest to the time of *Magna Charta*, made 9 *Hen.* 3; from *Magna Charta* to the Statute *De tallagio non concedendo*, made 25 *Ed.* 1; from the Statute *De tallagio non concedendo* to the first granting of Tonnage and Poundage; from Tonnage and Poundage to this very Day, and that the Petition of Right doth no ways concern the Dispute. I shall confute all Precedents, Objections, Reasons, Inconveniences, Authorities or Records, of which a great Number were cited, that there shall not be a Syllable left; and in that, *First*, I will either shew that the Record is mistaken, or impertinent and not to the Question: Or *Secondly*, Those that are Pertinent, I will either agree them, or take the Force of them away, that none of them shall be able to stand in the way of the King in this way of Defence.

The Fundamental Reason is the exact Rule of the Law in the 10*th* Report cited by that Learned Gentleman Mr. *St. John's*, *Salus populi Suprema lex.* All other Laws positive are Subordinate to this Law, and are to be regulated by it. We are not to talk of positive Laws, till we have a Kingdom to use them. *Glanvile* saith, *Regiam Majestatem non solùm Armis oportet esse decoratam sed & legibus*, Arms to defend us, Laws to protect us. *Bracton fo.* 1. In *Regibus duo sunt necessaria Arma & leges*, and gives the Reason; If no Arms, the Kingdom would be left as a Prey to the Enemies; and truly it is a strange Imposture, that the Law should so provide, that the King by his Writ can give us a Remedy for White-Acre and Black-Acre for a Clod of Earth, and not be able to give a Writ to defend the Kingdom when it is in imminent Danger; nay, positive Laws are abrogated by Reason, when the Safety of the Kingdom and People are in Danger. As in *Rome*, in the Night a Man might not come over the Walls, but if an Enemy did approach the City, then it was lawful for him to do it.

In the next place, I take that Ground which is taken in all Laws; the Common-wealth is to be preferred before all private Estates. 13 *Hen.* 3. *fo.* 15. the Opinion of *Shelley.* Rather than this shall suffer, the Law will turn some Prejudice to particular Persons, who are but a part of the Commonwealth. 21 *Hen.* 7. *fo.* 28. 8 *Ed.* 4. *fo.* 23. 29 *Hen.* 8. *Dyer.* 36. If the Enemy doth approach, for the Defence of the Kingdom one Man may make Bullwarks and Forts on another Man's Soil; and shall not the King keep the Outworks at Sea, least the Enemy should Land at our Doors.

Again by the King's Command, Suburbs may be razed. In 88 when three great Land-Armies, 20000 Foot and 10000 Horse, 30000 Foot, and 10000 Horse, and 20000 Foot and 10000 Horse were raised: Now least an Army should Land in other Places, Directions were given to keep them from Landing; but if they could not keep them from Landing, then that they should burn down Houses, and come and destroy all whatsoever, that they might not have Food and Provision to stay there: Where is the Law of Property in this Case which is so much talked of? the Publick and Private are so nearly connext, that they can hardly be separated; the publick Loss falls immediately, and by Consequence upon particular Persons. Be a Man in what Condition he would be, if a publick Loss comes to the State, though it falls on his Wedding-Day he shall suffer in it. It is impossible to save private Fortunes if the publick be lost, *unaquaque amat' Comm' bona totius*, &c. And another says very well, no Man repines at that which is done for the good of the Commonwealth. If a Subject then can be inabled without Parliament to make Bulwarks and Forts in another Man's Ground, shall not the King that is *Pater Patriæ*, do the like for the Defence of the whole?

My

My Third Reason is to confirm, or rather mind your Lordships, that the Crown hath many Powers and Prerogatives over the States of private Persons. May not the King enter into another Man's House, or at the least Out-Houses, and dig for Salt Petre, because it is for the Defence? 11 *Report. fo.* 81. *Bowles* Case, and enter into his Lands and dig Royal Mines?

There is *Proprietas Dominii* belongs to the Subject, but he hath not the Power over all, without the Property *Ratione Protectionis Jurisdictionis, &c.* private Interest must give Place to a common Good; the private Prejudice that any Man hath, is very well repaired by the publick Utility that comes to the Kingdom. Fishermen may Justifie their going into the Lands of others to Fish, because it is *pro bono publico.* 8 *Ed.* 4. 18, 19. 29 *Hen.* 8. *Dyer.* 36. 21 *Hen.* 7. 28. A Man may pull down the House of another Man, when the next House to it is on Fire; *Jam tua res agitur paries cum proximus ardet,* the Private must suffer for the publick Cause. 22 *Ed.* 4. *fo.* 2. *b.* 26 *Ed.* 1. *fo.* 45. If two Men are Fighting, a Man may part them, and put them into several Houses, because it is for the good of the Common-wealth. If a Mad-man be abroad, he may be taken, Whipped and Imprisoned, least he do Violence to himself and others. 22 *Ed.* 4. *fo.* 45. A Chirurgeon may cut off one Member to save the rest, 22 *Ass' Plowden* 56. Necessity is the Law of the Time and Action, and Things are lawful by Necessity, which otherwise are not, *Quicquid Necessitas Cogit defendit,* and the Law of the Time, must regulate the Law of the Place in such publick Things. If a Storm arise at Sea, to cast out Goods into the Sea is lawful for the Safety of the other Goods, and they whose Goods are not lost, shall be Sharers with the others. If it be for safety of Lives all must be cast out, *Duffeild's* and *Mowse's* Case; but if the Party hath taken more in than is fitting, and that be the Cause of casting away the Goods, and not the Tempest, there the Party hath his Remedy. 48 *Hen.* 3. there was a sudden Summons to be in Arms both at Sea and Land, they plead, that there was not a just time of Summons; the King tells them, that no Man shall excuse himself for want of convenient time of Summons; nay, they shall not alledge the time of Harvest, *&c.* it being safer to be somewhat diminished in Estate, than the Publick to suffer. *Necessitas est Lex temporis,* whatsoever is done for publick Safety is best, other Laws are Tributary, and must give way to the Law of Necessity; what talk we of Formalities, when we are like to lose the Kingdom, when the keeping of the Laws would end the Common-wealth?

But this needs not, for I shall shew that His Majesty hath trod in the Steps of all those Kings who have worn the Diadem, and swayed the Scepter of this Kingdom.

In the next Place, I shall shew divers Exemptions *a Custodia Maritima,* not only ancient but late: I will put you one, that is, *King's College* in *Cambridge,* 21 *Hen.* 6. when these grants are made it extends to the ordinary Defence of the People, and not to extraordinary, no more than if the King grants an Exemption to a Man that he shall not be of a Jury, yet if there be no other, that shall not excuse him. *Matth. Paris* 838, he speaks of Privileges granted to the Archbishop of *Canterbury, London,* &c. All are granted in *liberam Eleemosynam,* they are bound to do nothing but to pray, and yet are not exempted from publick Defence, *Nec adeo libertates & propter publicam utilitatem Regni & per ea resisteret hostem.* I shall give Mr. *St. John's* Argument an Answer by and by, yet by the Way, if Tenures *feod' Militar'* did begin as was alledged out of *Britton* in the Conqueror's Time, how was the Kingdom defended before. If Wards and Marriages, and Accidents thereupon did not go to the Foundation of the Kingdom, what was before.

The King is as much Lord of the Sea as Land, *æque Dominus Maris & Telluris.* Selden, *Mare Clausum,* 6 *Ric.* 2. *Doctor* and *Student* lib. 2. fo. 51. 5 *Report* fo. 108. It is observed by a great Lawyer of what Consequence it is to have Power at Sea. The Naval Dominion of *England* is of great Consequence and Use; for it is called *Dotem Regni;* if therefore the Kingdom of *England* consists of Land and Sea, I hope we shall not stand at half Defence to defend the Land and leave the Sea. *Rot. Parl.* 2 *Rich.* 2. *M.* 25. It is a great Advantage to have defence at Sea, else we should have hot War at our Thresholds, while the Sea is open Men may go to plow, and have the Courts of Justice open.

The Kings of *England* of themselves of their Prerogative Royal, in Times of War, denounced, intended or suspected, for the Preservation of the publick Safety, may seize the Lands of Prior Aliens 48 *Ed.* 3. fo. 10. 22 *Ed.* 4. 43, 44. 14 *Hen.* 4. 36. And can the Kings of *England* take the Possessions of Aliens, and can not he inforce his natural born Subjects, to defend the Land and Sea? God forbid; nay, if we would *parva componere magnis,* we should find in Cases of lesser Consequence, if they have relation to the Defence he may do it. As the King may lay a Charge upon the Subject for walling a Town, the Reason is, because they have Benefit by it in Time of Danger; and hath not all the Kingdom Safety by the Navy at Sea? 3 *Ed.* 3. *Ass.* 445. *Westm.* 1. *cap.* 3. 13 *Hen.* 4. *fo.* 14, 15. Sir *John Davies* Reports *fo.* 13. *Little. fo.* 58. 33 *Ed.* 1. 105. *Parl. Book Walsingham,* 14 *Ed.* 1. 60. 7 *Ed.* 3. *Pat. M.* 2. And the King did not only command it, but took an Account of it if it was not done, and took it into his own Hands. *Trin.* 27. *Ed.* 1. *M.* 14. *ex thesaur'* Murage of *Carlisle* taken into the King's Hands. *Pat.* 14 *Ed.* 1. *pars* 1. *M.* 14. and the Surplusage paid into the *Exchecquer,* and this agrees with the Reason of all Laws, where they have a Benefit they must contribute to the Charge, 10 *Report fo.* 141. out of 44 *Ed.* 3. nay for lesser things as for Pavage and Pontage, the King may impose that for a publick Good, and the King may distrain all the *terr' tenents* and Land-Owners to make Contribution *secundum Statum & Facultates.*

The

The King may dispose of the Preparation for Defence, he may compel Men to be Knighted, because it was for Defence, *Rot. Claus.* 19 *Ed.* 2. *M.* 16. *Matth. Paris* fo. 12. 37 *Westm.* 465. no Man is exempted from Defence, Judges are not exempted, yet Judges are not to fight, yet when it comes to necessity they are not exempted, *Trin.* 5 *Ed.* 4. *Moyle*, 13 *Hen.* 4. fo. 23. Clergymen compelled; nay a Serjeant at Common-Law sworn at Common-Pleas, is compellable, Sir *John Hulbert* in *Hen.* 7. Time was compelled to be a Knight; 9 or 29 *Hen.* 6. *Rolfe* a stout Serjeant pleaded that he was a Serjeant at Common-Law, and not bound to be a Knight, but he is forced to it: But why talk we of these, there ought to be a Common-Wealth before there are Laws, and Private ought to give way to Publick.

Again, Imminent Dangers and Perils to a State do dispense with ordinary Proceedings in Law, *inter Arma silent leges.* Nay, if there be but Rumours of Wars, Laws are silent, we must look then to the Kingdom, upon Rumors and Opinions of Wars, *Pasch.* 15 *Ed.* 1. *Banc. Regis Rot.* 70. *dors.* the Scotch Army they besieg'd *Rippon*, the People they promise a Sum of Money to them to depart, and give them in Hostages, and that Money should be levied among themselves; when the War was over they would not do it, but were compelled to it. In 14 *Ed.* 2. *Banc. Regis Rot.* 60, the *Scots* besiege *Durham*, but they must have ready Money, they would not take Hostages to depart; while this Peril was on them, they met together and swore, that what should be agreed amongst themselves every man would stand to. It was ordered they should go into the Houses of others, and take what Money they could find, for that Purpose, they took from one Man 60 *l.* oh, he was not satisfied, he had a Property in his Goods, he brought an Action, and at *Durham* it was adjudged for him; but when by a Writ of Error it was brought to *Westminster-hall* into the *King's Bench*, Judgment was reversed. And in the Time of Queen *Elizabeth*, greater things were done upon lesser Occasions.

The next thing is the Ships taken from Time to Time, and the Command of Persons, Watches, Beacons, shutting up of the Ports, which are the Gates of the Kingdom, 14 or 10 *Ed.* 4. *Pasch. M.* 12. *dors.* 3 *Hen.* 5. 18. *dors.* A Number of other things commanded by the King, for Safety, when the Law considers what may happen, it is not material what doth happen, nay, if there be but a *vulgaris opinio* it is enough, much more when the King, by his own Judgment, foresees it. 6 *Report* fo. 64. *Clark's* Case, there they are compelled to build a Hall at St. *Alban's* for the Judges to sit in, much more in this Case. See *Clegate's* Case for Triumphs; and if for State, shall not the King command for Safety of the Kingdom, *Hill.* 12. *Jac. Hawks's* Case, for paving of the Way, he may take Corn out of the Sacks of those that come by.

Again, it is a *Droit* Royal to meddle with War and Peace, Subjects have nothing to do with it. *Rot. Parl.* 13 *Ed.* 3. *M.* 5. 19 *Ed.* 4. fo. 160 or 6. *Brian*, Chief Justice, saith, That if all the Subjects of *England* do war with the Subjects of another Kingdom, this is no War, but if the King denounce it, it is War. 22. *Ed.* 1. *Rot. vascon. M.* 16 or 10. they must have a Power from the King: True, *Henry* VII. brought Military Discipline to the Parliament to advance his own Ends. Sometimes Dangers are fit to be communicated to the People, and sometimes not. The King should best know what is done abroad, who hath his close Council of War; he knows what is done Abroad, what can the People tell of these Things, and it is very fit that Preparation be made before-hand. It is not good to find the Kingdom without a Navy, especially when such Combustion is Abroad. 18 *Eliz. cap.* 23. it is as much to prevent Danger, as to remove it when it is in Being. 1 *Ed.* 6. & 1 *Mar.* A desired Provision to be made before-hand, and this hath been the Practice of all Times, *Jervasus Tilburiens.* Black Book, *Hen.* 2d's Time. *Dane-gelt* before the Conquest paid annually, but afterwards when there was *Bellum or Opiniones bellorum. Datum est nobis intelligere, Audito rumore, &c.* are frequent in the Records; nay, if there be but *vulgaris opinio.* Ay, but perhaps Dangers will not come; but if they come unawares, where are we then? In the Case between the Earls of *Glocester* and *Hereford*, there was a great Tumult between them about the Marches of *Wales*, and this was contrary to the King's Command and Exception was then taken, that there was no Record to warrant the *Sciri Facias*, the King did affirm it, *Et Dominus Rex in multis casibus est supra legem*, &c. *Dominus Rex est Recordum superlativum & præexcellens*; it is Treason for any Subject to raise an Army, unless a Town be Besieged. *Henry* the Seventh was a wise King, and he had his Spies abroad in times of Peace to see how Things went, and his Army prepared, and the preparation of a Navy do much more good than the spilling of Blood. And so hath our Navy these two Years done a great deal of good to the Kingdom, and Honour to the King.

Na' que fuit pur Salvation del Royalme.

Now I come to the Authorities, but first we shall observe what an Authority shall be in this Case. *First*, I conceive there may be, and are direct and full Examples in Point, for compelling the Subjects at their own Charge to guard the Sea and Land, though they are not ruled in particular Courts of Justice; nay, under favour, they are stronger than any Judgment; there were then no need of Suits in the Courts of Justice, if Men would pay, what need Judgments?

Secondly, I conceive, that though I find not direct Authority in printed Books, yet Records are as good Testimonies, and greater than Reports that are but Extracts, and second Authorities drawn out of them; and those that concern *Jus Publicum*, come not into ordinary debate, but remain *inter arcana Imperii*, and those will speak fully.

Thirdly,

Thirdly, I shall observe that our Precedents are not only in open War and Hostility, but upon Opinions, Rumours, Relations and Informations of Wars.

I shall shew this in all Ages to Queen *Elizabeth*'s time, and if it be not so full in the Years of King *Stephen* and *Hen.* 4. who were Usurpers, its no Wonder. If they had had Right to the Crown as his Majesty hath, they would not have used Compliments, but *Fide & legiantia quibus nobis tenemini.*

Before the Conquest, I find that King *Edgar* had his King-lents, who swore to co-operate with him, *per terram & per Mare.* King *Etheldred* he did Command, that he that had 310 Hides of Land should find a Ship, and those that had lesser, should find other Arms, and at their own Charge, for every Ship eight Oars, *ut tempore Patris*, that was *Canutus*, and it was *Tributum Classiale.*

My Lords, for *Dane-gelt*, if those Kings that were called in by the People, did lay this on the People, much more our Natural-born King, which shews it to be an undoubted Right; for it is not likely they would put that in Practice which was not an undoubted Right. In the Laws of the Confessor by Mr. *Lambert*, and the Black Book in the *Exchecquer*, it was sometimes one, sometimes ii *s.* annually, *in usus Maritimi*, and still the Charge lies on the Subject; this shews an inherent Right in the Crown, and it was paid for several Purposes, but still at the Subjects Charge. And to say it should not be so, because of the Word *Statutum (De Regibus Angliæ statutum)* cannot be, for in those times *statutum*, as in *Cicero*, was a Constitution, there was no Parliament then; and if it now doth alter from that way, truly petty Circumstances when the Substance is observed, alter not the Case. There must be a Defence, and it was not certain, doth not the Danger *suscipere Majus & Minus?* and the King may say as *Edward* the First said, nay, I have heard him say, that he hath bought neither Manors, Lands nor Castles with it.

After the Conquest, *Dane-gelt* is supposed to be released by the Confessor, because he dreamed he saw the Devil dancing upon the *Dane-gelt*; but the Black Book saith it was paid in the Conqueror's time. It was then quitted till there was *Bellum* or *opiniones Bellorum*, neither was it released by *William Rufus*, or *Henry* the First. King *Stephen* swore that he would release it at his Coronation, but *nihil horum tenuit*; nay, it was paid in *Henry* the Second's time, 4 *Hen.* 2. Pipe Roll; and though the Name be altred, yet other Things came in the room of it.

And now I will begin with *Doomesday-Book*, which began in the *14th* of the Conqueror, and ended the twentieth Year. There were divers Towns and Shires charged, and there we see what Assistance they did give both for Sea and Land. In the Black Book *fo.* 56, they that waited on the King's Revenue, *liber non erit* for publick Things. And in King *John*'s time, which was a troublesome time. 5 *Johannis Pat' M.* 17, and *Johannis Claus. M.* 9, they gave a fourth part of their Revenues for Defence, and there was a Command for staying of all Ships, and to repair to a certain place appointed.

And to come to those great Things when King *John* was deposed by the Pope, the King of *France* made Preparation, and the King of *England* made Preparation, and all Ships were imbreviated, because he would not put all upon Land-Forces; and so in 88 *Math. Paris fol.* 312. it is said, the People were *ad liberationes nostras*, but that Voiage was to *Poitu*, if it were *ad liberationes nostras*; yet the Command of the Persons and Ships were the King's; and true, all Mariners were to be paid, and no question immediately at the King's Hand, but it was first raised and levied of the People.

Whereas for Escuage and Knight's-Service, the Summons was *quod interfitis cum equis & armis, &c. exinde proficiscend' nobiscum'*; but this was only to come with their Horses and Arms, by reason of their Tenures. And it further appears, that Earls, Barons, Knights and Freemen, and all that had Arms, were to come *ad defendendum caput suum & Regis & quod nullus remaneat qui arma portare possit*, nay, those that had neither Lands nor Arms, yet all must come, and if they had nothing to maintain themselves withal, they were to be *ad solidatos nostros*, which shews all the rest were not at the King's Charge. 5 *Johannis Claus. M.* 1. *Quia ad arma jurat vel qui honorem poss'* if the King could command for Land, he may for Sea, for both are one Kingdom. In *Henry* the Third's time there are divers Arrays. 14 *Hen.* 3. *Claus.* 7. *dors.* When the King went into *France*, there went a Command to all the Sheriff's of *England* to swear those that staid behind, as they were sworn in King *John*'s time; all this shews they were bound to Arms.

The Statute of the Conqueror, which they stiled a Statute, that there should be no Talliage, Talliage must not be understood of those kind of Aids. That famous Year of 48 *Hen.* 3. and observe when, that Year is not only after *Magna Charta*, but after it was confirmed by him. 20 *Hen.* 3. when he was of full Age. 48 *Ed.* 3. *Claus. M. dors.* divers Captains and others not able to maintain themselves, and the King commands they should be paid, *de Comm' Comitatus.* 48 *Ed.* 3. *M.* 2. *de pecunia levand' circa tuitionem Maris*, the King Commands there, that they should come out of their Counties the Summons is Twofold. *First*, of Escuage, which is *secundum debitum. Secondly*, General for Defence, *Cum necesse fuerit.* 48 *Hen.* 3. *Claus. M.* 3. *pro Militib' Sancti Johannis & M.* 6. *dors. quod omnes qui nobis & Coronæ meæ jure astringant, &c.* all Freemen must do this Service. 48 *Hen.* 3. *Claus. M.* 3. *dors. Nullus excludatur sexus vel ordo*, 48 *Hen.* 3. *Claus. M.* 7, the Citizens of *London*, and the Men of *Greenwich*, were commanded to keep the *Thames* that none should enter, *per ora corund'*, the Men of *Greenwich* plead, that they

were distrained upon common Summons for their Service in *Kent*; and the King commanded that they should be freed in *Kent*, and join in Defence of the *Thames*. *Claus.* 48 *Hen.* 3. *M.* 11. *dors.* to excuse one who pretended he did attend at another Place with all his Strength; this shews that he ought to attend the Defence, nay, 48 *Hen.* 3. *M.* 4. when they refused to come, the King commanded to seize their Lands, and take the Profits, and answer them into the *Exchecquer*. 48 *Hen.* 3. *Pat. M.* 5. he commands them to attend, setting all Things apart. 48 *Hen.* 3. *Pat. M.* 10. or 5. like Writ to *Ipswich*, *Dover* and *per Costera Maris*; nay, when some went away when their 40 Days were expired, the King tells them, that *propter inopinatas causas*, they should stay. *Pat.* 48 *Hen.* 3. *M.* 4. one hundred Marks by the Abbot of St. *Austin*'s for Stipends for those at Sea, for Defence of the Sea. *M.* 5. *dors.* when they would have gone away, they were commanded upon pain of forfeiture of all they had to stay. *Bract. lib.* 5. *fo.* 336. *Cum fuer' in exercitu cum Domino Rege, &c.* speaking there of Law-Suits, what may be a good Excuse for Absence, saith, *ex causa necessitatis Reipublicæ causa, aut cum Rege in Armis.* In the time of *Edward* the First Statute of *Winchester*, finding of Arms began not upon that Statute, but how, and in what manner they ought to be rated, was then appointed. 23 *Ed.* 1. *Claus. M.* 4. *de contributione faciend'* to *Yarmouth*, a Command to the Collectors of Money *ad custod' Maris*, and he that was in *Gascoigne* was discharged of Grace, but not of Right. *Pat.* 23 *Ed.* 1. *M.* 4. *Ita quod omnes compellere possitis ad custod' Maris cum necesse fuerit. Pat.* 23 *Ed.* 1. *M.* 6. *Pro Willielmo de Stoaks fuer' custodes Maritimæ & M.* 5, *&* 7. *Custodes Maris de Jernemouth*, and divers Men taken both Archers and Slingers. *Pat. M.* 5. *de hominibus eligendis ad arma, M.* 7. *omnibus & singulis Marinettis*, between *London* and the Mouth of the *Thames*. *M.* 6. *de Navibus capiendis, Claus.* 23 *Ed.* 1. *M.* 5. *Maritt' faciend' in diversis Civitatibus. Pat.* 24 *Ed.* 1. *M* 16. *de partibus Maritimis inveniend' & custodiend'. M.* 6. *&* 17. *de Navibus & Galleis inter villam de Lyn & Barwicke. Trin.* 24 *Ed.* 1. *Rot.* 62. *Inter B. pro Rege*; there a Writ issued to such and such Men to find ten Horsemen; one affirmed, that he had some in *Scotland*, and some at *Cobham* in *Kent*; the King makes inquiry whether it were so or no, and finding that he had not so many as he commanded, that he should be distrained, not only for the Contempt to the King, but for the Danger the Kingdom might lie in for want thereof. 24 *Ed.* 1. *Rot.* 78. Power to compel Men to make Defence *juxta facultates*; and the County of *Berks*, which is an Inland County, upon refusal a *Capias in manus* was awarded to answer it in the *Exchecquer*, and the form of Wages to be set down. 24 *Ed.* 1. Lord Treasurer's Remembrancer. A Writ from the Barons to assess all the People without the King, News being of 10000 Men coming. *Claus.* 25 *Ed.* 1. *M.* 26. *dors. William de Ripo.* It was recited, that the People have been at a great Charge, and because Winter came on, the King willing to spare them, Watches and Beacons were commanded to be set up and kept, and the People to depart, but to return again upon notice. *Rot. Pat.* 25 *Ed.* 1. *M.* 5. Custody of the *Marintine* was with six Ships, by which it appears, that *Custodia Maris*, and *Custodia Marintina*, are Terms Convertible. The Abbot of *Robertsbridge*'s Case, 25 *Ed.* 1. *Rot.* 70. the Abbot brought a Replevin against one in . . . . . that lies in the Confines of *Kent* and *Sussex*. The Officers did own, by reason of the War between *France* and *England*, the Abbot was assessed three several Years, at several Sums, nay, the fourth time, and no hurt done; but now if the Writ goes out but two Years together, (*ob inauditum*) but what doth he plead, doth he deny the Writ? no, he pleads he was assessed for other Lands; he found a Horse *ad custodiam prædictam*, so that the Horse was for the Land-Service, and the Money for the Sea. I conclude as *Selden, aut ad ipsum Mare, aut ad tam littus quam Mare.*

After the Statute *de tallagio non Concedendo*, *Pat.* 27 *Ed.* 1. *M.* 3. *de Navibus congregandis Pat.* 31 *Ed.* 1. *M.*20. *Maleficientibus in Marchiis Angliæ*, a Commission went out that all shall be in Arms against *Scotland*. In ancient times there was such a Connection between *France* and *Scotland*, that we had always a double War, and therefore could not expect all Forces in one Place. In the time of *Ed.* 2. *Pat.* 2 *Ed.* 2. *pars.* 9. *M.* 26. *Pro Rege de Navigio providendo vestris sumptibus faciend'*. I see with what Policy Mr. *St. John*'s went, and what multiplicity of Records he cited, and opened them with as much Skill as ever I knew any Man, but I desire to go in the Path of naked Truth. I shall make it appear to all the World, that the King hath done nothing but what his Predecessors have done; and that there is not more Testimony to prove *Littleton*'s first Case, that the Heir at Law shall have his Patrimony, than there is to prove this the King's Right. *Pat.* 15 *Ed.* 2. *M.* 15. *dors.* all between sixteen and sixty to be ready. *Parl' Rot.* 5 *Ed.* 2. *M.* 4. Ordinance that the King without the Assent of the Barons could not make War, but that were repealed and damned. *Rot. Parl'.* 15 *Ed.* 2. *M.* 31. Its said it was prejudicial to the Royal Power of the King, and a Blemish of his Royal Soveraignty. *Rot. Claus.* 17 *Ed.* 2. *M.* 10. when they were warned to be ready, 19 *Ed.* 2. *Rot. Pat. pars.* 2. *M.* 6. to all Bishops in *England* to be ready for the Defence. *Claus.* 20 *Ed.* 2. *M.* 2. *&* 7. *de hominibus qui domi remanserunt*, &c. should Contribute to those that went, it was to forty or fifty Counties; *Nos Considerantes, quod justum & consonum rationi non est*, that those should expose both Body and Purse for the utility of the Kingdom. In the time of *Edward* the Third, *Rot. Claus.* 2 *Ed.* 3. *de Navibus inveniend'*, a Command that all Ships of 40 Tuns and upwards, with Men Munition and Victuals, that they should be in readiness at their own Charge. *M.* 2. Mariners are warned to come *per duos menses*, at their own Charge. 7 *Ed.* 3. *Scotch* Roll *M.* 19. *de Portubus contra adventum*, &c. *& datum est nobis intelligi*, &c. it appears it was done *tam per Mare, quam per terram*, and a Direction to all Archbishops to be attending, and the *Posse Comitatus* to be array'd, *Secundum statum & facultates. Claus.* 9 *Ed.* 3. *M.* 13. *dors.* all from 16 to 60, to be array'd *armis*

Competen-

Competentibus. And now I come to that famous Year of 10 *Ed.* 3. *Rot. Sco. M.* 31. or 23, Men for Land and Sea. *Rot. Sco.* 10 *Ed.* 3. *M.* 21. *dorf. omnes ex debito ad defensionem astringuntur, Rot. Scoc* 10 *Ed.* 3. *M.* 23. *De proclamatione faciend'*, to all Inland and other Counties. *M.* 20. to *Lynne. M.* 14. *dorf.* to all, *prout fieri Consuevit* to all Counties, *Nos considerantes quod ratione legiantiæ suæ astringuntur. M.* 1. *dorf.* through all Counties the like observed, especially *nequimus resistere Correctiones*, &c. *sine auxiliis vestris.* M. 2. *De Navibus supervidendis*, and in that are the very Words of the Writ. *M.* 25. *De portubus custodiend'* Inland Counties as well as others, *Berks, Wilts, Leicest. Northamp.* &c. *M.* 16. *Navibus supervidendis nos advertentes circumquaque aut hæc tempora. Rot. Alman.* 10 *Ed.* 3. *pars* 1. *M.* 13. *Rot. Clauf.* 12 *Ed.* 3. *pars* 1. *M.* 13. *dorf. Rot. Alman.* 12 *Ed.* 3. *M.* 33. *pars* 2. *versus boreales duplici eskippamento*, and to contribute, and those that refuse to assess them *juxta statum. Rot. Clauf.* 12 *Ed.* 3. *M.* 14. Archers. *Rot. Alman.* 12 *Ed.* 3. *pars* 2. *M.* 6. Order that but one Bell should be rung. *Rot. Alm.* 12 *Ed.* 3. *pars* 2. *M.* 3. *supervidend' quod omnes ariat' considerantes quod omnes*, &c. *se & sua exponere astringuntur pro salvatione. Alman.* 12 *Ed.* 3. *pars* 2. *M.* 10. because, *hostes nostri in multitudine non modica*, &c. All that have *Redditus*, &c. were to attend. *Alman.* 13 *Ed.* 3. *M.* 1. *de super vidend' vill' Southamp. Clauf.* 13 *Ed.* 3. *M.* 38. *dorf.* A Writ directed *Custodibus terræ maritimæ.* The Abbot of *Ramsey* lived at *Huntington*, yet distrained for Sea-Service in *Norfolk. Rot. Clauf.* 13 *Ed.* 3. *M.* 14. the County of *Oxon* an inland County, and yet commanded, *Custod' terræ maritimæ. M.* 17 *Ed.* 3. *Banco Regis Rot.* 15. a *Supersedeas* granted one. 17 *Ed.* 3. *M.* 24. Wages recover'd of a Town for forty Days. *Scot.* 20 *Ed.* 3. *M.* 14. *versus Scotos. M.* 21 *Ed.* 3. *Rot.* 4. *Banco Regis quam, deteine Soldiers Pay, ergo*, complaine, *M.* 31. Payment of Wages. *Rot. Parl.* 22 *Ed.* 3. *M.* 4. there the Commons were at great Charge for guarding the Sea, and pray Remedy, but not for the Right but for the Excess. *Rot. Franc.* 21 *Ed.* 3. *M.* 24. *dorf.* 22 *Ed.* 3. *Rot. pat. pars* 2. *M.* 1. *Rot. Franc.* 22 *Ed.* 3. *M.* 5. *dorf. pro* Johanne Coke. *Rot. Franc.* 26 *Ed.* 3. *M.* 5 *&* 4. *quia est vulgaris opinio*, and this recited, *Nos considerantes*, &c. *quod omnes per juramentum*, &c. and this was for the Sea and goes to all Inland Counties. And as they talk of Kings in the Field, Kings use not to go into the Field in Person. *Rot. Franc.* 34 *Ed.* 3. *M.* 34. *pro Clero arriando. Rot. Clauf.* 33 *Ed.* 3. *M.* 89. *dorf. Rot. Clauf.* 43 *Ed.* 3. *M.* 1. *de Navibus arrestand'. Rot. Clauf.* 43. *Ed.* 3. *M.* 14 or 13. *de hominibus arriandis. Rot. Clauf.* 45 *Ed.* 3. *M.* 8. *ut intelleximus. Rot. Parl.* 46 *Ed.* 3. *M.* 20. the Commons complain of their Charge, and say, that the Sea was so Noble, that all the World called the King, the King of the Sea, *&c.* they pray as of Grace, *&c. Rot. Franc.* 47 *Ed.* 3. *M.* 20. for guarding of the Sea-shore. 50 *Ed.* 3. *pars* 1. *M.* 105. 31 *Ed.* 3. *pars* 5. *M.* 25. the Charge is not put upon the People without common Consent. The King is not to do it but for the grand Necessity and Defence of the Realm. In *Richard* the Second's Time, *Rot. Clauf.* 1 *Ric.* 2. *pars* 1. *M.* 7. *Scarborough. Rot. pat.* 1 *Ric.* 2. *pars* 1. *M.* 12. *Rot. pat.* 1 *Ric.* 2. *pars* 1. *M.* 42. *dorf.* Beacons. *Rot. pat.* 1 *Ric.* 2. *M.* 13. *dorf. Rot. Franc.* 2 *Ric.* 2. *M.* 15. *Rot. Scot.* 4 *Ric.* 2. *M.* 9. King of *Castile, pro compellendo homines pro custod' maritim'* 7 *Ric.* 2. *M.* 9. *Totus Clerus apponere manus adjutrices*, Archbishop of *York.* 8 *Ric.* 2. *M.* 5. Archers.

The

The Second Day's Argument of Sir EDWARD LITTLETON, *Knt. His Majesty's* Solicitor-General, *before all the Judges in the* Exchequer-Chamber; *on the Behalf of His Majesty, in the Great CASE of* SHIP-MONEY.

May it please your Lordships,

THE last Day I left at the end of *Richard* the Second: I do not love to repeat, yet in regard the Records that are of weightiest Evidence for the King to Men of Understanding, perhaps not so clearly understood by every one that hears them, I shall sum up what hath been read. It hath appeared by the Records that have been read, that the Sea and the Land have been guarded by the Commons, when Danger did appear to the King; If the Danger was great, all the Commons, no Age, no Sex, no Order to be spared, all Ecclesiastical Persons bound to Defend. If the Danger were less, those Parts nearest unto it to defend, no Reason to trouble the whole Kingdom, when a few will serve the turn: Those that refused were compelled by Imprisonment, seisure of Goods and Lands. The Writs have expressed fully and significantly, that no Wages ought to be paid by the King, that when there was apparent Danger, it appeareth by some Records, that one Man should not serve for another; Care taken by Commission, that all Equality should be used in making of Contribution, and when Complaint as 25 *Ed.* 1. was made against it, it was remedied; yet it was not *Ratione Contributionis*, but *violentæ extorsionis.*

This constant Usage of former King's, is of much more Authority and Weight, than scatter'd Judgments here and there, or judicial Proceedings in any Court, and these are not wanting. Notwithstanding, I shall now proceed and come to the time, wherein so many great Lords did die, and so much noble Blood was spilt in Civil War, from *Henry* the Fourth, to *Henry* the Seventh, *Henricus Rosas, Regna Jacobus.* There was not then such great Cause to look to Preparation for Sea, for the War was then in the Bowels of the Land, and the Sea and the Land makes but one Kingdom, and the Reasons are the same for both. And for *Henry* the Fourth, when he was newly come to the Crown, it appears *Rot. Claus.* 1 *Hen.* 4. *pars.* 1. *M.* 12. *dors.* Writs are directed to the Archbishops of *Canterbury* and *York*, and other Bishops, and it recites, that the *French* had prepared a great Navy which was seen on the Coasts, and intended to invade the Kingdom; and that Abbots and Priors should be array'd, *Sine deliberatione*, &c. *& juxta statum & possessionem*, &c. *& triand' Millenis Centenis Rot. viagij*, begins 1 *Hen.* 4. to 11 *Hen.* 4. *M.* 20. *De Proclamatione faciend'* to go against the Rebels of *Wales*, *De arraiatione faciend'* in the same, and Barons assigned to the Custody of the Marches called *Battelfield*, less Reason for this Place of any, for they say there were Lords Marchers to Defend it. *M.* 14, 23. *de proclam' faciend'*, to go with the King in Person against *Henry Percy* a Rebel, and there was an array of Men by the Sea Coasts to resist the Enemies, *&c.* and in the same Roll, *De hominibus congregandis*, divers other Proclamations *de hominibus Defensibil'*. In the same Roll *De Militibus infra Comit' Lancastriæ arriand'*, upon the Insurrection of the Earl of *Northumberland*, to bring them to *Pomfreit. M.* 10, *&* 27. again to go to the Prince *Henry* the Fifth. And in 1 *Hen.* 4, this goes to *Northumberland, Derby, Lancaster*, by *Robert* Duke of ..... to invade the Kingdom. My Lords, Noblemen, Valets, *&c. & omnes homines defensibiles*, between 16 and 60, that was *juxta statum* upon warning of two Days, which was in *defensione Regni nostri* to go with the King. *M.* 20 *de hominibus levandis & congregandis*; and of this Nature 4 *Hen.* 4. *M.* 11. *dors. &* 10. 5 *Hen.* 4. *pat. M.* 28. *dors. pars.* 2. Principal Men joyned together to Array and Muster all over *England.* This hath appeared by the constant Common-Law of the Kingdom.

Before *Parl'* 5 *Hen.* 4. 24, the Commons pray that the Commissions of Array should be considered, and the Judges advised with, and a Commission made for the future; *ad arriand' & triand' qui de Corpore sunt habiles*, &c. *Juxta statum & facultates*, &c. *& ad assidend' & proportionand'*, with Power to Distrain. 7 *Hen.* 4. *Cooper Fitz. Her. Thorney* Title *Protection del* Subjects of *England*, not to go out of *England* with their King. This was upon the King's going to aid the Duke of *Flanders. Report.* 7. *fol.* 7. *Calvin*'s Case, not to go without Wages when they were to follow the King. In *Henry* the Fifth's time there were great Wars with *France*, but when the King went he took great Care that *England* should be provided for. *Pat.* 3 *Hen.* 5. *M.* 17. *dors. pars.* 2. *de arriatione faciend'*, Care is taken that all should be arrayed, and being arrayed, should continue so arrayed. *Stat.* 1 *Ed.* 1, it provides that they shall not go out of their Counties but upon the sudden coming of strange Enemies; and upon Warning, they were not only to array them, but to lead them to the Sea Coasts out of their Counties, when and where it should be necessary, *cum aliquid periculum eveniat*, notwithstanding the Statute, which is our Case, nay, our Case

Case is much stronger; And 3 *Hen.* 6. is Verbatim with the other. 6 *Hen.* 5. *Pat. M.* 8. *dors. pars* 101. 3 *Hen.* 5. 16. *dors.* this was upon the Threatning of the King of *Castile*, to all the Counties of *England*. 7 *Hen.* 5. *Vaga Regis*, divers Privy-Seals to all the Counties of *England*, to inform the King what able Men of *Ancestry* there were, *ad defensionem nos in propriis personis suis ad defensionem Regni*, and the return is *pur defence de son Roalme*. In the time of *Hen.* 6. *Rot. Pat. M.* 37. *dors. pars.* 2. *de Araiatione faciend'*. 7 *Hen.* 6. *pars.* 1. *M.* 7. *dors. Rot. Pat.* there is *quia datum est nobis intelligi*, for the Isle of *Wight*. *Rot. Pat.* 7 *Hen.* 6. *M.* 5 *dors. pars.* 1. 13. *Hen.* 6. *M.* 3. *dors. de Militibus congregandis & ducendis versus Scotland. Pat.* 13 *Hen.* 6. *pars.* 1. *M.* 13. *dors. Contra Militiam Inimicorum*, a full Command to array all, and to bring them *ad Costeram Maris* and other Places, *& juxta gradus suos.* 14 *Hen.* 6. *pars.* 1. *M.* 20. 21 *Hen.* 6. *M.* 40. *dors. Rot. Pat.* 28 *Hen.* 6. *M.* 11. *dors. Rot. Pat.* 29 *Hen.* 6. *pars.* 1. *M.* 45. *dors. Rot. Pat.* 37 *Hen.* 6. *M.* 6. *pars.* 1. *dors.* all Arrays. A Book-Case 28 *Hen.* 6. 11. *b. pl'* 22. Divers of the Clergy had Churches to be freed from the payment of Tenths for the Defence of the Kingdom, and the Clergy did grant ii *s.* in the Pound without Act of Parliament, and this sent by *Mittimus* into the *Exchecquer. P.* 26 *Hen.* 6. *Rot.* 10. *& Trin.* 11. for levying of Money upon *Sciri Facias.* 36 *Hen.* 6. *M.* 2. *dors. Regis* 1. *pars.* Array in the Isle of *Thanet*, and compel them by Distress, *Pro defensione Regni.* 37 *Hen.* 6. *Pat. M.* 1 *&* 6. *dors.* A Writ to many Counties, because of the great Hurt done to the People by the Sea Coasts, and the great Preparation to do more Hurt, thereupon Command to Train and Array all Parts of *England*, *pro defensione.* And the 39 *Hen.* 6. *Pat. De potestate* to Array the Isle of *Wight* being Invaded *juxta gradus & conditiones*, &c. 39 *Hen.* 6. *M.* 9. *&* 11. *dors.* A Commission to *Edward* Duke of *York*, who claimed the Crown, and it was adjudged him. 31 *Hen.* 6. *Pro araiatione faciend' quæd' person' fil' iniquitatis dissentientes*, &c. therefore is a Command *pro securitate personæ nostræ & populi nostri ad invocandum omnes homines defensibiles* to destroy them. *Pat. M.* 9. *dors. de villa de Stamford ad custodiend'. M.* 1 *dors.* a Commission and Command given to *Edward* Duke of *York*, *Ed.* 4. which gave Power to raise Men and Money at *Bristol*, *Hereford*, and other Places which was Cancelled, and other Commissions given in the Room. In the time of *Edward* the Fourth, *Rot. Pat.* 1 *Ed.* 4. *M.* 8. *dors.* for reducing *Henry* the Sixth's Power, *Congregare* all the People. 1 *Ed.* 4. *M.* 8 *Southwales* on the Marches. 1 *Ed.* 4. *Scoc' Rich.* Duke of *York*, *Custos West Marchiæ ad omnes homines defensibiles*, in *Cumberland* and *Westmerland* between 16 and 60, *sint prompti in defensionem Marchiarum*, &c. against *Percy* Earl of *Northumberland. Rot. Scoc.* 10 *Ed.* 4. there are *Custodes generales vers. Scoc.*, for Arraying all Men as there should be Cause. *Pat.* 3 *Ed.* 4. *M.* 3. *dors.* continue *parati ad defensionem personæ nostræ & Regni.* 8 *Ed.* 4. *fol.* 23. a Book-Case, a Subject hath Power to make a Bullwark in another Man's Ground; the King hath as much Power over all the Kingdom, as any particular Man to make Defence. 9 *Ed.* 4. *Pat. M.* 11. Array's 10 *Ed.* 4. *Pat. M.* 13. Arrays in *salvationem Regni*, when he was like to lose his Kingdom. A Commission to raise Power against his great Adversary and Rebel *Henry* the Sixth, who did lately enjoy the Crown by Usurpation. 22 *Ed.* 4. *Rot. Pat. pars.* 1. *M.* 2. *pro Conductoribus & Waffatoribus Piscatorum*, and at the Subjects Charge. *Pat.* 1 *Rich.* 3. *pars.* 1. *dors.* against the Duke of *Buckingham quocunq' Comitat'*, and this *juxta statum & facultates.* In *Henry* the Seventh's time. *Henry* the Seventh was a wise Prince, his Majesty's Progenitor, as well as his Predecessor, he staid not till he saw the Tops of the Ships, or the Drums beat; he provided for the Safety of the Kingdom betimes, when the War was denounced between *Charles* King of *France*, and the King of the *Romans*, though he was allied to both, he prepared to Defend his Kingdom. *Rot. Pat.* 1 *Hen.* 7. *dors.* a Command to the Sheriffs to make Proclamation throughout all *England*; that because we are informed of the War between *Charles* King of *France*, and the King of the *Romans*, and great hurt may happen to this Realm, and the Subjects thereof; Commanding all Subjects to keep Watch and Ward upon the Sea Coasts, and all Beacons to be made ready to be set on Fire, as in old Times, and this after Tonnage and Poundage was granted to him for Safety; and I am sure there are greater Wars about us now, than there were at that time. *Rot. Pat.* 7 *Hen.* 7. *Intus de potestate commissa* to the Earl of *Surrey* to go to Conquer *France.* 7 *Hen.* 7. *Cap.* 1. a Statute in Print. 8 *Hen.* 7. *Rot. Pat. pars.* 1. a Command to *Richard Fitz-Hugh* and others, to keep all in Array for Defence against *Scotland*, which intend to Invade the Realm, *ut informamur. Stat.* 1 *Hen.* 7. *Cap.* 16. every Subject is bound by his Allegiance, to assist when need requires. In the time of *Hen.* 8. *Rot. Pat.* 4 *Hen.* 8. a Proclamation to the Maritime Counties to be in a Readiness, considering the *French* King had in Readiness a great Navy to enter this Kingdom the next Month ensuing, *&c.* and certain Captains deputed to lead them; and they were all to be in a Readiness at an Hour's Warning upon their Allegiance. *Rot. Pat.* 4. *Hen.* 8. the same Commission to *Bourchiers*, *&c.* in Latin, 14*th* of *Hen.* the Eeighth, which is not in this Roll, but a Book of Proclamations; for before *Edward* the Fourth's time, all between sixteen and sixty, were to be ready at an Hour's warning. 15 *Hen.* 8. the Inhabitants of *Stamford*, *Nottingham* and *Salop*, *&c.* to attend the Earl of *Surrey* upon an Hour's warning. 30 *Hen.* 8. *Pallace treasur' omnes homines ad arma* to be ready *ad serviend' nobis* in *Scotland*, as need shall be. *Stat.* 35 *Hen.* 8. *cap.* 13. Remission of Loans reciting and considering, *est Duty & honor del People*, to assist their King in Body, Goods, Lands and Substance in his Wars, and there it was only for offensive Wars. *Rot. Pat.* 36 *Hen.* 8. *pars.* 2. 37 *Hen.* 8. in Mr. *Moyles* Book. 4, *&* 5. *Phil. & Mar.* Commissions of Array to go to all Gentlemen, but now but one Lieutenant of a County; and that Power which the Lieutenant now hath in *England*, was the same with the ancient Commissions of Array in Substance, for that it is no new Thing. These are in Force by 5 *Hen.* 4, and Common-Law in Queen *Mary* and Queen *Elizabeth's* time; and they did not go by the legal Array,

but by the Power of the Council-Board. 3, & 4. *Phil. & Mariæ* 1557. Council-Board. *Calais* was besieged on the suddain, the Enemy making Pretence of going into the Low-Countries, there went presently a Command to the Lord *Warden* of the *Cinque Ports* 5 *Jan.* to make Proclamation in *Kent*, that all from 16 to 60, should repair to *Dover* to save *Calais*, upon pain of Death; 8*th* of *Feb.* 1557. Letter of Thanks given to Sir *John Edgcombe* for diligently Mustering 1000 Men. 19 *Sep.* 1558, *Northumberland* served without Wages. 1 *Sept.* To continue Watch; 8 *April* 1558, *Whittypoole* for not finding *Demylance*, is called to the Council-Table. These are to shew what Proceedings there have been in former times. *Pot. Pat.* 7 *Eliz. pars.* 5. A Commission to Muster all Men against *Scotland*. 11 *Eliz. Rot. Pat.* though not on Record, yet in a Book in the *Crown-Office* in the *Chancery* with Mr. *Willis*. A Commission to Array Men, and to provide all Things necessary, *prout Necessitas, &c.* and to inform themselves what Armour they had, and this to be done for our better Service; but with those Commissions there went Instructions, amongst which observe this one; We require you to consider how necessary this Service committed to you is at this time, for the Benefit and Safety of our Realm, wherein we think the more Earnestness is the more Requisite, because of our Subjects long continuance in Peace, and the notorious being in Arms of our Neighbours about our Realm. If these Times be not worse, I leave it to any indifferent Man's Consideration. 27 *Eliz.* Watson *Roll*. A Warrant to the Lord Chancellor to make Lieutenants and Deputy-Lieutenants, which are the old Commissioners of Array, turned into *English*. And in 1588, when that great Armada came, all the Realm was in Arms, and at the Subjects Charge. 31 *Eliz. cap.* 14, 15. the Subjects granted a Subsidy, in Consideration of the Queen's Charge. And the Subjects were then at great Charge, both for Land and Sea, and she took it by the Power of her Council-Table. The City of *London* was desired to find ten Ships, and of themselves they desired to find twenty; this was the Affection of those Times, they did not dispute but were ready to obey. 28 of *April* 1558, a Letter to Sir *Robert Wingfield*, whereas divers Towns in *Suffolk* were charged to set out a Ship, and that divers were poor and could not, a Command that the Richer should do it. A Letter to the Earl of *Huntington*, that *York* should contribute to a Ship charged on *Hull*. A Letter to other Towns to contribute to *Colchester*, they refused yet were compelled to do it for Advancement of so necessary a Service. The Clergy, in 88, joined, and the Archbishop was Captain. And there were Letters for demolishing of Suburbs. *Statute* 3 *Jac. cap.* 6. where the Charge of the People in Queen *Elizabeth*'s Time was remember'd, *London* was charged, and Foreigners and Strangers were charged also to contribute, for that the Charge was common. In 1588, 3000 *l.* Conduct Money levied for the Earl of *Bath*; they did not stay here till the Tops of the Ships were seen, but they made Preparation in 87. In 1599, great Troops were assembled at *London*, for Defence of the Queen, when the Tumult was about the Earl of *Essex*, and in 1598, the Charge being common the Charge ought to be born in common: Nay, the Inns of Court were charged with Arms, upon the apprehending the Earl of *Essex*, a letter went to the Benchers of the Inner-Temple, for that Purpose, and all the Gentlemen found Arms. Amongst these Letters great Levies of Horse and Foot at the Countries Charge. And where she would not have their Persons, she had their Purses and Power to extend accordingly. 1595, Amongst the Papers of the Lord *Nottingham*, the People sent forth a Ship at their Charge, we have the Letter only to shew they did it, and how much each Man did contribute. In King *James*'s Time there was not much, the Times were not only peaceable but pacificous, his Motto was *Beati Pacifici*. 10th of *July* 2 *Car.* A Proclamation issued, that all People should make speedy repair to several Places, and should continue during the Danger. And for a binding Authority, *Car.* 12. the Resolution of all the Judges under their Hands, and inrolled in every Court at *Westminster*; a Man should have thought that that should have given Satisfaction, it would have done so in former Times. And truly, that the King hath done nothing more, but what the Kings of this Realm have done before, is most apparent to all those who willl read our Law-Books. How often have the Judges been assembled by the King's Command, both in the outward and inward Star-Chamber and there asked Questions? 2 *Ric.* 3. *fo.* 10. 8 *Hen.* 8. 190, *b.* 101. the King was there, and reasoned there. Is this a new Thing for Judges to deliver their Opinions? but his Majesty hath been pleased likewise to give way, that it might be brought to a publick Debate in a judicial Way; he hopes there are very few that oppose it, do it out of any aversness from the publick Service, but to satisfie themselves, and so to submit.

To answer Mr. *St. John*'s Argument, before I come to answer in Particular to what was objected by this Learned Gentleman, who hath taken a great deal of Pains, and made as much use of it as was possible for a Cause of this Nature to bear; I shall in the first place give a general Answer.

I say, that the Testimony by Records given on the other side, whereof many are vouched, which I am glad to hear of; and that Men look into a Business of this Nature. To make such a Search is for the Honour of the King, that there is according to Law the freest Access to the Records, that ever was in *England*; and that great * Lord, doth know that the King commanded with his own Mouth, that free Access should be to the Records in this Business; and I appeal to the Officers that keep the Records, whether I did not only deliver that Command from the King unto them, but desired them my self to shew to the other Party whatever I had.

* *The Lord of* Holland.

I say, these Records take them at the best, they are not of such Weight in Point of Right, as the other are which are for the King; for if

if a King shall voluntarily, and in ease of his Subjects, or especial Grace do any thing, yet I conceive that is not of such Weight, as when he produces a constant use of compulsive Power from the Crown, and obey'd by the People; for if any of the Kings have spoken in Gentle Language, as King *John* when he was deposed from his Crown; I conceive that will not be so much as gentle Words used in the Writs.

I shall answer particularly to all the Records that have been cited; it doth much concern the King, that this Argument be answered fully.

The first Thing that was said, was, that to seize Goods without Suit or Cause, is void in Law; but this was not used as an Argument, but an Introduction. But in the next Place, he comes to a high Objection, that in his Majesty there is *voluntas interna*, and *externa*; his inward Will which he doth declare in his Chamber, and his legal Will, and withal, that the King cannot Judge himself. 2 *Rich.* 2. *fo.* 10, 11. which was grounded upon that Book Case.

The King cannot Judge in his own Person, but hath left it to your Lordships, that are sworn to do equal Justice between him and his People; but to say, that the King cannot Judge himself, I question. Can that be wanting in the Fountain, that issues in the Stream, that I utterly deny. Is it not said, *Coram Rege* in the *Kings-Bench*, and in the *Star-Chamber*, *Coram Conciliis nostris*, this is a new Doctrine, and shall not the King Judge. Did not *Ed.* 4. sit in Person in the *King's-Bench* in a trial of *Rape*, and that famous Justice *Popham* sat at the King's Feet, and other Judges at the King's Side, and therefore called *Justiciarii a latere Regis*. Sure he forgot King *James*, who adjudged two Cases, that of *Bellingham*'s and Sir *Tho. Lake*'s Case. The Book doth no way warrant his Inference, the Book doth not say the King shall not Judge, but saith, that if a Man be Convicted before the Judges, the King shall not set the Fine, because he heareth not the Case. This no way concerns our Case.

That no Law can be changed but by Act of Parliament, as a Naturalization, and a Legitimation; nay, no Writ of Error but in Parliament, till by the Statute of 27 *Eliz.* and that the Parliament is *Curia Regis*, and cited 34 *Hen.* 8*th Crompton*'s Jurisdiction; the King is at no time in such State-Royal as in Parliament: All that was made out of this, was, that this was a change of the Law, *viz.* the Writ for Shipping.

We believe it is so far from being a Change of the Law, as that it was the Custom of all Ages in former times. Now he says the Parliament is the highest Court, and the King is there at highest both for Magnificence and Power; but yet out of the Parliament, the King is King of *England*. It doth not follow, that because he may do it in Parliament, that therefore he can do it no where else; and it is to prove a Comparison, to say, that the King should have the ordering of War as a Generalissimo over his Subjects and Vassals; all the Generals have their Power from him.

Oh! but the King hath Provision for War.

This is but a cunning Insinuation, to make a Survey of the King's Revenue, and to Insinuate with the People; and he begins with Knight's-Service, Tenures, and these in dangerous Places, as *Dover*, *Durham*, *Chester*. 35 *Hen.* 6. *Britt.* that the King should not only have his Wards Lands to breed them up, but to maintain the Wars in the mean time; and that Knight's-Service 37 *Hen.* 6. were instituted for ordinary Defence as Horsemen: And because the Kings of *England*, out of their Care to have Men trained up, had Horsemen to follow them, that therefore they shall have no Aid when the Kingdom is in Danger, is a strange Inference; shall we have no Footmen, no Archers, no Slingers to be used in War, no Guard at Sea, because he hath some Tenures of Horse-men? this doth not discharge the Subject; this is but for forty Days, and was Instituted to Suppress the suddain Incursion from *Scotland*. 19 *Rich.* 2. *Guard.* 165. *pl'* Tenure they do restrain particularly Escuage and Knight's-Service to *Scotland* and *Wales*. 22 *Ed.* 1. for *Gascoigne* afterwards discharged, but not for Mr. *St. John*'s Reason. *Rot. Claus.* 5 *Ed.* 2. *M.* 27. these were discharged of Escuage, because the King was not there in Person, and because it was Extraordinary. *Rot. Scoc.* 5 *Ed.* 1. *M.* 27. that Record doth shew the Kings of *England* did conceive that they were somewhat less than Enemies that refused it; for foreign Service I never meant to Object it.

Then he saith, that Escuage is to be assessed in Parliament, though for the Defence of the Kingdom.

If that were the proper Question, I could shew when Escuage was not by Parliament, for it was by another Reason. It was altered by an Act of Parliament 17 *Johannis Statute de Rumney*-Mead, *Nullum Scatagium*, for it was not so before.

Also it concerneth the Subject as well as the King. 9 *Hen.* 3. *cap.* 37. The true Reason of assessing in Parliament is this, other Men were to have Escuage as well as the King; now it is true that Rule, No Man shall be Judge in his own Case, but therefore not the King, that holds no Proportion. And Kings are said to do no Wrong, the true Reason why it was assessed in Parliament, was, because the Lords would take too much. This is from the Business, I pass it over.

Then he alledged, that the King is in actual Possession of the Wards.

That they should go towards the Maintenance of the War, he cannot shew any Authority worth the valuing, neither *Bracton* nor *Britton* hath any such Thing; for 35 *Hen.* 6. the Words are *pur ceo*, *&c.* The Argument will be but thus;

thus; because the King out of his especial Care, out of his own Land, provided some Tenures for that Purpose, therefore he shall have nothing from the Subject. The King did never give, nor could give other Men's Lands for those Tenures; for it is most apparent, the *Normans* came not in by Conquest. *William* was no Conqueror, for after he came in, Men did recover the Lands which were their Ancestors; that was the Wisdom: When *Henry* the Fourth took the Crown by Conquest, when he would have alter'd the Laws; No, take our Laws, and take our Lives. This is an Argument no way conducing to the Purpose, because he hath some Horse by Tenure, therefore neither Foot, nor Provision for Sea-fight, nor Trained Bands, because Provision is made by Tenure. This is contrary to all Reason and Experience; what Obligation hath the Soakman and the Plowman's Tenures, what do they pay to defend them, no Consideration for it; these are rather Insinuations than Arguments.

Then it was said, there were like Tenures for Sea, and cited two or three; one to hold the King's Head at Sea, and some such like, as if two or three Tenures were like to defend the Sea.

It was also said that the *Cinque Ports*, that they have many Priviledges allowed them for that Purpose, 13 *Ed.* 3. *Par' Roll.* 11.

Is the *Cinque Ports* Service a competent Provision to defend a Kingdom against Hostility? I know no Reason but the whole Body should defend it self. 13 *Ed.* 3. *M.* 9. it appears expresly, that the Commons made Defence at their own Charge. No Man can be discharged of keeping a Thing, that he did not keep; so because the Subject is said to be discharged, an Argument that he was charged; that of the *Cinque Ports* is not for the Defence of the Kingdom, but for Entercourse of Merchants, not *Quando Salus Regni periclitabatur.*

Then they Object, that Tenures in ancient Demesn were Talliable without Consent, and their Service for the King's Provisions in their House.

No Reason that should excuse them from the General Service; for though it be true, that the King's House imploys such Tenents, yet the Kingdom must be supported by them, and the rest of the Subjects together.

Then he did Object, there was another way of Supply of extraordinary Means, as Mines in other Men's Lands, and here remembred. *M.* 3 *Rich.* 2. *Prerogative Comm'*, difference taken between annual and casual Revenues for Defence.

Then he Objected, *Rot. Parl'* 6 *Rich.* 2. 11, 42, that the King would live of his own Revenues, and that the Mines, *&c.* should be for the Defence of the Kingdom.

Onslowe who argued the Case, said, that the King was the most excellent Person both at Sea and Land; therefore the Royal Fish at Sea, and the Gold and Silver Mines at Land, were given to him, because he was able to give a Stamp on Money. And so 2 *Rich.* 2, they of *London* pray'd, that the King would not put them to Charge, but live on his own, and so your Authority vanisheth into Smoak.

The King must live forsooth of his ordinary Revenues. *M.* 3 *Rich.* 2. which expresseth, that the King at that time would do so; that the King by Advice for Salvation of the Kingdom, would use these Things given unto him; that indeed was a reasonable Thing for that time, but must it be now turned for a Necessity.

6 *Rich.* 2. *M.* 42. *pars.* 42. that good Government be about the King; then they Petition that he would live upon the Revenues of the Crown, and that all Wardships, Releases, Marriages, *&c.* should be for the Defence.

The King is very willing to do and ordain in this Case, as by the Lords of his Realm may be thought best for his Honour and Profit; this is not a granting of the Thing, but a referring it to his Lords, at best it is but a temporary Desire.

But oh! he hath the old Customs, and Petty-Customs, Tonnage and Poundage, of the Legality of taking of it he will not speak. If the King doth impose it on the Merchants, he needeth not to take it of his other Subjects. Duties to the King in this Year, came to 300000 *l.* and that Tonnage and Poundage was granted for ordinary and extraordinary Defence 3 *Ric.* 2. 5 *Ric.* 2. 1 *Mar.* granted on Condition, that by the Statute of *Winchester*, they were bound to have Arms, and no such Statute for the Sea.

I shall answer all this, but for Tonnage and Poundage, I shall refer it for a particular Place. They say, the Courts of Justice are maintained by the King, the King hath a Profit thereby, but the Maintenance of them cometh out of the Subjects Purse; and the First-Fruits were for the Defence of the Faith, that no Heresie should creep into the Church. Therefore, because the King is Lord of the *English* Sea, he must defend it at his own Charge, and not command the Body nor Purse of his Subjects towards it, a pretty Argument; he saith, the King hath the old Customs, which are the ancient Inheritance of the Crown, and so for Petty Customs, and that these must go for the Defence of the Sea. See a Judgment in the *Exchecquer*, in *Edward* the First's time; search into the Fine Roll 3 *Ed.* 1, and see for what Causes these Old Customs were. It was never said till he spake it, the old Customs or lesser were for this Purpose. And for his saying that the Statute of *Winchester*, 13 *Ed.* 1. doth enjoin keeping of Arms, and thereupon all Defence comes, that Statute was repealed by *Philip* and *Mary*, and set a foot by King *James*, and again by him repealed, I shall shew before the 13 *Ed.* 1. many Records for Land-Service long before, for that Statute doth only set a Form of Arms,

and

and is not the Beginning of Arms. So for the Objection of the King's Revenues be it more or less.

Now I shall come to Tonnage and Poundage, the darling Argument, which I affirm was never given nor taken, of itself simply, on extraordinary Defence, I have seen all the Grants of it; it may be when there have been Wars abroad, and then the Subjects in Parliament have given Tonnage and Poundage with Tenths and Fifteenths, they have been all said to have been for the Defence. Tonnage and Poundage hath been given and taken merely for an Intercourse of Merchants; and in that Sense the King said we do and must pursue those Ends for which it was granted to the Crown; I shall make that appear by Reason, and out of the Grants themselves and other Authorities.

If Tonnage and Poundage were merely for the Defence of the Sea, how was the Kingdom to be defended before in the Time of the Saxons? At the first it was 6 *d.* a Year, then to 2 *s.* and 3 *s.* for Tonnage and Poundage; then 3 *s.* upon a Tun of Wine, and 8 *d.* a Pack on Merchandize, that was all for Tonnage and Poundage, the rest was for old Customs: If this was for extraordinary, how was the Kingdom defended when this was given for half a Year; Truth, it was for Defence of the Kingdom, that is, with Relation to the Intercourse of Merchandize; the Recital, 1 *Jac.* saith it hath been taken Time out of Mind. Hath Tonnage and Poundage been given Time out of Mind? then it was before *Richard* the First's Time: *Hen.* VI. he had it for Life, the Statute doth express it as plain as may be; Time out of Mind is beyond the Memory of any Man living. The very Interpretation of the Statute explains it to be for the Safety of the Sea and Intercourse of Merchants. In all Ages before the granting of Tonnage and Poundage the Kings, upon a general Defence, have had other Aids than this by their own Power. Ordinary Charge for an ordinary Defence.

I could have given a Legal Answer, that it was not given unto the King; no Act of Parliament for it.

Yea, but it is taken *de facto.* Shew your Instruments then by which it was taken, that had been a general Answer.

But I shall carry the King's Honour along with his Power and Practice: *Rot. Franc.* 2 *Rich.* 2. 7 *Hen.* 4. *M.* 23. *Rot.* 11. Tonnage and Poundage granted to Merchants to guard the Sea for Intercourse of Merchandize, which sheweth plainly it was for that Purpose. To put it without all manner of Question, 6 *Ric.* 2. *M.* 8. *Franc. Roll. pars.* 2. Merchants and Mariners had *Custodia maris,* and the King granted them 6 *d.* a Pound; doth any Man think that he would trust the Safety of his Kingdom with Merchants and Mariners? It was merely for the Guard of the Sea for Merchandize, express Exception in the very Grant, that they should not be bound by this to help against Invasion of Enemies, unless a Royal Power come, *regali potestate excepta*; therefore this was no extraordinary Service. 7 *Hen.* 4. *Rot. Parl.* is in the same Manner. And in the *Close Roll,* that the *Custodes maris* should put there a lawful Power for the Safeguard of the Sea against the Enemies of the King except a Royal Power, then Notice to the King, so it must be understood merely for Intercourse of Merchants. I can shew you a Book-Case for this, 9 *Hen.* 6. 12. *Quer.* Case *Title* Custom. *Bract.* 26. he saith, That Aids and Subsidies are granted to the King, to the Intent that the King, by his Admiral should guard the Sea, to the End that Merchandize may pass and repass; not a Word of the Defence of the Kingdom, and in *Anno* 11. the King was at great Charge with his Navy; cast up the Accounts of the Sea-Duties, and then it will appear there is not left to him a Penny for the Defence of the Sea. Impositions and Prizage of Wine was to furnish his House, and not for Defence of the Sea. Not only upon this but there was an ancient Writer that wrote the *Doctor* and *Student,* whose Name was *St. Jermine,* who wrote in *Henry* the Eighth's Time, he tells you, *lib.* 2. *cap.* 15. *fo.* 153. The King out of the old Customs of the Realm as Lord of the narrow Seas is bound twice in the Year to scower the Seas, but not against all outward Enemies, but only to put away Pirates and Petty-Robbers. History of Tonnage and Poundage, 25 *Ed.* 3. *Parl. Roll. M.* 11. the Commons did pray, that 6 *d.* of the 2 *s.* a Sack of Wool, and of a Tun of Wine granted, that the Merchants might have safe Conduct over the Sea, if it would please the King, the Merchants for that would make their owne Conduct. All the Rolls go in that Manner. 3 *Ric.* 2. 2 *Hen.* 4. and they cannot shew that Tonnage and Poundage was ever granted for extraordinary Defence, unless for some great Defence.

Next he alledged that Sea-Duties were born by every Man in the Kingdom, and that *secundum statum.* 22 *Ed.* 3. *M.* 4. *Parl. Roll.* which says it was in Charge of the People, *& nemy des Merchants.*

All Men must bear proportionably their Share in the Charge of Defence, what Consequence is this? because the first or second Year out of the Subjects Purse for their Commodities, therefore their Lands shall be discharged in Cases of extraordinary Defence.

Oh! say they but this *may be* done by Parliament.

By a *May be* a Man may answer any Argument, but a *may be* will never answer a Bill. 23 *Ed.* 1. *Rot.* 3 *dors.* the Writs were in *October,* the Parliament at St. *Martin's* in Winter. In that to the Archbishop of *Canterbury,* the King doth but a little Compliment with the Clergy, and telleth them he knoweth what Dangers were abroad; the Business of Shipping was done before the Parliament, so the Parliament might consider of it afterwards; that it was done

afore appears, this Parliament was not held at the Day, but the King doth prorogue it till after St. *Andrew*'s Day, because he was busy in preparing his Shipping, so they came about Shipping when it was gone to Sea before, for the Writ of Summons was the 1st of *October*, the Day of Meeting after St. *Martin*'s; that to the Archbishop was the 31st of *September*; the Ship-Writs *Aug.* 28, and *Sept.* 31; then the rest, the 3d and 6th of *October*; but all long before the Meeting of the Parliament, and so all grounded upon [*it may be.*] And to say that the King, because he did a thing voluntarily, therefore he must be necessitated to it, I know not what Argument it is. *Henry* VII. indeed did bring things to Parliament for the Advancement of his own Ends; did Queen *Elizabeth* send any of her Commands out of Parliament? and yet the Subjects gave her Subsidies.

24 *Ed.* 1. Summons there for the Clergy to come if the Truce did not hold with *France*.

I think it not fit at all times, when it standeth upon Intelligence, to commuicate it to the whole People. 26 *Aug.* summons to Parliament divers in *February* and *April* before, no Money granted in these Parliaments, therefore to tell us it might be by Parliament is a poor Argument.

Walsingham saith, Allegiance bindeth the King to Protection as well as it doth the Subject to Tribute.

The Subject hath a double Protection from Injury and wrong in Times of Peace by his Laws, and in Times of War by his Power: Must this be done by the King's single Person? No, it must be done by the Bodies of his Subjects at their Charges. Indeed it is fit that particular Soldiers should be paid.

Oh! but they tell us, that *Fortescue* Chief Justice of the *King's Bench*, to shew the Law of *England* to be better than the Law of *France*, saith, that nothing could be taken from the Subjects but by Parliament.

That is in the ordinary Way; doth he say, that no Man shall contribute to defend himself in imminent Danger? *Ne verbum quidem.* 27 *Ed.* 1. *M.* 7. *Pat.* there the King saith, he did not buy Lands, Manors, or Castles with it, but did it to defend the whole Realm; no more doth our King, but only to defend himself and the Kingdom.

In 33 *Ed.* 1. *Rot.* 10. It is objected that a Clerk sued for his Salary and had it allowed him: And the King supports his Courts by the Fines.

But they came from the Subject. And may not the King give a Salary when he pleaseth?

14 *Ed.* 3. *cap.* 1. and this were prest to prove, that Aids, tho' granted in Parliament, for Defence, should not be brought into Example.

These were not to be spent for the Safeguard of *England*, but *Scotland* and *France*, and so it comes not to our Case.

48 *Hen.* 3. When the Tenents came with greater Charge than their Service required, *non trahatur in exemplum.*

True if Tenents by Knights Service at that Time, did do greater Service than they were bound in Time of Danger, it is but reason that it should not be drawn to be yearly to make their Tenures higher.

Plowden, fo. 315. *Wiseman*'s Case. A Covenant to stand seized to the Use of the Queen, in Consideration she is Head of the Commonwealth, held no good Consideration to raise an Use, because there wanteth *quid pro quo*, and the King, *ex officio*, is bound to do that.

Under my Lord *Coke*'s Favour it was not in the Case. The Case was upon divers good Considerations, and he put this in by Way of Admittance. I can shew when this was declared to be no Law.

Next they alledge the King is in Possession of the Service of the *Cinque Ports*, and of Tonnage and Poundage, and this appears not to be expended; and of other Duties for the Defence of the Sea, and *Lex non facit saltem.*

Tempus belli, I reserve for another Place, for that is one of the three things considerable in this Argument. That Learned Gentleman, Mr. *St. Johns*, did confess (that as Necessity requires) when the Safety of the Kingdom is in Danger, the Subject is bound. If it were material to make it appear whether any thing were spent or not, it should have been pleaded at the *Exchecquer*, if he would have taken any Advantage upon it.

But admitting they had been all expended, yet the Property of the Subjects Goods, saith he, cannot be altered out of Parliament; he did agree the Kingdom must be defended, and did yield, that for the Manner of it, it did not belong to the People. 6 *Ric.* II. 2 *Ed.* I. Men and Money belong to the Wars; the Commons did acknowledge it belonged to the King for ordering in all Times, the Caution of former Ages was to demand it in Parliament.

We shall shew in all Ages, the King did it without Parliament. This is a pretty thing that the King is to direct the War, and yet shall have neither Men nor Money without asking his Subjects leave. And for that of Property, it is a thing taken away in the opening of my Argument, I cleared it, I shall not trouble you with Repetition of it.

Oh! but they tell us, the King hath borrowed Money to spend in the Wars, and promised to repay it, and that without a *Salvo* of his Right, this is an Argument they think worth Consideration. 48 *Hen.* 3. 16. *Pat.*

I know no Law that barreth the King from borrowing

borrowing of Money, as he hath Occasion. Is it not of Necessity that the King must borrow? notwithstanding both ordinary and extraordinary; must the King carry Millions about him? his Occasions may be such as he must borrow, and also fit it is that it should be paid again; doth any Man think, that if the King doth borrow 10000 *l.* of any particular Man, he must not be repaid again? 48 *Hen.* 3. *M.* 15 or 16. Power is given to the Earl of *Leicester* to resort to the City to borrow Money. Great Reason because it is the Chamber of the King.

But the King's Money not coming in, he desireth to borrow so much of the City, and it shall be paid when the other Money cometh in, the end was for the Defence of the Kingdom.

But that therefore the King cannot command Aid from his Subjects, because he borrows of his Subjects, is no good Argument.

Then he saith, the Law delights in Certainties, as in the Aids *pur file marier*, and to make his eldest Son a Knight; these are certain, 25 *Ed.* 3.

All Defence is uncertain, till we know the Offence, certainly he must be a wise Man that can do it. How shall a Man know how to Defend, and not know what the Defence will require? whether ten or twenty Thousand, and must it not be proportionable to the Offence? Is not this *suscipere majus & minus?* where is the Argument, that because Aids which were uncertain at Common Law, are made certain by Act of Parliament? therefore must this be certain, for which there is no Act of Parliament?

Oh! but the Talliage in ancient Demesn and Burgage, they are certain; and Mr *Hambden* he was assessed at xx *s*, it might have been as well xx *l.* this is uncertain, it doth rest only in the King's Mercy.

The Writ taketh care they shall not assess unequally: If Mr. *Hambden* be too high assessed, Mr. *Hambden* might call the Sheriff in question; but the Sheriff of *Bucks* is rather to be Fined for setting him at so low a rate as xx *s.* We know of what House Mr. *Hambden* is of, and his Estate too; for any thing I know it might have been 20 *l.* well enough.

But to the legal Part, some must be trusted with it, and who should be but the Sheriff? and the Parties not without Remedy if Overrated.

Then they come to Authority by Jurisdiction, and that they that have Priviledges are not Talliable, *nisi pur grand Cause*, and that Escuage must be set by Parliament, which is by Act of Parliament, 17 *Johannis* that it was called *Magna Charta*; and so it was in *Matth. Paris*, and confirmed by *Hen.* 3.

He speaketh of it as a Thing of Story, and these were for foreign Wars, and so not to our Case.

Oh! but it was admitted every Man was to keep Arms. 13 *Ed.* 3. 11 *H.* 7. *cap.* 18, and whilst they are in their own Counties, to be at their own Charge; but not to be drawn out of their own Counties without Wages.

Henry the Seventh afraid of his own Title, makes a Law, that no Man should be questioned for being with the King in Arms; this was to take away the occasion of the People's talking, whether they went upon just Ground.

That many Armies have been paid by the King. 2 *Ed.* 6. *cap.* 2. 28 *Hen.* 8. the Rebels in the *North* the King promiseth Satisfaction. 11 *Hen.* 7. *cap.* 1. the Duty of the Subject is recited in it.

What Argument is this? we shew in all Ages where the King commanded his People to attend him or his Lieutenant, and you tell us that he paid other Armies. 19 *Hen.* 7. doth extend to Wars without the Kingdom, as well as within. 11 *Hen.* 7. this last did expire with his Death, this doth appear plainly, this was by especial Gift by the King. 4 *Eliz. Dyer* 211. Expresly it did not extend to the Service of any other King but him.

25 *Ed.* 3. *cap.* 8. None constrained to find Men at Arms, but those that held by such Service.

This must be understood with Relation to the Tenure, they were not to come upon common Summons for Escuage; but when the whole Kingdom was in Danger that they should not come, was no Excuse.

Oh! 26 *Ed.* 1. *Reygnód de Gray* durst not levy Men without Pay. The Marginal Note clears this, and so no part of our Question; and it appears by *Walsingham, fo.* 74, 75. that the King was actually then in *Scotland*, where he fell from his Horse, and lost two of his Ribs.

Baronibus eligendis pro hominibus Scot.

In the next place they say, *Trin* 31 *Ed.* 1, there is a refusal to go without Pay. The Wardens of the Marches of *Cumberland* and *Westmerland* writ to the Barons, that whereas the *Scots* laid near the Marches with a great Army, that the People would not march out of their Counties without Pay.

This is easily answered; there were the *East* Marches, and the *West* Marches of *Scotland*, several Counties belonging to each? What reason had they to go out of their own Marches, unless they had Money for the keeping of them in their absence? *Rot. Pat.* 10, or 11 *Ed.* 2. *pars.* 2. *M.* 26. for War of *Scotland.* 9 *Ed.* 2. the same discharged in the County of *Norfolk.* 13 *Ed.* 3. *M.* 38. the Abbot of *Ramsey*, because he remained in his own County discharged; it was no absolute Discharge, but *Dum sic intendit.* 21 *Ed.* 3. *Rot. Franc.* Some are discharged from the Custody of the Sea, because they were *prompti* at home;

home; some for finding Hobellers and Archers, and this was by reason of a Grant in Parliament; some were discharged, because of their stay at Home to guard the Coasts. This proveth the Right of the personal Service, and of the Contribution.

Another Objection is that of 21 *Ed.* 3. *Rot. Franc*, that they should not be kept continually in Array, but suffer them to stay in their own Counties; but they were to go as soon as there was any notice of an Enemy.

This was for the Wars of *France*, and not for the Defence of the Kingdom.

Oh! but 20 *Ed.* 3. *M.* 6. *Rot. Scoc.* there were *Exploratores & vigiles*, which were *Incolarum*, but how *de assensu & voluntate?* but this was nothing, for it was with assent in the *Northern* Parts, and had been done in former times against *Scotland*: Then the 100 Roll of *Feversham*, which I conceive rather maketh for us, than against us; for the Castle of *Tunbridge* is to levy 15 *l.* for the King, *pro salvatione* of the Castle, and to levy it by Distress. 14 *Ed.* 4. *cap.* 19, the King could not compel the Subject to sell Victuals for Wars, nor to provide for the Castle in the Town, 29 *Ed.* 1.

That was for *Scotland* for payment of Victuals, and who can command a Purveyance but the King? and that of the Castle, it was the Victualling of his own Castle, and Subjects were bound to victual their Castles. 8 *Ed.* 2. *Rot.* 99. the Marches provided for Victuals, and particular Men paid for Victuals, but they do not shew from whence that Money came.

The next is Horses for the King's Service marked, that if they were lost they might be satisfied for, 24 *Ed.* 1. *Robert*..... lost a Horse worth xx Marks, and received Satisfaction in the *Exchecquer*, somewhat also for Wages, *M.* 26 *Ed.* 1. *Rot.* 105, 106.

That is only a *Concordat* how Men should be paid, what the Horsemen should have, and what the Footmen; for *Yorkshire*, *Northumberland* and *Cumberland* were to have no Wages from the King, but to go against *Scotland*; yea, that is another Thing, *Si contra Scotos*, and that Distinction upon stating of the Case, will go throughout. 14 *Ed.* 3. 34. for Castles. 24 *Ed.* 2. 72, 78. *dors. John de Sandall. Barwick* was taken from the *Scots*, and for furnishing of *Barwick* Castle, the People are compelled to trust him.

Oh! but the Prisoners taken in the War, and Hostages, were at the King's Charge; 8 *Ed.* 3. Allowances in the *Exchecquer* for it. 5 *Rich.* 2. *cap.* 11. examined in the *Exchecquer*.

The King, if he hath a Prisoner taken in the War, he is to have his Ransom, shall not the King pay for his Charge? 4 *Ed.* 2. *Rot.* 12. *Roger de Salvage* a *Scottish* Prisoner, the King bore his Charges; so because the King payeth the Charges of a Prisoner for which he hath Benefit by his Ransom, therefore he is to defend the Kingdom.

Dyer 162. A Man in Execution cannot be forced to go to War.

Our Writ doth not desire to send Men in Execution to go to War, for there are enough besides them.

Then they Object the borrowing of Money, and the King paid again for it, *pro negotiis urgentissimis.*

The King may have occasion to borrow Money, and reason he should pay it; nothing to the Question.

But the Case is, whether all the People for their Wives, and for their Families Safety, and for the Safety of the whole Kingdom, may not be compelled to Contribute to it. The Abbot of *Gloucester* gave Money to maintain a Damsel, the King took this Money for the present, and paid it back again. This was *ad exonerand' conscientiam*, that for Things taken away without Warrant, the Ministers should answer for it, not pay and repay, but shall hold themselves satisfied with Reason.

But they Object, that 26 *Ed.* 1. a Commission went out to inquire, *de Rebus captis, sive pro custodia Maris, &c.* and the King saith, that *il fera taunt que se tenderont a payse pur Reason.*

True *se tenderont a payse, &c.* which is not to be understood, that the King will pay or repay; but that they should hold themselves satisfied *pur Reason*, that is, he would give them Reason why they should be Satisfied.

The

The Third Day's Argument of Sir Edward Littleton, *Knt. His Majesty's Solliciter-General, in the* Exchecquer *Chamber before all the Judges, in the behalf of His Majesty, in the great Case of Ship-Money.*

May it please your Lordships,

I Shall go on where I left; only inform you of one Record. 1 *Hen.* 4. The Writ that went for the Array of the 23d of *Cant.* which doth recite, that whereas there was Danger upon the Sea, he and all his Clergy should, *Manus apponere adputrices.* I speak of this, because it was at so low a Time as *Hen.* IV. and it was *pro salut' Populi.*

Coia'. Pl'. 14 *Jac.* Between *Weaver* and *Ward,* Command came from the King and Council, that the Train-Bands in *London* should be mustred for the training and making of them ready to defend the Kingdom. One in the training, hurt his Companion, and thereupon brought his Action against him: And this was pleaded in Bar, that he was Mustered by Special Command, and this was adjudged a good Justification, because it was for the Preservation of the Land, 28 *Hen.* 8. which recited that the King did Pay them in *Lincolnshire*; but for the other, he saith, that he shall remember their Pains.

I shall now go on. It was objected, that by the Statute of *William* 1. That the People should enjoy their Lands freely, *Sine omni injusta exactione sine tallagio.*

This was for Money to be received for a general thing, but that it was not for this thing appeareth in oneChapter, that Knight Service Tenures should do what belonged to it. The rest *sunt Fratres Conjurati ad Monarchiam Anglie defendend'.* 14 *Ed.* 3. Chap. 1. 25 *Ed.* 3. 1 *Ed.* 1. *Walsingham* 184. All these are set aside by the Statute and concerns not our Question. Ours is ratable and proportionable according to old practice. And it is one Thing to compel a particular Man, and another thing to set an equal Rate upon the whole Kingdom.

Ult. Febr. 3 *Car.* A Commission of Loans for the Defence of the Kingdom.

They mean the Commission which was a Consideration to levy Monies, by reason of the Necessity of the Times.

It appeareth in the Journal Book to be for Impositions, or otherwise to raise Monies not concerning this Question. It appears by that, that the King gave a Gracious Answer unto it. And that it was done for the present time only, a Warrant for advice only. It was done to raise Money in general; but no Determination of Right, and said, at your desires it shall be can celled.

Then there was a Commission for Loans, 5 *Feb.* 2 *Car.* and this they say was for the Defence of the Kingdom.

It appears it was for the Defence of the Palatinate and *Denmark*, and for that a Bishop was sentenced for his mistaking, Mr. *Prin* brought up the Articles against him.

I shall now come to an objection worthy the making by Mr. *St. John.* And because it is a thing not truly understood, but taken at random, I shall wave your Lordship's Patience. It is the Statute *de tallagio non concedendo.* 25 *Edw.* 1. made after the King went into *Flanders*, and agreed upon here by the Prince, as Vice-Roy, and afterwards sent into *Flanders* to be sealed by the King, as it is put in some Books. The Words are general: No Talliage to be taken without the consent of the Lords in Parliaments.

For this I desire the Liberty to inform you of the Story of the Times to make a better Answer. This is not all, in some Statute Books it is not mentioned, in others, no Kings Reign mentioned. And in *Ed.* 1. no Year of it, and now they would apply it to the 25 *Ed.* 1. and this they would ground upon the compelling of Aid, 23 and 24 *Ed.* 1. And the Commission in 24 *Ed.* 1. did issue upon that, and consequently that this Aid was the Aid complained of, and then redressed.

Walsingham, a Monk of St. *Albans*, they rely upon upon for this, that wrote some Sevenscore Years after the thing was done. Sir *Edward Coke* saith, Chronicle Law is not much to be regarded. True he saith, Chronicle Histories may shew us the times, but if it tell us what the Law is, we are not to believe them. No Historian, that I ever knew yet, ever read the Records, and therefore no true History, for the most part they are taken up in Pauls or the Street.

To take something in Consideration, by way of stating the Case, upon the Statute *Confirma. Char.* and the other *de tallagio non concedendo*, that is, that no Aid shall be levied but by consent in Parliament.

The first Statute is, that no such Aid shall be levied, the Nature of it, and the Acts themselves rightly compared, there remains no scruple against the Case.

Three things for the true understanding thereof must be consider'd. *First*, what kind of Aid had been in use before 25 *Ed.* 1. and for what they are taken.

Secondly, how and what Remedy was given by that Statute.

And *Thirdly*, how far that Statute *de tallagio non concedendo* is in Force and Authority in this Case.

For the First, it appeareth in the common Story, that in the 21 *Ed.* 1. The King of *France* had seized all the Duchy of *Gascoigne*, upon pretence that he did not appear at his Parliament at *Paris* upon a Summons thereupon. The first took a course for the regaining of his Duchy, and the War continued with various Success, till 25 *Ed.* 1. And he had also War with *Scotland* and *Wales.* For though *Wales* was taken 12 *Ed.* 1. yet there was one *Madox* who pretended himself to be of the Blood of the Prince, till 23 *Ed.* 1. and till that Year they were not quiered. And he having all these Wars against *Flanders*, *Gascoigne*, *Scotland*, and *Wales*, some at one time, some at another, and most altogether, divers Aids and Supplies were taken upon these Occasions of several Natures, some were by voluntary grants of the People, some were by Impositions and Levies by the Names of Talliages or Taxes to be paid to the King, some by Assessment of Lands. As the Abbot of *Robertsbridge*, 25 *Ed.* 1. All this

appeareth by the Commiſſion to enquire of Extortion.

And beſides all theſe, ſome by Prizes of Goods and Money taken from the Poſſeſſors without any Payment, Rates or Taxes. Nay, there was then ranſacking of the Monaſteries, and taking of the Monies found there. Mr. St. *John*'s Caſe for Money taken out of their Treaſury, and beſides all theſe, there were ſome by way of Ranſom, as Mr. *St. John* rightly obſerved, and ſhewed his learning and Induſtry, that the Clergy upon their denial were put out of the King's Protection: And they did Ranſom themſelves by giving a Fifth Part of their Goods. *Pat.* 25 *Ed.* 1. *M.* 11. *pars* 2. The People being thus grieved with ſuch Aid and Prizes ſo extraordinarily taken for the maintenance of Foreign War, obtained that it might be enacted, that ſuch Aid in a Relative Term may not be granted nor taken without their Conſent, by the Statute of 25 *Ed.* 1. and *Confirma. Char.* Obſerve this one thing, the Markets of *England* three Years before had granted the King *Subſidium pro guerra*, upon every Sack of Wool Five Marks; three Marks upon Woolfells; upon every Pack of Skins Five Marks, and this was granted of their own Free-Will, and this was to continue for Two or Three Years. 22 *Ed.* 1. *M.* 2. *Sine Roll.* where it is there relicted. Next Year before *Confirma' Charta.* All the Laiety, except Cities, Burroughs, and antient Demeſne had granted to the King in *Subſidium pro guerra*, the 11th Part of their Goods, 24 *Ed.* 1. *M.* 2. *pat. Pars* 2. And the Summer before *Confirma'. Chart'.* an 8th granted by all the Laiety, except the Cities and Boroughs; and they granted a Fifth, and this was ſtill for the War, 25 *Ed.* 1. *M.* 11. *Pat.* The Application is this, Thoſe many Aids of theſe ſeveral kinds having been granted for the War, divers Men of that time did doubt and fear, that however they meant it but for a certain time, yet being not ſo clearly expreſſed, it might bind them for the future, and that they ſo doubted, appeareth by *Confirma'. Char'.* And for as much as divers of our Realm are in fear, that the Aid and Taxes which they have given us before time towards our War and other Buſineſs of their own Guifts and Good Wills, might turn to a Bondage to them and their Heirs. And likewiſe for the Prizes taken, we do grant for us and our Heirs, that we ſhall draw no ſuch Aid, Taxes, nor Prizes into a Cuſtom, for any thing done heretofore, be it by Rule or any other Preſident that may be found.

Then, my Lords, for no occaſion ſuch manner of Aids, Taxes, or Prizes ſhall be taken, but by common Conſent; but it endeth not ſo, ſaving the antient Aids and Prizes due and accuſtomed. This being the ſtate of the Caſe, be pleaſed to obſerve the complaint of the People; this kind of Aid it is plain was never meant there, when *ſalus Populi periclitabatur*, and may be levied notwithſtanding the Statute: for the Act is only againſt ſuch kind of Aids as had been voluntarily granted by the People, ſome by Merchants, and ſome by others, that they ſhould not be taken againſt their Wills hereafter, but by conſent in Parliament. Such is a Relative, it is not general no Aids, but no ſuch Aids.

Secondly, It refers to thoſe that were voluntarily granted to the King for *Scotland* and *Wales*, and his other Wars.

And another Reaſon why theſe Aids that had been for the Cuſtody of the Sea, could not be ſaid to have come of their good Wills: for obſerve the Abbot of *Robertsbridge*'s Caſe, it appears plainly it was done againſt their Wills, for the Cuſtody of the Sea, by vertue of the King's Writ.

Auguſt before *Confirm' Char'.* thoſe that had given an 8th Part, they did obtain expreſly Letters Patents, that ſuch their free Guifts hereafter might not be *in ſervitutem*, 25 *Ed.* 1, 2. that is, the very thing doubted in *Confirm' Char'.* Now thoſe that had granted an 8th, had no Reaſon to do it, for they had a Charter to free them, but the other had not. And therefore the Statute might well ſay ſome did fear; ſo upon the whole matter there are no other Aids but theſe voluntarily granted at that time, none in the Body of the Act but thoſe granted with a Good Will, for thoſe Foreign Wars, and upon the Forty Shillings received by the King upon every Sack of Wool, with Three Marks granted 22 *Ed.* 1. was by the Merchants, only for the War in *Gaſcoigne*, and thereupon it was enacted, that the King ſhould not take ſuch things but by conſent.

There is alſo in the Statute *Confirma. Char.* an exception, that all antient Aids due and accuſtomed were excepted; and therefore what kind was meant in the body of the Act, the exception makes clear, antient Aids excepted; this was an antient Aid; and therefore never meant there to introduce a new Law, that no Aid ſhould be taken, but no ſuch Aid. No impoſition ſhould be taken, but the practice of all Ages ſhews this hath been levied ever ſince, from time to time, which is an Interpretation of the Words of the Law. This I do open to make way to the Statute *de Tallagio non concedendo*, Thrice in the Statute is this Word (ſuch) but that they ſhould make uſe of that Statute *de Tallagio non concedendo* of it ſelf without relation to that, whereas it will appear it is a meer extract out of this, and no Statute it ſelf for debate of that, this *de Tallagio* is the ſame with that *Confirm' Char'* it is a plain Extract of it, or ſome other thing at ſome other time. Sometime in ſome printed Book *nullum Tallagium* no Aids ſhall be taken by the King, ſometimes without Notes of Time when made, and at the beſt it is no more, but it is ſaid it was made in the time of *Ed.* 1.

If we ſhall compare *Confirma. Char.* and the Articles that were in this, we ſhall find it to be nothing but an extract out of that Statute, and that it was no Act of Parliament. And to make it appear it was an Extract taken out of it, obſerve the general Heads *de Tallagio non concedendo.*

Firſt, The Charter againſt Prizes. Secondly, Another againſt Wool. Thirdly, A general Confirmation of the Laws and Liberties. Fourthly, A Pardon to divers Lords there.

Theſe are the things in which they would make it a Statute of it ſelf all expreſſed in *Confirm' Char.* they do not differ in Subſtance. A Sixth Head is the very Year of the 25 *Ed.* 1. for the Pardon of thoſe Lords was made 5 *No.* 25 *Ed.* 1. this ſame was ſealed by the King Word by Word, proved by the Statute Roll, the very ſame Roll that hath *Confirm. Char.* the next *Fol'* the Monks did miſtake this Statute. No Man will believe a Monk that wrote Seven-ſcore Years after againſt a Record.

I

I shall shew what was sent over into *Flanders*, and that was *Confirm. Char.* and did bear Date the 10th of *October*, the King being then in *Flanders*, and there sealed by the King himself; that it may appear there is no manner of question of it: Here is the very Copy of the Statute Roll; and the whole *Confirm. Char.* 8. recited, *verbatim*, in Witness, 10 *October* 25. of Our Reign: Whereas *Walsingham* saith, that this very Charter, Word for Word, was sealed in *Flanders*, under the Great Seal of *England*, 5 *Nov.* 25. of Our Reign, and sent back into *England*: For this Statute Roll against that Time, doth expresly say, that this was the Charter that was sent over into *Flanders*, and hath the same Teste, Word for Word; and this was sent back into *England* to confirm it further. The next Thing that followeth upon the same Date and Roll, is the Pardon of the Earls; this was dated 5 *Nov.* after this *Confirm. Char.* was sealed.

They have not yet shewed that this Statute *De Tallagio non concedendo* was ever entred upon the Roll; nay, it could not be entred: Who would think that an Extract of an Act of Parliament should be entred upon the Roll? If they can quit Mr. *Walsingham*, they are wise Men; they must carry the Practice of all Times. Where did ever any Man see that this Act of Parliament was ever shewed to discharge Men of the Defence of the Kingdom since 25 *Edw.* 1? Did no Body know this Mystery to plead, not to defend the Sea and their Land? Did no Man hear of this 'till now? Shall this, against all the Practice of the Times ever since, take away such a Flower of the Crown, as to compel People to grant Aid for the Defence of themselves? A harsh Construction!

If this should be true, it would destroy even Acts of Parliament: To what Purpose is that Statute made of the 25 *Ed.* 3. if that were totally taken away before? And if no Aid, those Aids *Pur Fille Marrier*, *&c.* are taken away also.

Nay, if this be an Act of Parliament, when was it made, before the 25 *Edw.* 1. or since? It appears not when: It is *individuum Vagum*, I know not what, but in Truth an Extract. Nay, if this be an Act of Parliament under these Words, no Talliage is equivocal as well as Aid, that is proper Talliage that is laid upon Villages. 25 *Ed.* 3. 100 *Avowry. Entries* 406. *b.* 8. *Ed.* 2. Execution 15 *Ed.* 3. 106 *Avowry.* A Rent may be released by the Name of Talliage: No Mention of this in all Ages.

Then it was objected, that 25 *Ed.* 1. *M.* 7. *Pars.* 2. expressed in the King's Proclamation 12 *Aug.* before ever he was going into *Flanders*; that he was sorry for the Aid demanded of his People.

Let him remember for what Reason he did demand those Aids which he was sorry for; they were Aids granted, not for the Defence of the Kingdom alone, but for the Defence of the Kingdom mixed with foreign Defence, by reason of Wars with *Gascoigne*, *Wales*, *Scotland*, and elsewhere, for that it was for foreign Wars; upon this followed the Commission, 26 *Ed.* 1. *Pat.* that went to all the Kingdom which makes for us.

There are three Parts in that Commission: *First*, To observe if the Officer did any thing without Warrant, they should return it. *Secondly*, If done wrong, the King would answer it. And, *Thirdly*, They should be satisfied with Reason if the King did warrant it; the Answer thereunto given was upon another Construction made of the Words of the Record in the Parliament 2 *Ric.* 2. The Cause was this; the Chancellor declaring the Cause of Calling the Parliament, he doth shew, that the King, in the End of the last Parliament, had assigned some Lords to be of his continual Council for the Year following; the Number was Seven that were signed, and were Sworn to give good Council for the Aid of the Kingdom: These Counsellors treating of the Peril of Enemies from all Parts, and the Matter requiring Dispatch, they durst not undertake the Ordering of so perilous a Thing, therefore ordered a Grand Council to be assembled. The Grand Council was assembled, to whom was shewn the great Peril and Mischief of the Kingdom apart by War, by Land and Sea; and that nothing was remaining in the Treasury for the Maintenance of War: For a final Conclusion, that they might remedy this Mischief, they say, that it cannot be done without Parliament; this was the *English* of it, and in the mean time an Army might be landed: And for the present Supply of the Charge of such an Army, lent the King great Sums, which by great Security and other Things, he did engage himself to pay: Upon this the Lords did advise how it might be done with the least Charge to them all, and how the King's Right of his Crown, and other Inheritance beyond the Seas might be safe, and the King, Kingdom, and themselves defended, to the Confusion of all their Enemies: To this Purpose the Treasurer was directed to be ready to shew what was expended the next Parliament, to be bestowed for the Marches of *Scotland*, *Wales* and *Ireland*; and said in that great Council, they could not remedy that Mischief without charging of the Commons, which cannot be done, say they, without Parliament.

It is plain, by the Story of that Time, and the Words of the Chancellor, that it was for the Maintenance of the War in *France*, *Scotland* and *Ireland*. And though the Defence of the Kingdom be mentioned with these Wars, yet the main Supply was for these foreign Wars.

In the next Place, a little before in the Parliament, the like Aid for the like Occasion desired by the King, 2 *Ric.* 2. *M.* 24, 25. *Parl. Roll.* What did the Commons say now? They ought not to bear such foreign Charges. The King gave them a fair Answer, admonished them, for *Gascoigne* concerned the Kingdom of *England*, for that is as Bulwark to the Kingdom of *England*: *Burbacon* is an Old *Fort de Hors*; for the Aid demanded in that Parliament was with this Relation as consonant, both together concerned the Defence of the Kingdom, that they might be Bulwarks for the Kingdom of *England*.

In the next Place, who spake these Words? The Lords, say they, would not remedy the Mischief without Parliament. The Lords assigned by the Parliament, they must not do it; it is dependant upon the other Part, the Lords could not do it that Way.

But

But shall we come home, and speak plain *English?*. We know this was 2 *Ric.* 2. a young Prince. It doth appear expresly, that these things were brought into the Parliament for Advice, which were fit for Royal Authority, for Expence for Wars, and for Counsel, and for Governing of his Realm. It appears further, by the very Chancellor's Speech, that the Council had been heretofore ordained for the Guarding of the Kingdom, 2 *Rich.* 2 *Rot. Parl.* This Parliament taking notice of the King's tender Age, they took much Power unto themselves. There was to be a Council for the Governing of the Kingdom in general, but the Councellors should be chosen to govern the State for two Years, and these Councellors not to be removed from the King without the Parliament. And more then, that his Treasurer was to be govern'd by the Parliament, and his Counsellors chosen in Parliament.

At the End of the Petition of Right, neither Lords nor Commons, jointly nor severally, can make a new Law without his Consent; and that your Lordships, and none but you are the Interpretors of the Law, Wise King *James* did declare.

The next thing considerable is, *Tempus Belli*, to defend it. It is when the Condition of the Time is such, that the Current of Justice and Law is by such Violence stopp'd, as Judges do not sit, nor Sheriffs dare execute their Office, nor any Court open, especially the Chancery, which is *Officina Justitiæ.*

It was said there was a Time when the King might command this Levy, to which they did agree: They did agree the King might command this Levy when he hath proclaimed a War, though no Stroak strucken, no Danger, nor Armies, nor Opinion of any Force coming; this doth put it into the King's Power by their own Consent. And by all Reason, 19 *Edw.* 4. 6. *Brian*'s Opinion. How many Wars have been proclaimed in this latter Age. No War denounc'd *M.* 88. though consulted of in *Spain*, and they did not think fit to denounce a War, saith Sir *Walter Rawleigh*, those Days are past. Now they begin by the Sword, not by the Trumpet or Herald.

In the next place they say, if the King be in the Field with his Banners display'd; this they say was *Tempus Belli.* Can not the Course of Justice sit then, but there must be a Peace? 39 *Edw.* 3. *Rot.* 10. Did not the Court of Justice sit then? Our ordinary printed Books shew what Causes of Law then were. And in *Henry* the 6th's Time, in all our Civil Wars, and in *Hen.* the 7th's Time they sate then. But the true Time, to make it *Tempus Belli*, is to make a War against the King. In the *North*, towards *Scotland*, when the Enemy approaches, is it necessary that it must be a Time of Peace because the Court of Justice sits at *Westminster*-Hall? There may be then as strong War in the *North* and *West*, as ever was in *England*, when the Court of Justice sits here, that *Tempus Belli* may be in some Places of the Kingdom, and in some Places not, appeareth 33 *Edw.* 3. and who shall discern if there be any Danger?

They agreed in general the King may do it; and that the Power of Discerning is in his Majesty, I shall leave it in the King 'till Mr. *St. John* finds a Third Person to do it.

13 *Hen.* 4. for the Murage, they say that this doth only charge those things that are *venalia*, for Men are not compelled to go to Market.

How shall they then live? True, it is not compulsory to go thither, but it is compulsory to pay the Money.

1 *Ric.* 2. *M.* 176. *Pars.* 2. A Petition from the City of *London*, to have all Owners of Lands to be rated with them in the Danger of Wars, not having Lands in Tenure to do it.

This doth make for us; that not only Merchants, but every Man in the Lieu of Tenure to do it. The Lord St. *Albans* saith of *Hen.* the 7th. that Kings may fall from their absolute Power when they see Cause, but not be compelled to do it.

They say Supplies are called those things, *sine qua non*, the Kingdom may not be defended: And because there is a Way by Parliament, therefore no other Way.

They say it will not be affirmed, that the King hath the same Power for an Offensive, as Defensive War: I affirm, nor defend nothing; the Parliament is a great Body, and the Kingdom may be lost in the Interim.

Then they alledge there is forty Days for Esoinage, and the like for Parliament. Many times things are impossible, and inconvenient to be done by Parliament.

First, Impossible, the Necessity may be such that it will not brook the Delay of a Parliament. 48 *Hen.* 3. Summons to the Cinque Ports. The latter, they come Day and Night to the King when any Danger is.

It hath been said, that there are seven Months between the Teste of the Writ and the Ships being at *Portsmouth*, in that Time a Parliament might have been summoned.

The great one, and the true Answer is, that this resteth still in the King's Judgment. If the King hath Intelligence that foreign States will set out the next Spring a Fleet: And for Conveniency of his People sendeth seven Months before hand to raise this Aid: Hath the People any Cause to complain of this? Mr. *Hambden* hath not paid the Money yet, being two Years after.

If they should have gone by Parliament, see what Rubs in this Case might be. Forty Days is spent before the Parliament sits: Then when they meet in Parliament, there is a Ceremony in choosing of a Speaker, Solemnities in these take up Time, then the Lords take things into Consideration, then they must have Conferences and Disputes with both Houses before they agree, the Kingdom may be lost: In the mean time, suppose this comes in some reasonable time, to make Assessments first in the Cities, then in the Burroughs, then particular Assemblies, then Divisions; and after all this, there must be Collectors appointed to Levy the Money; what a great deal of time is spent in all this, every Man may see.

Our County, say they, is an Inland County, and they cannot find a Ship suddainly; and therefore the greater the King's Mercy and Favour to lend them his Ships instead thereof. When all this is done, and Ships provided, reasonable Time must be allowed to sail from the *North* to *Portsmouth*; but this doth solely rest in the Judgment of the King.

31 *Hen.* 8. *cap.* 8. An Act of Parliament not to take away any of their Inheritance or Lands.

Here is no Lands or Goods taken away, only let them contribute to the Defence of themselves, and all is done. Mr. *Hambden* hath had none of his Goods touched.

They say, for Shipping it was done in King *John*'s Time at the Subjects Charge; but they do not meddle with Land Service at that time. 15 *Johi's* 13 *Dorf. Rot. Claus.* King *John* had Business beyond the Sea. That this was rather for beyond Sea, then the Kingdom, appeareth thus. The Writ saith to have such Ships as would carry Eight or Six Horses, and that must needs be for some foreign Service, and not for Land Service at Home. And it appeareth, *Rot. Claus. M.* 1. *Dorf.* the King was well landed at *Rochel.*

For the Terms of the Law, which concerns Hideage and other things, *Bract.* 37. and some Services introduced by common consent, I will not trouble you with it.

To come to the Case of the Abbot of *Bobertsbridge*, that Arms was laid on by the Statute of *Winchester.* That will not serve, Arms was long before that Time; they say the Assess was in time of War. The *French* had burnt *Dover*, 23 *Ed.* 1. and that the Assessment was not made by the Kings Authority; but it appears it was by the King's Authority, by Vertue of his Writ. 25 *Ed.* 1. *Lo. Treas. Rememb. Layburne* was Admiral of all the Kingdom; and was *Custos Maris & Marintine* for some Parts; but that it was for Land Service, and not for Sea Service.

Custos Maris & Marintine are Terms convertible; he that doth one, defends the other.

They have left no Stone unturn'd to take away the Force of this Case. They tell us now the Clergy was put out of the King's Protection this Year, and so it appears in the *Exchequer*; but they have not shewed any such Writ delivered into the *Common-Pleas*, only *Spencer*'s Word of Mouth, that they should have no Privilege there. Suppose it were so in other Courts, 25 *Ed.* 1. it appears plainly, that the Clergy came all to be in the King's Protection, and gave Ransoms; and this Cause was not 'till *Michaelmas* after. And whereas it is said, this Abbot's Case did only concern the Land Service, it proveth both the one and the other Money for the Sea Service; Horse and Man for the Land Service.

Oh! they say, 29 *Ed.* 1. *Mag. Char.* was not observed; and instanc'd *John De Gray* and *Phillip*'s Case.

Whatsoever was the Practice of that Time, not material. And for that of the Charter of the Forest, they say, though it be there said, *Nullus omittat vitam vel membrum pro venatione nostra*, yet one was beheaded.

But what is all this to the safe Custody of the Sea? Nay, they have not shewed your Lordships, that there was any thing in that great Charter for the Custody of the Sea, 51 *Hen.* 3. *Fol.* 84. *Britt.* 117. *Flet. & Fitz. Her.* Lord *Coke* on *Litleton.* Perhaps question might be about this in the *Exchequer* at this time, the Case of *Shoreham* discharg'd of Land Service, because they found Shipping.

They that were nearest Danger, most fit for that Defence; as the King in the tenth Year of his Reign, sent only to Maritime Towns.

2 *Ric.* 2. *M.* 42. They say *Beverly* was discharg'd, because it was an Inland Town, therefore no Inland Town ought to pay. A Writ directed to *William Russel*, Admiral, commandeth only the Sea Coasts.

13 *Ed.* 3. *M.* 35. *Rot. Claus. Part.* 1. afterwards discharged, because of other Service. And for that of *Beverly*, a Complaint that they were to contribute to such a Town to find a Ship; they say they have Privileges; but the special Reason why it was freed, was for Reverence the King did bear to *St. John De Beverly.*

Mr. *St. Johns* knows it; 120 Ships granted to the two Admirals, *North* and *West*, for Service beyond the Sea. 31 *Ed.* 1. *De inveniendo* Horses, because of great Business in his Wars Abroad, he bound them to make Gallies for foreign Service. True, the King at this time was in *Scotland*, and kept his *Christmas* there; then come to 31 *Ed.* 1. as though he should do it by Service of the Cinque Ports: *Newcastle* upon *Tyne* at their own Charges; but when not *Scotland* at the King's Pay, then they came to this, 10 *Ed.* 3. *M.* 6. *Rot. Claus.* sent for Ships into *North-Wales*, and *South-Wales*; the Writ did say, that Wages used not to be paid for such Service; and did express in his Writ, Satisfaction should be given unto them, not of Right, but *De Gratia*; and reciteth that Clause, that the People were bound unto it; 2 *Ed.* 3. 16 *Dorf.* That there should be three hundred Pounds to relieve the Fishermen, the King should not have it of the People of that Town: They say all these Records being Matter of Fact, did occasion the Making of many Statutes of Redress, 14 *Ed.* 3. *cap.* 1. great Aid for *Scotland*, *France* and *Gascoigne*, 15 *Ed.* 3. *M.* 9. contrary to *Mag. Char.* 22 *Ed.* 3. *M.* 4. 36 *Ed.* 3. *M.* 9. no Goods to be taken without consent; these are things comprehended within the Petition of Right, 37 *Ed.* 3. *M.* 2. speaketh only of the great Aids: 23 *Ed.* 3. Gallies made; they say the King paid for them; that is, upon the King's own Promise; but they say that is *Nudum pactum.* Then they say, is the King's Word nothing? 13 *Ed.* 3. *M.* 9. called a Parliament, propounded as on the King's Part; they are not liable to the Defence of the Sea. If the Commons have nothing to do with the Gaurd of the Sea, why is it propounded unto them?

20 *Ed.* 3. *M.* ---. That the Guard of the Sea, hence forward, be made at the Charge of the King, as hath been promised, and there the People discharged. They do not affirm in their own Case there was any Right, 21 *Ed.* 1. *Rot. Franc. M.* 9. that is, on Merchants Wools, and paid Poundage for a certain Time, and to cease *tam quam, &c.* 22 *Ed.* 3. that is, upon a Sack of Wool may cease.

All these things were granted for foreign Wars; and if the Cause should cease, then the Thing should cease. 2 *Hen.* 4. Commission for Building of Gallies, the King would confer with the Lords about it: Then 19 *Hen.* 4. 17. 21. touching the Guard of the Sea not bound unto it.

4 *Hen.* 4. 28 *M.* Tonage and Poundage not to be taken without common Consent. A Protestation of the Commons doth not bind the King; and concluded with *Nullum tempus occurrit Regi.*

The First Days Argument of Mr. Holborne, *on the Behalf of* Mr. Hambden, *before the Judges in the* Exchecquer-*Chamber, in the great Case of Ship-Money.*

May it please your Lordships,

IN Obedience to your Lordships Commands, I am ready, though not as I desire, nor as the Cause deserveth, to argue it; it being impossible for one in so short a Time, to be fitted to make a Reply to the Life of the Cause of an Argument; so long, so learned, and so full of Records, wherein neither Labour nor Learning was wanting. I may say of him, as one said once, *Etiam hæc defensa fuisset.*

I shall now rather shew your Lordships what I should do, than what I shall for the present. I shall proceed well, hoping the Subject will excuse, and your Lordships greater Care supply my Defects, which have been without any Default.

My Lords, the Case upon the Records stands thus: In my last, there issued out of the *Exchequer* a Writ of *Scir. Fac'.* to the Sheriff of *Bucks*, to warn my Client to shew Cause, why he should not pay xxs assessed upon him by the late Sheriff of that County assessed upon him, for the finding of a Ship of War mention'd in the Writ, 4 *Aug.* 11 *Car.* sent into that Inland County, and the xxs certified into the *Chancery* to be unpaid and sent over into the *Exchecquer* by *Mittimus*, to be levied there. Mr. *Hambden* hath appeared, and demanded Oyer of the Writ, 4 *Aug.* on the *Mittimus*, *&c.* and upon the Reading of them all, hath demurred in Law generally; and the King's Counsel have joined in Demurrer; and I humbly conceive Judgment ought to be given for my Client.

My Lords, I shall proceed to the Stating of the Questions, which are Three: The First, which is a chief one, is this; Whether upon the whole Record the Case do appear for the King; that 4 *Aug.* 11 *Car.* being the Day of the Date of the Writ, the King could charge the County of *Bucks* to find a Ship at their Costs and Charges, by way of Admittance? If he could, yet whether the King can give Power to the Sheriff to assist the County as in this Case? By a further Admittance; admit that the King have Power to charge and assess, whether he can levy the Money unpaid by this course of *Certiorari* and *Mittimus*, as he might do if it were his own proper Debt? Of these three Questions, whereof the two last remain untouched, and not argued by us, I chiefly intend to insist;

For the first Question, though argued fully, yet I doubt, as yet, whether it standeth rightly stated; not but that I conceive Mr. *Sollicitor* had good Colour to state it, as he made it partly by the Record, yet somewhat out of our Admittance; yet by Admittance only, and so expressed.

Again, another Reason which I conceive, there was a Necessity on the King's Part, so to make it as Mr. *Sollicitor* stated it, or else to wave the Debate.

The first Question is, whether or no upon the whole Record, the Case so appeareth for the King, that 4 *Aug.* 11 *Car.* being the Date of the Writ, the King could by his Writ charge the County of *Bucks* for the finding of a Ship of War.

This on his Majesty's Part hath been stated in these Records, whether the King finding in his Judgment the Safety and Preservation of the Kingdom and People, necessarily and unavoidably to require this Aid commanded by this Writ, might not command such an Aid by the Writ, for saving and preserving of the Kingdom and People; wherein, I confess, there is not one Word but hath its Weight.

As to this Question, thus made, I shall take three Exceptions, which are things taken in to be granted, which I shall not agree if I can avoid them.

That at least in the King's Judgment, the Safety and Preservation of the Kingdom was in danger'd, 4 *Aug.* that is, that the Kingdom was in danger to be lost. If it be so that the Kingdom was in such Danger, and that the Danger was so instant and unavoidable, that it necessarily required this Aid; and by this Writ, that is, it required a present Charge of Shipping presently, 4 *Aug.* 11 *Car.* to be forthwith commanded, and that the Occasion could not expect a Parliamentary Consideration and Supply; these be things wherein we differ. And, lastly, for the Truth of it, the Certificate was sufficient in a legal Way.

My Lord, to find out whether the Record doth warrant these three things of great Importance. First, I shall seek for them in the Writ, 4 *Aug.* and next in the *Mittimus*; there is no Colour else where to look for them.

To open the Writ rightly, will clear these Differences, as I humbly conceive without any great Argument. And first, for the Writ dated 4 *Aug.* 11 *Car.* I shall read the Words, wherein the Danger of the Kingdom is expressed, and then explain what Words give that Sense that is taken out of them.

Quia datum est nobis intellig' quod prædones quidam Pirati & Maris Grassatores tam Nominis Christiani hostes Mahumetani quam alij Congregati Naves & bona & mercimonia, non solum subditorum nost'. verum etiam subditor' Amicor' nost' in Mari quod per Gentem Anglicanam ob olim defendi consuevit nefarie diripientes, & spoliantes: Ac ad libitum suum deportavere hominesq; in eisd' in captivitatem miserrimam mancipantes. Cumq; ipsos. conspicimus Navig' in Dies preparantes ad Mercatores nost' ulterius molestand' & ad Regn' gravand' nisi citius remediam apponatur. Eorumq; conatui virilius

lius obvietur. Et Consideratis etiam periculis quæ undeque his guerin' temporibus imminent. Ita quod nobis & subditis, nostris defensionem Maris & Reg' omni festinatione quæ poterimus accelerare convenit nos velentes defensione Reg' tuitione Maris securitate subditor' nost' salva Conductione Navium, &c. Here are the Causes and Occasions, all that comes after is not material to the stating of the Question.

My Lords, in the opening of this Writ, it is true, there was mention of loss by Merchants of some particular Members of the Kingdom. And this loss by *prædones Pirati quam Mahumetani & al'*, and though *alii* yet Pirate still and no more, then it saith *ipsi*, still those Pirates daily prepared Ships, but not armed with Men. What to do? To molest the Merchants, and *ad gravandum Reg'* as Pirates still hitherto. I conceive there is not a Word of Danger from any Empire, but from Pirates; not a Word of Danger to the Kingdom, but to Merchants; however, all this is *quod intelleximus*, the Record goes thus, *Consideratis etiam periculis, &c. emanen'*. This part as I conceive is not so positive, the Dangers are but *Consideratis*. Nor the Danger to the Body of the Kingdom, no Word of that, or that to the Kingdom; yet nothing in point of Safety, but only in point of Molestation, none of all these appears. And besides, the Clause is too general, not expressing any particular Danger, from whom or how. However, be the Danger to the one or to the other, be it to the Kingdom or to the Merchants; be it for Trouble or Safety, hitherto I may say there is no mention of any such instant Danger, as necessarily did require this instant Command in the Writ, not so much as in the King's Judgment. For ought that appears, a Parliament, even in the King's Judgment might have been called, and consideration taken for Defence, here be all the promises upon which the conclusion must arise; and hitherto nothing material to make a Danger to the safety of the Kingdom, and so instant, that a Supply *nunc aut nunquam* must come in.

Although the Promises, I conceive, are only considerable, yet the Conclusion will be but this, *convenerit accelerare*; but it is fitting to hasten; but no such Necessity, though it be *convenit accelerare defensione Reg'*. If that were material, it cannot be construed, but with relation to the Premises on which it is Built. And whether in fear of Trouble, or Danger, or Loss, *non constat*. and tho it be *cum omni festinatione*, yet it is *qua poterimus*, and that is, *possimus quod jure poterimus*, that is with all the haste that by Law you can make, which way this is, your Lordships have heard.

Now, my Lords, it appears on the Record, that there was no such instant Necessity, but that a Parliament might have been time enough; for that it was observed between the Teste of the Writ and the Rendezvous, there were Two Hundred and odd Days, where a Parliament requireth but Forty, in the remainder of these Two Hundred Days, the Parliament might have considered of the means of Defence; but I leave it to your Lordships to judge, notwithstanding those expences of time cunningly reckoned up to your Lordships by Mr. Sollicitor; and though it be true, that things are often times long infecting, and in deliberation, yet Nature tells us they can be sooner. If there be a necessity we know that will Force.

I have but opened this Writ, 4 *Aug.* I am now come to the *Mittimus*: The only doubt which I conceive in the *Mittimus* is, that where the Case stands but thus in this Writ, is recited the Tenor of the Writ 4 *Aug.* And then the Writ goes on and saith, *Quia salus Reg' periclitabatur*, and that is all the Clause in the Record that gives colour to the Case so to be made. And to the whole Record we have Demurred.

Here it hath been said we have confessed all by the Demurrer; and if that hold not, the King, who is the Judge of the Danger, he hath said so, he hath certified so under the great Seal, and on these depends the weight of both these Processes.

To this I have many Answers, but I shall select a few from many others on which I shall rely. My first Answer is this, Here the Words are, that *Salus Reg'. Periclitabatur.* These Words in shew seem to be positive, but in substance but Relative; and is rather but a Comment on the Writ, or an Abstract in point of those Dangers mentioned in the Writ, for the Clause was brought in on the return of the Writ; and if we have the Writ it self, the comment thereupon or further explanation thereof is not material.

My Second Answer is, I doubt, I say no more if the King put particular Reasons into the Writ, 4 *Aug.* whether the Law (I speak of legal Course) doth permit any after Writ to put in further Clauses of the same Nature with the former to the same end.

If the Case be thus, then our Demurrer will be no Confession of any such Danger.

In the next place, admit the Words in the Writ had been positive, and materially expressed; yet according to our Rules of Law, it cannot make use of that Sense they are now applied unto: For at the best, the Word *Salus* being only proper to a Physical and Natural Body, is applied here to a Body Politick. It is but a Metaphor which the Laws will not indure in Writ, for it would bring in great Mischiefs. In Writ and in Pleadings Metaphors are Dangerous, we know not how to take Issue upon it, and therefore is not regularly allowed; but I leave it to your Lordships Judgments.

There are no Words of the Danger of the loss of the Kingdom, that is, such instant Danger, for apply the Words to a Natural Body as *Salus. J. S.* is in Danger, it doth not presently imply, that he is in such instant Danger of Death. A Doctor will say a Patient hath not his Health, yet no Danger of Death, it is the common Speech, the same Sense it must have in a Body Politick. If the Words were good, and did imply a Danger, yet not such a Danger as may hazard the loss of the Kingdom; for the Words are only *Salus Reg'. Periclitabatur*, and the thing may be never in Action which Twenty Years hence may lose the Kingdom. A Man may say, that the safety of the Kingdom is in Danger. At the best, the Words will not make the Case as it is put.

Mr. Sollicitor out of his great Care searching into every hole, where he thought we might peep out, doubting our Demurrer would not be a confes-

confeſſion ſufficient, he takes in another help, which is this, that if this be ſo declared by the King's Opinion, and under the great Seal, that this alone had been ſufficient for this, there hath been urged, the legal Weight of the King's Affirmation and of a Certificate under the Great Seal; and both be concluded in this Caſe.

My Lords, before I anſwer to this Matter, I profeſs for my Client and my Self, that we make no doubt of the King's Word, and believe there was Danger, though not ſo apparent to us: but only both to allow it as ſufficient in a legal Proceeding, and that his Majeſty who in his own Worth deſerves it, by after Princes, might turn to a Diſadvantage.

That which we urge is, how far in form of Law, this may be allowed, we ſhall argue, and that briefly, for the Caſe needeth no help.

For this point I take it for leave, under your Lordſhip's Favour, that in legal Proceedings, and regularly, his Majeſty's Opinion, and Certificate in things of Fact is not binding.

Yea, but they ſay, it is matters of State and Government.

For that to ask the Queſtion, whether or no raiſing Forces thus, is left to his Majeſty, that ſtands and falls on the main Cauſe.

My Lords, I do agree in divers Caſes the King's Affirmative ſhall be concluſive in Matters of Fact, that is, when it is not ſo triable elſe where as in a Writ *de Rege inconſulto*, to ſtay Proceedings when the King Certifies matter of Fact, the Writ muſt be obeyed, but then withal the matter is triable elſewhere. But theſe Caſes will not match ours. As for that great Caſe 20 *Ed.* 1. concerning the Lords *Marchere*, that the King was *Recordum Superlativum* to ſay no more, it is but an Allegation of the King's Counſel.

My Lord, the Reaſon whereon I ſhall moſt rely to void the Senſe of the Writ, *Salus Reg' periclitabatur*, is thus, That though it doth now appear by the Mittimus, that 4 *Aug.* the Kingdom was in Danger of being loſt, yet it is not ſufficient in Law, nor can our Demurrer hurt us; becauſe it muſt have ſo appeared in the Writ, 4 *Aug.* it ſelf, for the Writ and Declation in Law muſt ever contain preciſely ſo much of matter as is neceſſarily true to warrant the Demand.

In this to ſee the Miſchief, that a Danger now declared makes the Caſe, how ſhall the Subject know by the Writ 4 *Aug.* whether to obey or no. The Law binds not a Man to Divine; And if this ſubſequent Declaration ſhall mend the Caſe, then the Subject ſhall be a wrong doer, *ex parte ſeo*', which is againſt the Reaſon of our Book. I ſhall remember the Caſes put by Mr. *St. Johns* to another purpoſe. A Commiſſion ſent forth without Cauſe expreſſed, that Commiſſion is not good, and it is not denied by Mr. *Sollicitor*, that a Cauſe maſt be ſet to make it good in Law. And if your Lordſhips be pleaſed to look on the Precedents, as I know you will, which the King's ſide ſhall bring unto, your Lordſhips will find the Danger turned from the firſt Writ to the laſt. Nay, in the Writ of this Year I am told it is ſo out of their Opinion, fearing the Writ. 4 *Aug.* was not ſo good as they would have it. They put it into the Mittimus, which they knew could not do good, but they did it only to Cavil.

But laſtly, admit the King had ſaid the Kingdom was in ſuch inſtant Danger of loſs, and that there was an inſtant neceſſity of the Command this way, and that this could not have expected Conſideration in Parliament yet if the contrary appears in the Record, then neither was the Demurrer a Confeſſion, nor the Certificate Concluſive.

I could ſtand on many other things, as that the Danger ſhould be more particular, for ſo are all the old Precedents, to ſay, *Salus Regni* is in Danger, is too general, as in a Protection, they muſt alledge, in what place the Party protected is imploy'd.

Secondly, in the Mittimus it ſhould not be that *Salus Reg' periclitabatur*, but how, *Salus Reg' periclitabatur*, I believe it is meant for, but we muſt now look to rules of Law. True it might have been in Danger before, but not true as in the Caſe of Indictment upon the Statute of 8 *Hen.* 6. for an entry upon *Whiteaker exiſtens tenement.* J. S. the Laws will not take notice of the time, without ſaying, *tunc exiſtens*, at the time of the entry.

My Lord, in the Concluſion upon this Diſcourſe, it appears, I have ſo pared the Caſe, that in the Writ dated 4 *Aug.* there appears no Danger of the Kingdom being then loſt; and that in the Mittimus there are no expreſs Words of Danger to the Kingdom inſtant or unavoidable. If it were ſo, it cometh not time enough, for it ſhould have been in the Writ dated 4 *Aug.* And if there had been ſuch expreſſing of ſuch inſtant Danger in the Writ, 4 *Aug.* and in the Mittimus; yet not material if otherwiſe on Record. And laſtly, this Certificate doth not conclude us.

Thus then to ſhew what the Caſe is, and what it is not I have put out of the Conſideration of the Caſe, all Conſideration of ſuch Danger to the ſafety of the Kingdom, as are unavoidable.

I have left nothing in the Caſe but Conſideration of the protecting of Merchants againſt Pirates; but for ordinary Defence of the Sea, that the Caſe doth fall thus. I humbly conceive, that in this place, I might, without further Argument, with ſome Confidence venture my Clients Caſe upon your Lordſhips Judgments, notwithſtanding any thing objected on the King's Part.

Then, by your Lordſhips Command I ſhall proceed, having laid aſide the Mittimus and *Salus Regni periclitabatur*, and taking the Caſe only on the Writ, 4 *Aug.* which, as I take it is nothing of Danger to the Kingdom, but for protecting Merchants, and for common Defence, the Caſe ſtands thus.

That though there be no actual Invaſion, no known or declared Enemy; yet the King out of his Judgment, 4 *Aug.* 11 Car. apprehendeth and foreſeeth Danger to the Kingdom in point to be loſt; and that the Danger is ſo inſtant and unavoidable, that it requireth this Aid. Whether the King out of Parliament by his Royal Power can command this Supply?

I have endeavoured not to miſtake Mr. *Sollicitor*, it were an injury to requite him ſo ill. In my Argument I ſhall deſire leave to hold his

Courſe

Course, because the two main Questions are both of one Nature, though different in Degrees.

Our Question is, in Case of common good against Pirates. Upon the whole, my endis to shew that by the fundamental Policy of *England*, the King cannot out of Parliament charge the Subject, no not for common good, unless in some special Cases, and of a different Nature, or upon different Reason, nor for a necessary Defence, though in the King's Judgment the Danger be instant and unavoidable.

My Lords, in the debate of these two Questions, I have learned of Mr. Sollicitor not to say all that I could, but so much as is necessary, and as he hath chalked out the Way.

I shall inquire of this Power by Arguments upon a practice constant and allowed in time of good Government, when the Liberty of the Subject was not trampled upon. And shew it by Acts of Parliament, Reasons, and Authorities in both.

My Lords, I am now come close to the Arguments on the main; Before I begin, give me leave to profess that I am in a Dilemma. The Question will be, what the King can do in these Cases, by his Royal Power; it much concerns him. And I have learned out of a Speech of his late Majesty, what it is to debate such Questions. Not to argue, it were to disobey the Assignment of the Court, and to desert my Client and his Cause. For my Part, as your Lordships see I have labour'd to decline the main Questiston, I should be glad it might so sleep.

I shall not offer it if happily the Case falls off in the penning of the Writ, and not of the King's Power. I doubt whether the way of Argument shall do the Crown a disservice.

Out of my Duty to his Majesty, and Service to your Lordships, I humbly offer, whether your Lordships may not think it fitting to determine the Question upon the framing of the Case, before it be further argued, and here I shall rest, or upon your Command am ready to go on.

Here the Lord Chief Justice Finch *said, we do not use to judge of Cases by Fractions.*

My Lords, since it is your Command, I shall obey, and go on, notwithstanding the *bicornus Argumentum*, which on each side threateneth.

I hope his Majesty will excuse us for arguing of that which cannot else be determined. And as he hath given way to an Argument, I hope his goodness will excuse us, while we do our Duty for our Client. And if I err in my materials, or in the way of my Arguing, it is from the defect of my Wisdom, I cannot be Wiser than God hath made me, and not out of any disaffection to the Service.

My Lords, I hope neither his Majesty nor your Lordships will think it a Presumption if I make a strict inquiry into a point of a higher Nature, yet thus far I assure your Lordships, that if any matter or Consideration of State come in my way, I shall tread as lightly as I can, yet I must crave Liberty to pick out some to refer to your Lordships Consideration, and shall forbear those things that are unfit.

Here the Lord Chief Justice Finch *said, keep you within the bounds of Duty, as befits one of your Profession at the Bar at* Westminster; *and you shall have no Interruption.*

My Lords, I shall be very wary and tender. I shall now open the Division and Parts of my Argument.

My Negative Part is this, That the King cannot out of Parliament Charge the Subject, not only for the Guard of the Sea against Pirates; but also not for the Ordinary Defence of the Kingdom, though the King judge the Kingdom unavoidably in Danger to be lost. And in this I must take in the Defence, as well the Defence at Land as Sea.

My positive part is this, The King regularly is to be at the Charge for guarding the Sea against Pirates. And for the Defence of Land and Sea against Enemies, so far as he is able. And that the King hath Provision for both, especially for the Sea Service.

In the Prosecution of these two general Parts, I shall not only propose my own Considerations, but join them with Mr. *St. John*'s as I can further infer them or justify them against Mr. *Sollicitors* denial or Evasion.

And this Course will necessarily bring in many of his Arguments, which I would be glad to spare, if the Cause would bear it, because your Lordships should not think that I do nothing but repeat. In this way I shall humbly endeavour to clear each Part, by giving a reply before I descend to other Particulars. And where I conceive a new Objection, which will not fall within any former Answer, I will raise it and endeavonr to lay it. Into these general Questions will fall many others of great Consequence.

First, Such as not being the main, the main I will not draw upon particular Debates. Where there is any thing concerning State or Reverence, I hope to admit such, and save my Clients Cause.

Having thus unfolded my form of Argument. I descend to my Negative, That the King in none of these Cases without Parliament, can charge the Subject.

I will prove it from Reason, which is the Master of all Authorities, as Mr. *Sollicitor* said. And from Reason drawn from the Fundamental Policy of the frame of this *English* Government, in the necessary Attendance of the Publick Advice in Parliament upon the Royal Power.

And Secondly, from the absolute Property the Subject hath in his Lands and Goods, from these two things I shall draw my Reasons.

For the Political Advice in Parliament, I shall humbly decline all School Disputes. The *Spider* may make Poyson out of that which the Bee makes Honey. I shall omit the Consideration of some Points.

I shall take my Rise from the Judgment of King *James* 1619. in his Speech in Parliament, wherein his Majesty agrees, that the King *in concerto*, can do no more then the Fundamental Laws of the Kingdom alloweth; and I assure my self his Majesty desireth not more.

Before I enter into the Argument further. Whether the Law hath intrusted the King out

of Parliament in either of the Cases put. I here profess for my Client and my self, that while we speak of Political Advice, and how far a Governor subject to Error and Will may use a Regal Power, we do always with thankfulness to God acknowledge our present Happiness to be blessed with so just a Prince, and we fetch it from our Hearts. And were his Majesty so Immortal as he deserves, and that his Successors may be Heirs to his Virtues as well as to his Crowns, we should wish the Royal Power might be free from Political Advice and Unlimited.

Here the Lord Chief-Justice Finch *said, This belongs not to the Bar to talk of future Government, it is not agreeable to Duty, to have you Bandy what is the Hopes of succeeding Princes, when the King hath Children of his own that are like to succeed him in his Crowns and Virtues.*

My Lords, for that whereof I spake; I speak as looking far off many Ages, Five Hundred Years hence.

My Lords, because I might run into further Error, if I should not take your Advice, I shall slip over much, and the Sum of all is,

First, An Argument from the Policy of *England* in the necessary Attendance in the particular Advice in Parliament.

Secondly, It will be from the absolute Property that the Subject hath in his Goods, taking that for granted, against the Book of *Cowel* written in the Time of King *James*, who under the Word Parliament, speaking of the King's Power out of Parliament, saith, the Power in Parliament is but a Pious Policy; but this was complained of, and by Proclamation the Book was denied. Your Lordships also know of another Book that was sentenc'd upon the same Occasion.

The use that I make of it, is this. If the frame of *English* Government stands in the Royal Power, and the Subject hath Property in his Goods; Then the adequate Reason of both from these is, that therefore the King cannot without Parliament Charge the Subject in his Estate, though in pretence for common Good, than a Prince Five Hundred Years hence, if subject to Error or Will, may, if he will, upon any Occasion, or no Occasion, at what rate he will, Charge the Subject to the height.

As to the Advice Political, if the King can do this alone, what is become of the Policy, for which the Political Advice was made attendant to the Regal Power? *Ne Respublica*, &c.

Secondly, If the Subject hath a Property in his Goods, how is it in the Power of any one alone to Charge that? This Reason I must not leave, for on this the Case stands or falls, tho' there be many Books and Cases, yet all are from Reason, but especially when these stand together.

The Reason seems so strong, that it ever holds in ordinary Power. It holds *pro bono publico & pro Defensione*, he cannot make a Charge in ordinary things, and Mr. *Sollicitor* did not deny it the force of this Objection, the Answer stands thus.

Admit it be agreed, that by the Policy of the Kingdom, the King cannot charge the Subject, yet the King may, without Advice in Parliament, in Cases extraordinary; where, in his Judgment, Safety of the Kingdom is in instant Danger, and that the Business will not admit of the Calling of a Parliament. He fortified this part of his Distinction with strong Reason; for in such Cases Property must yield, for *Salus Populi suprema lex. & necessitas lex temporis & quod cogit defendit*, all are true; and to this some home Cases were put. As for building of Bullwarks upon another Man's Land, and burning of Corn in 88. and then foreseeing the Incounter of a Reply, he saith, the Subject must not say, that although the Power be in the King, he will inlarge his Power, for the King can do no wrong.

This *prima Facie* hath a fair Shew, and may go far; yet I hope to give it a full Reply: By this Distinction the whole Frame of Political Advice is, under favour, destroyed. I shall shew the contrary by Reason and Experience.

For the Distinction between Danger, ordinary and extraordinary, where the King doth think a Danger and a Parliament cannot be called: That Distinction, I say, must needs destroy the Policy in the whole; for as I conceive, the End of that Policy was but this; for else, what could it be? As it will ever be in the Will and Desire of a good Prince to do all Good for the Subject, to whom this Advice by Parliament can do no Hurt. So in what Case whatsoever should happen many Ages after, for that Posterity will look upon it, It should never be in the Power of any Governor to become subject to Will or Error, if he would so do to hurt the Kingdom. That Policy was not made so much for a good King, but looking what might happen many Ages after.

If you allow such a Prince Power extraordinary, and make him Judge of the Occasion then in Substance, though Provision be made, yet after his Declaration we must make further Provision.

Yet may some say here is a *Posse* and *Esse*; because he may, so he will.

True, it is unmannerly to say so of any ordinary Man; but under favour, it is allowable to say he may, if he will: Then if we leave him that Liberty, in such Cases he hath no Restraint, but his Will.

But it is said the Law will not presume any such thing.

The Law doth not presume a Will, but the Law-Books doth on Things that may be, as well as on things that will be. True, the Law-Books say, the King can do no Wrong, which proves, that it is possible for a Governor in his Inclination to incline to Wrong, and therefore the Law hath taken a Care that he should do none; for he cannot make a Disseisin nor Discontinuance. There may be an Inclination to Entry; but the Law, because he should do no Wrong, hath made this Act void, which is not a Disability in the King, but a Prerogative to make him come the nearer to the Divinity in the Attribute.

I shall offer the Judgments of several Ages in *England*; they ever thought it a dangerous thing, when they thought any Restraint fitting to allow any Exception whatsoever, though Cause for it, lest the Party, that was meant to be restrained,

ſtrained, ſhould be judged, and then go out when he would. *Thomas* of *Beckett*, he would not ſwear to the Laws of King *Hen.* the Second, unleſs he might put in this Expreſſion, *Salvo honore Dei.* The King never meant to violate none of theſe; but if that had been allowed, the Clergy had been Judges of that, therefore they would not be ſatisfied at this Day, we have an Experience of Kings themſelves in this Caſe.

I ſhall proceed to the Practice of our Kings. In all Acts of Parliament where they had ever a Deſire to declare the King limited or reſtrained, If they did admit of any Exception, they would have it in Words ſo punctual, that they would not admit of any Matter of Evaſion, for fear hereby his Proceeding might be at large. In the grand Charter of King *John*, *Nullum Scutagium imponatur*, there was a Clauſe of Exception; true, there was a Reaſon to except. How all (not as *Ed.* 1. would have done) ſaving the Aid due and accuſtomed; but the fair *Fits Chuivelier*, *&c.* and ſo was *Mag. Char.* though not in the Roll ſo careful to have no Words that give any ſuch Light.

I come to the Statute of 25 *Ed.* 1. againſt Aid, ſaving the ancient Aid due and accuſtomed; no doubt but in theſe Words there was no more ſaved than Law muſt allow the King, and the Parliament did ſo mean; yet when that ſame Act came out, the Subject was not ſatisfied, and therefore the Statute, *De Tallagio non Concedendo*, was made to take away the Exception in that Act. The Statute 28 *Ed.* 1. after the Confirmation of two Charters, and diverſe Additions, there comes at laſt a *Salvo Jure Coronæ.* Your Lordſhips will find in Hiſtory how all this was ſatisfied. And 29 *Ed.* 1. at a Parliament held at *Lincoln*, the King made a Confirmation without a *Salvo*, and yet none will deny the Right of the Crown; the Lords did intend to preſerve that. Thus your Lordſhips ſee the Opinion of this Kingdom, from Time to Time, how careful they ever were in all their Acts, to leave any Way whereby that which they did intend for their Good might be avoided. Now whether in this Caſe there might not be an Avoidance, I humbly leave it to your Lordſhips Judgments?

But before I go further, it may be demanded, how came in thoſe Savings into thoſe Acts, if the Parliament did not like them; and that they were put in here was a Truſt?

I ſhall give a double Anſwer in the Caſe; though a *Salvo*, yet it will differ from our Caſe, the King was not Judge there, but your Lordſhips to be Judges between the King and his People; but in this Caſe the King is to be Judge of the Neceſſity.

But to give you the true Anſwer, the Exception never came in originally from both Houſes, but from the Lords themſelves; this may ſeem ſtrange. It was the Difference of thoſe Times and ours in making Acts of Parliament; thoſe were not Times of granting all, or denying all, but to anſwer ſome as to ſome part, and ſometimes an Exception. And this being read, the Act drawn up upon the whole by the King's Council; and this Miſchief was found out, 5 *Hen.* 4. and from that time all Petitions were wholly granted or denied; ſo your Lordſhips ſee how theſe Savings came in, not by the Subjects, but by the Penning of the Acts by the King's Council. The laſt Example is in late Times in the late Parliament, in the Petition of Right now printed, which was long in Debate in Parliament againſt Loans and Billeting of Soldiers. After the Petition had paſſed the Lower Houſe, that thoſe things were againſt the Law, there was a Propoſition in the Upper Houſe concerning the Addition of a Clauſe of Saving. Upon the Journals it appears, that there were ſeveral Conferences between both Houſes where the Reaſons are mentioned, and do appear. And in the ſeveral Conferences the Commons did not yield, but the Petition paſſed abſolutely; and the Reaſon was, becauſe to put in that Saving was to undo the Petition.

To conclude this, to ſhew the Experience of ſuch an Exception, *ſine aſſenſu*, what it hath wrought in former Ages, as that of *Normandy*, though foreign; yet to ſhew what ſuch a thing did work there. It had the ſame Privileges we claim, and much of their Law came in here with *William* the Conqueror. *Lewis* the 11th taxed them high; they made Complaint, he, on the Complaint acknowledgeth it, and would Tax them no more but on great Occaſions: What followed thoſe Hiſtories plainly declare.

Having, as I hope, taken off the Bulk of that Diſtinction, I ſhall further ſhew how it doth not ſtand with the Practice of the Common Law. It is a Fundamental Rule in our Law, rather a Miſchief than an Inconveniency: For when nothing can be ſo abſolute in Government, but that there may be one Caſe or other wherein there is no Proviſion made, all the Care Men take is to chooſe the leaſt. Now his Rule is rather a Miſchief than an Inconveniency. Now Miſchief is that which perhaps may fall out never; or if it doth fall out, yet ſeldom; for if it were a thing that might commonly fall out, it were an Inconvenience. On this Fundamental Rule, the Law concerning Lands and Liberties is thus grounded; true, there might be a Miſchief for want of this Power in a Caſe extraordinary; but the Miſchief perhaps never, or ſeldom falleth out. But to allow the other would be an Inconvenience daily; I deſire your Lordſhips to caſt your Eye upon a learned Writer, *Comines*, Fol. 107, 131, 180, 181; wherein the Whole putting them altogether, ſpeaking of the Danger that might come to a State for want of Power, to raiſe Supplies for Reſiſtance, giveth a Commendation of the Government of *England*: True, he doth go ſo far, ſaith he, it is hard in a defenſive War, that any Preparation, which muſt be great, and long about, can be ſo acted, but that Prince may take a timely Notice, to call together, and adviſe by Parliament. In the Low-Countries, where they have Wars, though they have an Exciſe for ordinary, yet they do it not for extraordinary, without Conſent in Parliament.

My Lords, I go on, admit an Enemy ready to land; no Poſſibility for a Parliament; ſee how the Caſe will now ſtand? I ſhall leave it to your Lordſhips Conſideration, whether there be an abſolute Neceſſity, *Infra & extra*, to command, and then to ſhew there is a Command, and by what Law; and by that Law that is more ſtrong than the poſitive Law of the Kingdom; and doth work more in Point of Fear. I do put this by way of Admittance.

In

In that Case there goeth out a Writ, a *Mandamus Rogantes*; but it is in *Articulis necessitatis & quatenus a Mandamus Rogantes*, nor *sub pœna forisfact.* of all you can, but for your own Preservation, and Safety of the Kingdom. These Writs have gone forth in such Times, when there hath been a near Danger, and that hath served the Turn; for that Instinct of Nature, that did make some Part of the Kingdom desire Government for Preservation; the same Instinct of Nature doth inferr to Contribution for Defence: Nay, that is a stronger Law than ours; for that Law which ariseth from ones own Breast, as it doth command, so it doth compel: There need no Law without, when there is a Judge-within. Now in Times of Necessity, there is a Law that doth compel; nay, there is a stronger Penalty than our Laws can imagine; for our Laws can make but a Penalty of all that you have; but how? To the King. But when there is a Danger from an Enemy, there is not only a Danger of losing all that one hath, but of losing Lives and Lands, and all that we have; and all into the Hands of the Enemy.

Put the Case an Enemy was landed, to shew what the Powers are by our Laws in that Case for Defence; when there is particular Appearance of instant and apparent Danger, in that Case, particular Property must yield much to Necessity. These Cases our Books warrant as building of Bullwarks on another Man's Ground, and burning Corn. *M.* 88. there was an actual Danger, and then it was just to take Corn or Grass, or any thing to raise Supplies. But where do any of our Books say, that upon Fear of Danger, though in the King's Case, a Man can, without leave, make a Bullwark in another Man's Land. I do not read, as your Lordships may observe in this Case, of apparent Danger, the Power of the King; observe withal the Power of the Subject, and out of what Principle this doth grow; whether out of a Form of Law, or out of Necessity. In these Cases of instant Danger, and actual Invasion, it is not only in the Power of the King, but a Subject may do as much in diverse Cases. For if there be an actual War, the Subject may, without any Direction, do any Act upon any Man's Land, and invade any Property towards Defence: It is the Law of Necessity that doth it. Nay, in that Case, the Subject may prejudice the King himself in Point of Property. If an Enemy be landed, and a Subject take away the Horses of the King, he may justifie it in any Action; as in Case of a Castle or City, if they can justifie there was a Necessity, they may pull down the Walls, or blow up the City. In this Case there is no manner of Mischief if Subjects Goods be taken by the King, or any Man; and in that instant Necessity be imploy'd to the publick Good. *Levis timor* will not serve, for then a Man cannot enter for fear of Force, but such a Fear as arises from an actual and apparent Danger; then there can be no Loss to the Subject in that Case. *Secondly*, On the other side I shall shew, what Goods were taken for publick Use, were taken by way of Loan, and Satisfaction was made for them.

The Second Days Argument of Mr. Holborne, *on the Behalf of Mr.* Hambden, *before the Judges in the* Exchecquer-*Chamber, in the great Case of Ship-Money.*

May it please your Lordships,

TO remember the Question whereupon I left off my Argument the other Day, whether the King of *England* can charge the Subjects for finding of Ships at their own Costs, only upon the King's Judgment of an instant Danger.

First, Whether for Defence of Merchants against Pirates. *Secondly*, For ordinary Defence of the Sea: And, *Thirdly*, For Defence extraordinary against an Enemy, only out of the King's Apprehension of an instant Danger, which can not, in his Judgment, expect a Supply elsewhere.

Not to repeat, yet in a Word or two, I shall open my proceeding on this Question; and the rather, for that I find some Misapprehension, as if I had granted more than I meant, which is fit to clear.

The Sum of all was but this; That the King could not charge the Subject in any of these Cases. The Reasons I urged were but shortly thus: That the Subjects of *England* having an absolute Property in their Goods and Estates, and the Policy of Parliamentory Advice being to prevent Charge only then on no Occasion, one might err by Weakness, by Evasion or Will: That therefore the King could not charge, in any of these Cases, without Parliament; for that so he might charge, if he would, as on Occasion, so on no Occasion, as to 7 *l.* so to 17 *l.* That if this held in ordinary Charges, you may not exert extraordinary Occasions, though instant in the King's Opinion; for so a King intending to do nothing by his Policy without Parliamentary Assistance, he may, if he would so declare, to charge at Pleasure, on no necessary Occasion, or beyond all Proportion. This Distinction I indeavour'd to take off, shewing it did destroy the End of the Policy.

That there was no Necessity of such a Distinction here I shewed; there was one thing which I forgot for destroying of the Distinction from Necessity, and leaving the King Judge of the Necessity; that in Judgment, so to do it, is all one to leave it to him arbitrarily, if he will, which is that only which was intended to be prevented, if he will part of the Charge, if not the Principal in the Lower House of Parliament, against the Divine for his Sermon. I have seen the Charge, for holding the King had a Power in case of Necessity, and leaving the King Judge, and so at Liberty and Pleasure, if he will. This I do but touch here, for I must make use of it in the Main; and under Favour, shall make the Case somewhat like.

For

For the other two Matters, that when Danger is apparent, there was no need of positive Laws, I urged it thus; not admitting any thing wherein I desire not to be mistaken. Admit no Writ of positive Command, yet the Subject will be then under a stronger Law, which as it doth command, so it doth compel, that is, the Law of Necessity, which is the strongest of all Laws, with which the Judgment carrieth an Execution, and that this Law commandeth under as greater Penalty; for though not under Pain of Forfeiture to the King, which as to the Cause of Forfeiture, is but *ad terrorem*; yet under the true Pain of Forfeiture of all to the Enemy, from whom we must look for no Mercy.

Lastly, That if an actual Invasion and Necessity withal, that not by any Positive Law of the Kingdom, but of the general Law of Necessity which is above all Laws: For the publick Good, private Good doth yield on all Parts. Of these two last I have but touched here to shew what I mean; I shall speak further of them both towards my Conclusion, in my Answers to Mr. *Sollicitor*'s Objections.

I shall now proceed to make good out of our Books of Law, that the Law doth not leave it in the Power of the King (in respect of such a King as possibly may be) to lay any Charge upon the Subject, but only in such Cases where the Law hath made such Provision, that if he would he cannot miscarry.

In this Place, because it is taken for a Maxim, That the King can do no Wrong; and therefore the Law doth repose this Trust in him, of charging without any Danger at all. I shall shew, that the same Law doth take notice how, and in what Cases the King can, as much as in him lieth, do amiss; and where the Law is sparing to leave the King any Power to lay a Charge on the Subject, even in small things, when the *Quantum* rests in his Judgment. It is true, the Law doth allow the King to command Payment of Monies in some Cases, yet where the *Quantum* or Occasion is Subject to a Trial, the Ground of all this is, that the Law sees the King may incline to mistake, though as a King he can do no Wrong.

This may seem a Nicety, but under Favour it is clear. This resteth in the Distinction of a double Capacity of a King, as a natural Man; and to say in this respect he cannot err is strange! Humane Nature is not capable of that Prerogative at the best; and they are subject to natural Infirmities of the Body, and must die; even so of the Understanding and Will. And so you see the Law must take notice of possible Mistake in Government; and this Possibility in another is no Injury to a good Prince, but sets off his Merits with a greater Lustre: This is not only true for smaller things, but even in the greatest. How many Acts of Parliament have we in Print (of which your Lordships are Judges) declaring the King's Mistakes in the Acts themselves by way of Complaint, and providing Remedy for the Future, yea, in their own Times. To instance in one long since, cast your Eyes upon the beginning of the Acts of Parliaments of *Ed.* the Third's Time, where we find a Statute for the Government of the Realm.

As the Law saith, he may incline to mistake in his Natural, so it hath taken care, that in his politick Capacity he shall not. And therefore, lest possible Errors of the Natural Body should reflect on the Body Politick, the Law hath provided ancient Means to prevent it, which was a Writ of *ad quod damnum*; *Na. Br.* saith, that if any Damage be to the King's Subjects, the Patent is in Law nought: As if the King grants a Fair, and there is an *ad quod damnum* brought, to inquire what Fairs were kept by it; if found a Damage, the Patent is void: The Books are full of such Cases. It is true, that in some Cases, the Books do allow the King to lay a Charge upon the Subject, yet not in every Case for publick Good; but only in some few, which indeed have been ancient, and indeed of the very Essence of necessary Traffick and Intercourse, between one Part and another of the Kingdom; as Murage, to keep the Commodities sold the safer. Toll for a Fair or Market towards the maintaining of it. Pontage and Paveage, for the bettering of Passages. And in all these Cases the King may grant a Sum of Money to be paid; yet as it is in this common Good, some Body must have the Power to grant, and that can be none but the King. So if the King should grant on no Occasion, or howsoever, which is enough for me, a Sum too great, greater than the Benefit the Subject shall receive, it is void in Law. If the Subject hath not a *quid pro quo*, then no Charge; 5 Report; and in this Case there is a Judge of the Justness of the Proportion, besides the King: And this is when a Patent cometh to be questioned, if the Toll be laid too high, then the same Patent is nought. Thus then you see how far it is that the Law doth agree, that the King shall lay Charges upon the Subject, only out of common and ordinary Necessity, there must be some Body to have Power; but then there is a further Remedy of a Mistake.

Here, before I leave this, I will make a double use thereof. First to shew, that if the Law doth not permit the King any absolute Power in this Trifle, shall the King do it in so great a Matter, where you shall have no Judge but himself of the Occasion and Proportion.

I next observe, where the Law permits the King to charge in any Case arbitrarily, it is but where this Power doth arise by Original Contract, and Precedent Consideration and Agreement for Land; and then not *quatenus* as a Subject, but *quatenus* as a Tenent, only as *Ratione Tenuræ*, in respect of the particular Signory and Dependance, not in respect of the general Signory of the Kingdom.

My Lords, it is true, at the Common Law the King had a Power and Liberty to charge, 'till he was restrained by Statute, which was Aids *pur Faire Fitz Chivelier*, *pur file Marrier*, *pur Ransome*, and Taxing of ancient Burroughs: And these Aids too, were in respect of particular Signory, *quatenus Tenentes*.

The next thing that I observe is, that the Policy of the Kingdom so little delights in these Incertainties, though it ariseth out of Contract and Consideration, as in Case of these Aids, the Law would not allow that Inconvenience of leaving them to an arbitrary Charge, but in some Case settled a Proportion. It's true in Case of Ran-

 som,

ſom, becauſe no Man can tell the Certainty of that, it is left at large.

This I further obſerve, by the Common Law, where the Charge is in reſpect of the Tenency; yet if the Charge comes often, as the King pleaſeth, there the Law did not leave it to the King's Judgment; as in Eſcuage, which is a Profit ariſing to the King in reſpect of the Signory. Though the Law allowed the ſaid Aids, *pur Faire Fitz Chivalier*, and *pur File Marrier*, becauſe they could happen but once; but Eſcuage, that might happen often, the Law would not allow that to be uncertain; it muſt be aſſeſſed in Parliament, as in the Charter of King *John*, which was always held to be no more than the Common Law.

My Lords, upon the whole, I deſire your Lordſhips to conſider how unwilling the Law is to leave the King a Liberty to charge, even in the King's Caſe, at Common Law, and how reſtrained by Act of Parliament, where the Common Law before did give Liberty.

Next obſerve, that the Law, in none of the ſaid Caſes, nor I believe in any other, doth permit a Power to lay an immediate Charge upon the Subject, but only in laying a Charge to be paid in reſpect of the Benefit, which he hath received, which is fit to pay, and none are compelled to receive it or pay it; for if he will not have the Benefit, he may may refuſe to pay it even in Caſes between King and Subject. In the Caſe of Toll, Pontage and Paveage, it is not laid ſo on the Subject, that he ſhall pay it whether he will or no; but as there is a Benefit by the Pontage, *&c.* which cannot be maintained without Charge; and therefore juſt, that thoſe that have the Benefit ſhould bear the Charge.

Laſtly, I ſhall offer, that even in Caſes where the King doth lay a Charge, *quatenus Rex*, it is not ſo left unto him, either for the Occaſion or Proportion; as that if he will lay never ſo much, he may; for if it be unreaſonable, the Law doth make it void, as in caſe of Toll, if unreaſonable.

My Inference is this; if the Law be thus careful in ſmall things, as Penny Matters, whether or no the Law will make no Proviſion in the Main, but leave the Subject to the abſolute Liberty of the King, to charge the Subject when he will ſay the Kingdom is in Danger, and where there is no Judge at all. I will conclude with Book-Caſes, in the Point that the Law doth not leave a Power in the King to charge, though it be in the King's Judgment, *pro bono publico*, as in the Caſe of granting an Office. The King cannot at this Day regularly create an Office in itſelf with a Fee, but in Law it is void; though the Office in itſelf hath a Shew, nay, it may be *pro bono publico*. P. 11 *Hen.* 4. 15, 16. and in 14. a Grant of an Office of Meaſurage with a Fee void; and that very thing, 13 *Hen.* 4. was complained of in Parliament, that it was againſt the Law, becauſe it was in Charge of the People; to which the King anſwers, let the Laws and Statutes be performed. In the Roll, amongſt the Adjudicates, the Reaſon is expreſſed, *quia ſonat in prejudicum Populi*; 16 *Ric.* 2. the King grants to one a Rate upon every Barge that paſſed the Bridge, in Conſideration, that the Patentee had taken upon him the ſcouring of the River, in that Caſe the Patent was repealed. So in the Caſe of Lights to be kept for the benefit of Sea-fairingmen, this was in Charge of the People. This Patent was complained of, and your Lordſhips know the Order upon it. I omit many Caſes, and conclude with that of *Forteſcue de Legibus Angliæ. Cap.* 25. ſpeaking of and commending the Policy of the Government of *England*, prefers it before that of *France*; and ſhews the good Fruits and Efforts of it; and lays down this for one. That the King cannot Charge without conſent in Parliament, and he was a Man allowed for extraordinary Judgment who ſheweth Inſtructions for a Prince for future Government, being truſted more with the Government of the Prince then any other. I conclude theſe Caſes with this Obſervation.

This denying of Power of laying Charge on the Subject, is not only in the Caſe where the King would raiſe Benefit to himſelf; which a Man may call *tallagium vel auxilium*, but in Caſes of Charge which lies on the Subject, though not for the Kings own Benefit, though alſo it be in Caſes *pro bono publico* as in the Caſes put before.

I ſhall now come from the Books, by which I have ſhewed what is the Common Laws, that by theſe Grounds the King cannot Charge the Subject. I ſhall now offer the Conſideration of ſome things, which are Acts of Parliament, or have the force of Acts of Parliament.

I ſhall begin with that of *William* 1. for a Conqueror I ſhall not call him, for that Name came in about *Ed.* 3. his Time, for there being an *Edward* before, becauſe they could not tell how to give him a Diſtinction from the Confeſſor, they called him *Ed.* 3. after the Conqueſt, by Direction of Sir *Roger Owen* the great Antiquary. That which I ſhall urge is, that which he granted *Anno* 1. of his Reign. That all Free-Men ſhould hold their Lands *ab omni injuſta exactione ſeu Tallagio*, nothing to be demanded but that which was by Tenure, as in *Edmerus*, by *Selden*. Now whether or no this be an Act of Parliament I ſhall not diſpute, yet in thoſe times when a thing was granted, between the King and the Subject, though it had not all the Formalities that now it hath, yet it was binding, however, this is called the Conqueror's Laws, and I take it for a Law.

Then it reſteth to examine the Words, whether the Words will ſerve the purpoſe to clear the Subject in point of Seſs. It is ſaid, they ſhould be free *ab omni injuſta exactione ſeu Tallagio ita quod*, &c. by this all Charges, but ſuch as were by Tenure, are called Exactions. The Rule is, *ubi lex non diſtinguit nec nos debemus*. This is a Grant if not of Right yet of Grace, and muſt be taken largely *favores amplificandi*. The Subject could not have demanded of him, eſpecially that of Forty Shillings, if it had not been the Laws of the Land before.

I ſhall humbly leave it, whether this be not the Laws by which *Edward* the Confeſſor laid down the Dane-gelt, for the Dane-gelt was not only againſt Pirates and Sea Robbers, they were indeed Pirates and ſtrong at Sea, but alſo againſt all other Enemies. Theſe called the King of Man, *Archipiratus*, that is, a powerful King at Sea, and that theſe Pirates were only ſtrange Enemies

mies, and it was to raise Men not *obviare eruptioni* but *irruptioni*, not so much to keep them within their own Kingdom, as to keep them from falling on the Land. And by the History of those Times when this was raised, it was by reason of the *Danes* landing in *Northumberland* and *Essex*; and so upon that Irruption of the *Danes*, Danegelt was raised, It is called by *Cambden* in his *Brit' irruptione hostium*; and *Lambert* in his Saxon Laws; but let it be *irruptione* or *eruptione*, or be it Dane-gelt, to keep them from coming out or landing here, both of them were for the Publick Service: when this had been so much complained of in *Edward* the Confessor's Time, it is clear he damned it. And *Ingulphus* is an Author without exception, and *Tilburiensis* not to be compared to him. *Ingulphus* was a great Courtier and Favourite of *William* the Conquerors, and to think that he had not a better Knowledge of what the Confessor did than *Tilburiensis*, who wrote many Score Years after, is much. And it is strange that *Ingulphus*, who was so much bound to the Confessor should carry a Law down to *Edward*, so much to the Prejudice of the Confessor, if he had not been sure of it. *Tilburiensis* was urged, as if he spake, that it had been paid to the Conqueror; he wrote in *Hen.* 2d's Time. And, my Lords, observe that he was an Officer in the Exchequer, and for the Rules of the Exchequer he teacheth them well; but for History against *Ingulphus* I leave him.

If this were laid down by *Edward* the Confessor, then I conceive, this Law of *William* 1. was but the Law of *Edward* the Confessor, and there was no Ground for him to require a Law to lay any Charge but what was before. *Tilburiensis* makes this Good, for he himself saith, that the Conqueror laid it down and took it up again. If it were laid down, I would know by what Law or particular Direction it was laid down if not by this, for nothing in all the Laws of the Confessor can Cause to lay it down but this, and thus far he standeth with *Ingulphus*.

I shall further shew these Aids and Talliages were meant here. It is a clear Ground that *exceptio format Regulam in non exceptis*, an exception often doth enlarge the meaning of the Word beyond the ordinary Sense. As if I do grant to *J. S.* all my Trees, here my Apple-Trees pass not; but if I grant all my Trees, except my Pear-Trees, there my Apple-Trees do pass, because this sheweth that I meant all my Fruit-Trees. In the Word Trees I apply it, that here is a discharge of all Taxes, except by Tenure. Now I shall shew that Tenures were for Defence and Service of the Kingdom in the proper Place, when I shall shew what Provision and Means the Law hath allowed the King for Defence.

My last Observation is this. This was not a Charter between the King and his Tenants, but betwixt the King and Kingdom, and so something must be laid down that was due to the King.

There are two kinds of Aids, one from Tenents, the other from the Commons; one was by Command from the King without any more, the other by Act of Parliament.

But here Mr. *Sollicitor* hath taken that grounded Argument of which I have found a contrary Sense, that is, *Sumus fratres Conjurati ad Reg' defendend'*, wherefore these Aids not possibly meant here; but this is contradictory. By inference to overthrow a thing express, is against the Law. The Words are express, that there shall be no Talliage, then by an Inference to say, that the Defence of the Kingdom is not meant is hard. True, all by their Allegiance are bound to defend the Kingdom, all are to fight for it. Acts of Parliaments tells us, where and how we do it, and when; but that we must give Aid is another thing.

It is one thing to supply with the Body, another thing to give or pay Money; and if there be any Invasion *pro posse suo*, every Man is bound to Defence; but whether for every Defence of the Kingdom we must give an Aid is another thing. Acts of Parliament will be the best Expositors of things so long since, for as Custom and Use will make a common Law, so likewise it will declare an antient Act of Parliament.

Now I shall come to that of King *John*, *quod nullum Scutagium vel auxilium ponatur*. The Credit of this Statute I shall first clear. It is not only in *Math. Paris*, *verbatim*, who wrote in *Hen.* 3. Time; but the Original was shewed under Seal the last Parliament by Mr. *Selden*, and these very Words were read *Nullum Scutagium*, &c. And, my Lords, though this be no where on the Roll, yet that no ways lessen the Authority of it. It is no part of the Essence of a Statute to be found on Record, if all should be burn'd by mischance, what would become of the Laws, though the Rolls are all burnt, yet the Judges knows what are Acts, and what not, though they have nothing to make it good by, but their own Manuscripts or printed Books, or Traditions; a Man cannot plead against an Act of Parliament *nul' tiel Record*, and that is the Judgment in the Case, in 8th Report, Princes Case. The Duchy of *Cornwal* stands supported by an Act of Parliament, not upon Record. That which I shall shew to make this an Act of Parliament appears out of the Words, there are two things *Scutagium* and *Auxilium*, and *Scutagium* riseth from the Tenents, and *Axuilium* from the Subject. To shew that *Auxilium* is laid down by this; it appears, that he could not assess Scutage without Parliament. I hope to shew that Scutage was for the Defence of the Kingdom, and is such a Provision, that no King hath a better, and such an one as will raise in *England* above 40000 Men.

Ay, but saith Mr. *Sollicitor*, not assessed but by Parliament, that is, not meant to bind the King, but the Subject; the King can do no wrong.

Doth any Man think that the Commons did come to the King to bind themselves, and leave the King at Liberty.

I come now to argue from the exceptions, *exceptio format Regulam in non exceptis*, this exception shews the latitude of the Words to be a discharge of all Aids, that there had not been care had of the particular Aid, *quatenus a Tenentibus*, they were afraid, even those were swallowed

lowed up. True, I do not conceive that was a thing of necessity; but as the King may have it in, if he would, so the Subject had no reason to deny it him, for it was but just, and was never meant to be taken from him. Nay, the Lords themselves had reason to take care themselves, that this was not discharged, for in all these Cases the King hath no more then a common Person, for he hath his Aid *pur file marrier*, and *pur faire ransom*, and that appeareth 21 *Ed.* 1. A Release from a Lord unto his Tenent, so that there was Reason that the King and Lords should have Care of this, yet they were afraid those Words would be so strong against publick Aids, as that they would take away private Aids.

Last Reason that this *Auxilium* must be said publick, look in all the King's Desires, when they did desire Aids, still their Introduction is for the Defence of the Kingdom, which is a Cause of calling the Parliament, which appeareth by Speeches there on Record. Nothing can be intended of these private Aids for himself. I have done with the Charter of King *John*.

I next come unto *Mag. Char.* 9 *Hen.* 3. for *Magna Charta*, I humbly conceive that this Charter, at the first, when it was granted, was no more then *verbatim*, the Charter of King *John*, and originally had in it this very Clause of *Nullum Scutagium*, my Reason for it is this.

First, upon all Histories, that after King *John* had granted a Charter, the Pope would have discharged him of it, as far as in him lay, but that still the Lords and Commons made Claim; he died. *Hen.* 3. cometh in. A Difference ariseth between the King and the *French*. Then it was proposed, that this Charter should be confirmed; Histories say, that at his Corronation, he gave his Oath to confirm the Charter of King *John*. Then in the 9th Year of his Reign, the Lords demanded it, he was unwilling, because it was gotten *per dures*: But the King said, we are Sworn to do it, and therefore must confirm it. And in *Matt. Paris* it is said expresly, that the Lords did call for the Charter of King *John*, and there it was read and confirmed *Verbatim*. And *Mat. Paris* lived in the King's Court, and was *adeo familiaris*, that it is said, he Eat with him at his Table, and at that time he wrote this Book, and sure he durst not have written it, had it not been true; but we find it not now upon Record, how this might possibly slip I shall tell you.

First, We have no Original Inrollment of *Mag' Char'* no *Mag' Char'* but that of King *Johns*. If it be true, which Histories say, that *Hen.* 3. did revoke his Charter, it is possible these Rolls might Perish in that time, the Authority of the King at *Oxford* did inforce them to bring in their Records, doubtless they would not leave the Inrollments.

The next step to look for it is, 28 *Ed.* 1. confirmed there, and is exemplified, the Original may be lost in so long a time, what became of all Parliament Rolls, till 4 *Ed.* 3. All perished by Fire or some other Mischance, things were afterwards put together and upon the Roll. This was not the Original Inrollment of 8 *Hen.* 1. and written in the Roll where Acts of later time are Written, and with the same Hand. If it were once in King *John*'s Time, it must be left out somewhere.

Observe this one thing more, that is, as this of *Scutagium* and *Auxilium* doth concern the Subjects in their Lands, there is a Clause also that concerneth the Subjects in their Persons, *Nullus liber homo Imprisonetur*, that might be taken for ordinary Imprisonment, then there cometh a Provision for the King that he should not do it, which is *non super eum Mittimus*, such Words as that a Man knoweth not what to make of them; but in the Charter of King *John*, it is *nec eum in Carcerem Mittimus*, in the great thing we see the Mistake, and how the other happened I cannot tell.

I now come to *Ed.* 1. Time, wherein I hope to make good those Acts of Parliament that we have vouched, and here lieth a main Endeavour, the First was of 25 *Ed.* 1. which is not denied to be an Act, nor cannot. The other is *de Tallagio non concedendo*, which is so full, that it cannot be evaded, and therefore is denied to be an Act. First, for the Act of 25 *Ed.* 1. which is against Aids and Talliages, not to be taken without consent of the Kingdom, I humbly conceive, that by these Words Aids and Talliages used in former Acts, that these were meant of things for a publick Defence of the Kingdom, complained of and not denied. I shall bring home the Roll of the 25 *Ed.* 1. that the King doth not promise to pay them *pur Reason*, to have Words for their Money; but that they must have a reasonable Satisfaction, I will shew that was the Sense given upon the Record.

First, for the practice of the times, that there were Ship Writs went out, these Writs went forth in a more terrible Term then any I ever saw, *sub pœna forisfacturæ vitæ & Membror'*. 24 *Ed.* 1. was the Writ. I am sure that such a Writ by the common Laws would not have been mentioned, that if they did it not, the King should hang them. This Writ was the Grievance upon the Subject, and this Act refers to that. True there were other Greivances, 4*to* and 5*to*. but this was one, and that these Aids which were then for the Defence of the Kingdom were included within the rest appears. The King in reading the Articles, speaketh, that what was done for Defence, though true he had Wars in *Poitou* and in other places beyond the Seas, yet as true that it was a War to be kept from hence by Defence. That part was for Defence cannot be denied, and yet no Distinction to be made between a Foreign War and Defence, and both equally a grievance to the Commons.

After this Act of 25 *Ed.* 1. there cometh out a Commission, and this was in pursuance of the promise, that the King did make at his going into *Flanders*, and that was to inquire of those Grievances in the Articles, and among the rest, there was *De laneis & Coriis* taken away *pro defensione Maris*, and to that the King saith, there *pay pour Reason*, there hath an Answer been given unto this, and much stood upon, that the King should say upon this Commission to inquire of Grievance *pro Custod'. Maris*. If it were so *il ferra taunt ils teneront appayer pour Reason*, that this should be no more, then that the King would give a Reason

Vide le Parol del Record.

ſon why he did it I queſtion. As if he ſhould ſend forth Commiſſions, and afterwards diſpute it, or if he did do it, whether lawful or not, that is not the way of ſending out Commiſſions. Suppoſe that the King ſhould ſay he would give them a Reaſon for it, this Commiſſion did go forth to enquire of thoſe Grievances. And if the King had not ſaid he would have given any Satisfaction, yet it is enough that it is inquired of as a Grievance. It is a wrong upon the Subject, Princes may lay Taxes, yet the Subject doth not call for Satisfaction. A Princely Word that it ſhould be done.

But when the King doth ſay, *pais pur Reaſon* to think that, that is no more than that he would give ſome Reaſon for it, is a very ſtrange inference. In a bargain they uſe to ſay you ſhall hold your ſelf content with Reaſon, you ſhall not have your own Demand, but he is ſatisfied one way or other ſo here.

To begin with a Record 21 *Ed.* 1. Parliament Book. A Petition of the Commons, and they did deſire Reſtoration of all their Monies, 25 *Ed.* 1. there were Two *de laneis & victualibus* within that Commiſſion, ſo the Monies and the Things taken were inquired upon by that Commiſſion 26 *Ed.* 1. were for Defence, and here *Ordinatum eſt per concilium quod Rex ſatisfaciet eis quam Citius poterit*, upon this Petition they deſired Satisfaction for Goods taken upon the aforeſaid Commiſſion, 26 order'd by Parliament, that the King ſhould ſatisfy them ſo ſoon as he can, ſo that they ſhould hold themſelves content, *Ita quod ſe contentes haberent*, ſo that you ſee not Satisfaction by Reaſon, to juſtify them, but the King ſhould ſatisfy them one way or other. It is that they ſhould have ſome thing for it, and not that they ſhould have Reaſon ſhewn them why they ſhould have nothing.

But I reſt not here, there is one Parliament Roll remaining before 4 *Ed.* 3. and that was 8 *Ed.* 2. *Pro Priore & Fratribus Sti Johannis Jeruſalem*, It is there ſet forth, that *Ed.* 1. did Command his Treaſurer and Barons of his Exchequer, to make Satisfaction for Wages taken *in Scrutinio* to the Clergy and Laiety *velut pro laneis & Coriis*, and that Satisfaction ſhould be part by Money and part by realeaſing of Debts; ſo as this the King had no meaning, 26 *Ed.* 1. to pay back Money preſently, but would give them Satisfaction one way or other, by Payment of Debts, or releaſing of Debts, as was explained by that of *Ed.* 2. Another Record *P.* 27. *Ed.* 2. *Rot.* 36. Satisfaction was there given for an Eight and Fifth.

Thoſe things which were taken before 25 *Ed.* 1. complained of, and that confeſſed by Mr. *Solicitor*, ſo as I conceive, though it had been enough that there had been an inquiry of theſe things as upon a Complaint, though there had been no more Anſwer. If an Anſwer make it better, it is no Anſwer to ſay, that they ſhould have Satisfaction by Words, but either in Money or releaſing Debts, if none at all, Confeſſion had been enough.

I ſhall now come to talk of Mr. *Solicitor*'s Exceptions to the 25 *Ed.* 1. where he endeavour'd to ſhew that this Money for Shipping could not be intended within the Body of the Act, and if it was, yet it was excepted in the ſaving of the Act.

The Objection ſtands thus. No Aids were charged but ſuch as were granted, and we do not ſhew that theſe were granted, and there is a Word beyond that, (Prizes) and how far that extends I leave to your Lordſhips Judgments.

But if in the Body of the Act yet excepted in the ſaving all antient Aids due and accuſtomed, for the ſaving ſuch an Aid due and accuſtomed, ſurely was meant there.

In this Anſwer lieth this Queſtion, whether theſe were the antient Aids due, or not by the Common Laws, this will ſtand or fall on the Body of the Argument. I ſhall tell you what theſe Aids were, and they cannot be theſe, there were other Aids mentioned in the Charter of King *John*, as *pur faire Fitz Chivalier*, &c.

That which takes off all, is, If theſe Aids were part of the Grievance, though for the Defence they cannot be meant in the ſaving, for that deſtroys the purpoſe of the Act. And for that ſaving, it never came in by the Commons, nor the Lords, but the form being ſo to grant in part, and as the King would grant it ſo they muſt take it, Hiſtories do ſay they did not like it, and ſo they deſired an abſolute Act.

It was ſaid, that Aids and Defences were meant of Foreign ones. If the King and Council were ſo wary as to put in ſuch a ſaving as before was not in the Act, it ſhews what Care they had to have that they could not have. If by the Laws they might have them for Foreign Defence and not at Home; they that put in the ſaving would have put in a Diſtinction. I ſhall leave the Conſideration of this Act to your Lordſhips, how far it ſhall extend to Aids for the Defence of the Kingdom in that Caſe.

I ſhall go on and conclude with the Statute *de Tallagio non concedendo.* That Act of the 25 *Ed.* 1. was indeed ſo well penned, that it gave Mr. *Solicitor* a very probable Colour to make thoſe plauſible Anſwers. The Lords did deſire a better Act, not with theſe Words, no ſuch Aids, for ſuch is a Relative Word, and thoſe are Dangerous Words.

Next, if no more be meant by the ſaving then *pur faire Fitz Chivalier*, &c. and yet to have left theſe in the general, and not in the particular, had left a way open to queſtion what they had been. And in *Walſingham* it appears the Lords were not contented with it, though it was ſigned and had paſſed the Great Seal. It is true, that at this time a Pardon did paſs to thoſe Lords, the Words are ſo ſtrong, that this was denied to be an Act: and much ſaid, and very colourable too to that purpoſe.

It is true, that this Act is no where on Record, that we find, but for that an Anſwer hath been given before.

It is ſaid, that is no Act, but only penned as a Charter, that Exception was once made by the King's Council on another Occaſion.

Acts of Parliaments were then penned ſo *Mag' Charta*, and *Charta de Forreſta* are but in form of Charters.

Yea, but we cannot tell when it was.

How many Acts of Parliament are there which we know not when they were. Hiſtorians beſt

tell, that it is hard to find it when the Records are loſt; but this will appear to be in the time of *Ed.* 1. there is the Pardon to thoſe Earls, in 25 *Ed.* 1. we know that the Rolls of thoſe times miſcarried and were loſt, and ſure it muſt be after the Statute of 25 *Ed.* 1.

But then there is an exception from the diverſity of the penning, ſometimes *nullum Tallagium ponetur*, ſometimes *ponatur*.

We know upon the entering of the Rolls, there have been diverſe Miſtaks in the entering of *ponatur*, if it be with a Daſh, it may eaſily be miſtaken, and ſo only *vitium ſcriptoris*, and nothing elſe.

Then let us inquire what it was if it be no Act. It is ſaid it is no Act but an Extract out of 25 *Ed.* 1. and that he urged ſeveral ways upon ſeveral Occaſions.

By the penning of it, it doth appear, that he that wrote it was a Scholar, and not miſtaken to make a thing abſolute that was Relative, for *nullum* to make it *tale*, and to make that without a ſaving that had a ſaving, is a ſtrange kind of ſaving.

Yea, this cannot be an Act, for at that time there was a Pardon granted to ſeveral great Lords.

If that be true, which Hiſtory ſaith, when this Act was publiſhed, the Lords were not ſatisfied with it; and theſe were the Lords to whom the Pardon was granted that were not ſatisfied, and to make their Pardon the ſtronger, they did Weave it into the very Body of the Act; and for *Walſingham* he is of great Credit among the Hiſtorians.

They ſay further, that this is no Act, for this takes away theſe Three Aids, *pur faire fitz Chivalier*, *file marrier*, and *pur Corpus Redimind'*.

This is not ſo, Acts of Parliament ſpeak of it, and practice ſpeaks of it, and therefore no Law, and practice of Ship Writs ever ſince, and for Defence of the Kingdom.

For the Aids, that is a good Act; yet thoſe were not intended nor included within that Act, and therefore that practice is not contrary, becauſe it is not within the Words of the Act, nor in the meaning of the Act.

For the Aids therein queſtioned, the Queſtion was between the King and the Commons, and not between the King and Tenents; then that being the Queſtion, there muſt be a Conſideration according to the Occaſion and the Doubt made. But to take thus *Nullum Auxilium ponamus*, theſe are not Aids put on the Tenents, but Fruits of a Signory, as the Duty riſeth not from the King's Command, but from the Laws, and ſo not within theſe Words *Nullum Auxilium ponamus*. And ſo all the practice ever ſince will well ſtand with this Act.

And to ſay Shipping is not meant, becauſe of the practice ſince, is nothing. Let me eſtabliſh once the Laws, and no matter for the practice. If the Laws be once ſettled, we muſt reduce Precedents to Laws, and not Laws to Precedents.

And for the practice yet, ſtill the Subject makes a continual Claim againſt them.

My Lords, to prove this is an Act, *Walſingham* entred it in his time, who did not write very long after it. Though it hath been ſaid that he was a Monk; and what he wrote he took up in the Street and Market-Place, yet I will not think ſo of *Walſingham*, who was ever held an Hiſtorian of very great Credit. And no Hiſtorian whatſoever durſt ſet down any thing for an Act of Parliament, if he had not a ſure Warrant for it, it had been little leſs than Forgery.

In the next place, it hath been ſaid Hiſtories are no good Authorities in Law.

True, they ſhall not tell me what the Law is, yet they are good to tell us of *Res geſta*, whether or no there hath been ſuch things done. He tells us, not that this was for Shipping, or not for Shipping, but tells us there was ſuch a thing. I have ſearched after this Act, and I have found in an antient Manuſcript in *Hen.* 4. Time where it is, and it goes there under the Name of *Statutum de Tallagio non concedendo*, and I find it mentioned no where, but ſtill find it mentioned as a Statute. I have an Abridgement of *Hen.* 8. Time, and there it is put in as a Statute. I will not urge poſitively, but probably, and that an Act in *Hen.* 4. Time, 13 *Hen.* 4. A Complaint of laying Taxes on the Subject, the Anſwer is, let the Laws and Statutes be obſerved, this is that poſitive Act that doth reach it more than any other.

But the main Anſwer that I rely upon, is, that if they deny the Truth of an Hiſtorian for *Res geſta* as this. If from time to time it hath been conceived an Act what more ſtrong? What makes our Common Laws, but general Opinions and Allowances? And ſhould we doubt of many things, whereof we find the Acts of Parliament themſelves, I am afraid we ſhould ſhake many things done by the Common Laws. That which I rely upon is, the Judgment of the late Parliament, to which your Lordſhips will give all Reverence. This, my Lords, did not paſs *Sub ſilentio*, but was made a Queſtion, and ſomething propoſed on the King's Part, whether an Act or not, in the Concluſion it came into the Petition of Right, the very firſt Statute mentioned in that Petition was this, *de Tallagio non concedendo* made in *Ed.* 1. Time. How far this Queſtion paſſed at the Committee, it is better known to your Lordſhip, and is the thing whereon it is built. If this had not been an Act, it had been dangerous to have put it into the Upper-Houſe; but it being there Read, your Lordſhips know what was done upon it.

The Petition being thus debated in both Houſes, I ſhall leave it to your Lordſhips Conſideration, how far you will make this Queſtion to go in this Caſe. And his Majeſty did not deny the ſame, but both King and Counſel agreed it is a Law.

Mr.

Mr. Holborne's *Third Days Argument in the* Exchecquer-*Chamber, before all the Judges, on the Behalf of Mr.* Hambden, *in the great Case of Ship-Money.*

My Lords,

AS the other Day, so now again with your Lordships Favour, I shall be bold to sum up my last Day's Argument in a very few Words, and by the way, clear my Meaning, wherein I was any whit obscure, as also add where I was defective, yet briefly in both.

My Lords, The general Question the other Day, being concerning the King's Power, to lay a Charge of Money upon the Subject; and my general Ground against it being but this, that though the Laws did intrust the King in many great Powers in Government, and with the whole Government, according to the Laws; that yet by doing of Acts, which charge or prejudice the Subject in his Estate, the Law did see that it was possible that Kings, as Men, might err, and therefore did make Provision, that their Acts, if against Law, should be void, as in Case of a Disseisin or Discontinuance, or where they were to pass Grants, that there should go before an *Ad quod damnum*; and also, that if they were passed, that if they were to the Prejudice of another, that regularly in that Case, Law did make them naught, and that they were to be repealed.

And I shewed how this did hold, especially in laying Charges upon the Subject. I shewed that the Law was not willing to leave the King Power to charge in any Case, notwithstanding where the Occasion might be common, and did require for the Maintenance of Traffick and Commerce between them, so to hold them still as within one Body. The Law must leave in some Body a Power to charge, which would be left in none but the King as supream Governor. The Cases for this were the Monies to be paid for Murage, Pontage, Paveage, Ferriage, and the like. That in those Cases, though the King was trusted with a Power to lay a Charge; yet the Law did not leave the Charge arbitrarily in the King's Breast, so, but that if it were unreasonable; the Grant was naught, and the Proportion was to receive Tryal by another, upon whose Judgment it must stand or fall, which were either the Judges or a Jury; like to the Case which I might have put, but did not, of a Fine uncertain upon a Copyhold. I also shewed, that in some Cases the Law did allow to demand arbitrarily upon some Subjects, Sums of Money, yet that was not upon the Subjects, *quatenus* Subjects; but upon some Subjects, *quatenus Tenentes*, which did rise upon the *Jus rentulare*, as to marry his Daughter, to make his Son a Knight, or for Ransom, or upon those which were little better than Villains; the King's Burgesses, whom the Law did not so much regard, yet the Policy of the Kingdom, in those Cases, did afterwards restrain the King into a Certainty, by Act of Parliament.

Afterwards I went to the Cases which were in Point, that the King could not lay a Charge upon the Subject, though for a publick Good, and instanced in the Case of the Grant of the Office of Measurage, with a Fee, adjudged void, *quia sonat in Oppressione Populi.* 22 *Ed.* 3. *Pat.* 31. The King granted to one *Pawley*, an Office of Alneage of Worsted, and because in Charge and Burthen of the People, and a new Grant, adjudged void, and was repealed.

I began with that of 4 *Will.* 1. which I now find more clearly to be an Act of Parliament out of an ancient Manuscript of the Church of *Lichfield*, mentioned to this purpose in *Eadmerus:* Here I endeavour'd to answer to Mr. *Solicitor*, when he said, that there was another Law of the Conquerors, which explained this, and shewed, that the Charges for the publick Defence were not meant, because it is said in another Place of the same Laws *quod omnes sunt fratres conjurati ad Regnum defendendum.* To this my Answer is, that they are so for their Bodies, *Fratres conjurati*, to serve, but not to be charged. Yet I must confess it is *pro viribus & Facultatibus*, to defend the Realm, where *pro Facultatibus* may seem to imply, that they were bound to be subject to Charges, *secundum Facultates*; under Favour, *pro viribus & Facultatibus*, are but Words of like Nature, *viribus*, that is *Facultates*, natural Powers not Substance; for it is not only that should be *Fratres conjurati ad Regnum defendend'.* but also *ad pacem Dignitatem Coronæ, &c. & ad judicium Reg' & justitiam faciend'.*

I went next to the Charter of King *John*, which I observe to be but common Law; it's inrolled, remaineth under Seal, and is recited, *verbatim*, in *Matth. Paris.*

I went next to the Acts of Parliament, 25 *Ed* 1. against Aids and Talliages; there I laboured to shew, that the Act was made against Aids and Talliages, though for the publick Defence, and that was out of the Articles; whereupon the Statute was made, and upon the King's Answer to the Articles: Next out of the Commons, which was after the Statute, to enquire of the Grievance mentioned in the Articles, to the end there might be Satisfaction, which was promised upon the Articles; where, in the Commons, the whole Inquiry was *De gravaminibus.*

It is enough for me that this Commission was grounded upon the former Articles, and that here this very thing, *pro defensione Reg'* was *inter gravamina.* It had been strange, when the King had confessed upon the Articles, that he would not legally justifie them. And upon the Commission, in pursuance of the Articles, had called them *Gravamina*, and so to be inquired of, that now when they were found he would justifie them in any Point, and say, *a pais pur reason*, give

give them a Reason for what he did, as Mr. *Solicitor* saith.

Next I did conclude with the Statute, *De Tallagio non concedendo*; and there my Labour was to prove this to be a Statute; and I am sorry I spent upon it so much Time, if that had not been denied by Mr. *Solicitor* to be a Statute; but now I understand, by the King's Side, that this was no Statute, but made and sealed at the same Time with that of the 25th. and meant to be no more than that of the 25th.

This seemeth strange: For why should they be both at one time? Next, how came they so much to differ, if made at the same time? Why are there some things in the Statute, *De Tallagio non cencedendo*, which are not in the Statute of the 25th?

But the Teste will clear all; First for the Teste of that of the 25th. it was *Teste Ed' Principe*, and sealed by no more than the King. To this the Archbishops and Lords put their Hands and Seals. But however, I am glad to hear it now confessed to be a Statute; for then we have no more to do, but to see whether the Charge of the Defence were within the Meaning of these Words, wherein sure the Words are general enough, and what Reasons have been given, why by the Expositions, these Charges of Defence should be excepted, you have heard; and what my Answers have been unto them I leave to your Lordships Judgments.

I come now to *Ed.* the Third's Time, 17 *Ed.* 3. *Parl. Roll.* whereas Commissions have been awarded to the People and Shires, to prepare Men at Arms for *Scotland* and *Gascoigne* or elsewhere, at the Charges of the Shires contrary to Law; the King hath not, before this time, given Wages, whereby the People have been at great Charge, and much impoverished. The King wills, that it be done so no more.

Ay, but it was said, this was to *Scotland*, and to *Gascoigne*; and that this was foreign War; and that was denied, though not admitted.

I answer, that in those Times, *Scotland* held in Fee of the Signory of *England*; and in those Times the King of *England* was *Dominus directus Scotiæ*: And so *Ed.* 1. when he determined that Quarrel between *Bruce* and *Baliol*, and gave Judgment by Writ, settled *Baliol* King of *Scotland*, and did justifie it; and it is remaining in the Rolls of *Scotland*, in Mr. *Squire's* Office. When there was a Treaty of Peace beteen *Baliol* and *Ed.* the First, he refused to acknowledge the Signory of *England*, and there the Parliament resolves he should rather have a War than lose this. So see *Selden* upon *Fortescue*. War in *Scotland*, not foreign War, but like to that in *Wales*; and so was it ever since held, since the Conquest, to be within the Signory of *England*. By the Statute of 12 *Ed.* 1. and by the Statute of *Hen.* 8. it appeareth to be within the Fee of *England*: War against one another, cannot be called a foreign War. In the War to *Scotland*, *Wales*, and elsewhere, which is not meant of foreign Parts; for then it would have been expressed where, as well as *Gascoigne*. And by the Histories of those Times, we shall find there were Armies carried to no other Place. Nay, to shew this elsewhere, is meant in *England*: See the 1 *Ed.* 3. Parliament Roll before this Parliament. The *Scots* invaded *England*, as appears by a Writ of *Ed.* 3. where is Mention of an Invasion, and thereupon requires Aid. If there be Wars in *Gascoigne*, and if occasions to *Scotland*, and in *England* too where the *Scots* are, and this a defensive War. Further for the Wars of *Scotland*, if that should be called a foreign War; if the King should go thither and make a War, yet by the Rules of the King's Counsel, if a War in foreign Parts, is but to prevent a War at Home; this War is not foreign, but for Defence.

Another Act made on this Occasion, that the King wills, 1 *Ed.* 3. *cap.* 5. that no Man henceforth shall be charged to arm themselves, otherwise than formerly in the Kingdom of *England*; and not to be compelled to go out of their Counties, unless upon the suddain coming of an Enemy, and in case of Necessity, and then to be done as in Times past. This Statute coming in the same Year when the Complaint was made for carrying Men out of their Counties at their own Charges.

Here I observe, that the Subject shall not go out of his County, not only at suddain coming of Enemies, but likewise on Necessity, and both together. And when it said, it shall be done as formerly, is an Allowance that they had formerly been paid. So then, if this be a stronger Case, admit here an actual coming of Enemies, nay suddain; nay here is a Necessity, and the Subject is to go out of his Country, *pro posse suo*, yet he had his Allowance.

Perhaps it may be asked, why should not the Subject pay? Is not the Kingdom in Danger? Are they not to defend it, *posse suo?*

They are so in their Counties; and if they go out, the Law hath provided a Supply. Parliament Roll, 13 *Ed.* 3. there was a Time, when there were known Enemies, actual Wars in *France*; they intended to divert the War by bringing it home to our own Doors: The Enemies threatned much, nay, did much Hurt, yet did not *Ed.* 3. command these Supplies this Way, but called a Parliament, and there Consideration was had in Parliament for Supply; and that the Kingdom has Ships enough, if they were willing, and this was in way of Defence.

From all this I conceive that it is strongly inferred that he could not force them: And when the Lords and Commons did meet, to take Consideration for the Wars against *France* and *Scotland*, the Commons laid the whole Charge on the Cinque Ports, they disclaim'd to have any thing to do with it. And for the Land Service, they said, let those of every County reside there, but no Charge on the Subject in pursuance of this. *Claus.* 13 *Ed.* 3. *M.* 11. & 14. *Dors.* The Town of *Bodmin* doth shew the Execution of this Judgment; it being agreed, that the Sea Towns, and bordering Shores, should look unto it.

I shall agree, that some Inland Towns are bound by Use and Tenure, but no otherwise, 4 *Ed.* 3. *cap.* 1. that the People are not compelled to make any Aid out of Parliament; and that the Aid granted shall not be drawn into Example; and that the Aid granted is for the Defence of the Sea.

But it hath been said, that they are Aids granted for foreign Wars, for the Wars in *France*.

True,

True, they were in part granted, some for the Wars in *France*, and part also for Defence on this Side. And where there is no Distinction, why not for the one as well as the other? It must, under Favour, be conceived for either, or both. And between this Time of the 14. *Ed.* 3. and the 25 *Ed.* 3. Your Lordships have heard from Mr. *St. Johns*, some Complaints in Parliament, for charging the Counties with Hobbellers, and going out of their Counties, which are not really compleat, only for Proportion, in regard of their Success, but also for the thing it self.

2 *Ed.* 3. *M.* 21. The Commons pray to be discharged of the Guard of the Sea; and that the King would keep it at his own Charge. This shews the Judgment of both Houses, and the Weight of it is very great: For when there is any difficult Point concerning the Liberty of the Subject, it is referred by the Judges to the Parliament, to be there decided, of that Reverence is the Parliament.

But it hath been said, this is rather a Matter of Prayer than Right.

Under Favour, the Matter shews that they claim in Point of Right: And it is to be supposed, that they would not make such an unreasonable Request, as to lay that wholly on the King, if they of Right ought to do it. And if Words were put in a fair Language, it was but a fit and humble Language for so great a Prince as *Ed* the Third was. But *Ed.* the Third gave no Relief; yet that doth shew the Judgment of the two Houses; and as there was no granting, so there was no express Denial. A handsome Prayer, and a handsome Answer. 14 *Ed.* 3. Parliament Roll, there it appears there was a Charge of this on all Woolfells, and for this Defence of the Sea, and in the 15th taken away in the Parliament.

I shall conclude this with the 25 of *Ed.* 3. No Hobbellers were to go out of their Counties, unless by common Consent. This Statute is general for Defence; there is no Exception, if an Enemy do invade, the Parliament believes the Kingdom is provided for.

Yea, saith Mr. *Solicitor*, the Subject is not charged to go out of the County, that is, upon Summons, *ad Exercitum*, for Summons is twofold. *First*, A Summons, *ad Exercitum*, and then a general Summons. By the Summons, *ad Exercitum*, only those were to go that did hold by Tenure; and they say it is *encounter droit*, to be charged out of their Counties.

It is true, about this time there are some Records of 16 and 18 *Ed.* 3. in the *Exchecquer*, where Charges are laid on the Subject for Hobbellers, and such things: But you shall find in the *Exchecquer*, that the Money came thence, which was before the Statute; these things were the Grievances complained of. So the Practice there will not expound the Statute, for the contrary Practice did beget the Statute. But the last of these, in the 24th of *Ed.* the 3d. who was an active Prince, and maintained Wars, and so had great Occasions for Monies, and so charged the People higher than they would endure; for which he did afterwards repent, and desired to be prayed for; and therefore there were diverse Impositions on Merchants; which I pass over all, only this out of the Roll, 50 *Ed.* 3. *M.* 24. It is the Lord *Latimer's* Case, a Privy-Counsellor and Chamberlain to the King, there was a Complaint in Parliament against him for diverse things, whereof one was for laying an Imposition upon Merchandize, in his Justification he pleads the Command of the King; and for that Particular he was sentenced, imprisoned, fined and ransomed; so careful were they to revive that Law. And that Sentence of his, 2 *Ric.* 2. made the great Lords so unwilling to talk of the Defence without Parliament.

And so I come to that of 2 *Ric.* 2. upon which I must insist, for that it is of great Weight. It doth appear, as well by the Consultation it self, as by History, that the Realm was in great Danger from several Parts; as from *France*, *Scotland*, *&c.* and that the Danger was so instant, that it could not stay for a Parliamentary Supply: Therefore the Council of the King were to consider of it, they know not what to advise; they meet together, they had no Time to call a Parliament; but the Lords, both Temporal and Spiritual, and Sages of the Realm, to consider what to do, when the Safety of the Kingdom laid so at the Stake. The Resolution of these Lords and Sages; which were, as I conceive, the Judges, *Propter excellentiam*, conclude that there was no way but by Parliament; and all this was for Defence, and against an instant Danger, which could not expect Summons of Parliament. And the Lords themselves rather lend Money out of their own Purses, than adventure that which *Lattimer* did; which indeed was the Ground which made them wary.

To this there were many Answers, yet all will fall off. 'Tis true, that it is no Act of Parliament; yet such a Resolution, that had it been 300 Years before, would have done much. The Weight of this is thus: If this had been a Parliament, there is little doubt what this Resolution would have done: For the Matter we have the Resolution of the Upper House, and how the Commons would have resolved in a Point of Liberty, we may easily conceive. Here we have the Judges Opinions in Point of the Legal Power of the King, what the King would do, as well as what he should do: And in things of this Nature, the Judges are the King's Council. And as in the great Council, (the Parliament) they set there for Counsel in things that belong to Matters of Law, so at this Time in this Assembly, which was instead of a Parliament these were not left out, being best able to declare the Rule, and this was about two Years after *Ed.* the Third's Death; he could not then have any other than the Council of his Grandfather; and of these their Resolution was, that that the King could not charge the Subject out of Parliament: And though it was no Act of Parliament, yet it had the Honour to be so accompted, else it had never been entered upon the Parliament Roll.

But it is said, by way of Objection, that *Ric.* the Second was then an Infant.

True, he was so, but he had a brave Man for his Protector, *John* of *Gaunt*; and he had doubtless a Select Council, and they were as fearful as might be, that nothing should be done that might wrong the King in his Prerogative.

It is true, they had a Power of doing things by Parliament, yet that was no Act to restrain the King, but an Act of Necessity: The King was an Infant, and therefore it was requisite, that during his Minority nothing should be done but in Parliament, especially that concerned the Kingdom, which was not an usurping of the Regal Power, but a provident Care of the Kingdom and him; and they do protest in that Roll against Incroachments upon the Royal Power; and to say that is good, which is to an ill Intent, is a strange Construction.

They say that this Consultation was for foreign Wars; for that *Brest* and *Calais* were in Danger, and to be provided for; and for foreign Wars it is agreed the Kingdom could not be charged.

To this I answer, admit a Mixture of Wars, yet every one looks home first; we have a Care of our selves first, but they would have made no such difference if the Debate had been for both. However, the Lords conclude the King cannot charge without Parliament.

But I cannot leave this Objection, but shall give a particular Answer. Though *Brest* and *Calais* might be in Danger, yet that was no part of this Consultation; for it is said in that Consultation, that in a former Parliament, sufficient Provision was made for them: True, they were in Danger, but provided for in Parliament before; and that which clears all, under Favour, there is is not a Word in that Consultation, but is meerly for the Defence, and no Relation to a foreign War.

I end this King's Reign with the 8 and 9 *Ric.* 2. *Rot.* 10. where is a Consultation with *John* of *Gaunt* for foreign Wars, and others mixed together, it appears the Subject is not chargeable out of Parliament.

And so I come to *Henry* the Fourth's Time. 2 *Hen.* 4. hath been urged, and an Answer given to several Commissions for *Calais*, and for the Defence there was then a Complaint, and a Desire that those Commissions might be recalled. 'Tis true, we find not this granted expresly; but as no Grant, so no Denial; and as we take it, it was granted. This Time of *Henry* the Fourth did yield many Instances, that the King cannot charge, though for the publick Defence. I shall remember a Record which the other Day I vouched: *Par. Roll*, 13 *Hen.* 4. *M.* 43. it was upon an Action of the Case which we find in the Books, 11 *Hen.* 4. which was pleaded in 13 *Hen.* 4. there was an Office of Measurage erected and granted, and a Fee granted in it, this was complained of in Parliament: *First*, an Action was begun at Law 11, and in 13 *Hen.* 4. a Complaint in Parliament; and they complain that this was against the Statute, that no Taxes nor Talliages should be laid upon the Subject; and the Answer is, let the Statute be observed: This Use I make of it; this doth not only shew the Confession of the thing, that this ought not to be laid, but that this Statute, *De Tallagio non concedendo*, was to be a Statute; and this Statute was not for Aids that come to the King in particular, but against any Charge laid by the King upon the Subject, though it be *pro bono publico*; and upon the Record, the Judgment was delivered so, because *sonat in prejudicium Populi.*

I shall remember the Grants of Tonage and Poundage to *Henry* the Fourth, and the Grants usually to him were temporary and upon occasion, and not for Life, until afterwards, and his Time they were for the Defence of the Sea and Kingdom; and it was granted upon Condition, that it should be confessed it was granted of Loan, and not of Right, 9 *Hen.* 4. *M.* 16. and 11 *Hen.* 4. *M.* 45. and 13 *Hen.* 4. *M.* 10. which is the fullest, they make a Protestation it shall not be drawn into Example, yet all that time were imminent Dangers.

But it was said we cannot shew that purely, and simply, and solely, it was ever granted, but with a Mixture of other things, as that of Tenths and Fifteenths.

But the Parliament was so wary, that they did sever them, and lay the Tenths and Fifteenths by themselves, and Tonage and Poundage by itself; for though they are the same Acts, yet upon the Matter they are several.

I am now come to *Henry* the Fifth's Time, and for him there is not much, but like *Henry* the Fourth. Parliament Roll, 1 *Hen.* 5. *M.* 17. a Grant of Tonage and Poundage for the Defence of the Realm, and Safe-guard of the Sea, with a Protestation that they should not be charged for the time to come. I think after this time we find no more Protestations or Grants upon Condition.

But that which I argue from these Grants made in this manner is, sure it was the Opinion of the Parliament, that they were not bound, and the King by his Acceptance doth acknowledge so much: No Landlord accepts that from the Tenent as a Gift, which he may command as a Duty, and to take it on Terms so advantagious for the Subject; and not only give an Acquittance for it, but put it on Record as in Point of Right.

But here is an Affirmation of the Commons; and though they cannot make a Law, yet that which they do, and the King accepts, shall be of a strong Proof.

Again it is true, you shall not charge the Subject with Tonage and Poundage without Parliament, but shall not the Subject be charged another way?

To what end would that Protestation have served, that the King should do it another way? And it is all one if the Commons bear the charge of Defence, whether they bear it by Tonage and Poundage, or otherwise; for that which falls on the Particular, falls on the other. To charge them thus, were as if the King should say, though I cannot charge you this way by Tonage and Poundage, yet I will charge you another way.

In the Time of *Henry* the 6th there's little.

I come next to the Time of *Ed.* 4. wherein, though there is not much upon Statute, yet there is a Speech of his that shews much of this. 7 *Ed.* 4. *Parlm. Roll* 1. there was a Speech made and cited; the King first protests, which was not immediately upon his coming to the Crown, that he will live of his own, and not charge the Commons but in Cases extraordinary, and those Burthens too should be *secundum morem Majorum*, and that he hopes they will be as tender of, and kind

kind to him as to his Predeceſſor, ſaying that he would lay no Charge upon them, but in extraordinary things.

This ſhews, that what was granted by the Commons, though upon extraordinary Occaſion, was not out of Duty, but out of Tenderneſs; and this was a good while after his Victory, and could not upon the matter be called a Broakage. And this falls not under the Anſwer of Mr. *Solicitor*, that Money was borrowed of the poor Men, and reaſon that they ſhould be paid again.

But thoſe Loans were by way of Commiſſion, and not to ſome poor Men, but they did concern the general. And though *Rich.* 3. had Reaſon to bring in good Laws, becauſe of the Defect of his Title, yet my Lord of St. *Albans* called it a kind of Broakeage to get the Peoples Good-Wills; yet, however, this muſt be a Declaration of both Houſes of Parliament; and it was not ſo much offer'd by *Rich.* 3. but becauſe *Ed.* 4. had made many borrowings.

I come now to *Hen.* 7. Time, that which hath been preſſed, is the 19 *Hen.* 7. *Cap.* 11. — Proviſion that the King's Servants that were to attend upon him in the Wars out of the Counties ſhould be paid, then if they were to have it, then a *Fortiori*, they that were not to attend. This ſhews that the King is to be at the Charge, and not the Subject.

The Anſwer is, this extends to Foreign Wars, and then no Reaſon but that they ſhould be paid, and ſo will not ſerve our Turn.

If there be ſuch a Difference between Foreign and Home Wars, why doth not the Acts of Parliament make a Difference? the Words are general and extend to Wars out of the Realm and in the Realm, and where the Laws doth not extinguiſh, neither I hope will your Lordſhips.

Now I come to *Hen.* 8. who was as unwilling to beg, as powerful to Command 13 *Hen.* 8. *Cap.* 20. the King deſires for ſome Neceſſity of Government, and againſt an inſtant Occaſion to have Power to make a Proclamation for Government, and to do it under Penalties. A Law ſeaſonable for that time, though it continued in *Ed.* 6. Time. As he would have Liberty, which he could not have without Parliament, to lay theſe kind of Penalties on Men; ſo the Parliament was as careful to give him no Liberty to lay any Charge upon their Eſtates, Lands, or Goods. So as, though for the natural Government they leave him a Power to lay Penalties upon others; yet to lay any thing upon their Goods, that which is *Meum & tuum*, he had no Liberty, which is a Declaration of the Opinion of the Parliament, that by the Common Laws he could not do it.

But in the preamble of the Act it is ſaid, that there is ſome intimation of the Power of the King if he will; and upon that preamble indeed *Cowel* would have built the Royal Power of the King. But *Cowel* was miſtaken, and had his Reward.

It is true, there is ſomething in the Act that ſpeaketh of the Regal Power in Neceſſity, but not Abſolute, and that too came in by the penning of it in the King's Side. And 21 *Hen.* 8. your Lordſhips know his Power, and how he was not to be reſiſted in ſmall things. If he could pull down thoſe Abbies, what could he not do? Therefore it was not for them to queſtion with the King upon the penning of his Preamble, but a dutifulneſs in them to conform themſelves. And when there was Proviſion enough made againſt that in the Act afterwards, it had been a weakneſs of the Houſe ſo to do.

Yea, the Act was that the King could not Charge the Lands nor Goods, but there is no ſuch thing in our Caſe.

It is true, there is no immediate Charge laid upon the Lands or Goods, but in Subſtance and Conſequence there is a Charge. It is all one to me in Subſtance, where my Life and Benefit is the ſame in either Way. And if I am taxed *ſecundum ſtatum & facultates*, I muſt pay the Money out of my Eſtate, and in the penning of an Act *non littigatur de verbis ſed de intentione.* And if I am charged and pay not, my Goods are taken away and ſold, ſo it is all one to me, as if it had been laid upon my Goods.

For the times of *Ed.* 6. Queen *Mary* and Queen *Elizabeth*, and his late Majeſty King *James*, I ſhall put my Obſervation of all theſe into one. I find not much upon Parliament Rolls, for theſe four few Statutes were made, yet in every one of theſe is offer'd one Act of Parliament, which is a ſtronger Proof than any of thoſe which have been urged, and ſuch Proof as doth only come home to the Defence of the Kingdom, in Caſe of extraordinary Defence, in Caſe of Neceſſity, and in Caſe of Invaſion. All this ariſeth out of the Conſideration of the penning of the Statute of Tonage and Poundage, in the beginning of every of their Reigns. The Act that I mention, is 1 *Jac.* where it is ſaid to this Effect, that there may be Times of Neceſſity where Treaſure is not to be wanting; and it is unfit the Treaſury ſhould be unprovided at any time upon neceſſary Occaſions, and therefore they grant unto the King Tonage and Poundage, but how? Not for *quid pro quo*, not merely for Defence, but towards the Defence of the Kingdom. Then by the Judgment of the Parliament this being not granted formerly, but towards this Defence, and towards his great Charges: therefore, by that, the Charge by the Laws ought to lye upon the King.

Now, my Lords, if the King were not bound to the Defence of the Kingdom, whether or no would he accept it on theſe Terms, and whether it ſeems not more than probable, that in Caſe of Neceſſity the Charge may not be laid on the Subject, 1 *Ed.* 6. *Cap.* 13. *Marie Cap.* 18. 1 *Eliz. Cap.* 19. 1 *Jac. Cap.* 33. are the ſeveral grants of Tonage and Poundage.

I conclude this part with the times of his Majeſty that now is, which in the Point of Defence have been ſtronger and greater then before, both in point of Laws, and in matter of Example. I take my beginning in this upon that Parliament 3 *Car.* upon the Petition of Right, and his Majeſty's Anſwer and Judgments to that are ſomething home.

The Commiſſion of Loans and Benevolence, the Neceſſity of the time did require an inſtant ſupply; and it appears by the Commiſſion, that there was a Neceſſity which could not ſtay for a Supply another way, and your Lordſhips know what was done in this. This Commiſſion was not

not to borrow of a few, but it was general with an equal and proportionable Weight, and this as it appears was for the Defence of the Kingdom.

It hath been said, that mention is made of supply for the Palatinate, and to send Aids to *Denmark*.

True it is so, but that of the Palatinate, and that of *Denmark* do, upon the matter concerns us, for that War being upon our Resolutions, there was a kind of ingagement laid upon us.

In that Commission, there appears more than a possible Danger to the Kingdom; there was a Necessity, yet this was laid down, it held not, and in pursuance thereof there was an Order, whereof we have a Copy; it is in the Exchequer moved by the King's Attorney for staying the Proceedings for Money spent about Loanes, which was by his Majesty's Gracious Command, wherein his Majesty did prevent the Commons desire.

The Petition goes on, that there were Soldiers billeted in several Parts, and there was a Charge, and this was after a late Foreign War, an Enemy then known and declared; there was a Necessity for instant Defence, and to stand upon our Guard, the Enemy might in a short time have been upon our Coasts, yet your Lordships know what was said to that.

And as the Petition looks back to those things that are taken of their Hands, so it looks forward and provides, that no such things should be taken hereafter by the Power of the King alone, although upon matter of Necessity. And all this was a Petition not of favour merely, but in point of Right according to our Laws and Statutes, which are the Statute 25 *Ed.* 1. the Statute *de Tallagio non concedendo*, and *Magna Charta* the ground of all. And to all these his Majesty promiseth such things should be done no more. And they not content with this, his Majesty gives this Answer, *Soit droit fait.*

I cannot leave this great strength thus, but bring it home to this very Case. The Substance of this Petition being for charging of the Subject out of Parliament by the Royal Power, when this Petition had passed the Lower House, it came to the Lords; and upon some Motion, there was a Proposition of a Saving to be put in the End of the Petition, Saving the Sovereign's Power, which his Majesty is intrusted with for the Defence of the Kingdom. All this your Lordships know, that after several Conferences, in the Conclusion the Petition passed without any Saving.

My Lords, upon that Reason this Saving was left out, your Lordships may see by the Record, which your Lordships and the rest of the House best know, and whether upon this Reason or not.

That the Laws the Petition went on, whether the Saving would stand with those Laws.

My Lords, it appears that the first Answer was, that the Laws should be put in Execution, yet in the close there is put in a saving of the Prerogative, but this Answer did not satisfy; and therefore there was a general Answer, *Soit droit fait.* But now what was granted by the last Answer more then by the former, only that the Laws was left more absolute.

To that Commission of Advice for Consideration of means to raise Supplies, and it was for Defence, and a necessary Defence, and that did not bear delays, that Commission was laid down by his Majesty; yet in that there was no more then this Consideration, how Supplies might instantly be raised, which could not indure delays by Impositions or otherwise, that is still lawful ways If there had been any to lay a Charge on the Subject, by way of Loan, then that Commission had not been excepted against, yet his Majesty was pleased to lay down this upon the desire of the House.

I conclude with that which I conceive to be the Judgment of both Houses in point. It is the Judgment of both Houses against the Sermon touched upon by Mr. *St. John*, which I shall press as far as it will be appliable to our Case.

The Sermon was to shew the Power of the King in Case of Necessity to lay a Charge on the Subject without a Parliament; when this came into the Lower House, this was the main and principal Charge, I say not the sole Charge. When it came into the Upper House, there it was pressed against that Divine by the King's Council; and it appears by the Journals of the Upper House, that the Crime was, that he should shew the King's Power to charge the Subject without Parliament. It appears by the said Journals, that the Doctors excuse was, that he meant nothing but to shew what Kings might do in extream Necessity of Danger. And your Lordships may read in his Sermon, that he speaks of Necessity, not attending the slow Motion of Parliamentary Advice: so that it is pinched on extreme Necessity, but neither one excuse nor the other did serve his turn. The Offence is acknowledged, Submission made in both Houses, and the Sermon called in by Proclamation.

Ay, but saith Mr. *Solicitor*, this Sentence was for other Matters.

I say not, but that the Sentence was for this thing alone; there were other things, but they were only by the by; only occasioned by this. Now how far this Case comes to our Case, I leave to your Lordships Judgments.

Mr.

Mr. Holborne's *Fourth Days Argument in the* Exchecquer-*Chamber, on the Behalf of Mr.* Hambden, *before all the Judges, in the great Case of Ship-Money.*

May it please your Lordships,

I Have thus far gone on in my Proof from Reason, Books, Cases and Authorities, all being of highest Nature, that is, by the Laws of *England.* That the King cannot Charge his Subjects without their Consent in Parliament, tho' it be; *pro bono publico*, or for Case of Necessity. It now remaineth that I offer, what either the practice hath ever been in the best times, and the contrary practice decried from time to time.

In this I shall do a Work of Supererogation. It is not material what the practice is if the Laws be once settled. A Law once made over-ruleth all Practice afterwards. And as a Law is Law before Practice, so it is Law against Practice: yet because Practice may be an Expositor of Law especially where the Words may seem general, I shall shew from Age to Age the Subjects without their Consent could not be Charged.

From the Practice of the Kings themselves, even in all Ages, that on extraordinary Occasions they have resorted unto Parliaments, and when they could not do good by that, they have made many Borrowings, as appears by the Parliament Rolls. What other Courses they have taken your Lordships have heard upon the former Argument. And when the King received these Supplies, it came voluntarily, and with Protestation, that those things should not be drawn into Example.

I shall go now to the Practice on the Subjects Part. First, I shall go as high as the *Saxons* Time. That if *Danegelt* did begin by a common Consent, and in the very Laws in Mr. *Lambert*, it is said *Statutum est*, though it always did not signify a Statute, yet when it was written by one that knew the Laws, and Writ of the Laws, it must be so taken. *Tilburiensis* saith, as it was the Act of the King, so it was the Petition of the Commons *Statutum est a Regibus*, still the King. It is strange in that time of *Etheldred*, when *Danegelt* was so great and common as it was, that the Subject being easily drawn unto it, that the King should not ask it; when he might have it for asking. But this *Danegelt* being raised by *Etheldred* upon emergent Occasions, as it was not like to be always, so the Provision was not for all Times. After him came in some of the *Danish* Kings, and they continued the *Danegelt.* And what became of those that were the Collectors of the Danegelt between *Etheldred* and the Confessor doth appear in *Huntingdon*, and how the People did decry it in general, then it was laid down *ut gravamina*, as appears in *Ingulphus.*

Edward the Confessor he laid it down. At the Conquest, still they go on with the *Danegelt.* It was part of the Terms made by the People with several Kings that it should be laid down, and King *Stephen* did promise to lay it down, tho' notwithstanding they did now and then take it up in *Hen.* 2. Time, yet still more complete, and that was left on the Charter of King *John.*

The use of all this is, that though there were a Practice which under Pretence for Defence of the Kingdom, yet the People did decry it, it was not such a Practice as could bring in a Law.

When *Danegelt* was thus laid for the time of King *John*, *Hen.* 3. and *Ed.* 1. in which times Practice for Shipping will not be material, for in all those times the very Shiping it self was decried Parl' 25 *Ed.* 1. there the very Charges of the Subjects for Shipping were the Complaint, the Complaint is the thing I am upon. After the 25 *Ed.* 1. and the Statute *de Tallagio non concedendo*, the course of these Proceedings did alter, for before in 24 he sent forth Writs under a great Penalty, and 29 *Ed.* 1. *M.* 10. he contracts for his Ships, and they go at his Charges. *P.* 76. *Ed.* 1. *Rot.* 35. *Reygnald de Gray* when the *Scots* entred the Kingdom, he was commanded to bring Seamen out of their Counties, and he durst not without Money; and thereupon he had Money out of the Exchequer.

But the Answer was, this was for *Scotland.*

For that no doubt this War was at Home, for in the 26. the *Scots* had enterd the Kingdom. *Br. Trin.* 32 *Ed.* 1. *Rot.* 11.

I come now to *Ed.* 2. Time, there is not much against us, but for us. This I shall observe, that the first Writ that went out was 9 *Ed.* 2. It is true, a *Mandamus* went out for Shipping, and against an Enemy, and Defence of the Kingdom; but how? not a *Mandamus firmiter injungentes*, nor *sub pena forisfacturæ*, but a *Mandamus Rogantes*, and the means of compelling *Quatenus honorem nostrum & Salvationem vestram diligitis*, so you see how the Course of the Law altered in that time.

I come to *Ed.* 3. for I will but touch upon every time, and offer but one Thing to shew the Practice in it. As I find a Statute in the beginning of his Reign concerning Provision made for Wars, so I find an Execution, *Rot. Sco.* 1. *Ed.* 3. *M.* 8. there went out two Writs, and they were concerning raising of Shipping, and in respect of the *Scots* entering that Year. This is that I put it for, to shew that upon that Occasion 1 *Ed.* 3. Soldiers were paid, although for the Wars in *Scotland*, it doth recite that the *Scots* had entred the Land that Year, and did make further Preparation; and if they could not have their Peace on their own Terms, they would proceed, *Consideratis etiam periculis*, for it was in *articulo necessitatis*, he giveth a Command that there should be Ships, but it is a *Mandamus Rogantes*, nothing at all by Compulsion or Forfeiture in the Writ, *Sicut honorem nostrum.* It appears by the

Writ that he said, he sent Money at that time for the Victuals for the Soldiers; and this very Writ was *pro Salvatione Regni*, and that we could not be safe without Shipping, and this was in a pure and innocent Time.

I will not say, that in all the Actions of *Ed.* 3. he never broke this Rule; your Lordships know what Wars he had, and what Necessities, and what those Necessities brought him to; but he was so far from justifying of himself, as it appears by *Daniel's* History, that he sent to the Archbishop of *Canterbury*, to pray for him, and desired the People not to think ill of him for laying those Charges upon them in Case of Necessity, 12 *Ed.* 3. *Rot'. Alm'.* your Lordships shall see upon that acknowledgement, how he began to alter his Course. Parliament Roll, 13 *Ed.* 3. though he laid Charges before now, he calls a Parliament, and desires Supplies for Shipping that way; and that acknowledgement 12 will Answer home that famous Year of 10 *Ed.* 3.

Next, my Lords, to shew the decrying of the People in this time of Shipping it self, in the Rolls of 21 and 51 *Ed.* 1. there the People said they were not to bear the Charge; so it was no practice, for the Commons did decry it. That for Hobbellers they were at the Charge of the County before 25. but that they were complained of in Parliament, wherein the Statute of 25 *Ed.* 3. was made. But all that I am at in this is, what ever the contrary Practice was to out-ballance it by the contrary Opinion, and Claim of the Kingdom, and the practice I hope shall not be able to make it Law.

I come now to the time of *Rich.* 2. for his time I shall remember but one, *Tr.* 7. *Ric.* 2. *M.* 15. *de contribuendo ad Custodiam Maris*, there is a recital of *Danegelt*; and that the Subsidies that the King had were not sufficient, and therefore commanded an Aid, but to do it *gratuiter*.

I do observe, that all Ship Writs do end in the time of *Ed.* 3. one or two perhaps may be after, and therefore I do end with the Practice of those times; but from those times downwards to *Hen.* 8. This was offer'd and not denied, that there are several Records, how the Kings of *England*, both at Sea and Land did bear the Charge of Defence; and all the Answer was, that it doth not appear how the King doth raise the Moneys.

For the time of *Hen.* 4. 2 *Hen.* 4. Parliament Roll. A Complaint of the Commons, of a Commission for building of Gallies for Defence. And their Complaint was, that it was done without Consent of Parliament, which ought not to be done, and this Commission is repealed; this shews the decrying of the Subject, and that the Practice hath been, that the Defence was at the Charge of the King.

I have thus finished the Negative Part of the Argument, that the Subject is not compelled to find Shipping for Defence at their own Charge.

Next for the positive Part, that the Charge both in Cases ordinary and extraordinary lies on the King, and that by the Common-Law, and that the King hath Provision and Consideration for it.

My Lords, for Provisions regularly, whatsoever Estate is in the King in the Politick Capacity is in him as *Rex*, and not in him, in his natural Capacity, and what is in him so is for the benefit of the Kingdom, and that hath ever been the ground of the Acts of Resumption, and some of Resumption made by *Hen.* 7. where Lands were aliened by him, he made a Resumption, and those many Priviledges that the King hath in him, are as *Rex* in his Politick Capacity. All which Cases are put together in *Calvin's* Case in the 4th Report, and not only in *England*, but in all Christendom: All Estates in Princes are held for the Benefit of the Kingdom, as well as for themselves; and that is not denied by King *James* in his Answer to *Perone*; he would have it absolutely to be to that purpose. All that is to the Advantage and Honour of the King is for the Benefit of the Kingdom.

My Lords, from the Consideration of the Interest of the Kingdom in the Estate of the Prince; the Parliament have so often offer'd their Service to the King: And the Parliament in former times did require a Hand in the naming of a Treasurer, they called it *Antiquus Mos.* And it was 5 *Ed.* 3. in a Parliament, but repealed 15 *Ed.* 3. and for antient Lands of the Crown they were not devisable out of that Reason; and that none should buy the Land of the Crown, for it was not alienable in that time.

My Lords, in the form of our Government the King in Supposition of Laws had all these by the Books cited by Mr. *St. John*, all were in the Crown, and being so, they were for the Service of the Kingdom; and that is the Reason that all Land is held immediately or mediately of the King. As a Lord of a Manor, when he hath a Circuit of Ground, he lets one Part to one Man to Plow in Knights Service, and part he keeps for himself. So the King when all was in him, he disposed of some for the Service of the Kingdom. Hence ariseth the Tenures Originally. As they kept in their Hands Palaces and Demesne, so for Publick Service they made distribution of certain Lands for Publick Defence; some by Knights Service, some by Scutage, some by Cornage, and some for Castle-gard and Grand Serjancy, all for the Service of the Kingdom, and Tenures *per Baronagium*, which was an eminent Service, as appears by the Books of the Knights Fee. Petty Serjancy for meaner Offices, and Grand Serjancy for greater Offices.

Diverse Lands were given to find Ships, as in Doomsday-Book; besides the Cinque-Ports, which were to find a certain Number; and so some Inland Towns did find Ships, but how? As by Tenure, not generally as Subjects. And though Mr. *St. John* did urge one or two Precedents by way of Example, yet he said not there were no more.

Mr. *Solicitor* did give an Answer, that all those came out of the Estate, what was that Charge to the Publick.

It is true, if the King had that for himself Originally, he said well; but if it was in him Originally *pro Regno* as well as for himself, then it is otherwise.

But it hath been said, what are a few Men, or one Ship,

But it appears in Doomesday Book the King hath a great Navy; There were Sixty Thousand Knights Fees in the Conqueror's Time, and tho' divers Serjancies are turned into Rents, yet the Revenue

Revenue is the same. I shew it for this, that there was a Provision made in the Institution of our frame of Government. But for the guarding of the Sea more particularly.

The King for the guarding of the Seas hath all the natural Profits thereof; as all great Fishes, Whales, Sturgeons, *&c.* and all other Profits of the Sea, if the King would take them; and so Letters of Marque; and though some of them are got into the Subjects Hands, yet originally they did belong to the King. So the old Customs by the Common Laws *Antiqua consuetudo*, and so holdeth Sir *John Davies* in the Customs of *Ireland*; so Prizes and Impositions are for the Defence of the Sea. So Tonage and Poundage, which was originally granted for Ordinary, but often times upon emergent Occasions; it appears it was granted *pro Salvatione Regni*, and not granted amongst other things but by it self. But in latter times when it was settled upon the Prince for Life, then it was for extraordinary Defence, and to have Money in readiness for an instant Occasion; for it is said, in the very Grant to King *James*, that the King must not be without Money; and therefore, towards his Charges upon an instant he must have it. And though it was granted by particular Occasions, yet that is enough that it was granted on great Occasions, and this was granted out of their Love to him. The Words of the Act 1 *Jac.* speak of a suddain Invasion, now whether this is by Sea or by Land it is general.

My Lords, I shall now upon the whole observe what I have made good, either upon those general Statutes, that the King shall lay no Charge, or rather by the Books, that the King cannot Charge for little things; or upon the Practice of times, where in every time the King hath been at the Charge, and when it hath been on the Subject they have decried it: How you my Lords believe it in point of Right I leave it to your Judgments.

My Lords, I shall go on to the Answer of Mr. *Solicitor*, I have made a Reply to all his Answers to our positive Part. It remains I should offer an Answer to his positive Part.

First, I shall give a general Answer to his whole Argument; for if the Case be as we conceive it is, that the Point of *Salus Regni*, is not now in question, the Argument will fall of.

How far *Salus Regni* is in the Case, notwithstanding I shall argue over and examine the nature of his Proofs.

I am sure he had none from Parliament, either Act or Declaration of both Houses, what there is, is against him. The Answer of the King, with the Judgment of both Houses, is a main thing in point of Right. I did not receive any legal material Record, but that of the Abbot of *Robertsbridge*, nor any Book Cases in Point, where it is said the King shall Charge, but the Books 13 *Ed.* 4. I shall Answer these First, Practice next, and Reasons last.

To begin with the Case of the Abbot of *Robertsbridge*, which was open'd by both sides. It was 25 *Ed.* 1. the Abbot had Land agisted *ad Custodiam Maris*, and in an Action brought, the Abbot pleads that he had found a Horse for the same Land. Here is an Argument that the Abbot doth admit that the King might agist *ad Custod' Maris*, now if that admittance in this Case should be of any Authority to alter your Judgments, I shall leave it. The Abbots Counsel did no more then a discreet Counsel would have done. If an Action be brought for Words, and it appears, the Action will not lye. What then? If the Abbot had a Plea that he was agisted to find a Horse, what Reason had he to put himself on matter of Law with the King? So the Authority can be nothing against us, and at the best the Case did rest there, and went no further.

For the Book Case, 13 *Ed.* 4. where it is said, that the King can lay a Charge, that Book is with Reference Toll, and such things are nothing to our main Case, and that Book will prove strongest against the King. The main Case was concerning a new Office of Mesurage erected with a Fee, this was *pro bono publico*, yet an Action brought; it began in 11 *Ed.* 4. then cometh the Parliament in 13. and this was complained of to be against the Statutes, that provide that no Taxes should be laid. The Answer is, let the Statute be observed.

To the Case of Toll, which for common Necessity to maintain Trafick, and because there must be a Power in some Body, and without a Fee, not possible to maintain the Charge, it is allowed it may be done by the King; but in our Case here is no common Necessity, here is a thing that may seldom or never happen. The ground of granting Toll is this, because it is *pro bono publico*, yet if not for common Necessity the King could not do it.

Next, the Toll is not so much a Charge, it is *quid pro quo*, in the 5th Report it is said there, that it is no Charge for the Benefit in the thing it self will quit the Charge.

Again, Toll is but *inter minimum*, this of Weight, and though an Argument will hold *a Majore ad Minus* in the Negative, because a Man cannot do a less, therefore not a greater, but not in Affirmatives, because he can lay those, therefore greater *non sequitur*.

Next, for Toll no Man is forced to pay Toll, because no Man is compelled to come to the Market; if he will come voluntarily and receive the Benefit, then there is Reason he should pay it, but this is not our Case.

Lastly, the Law doth allow in this Necessity, in Case of Toll to the King a Power to grant, yet the Law doth not leave the King absolute Judge of the *quantum*: For if the Toll be not proportionable to the Benefit, the Patent is to be avoided, as in Case of a Fine uncertain, Now, my Lords, in our Case here is no Judge of the Proportion but the King, so the Argument is thus,

If the Law admit not the King to Charge but in common Necessity, then not in Cases that may happen but seldom or never, if not in small things, then not in greater.

I come now to Practice: And for Practice, where there is no Opinion, either for Records or Books to warrant it, it is something weak, especially when there is no urgent Occasion.

For the Practice, I shall give this general Answer; If I can satisfie your Lordships by Authorities of Parliament, how the Law standeth; the contrary Practice, either before, or after, is not

not material; and for that, I muſt leave it to your Lordſhips.

Your Lordſhips have heard we have read the Words of the Acts of Parliament, and explained our Meaning thereon, and brought them home to our Caſe: It will be hard to make an Exception if the Act be general.

For, my Lords, the Practice, it conſiſts of two Parts. *Firſt*, Arrays of Men. *Secondly*, Of Shipping, and for Shipping; *De Navibus congregandis*, or *maniendis* and *inveniendis*.

For Practice of Arrays, I ſhall lay them by, and give them a general Anſwer for very few or none that went from the Beginning of *Ric.* 2. are but only to ſee if they be armed, *& prompte*, and that is made by the Statute of *Wincheſter*. It is one thing to ſee that they be armed and in Readineſs; and another thing, at whoſe Charge they ſhall go, that appears not out of thoſe Arrays. There is no doubt but the Subject on the Statute of *Wincheſter* ought to be ready with Arms, and in his County to make Defence; and upon Occaſion he ought to go out of his County, but at whoſe Charge, that is the Queſtion. And if thoſe Writs of Array were the ſame with the Commons, now to the Lieutenant, yet I know not how; this is my Argument in the Caſe; and ſo your Lordſhips ſee that a great Number of the Arrays falls off this way.

But if Arrays had been, and at the Subjects Charge, yet againſt the Statute: I leave it to your Lordſhips to judge, how far Practice ſhall be an Argument.

But for Shipping for Writs *De Navibus congregandis*, thoſe are nothing; for the Matter is, whether they ſhall be paid before they go, and many of the Ship Writs are of that Nature. No doubt but the King may command *ad congregandas Naves*, to uſe them upon occaſion; but the Matter is, at whoſe Charge they ſhall be. And for all the Writs that are to find Ships, I hope thoſe Writs are not concluding.

My Lords, for thoſe Writs that are *ſumptibus propriis*: A Writ, and no more, without Execution, is not a Practice ſufficient to make a Law, no more than a common Evidence, when to prove Right by Uſage. Now whether or no they have ſhewed a general Execution, by obeying and doing it at their own Charge, or Money levied upon them, I leave it to your Lordſhips; I ſee no Proof. It may be, ſuch Writs might be, but that there was an Execution of them at their own Charge, or Money levied on them, we ſee no ſuch thing. And if Writs were to find Shipping in theſe Times, it is like the Monies were returned by the Counties, and ſo the Receipt might ſhew it, eſpecially if the Inland Counties, where nothing could be had from them but Money.

But, my Lords, to examine on thoſe Grounds, whereby a Practice muſt make a Law. If this Charge be within the Words of the Law, no Practice can take this out of the Way of Exception. The Practice muſt either ſhew that was the Common Law, and ſo *Generalis conſuetudo*, or which muſt declare the Meaning of a Statute by conſtant Conſent; which muſt be of thoſe that could conſent, and thoſe which did not expreſs a Diſ-aſſent.

We are now upon Inquiry as on Practice, though the King cannot generally lay a Charge, yet whether he can do it in this Caſe, to make an Exception of Law; it muſt be done by Uſe and Practice; as to make a Law Practice, doth not make Common Law, but as it is a Proof of common Conſent; for all Laws are made two ways.

Firſt, By expreſs Conſent of Parliament: Or, *Secondly*, By Uſe, from Time to Time, whereby it doth appear this was excepted, and the Uſe becometh a Common Law: So as ſtill, if an Uſe doth make a Law, ſuch Uſe it muſt be as doth prove a tacit Conſent.

Next, as the Uſe muſt bind the Kingdom, ſo it muſt be general over all the Kingdom; it is not enough to be at ſometimes and ſeldom, but it muſt be *Semper eadem*: And, *Laſtly*, It muſt be reaſonable.

I ſhall examine on theſe Rules, for theſe are undoubted Rules to examine a Law by. The Writs of *Hen.* 3. *Ed.* 1. and *Ed.* 3. all theſe Times the Practice, as to this, will not make a Law; here will be no Proof of a Conſent.

Firſt, For *Hen.* 3. to 28 *Ed.* 1. here the Subject, as before the Complaints, which begot the Charter of King *John*, was upon the Charges impoſed on the Subjects; ſo afterwards, until the 25 *Ed.* 1. the Laws of the Liberty of the Subject was not ſettled: For though King *John* did grant his Charter, yet the Pope did diſpenſe with him, and he broke it, and ſo did reſt till 9 *Hen.* 3. ſo all this time the Subjects of *England* were under Power; and what in that Time he might do by Dures, was not by Conſent.

Then, 9 *Hen.* 3. he made a Charter, yet from time to time he broke it, though he deſired to be excommunicated if he did it, and ſo it reſted until 25 *Ed.* 1. and there with much ado was gotten a *Confirmatio Chartarum*; yet this ſatisfied not at all till 28th of *Ed.* 1. *Mag. Char.* not obſerved. I could ſhew diverſe Caſes point Blank againſt theſe.

The Statute 28 *Ed.* 1. ſaith expreſly, that this Charter was not obſerved; and it was once a Puniſhment for thoſe that were the Breakers thereof. Now when Acts of Parliament declare that the Law of the Liberty of *England* was not obſerved, I ſhall not need to ſhew any Record how it was broken: So that all the Practice in *Hen.* the 3d's Time, though much, yet that will not ſerve the Turn; for that Government was more of Force than Law.

But for that of *Hen.* the 3d's Time, I ſhall give a further Anſwer; the very Courts of Juſtice were ſhut up, then it was in *Flagrante Bello*.

And for *Ed.* 1. Time, all the main ones conſiderable were immediately before the making of that Statute, if rightly apprehended they did particularly occaſion that Statute; ſo the Subject did deny it, and is a Diſ-aſſent.

After 28 *Ed.* 1. little conſiderable; and *Ed.* 1. when he made 28 *Ed.* 1. when the Charters were confirmed, yet he had his *Salvo Jure Coronæ*, which did not pleaſe the Subject: And afterwards, notwithſtanding he made ſome Grants in Parliament, yet ſometimes he did revoke. Your Lordſhips know what a great Renunciation he made; but as ſome of our Hiſtorians obſerve, when

when he had Occasions for Moneys he did grant, but otherwise did not; so that in all his Time the Subject did not consent, but as much as they could, did dis-assent; and in the 25th you see how the Practice did alter for commanding of Ships.

Next for *Ed.* 2. for his Time, we see how he went. In the Beginning of his Reign, he sends but a *Mandamus Rogantes.* In the End of his Reign, whether his Government was more of Law than Power, I leave to your Lordships; that little Practice that way, if it doth come Home, is not sufficient to make a Law who was under Will.

Next for *Ed.* 3. for him in his best Times, you see how he went, he laid not the Charge on the Subject at the first; afterwards there is no Age wherein there were so many Complaints as in his Time. And from the First to the Last, and not only in this of Shipping, which as often as it was, there was still Complaint, but in Impositions on Merchants, whereupon Lord *Latimer* was imprisoned; so that in Point of Charge, the Subject did inforce him upon it in time of Necessity: So that in those Times the Practice will not be any Argument against us.

That of the 10th of *Ed.* 3. he confessed that he had laid too heavy Charges on the Subject, and did ask forgiveness; so here was no Consent, but a several Dissent by their several Complaints. And if I take off these three Kings Reigns, I take off all the force of Practice concerning Shipping, for from that time afterwards you will find very little, for what cometh afterwards is but for Matters of Arrays.

The next Thing is, that every Practice that must bring in a Law, must be constant and continual, so long together as may bring it into a Custom.

Now out of what your Lordships have heard, if you conceive that in the Times of those three Kings, that they had one way, and the Subject another, then there is no constant Practice to lay it on the Subjects: And for Arrays, I conceive them to be no part of the Case.

And for the next; if Practice make a Law, it must be general through the whole Kingdom, for that is our Case, we are in an Inland County, and observe how few Writs we have that went over the whole Kingdom: Nay, have you any that proveth it indeed? That they went to some Inland Counties it is true, but that they went to all throughout the Kingdom you shew not.

Now if you will have a Practice to bring in a Law, you must not bring your Practice by Pieces; at one time in one part, and at another time in another part; for that in one part of the Inland Counties alone will not be justifiable, for that was to lay a Charge on the one, for the Maintenance of the whole; and that is against Reason, and the Reason of this Writ. So to charge the whole Kingdom, you must shew they went over the whole Kingdom, and obeyed by the whole Kingdom; for Obedience in some Parts, will not bind all, so once or twice will not do it; for the Writs that have been produced, many of them went to the Sea Towns only.

Next, my Lords, admit that the Practice had been constant from King *John*'s Time, down to *Hen.* the Third's; so to this Day, under Favour, as the Case standeth, your Lordships could not find such a Practice as could now introduce a Law. The Custom, which must be of a Manor, you must not shew the Beginning of it, that within Time of Memory the Thing was not so. True, if the Time had been long, and I cannot shew when it hath not been, that is Time out of Mind.

To examine this upon the Rule; it hath been said, that from the Time of *Hen.* 2. *Danegelt* was taken: True, it was taken, *De facto*, but not *De jure.* The Subject was not at that time charged both with *Danegelt* and Shipping too; then our Course of charging the Subject to find Shipping must begin since that Time.

But paradventure it will be said, as Sir *Henry Spelman* in his *Glossary*, that when *Danegelt* went down this other came in. And paradventure it will be said, this is enough to shew this begun, though but in Memory; then it is but to see upon what Warrant of Law this begun.

If *Danegelt* had not been legal, then this to come in instead of that which was not legal is not sufficient. Now for *Danegelt*, it was not legal, and so *Fallit Fundamentum*; if it had been legal, yet not so pursued in the Course as is legal, so that there is no Ground for it on Right or Wrong.

That *Danegelt*, when it went, it went over all the Kingdom, and in a proportionable way to all; yet these Writs for Shipping were commonly to the Sea Towns, and but some times to some Inland Towns. If *Danegelt* were on the Land, and certain, this is on the Person, and uncertain; this respects both Lands and Goods, the other not. There is no such Assurance of equal Charging in this, or in the other, if *Danegelt* had been legal; yet whether this coming in lieu of *Danegelt*, being of a far different Nature be legal, I leave it to your Lordship's Judgments.

Next to examine it upon another Reason, upon the Reason of the Practice. If the Practice went over the whole Kingdom from time to time, there was the more Equality; but if the Practice went over the Kingdom, but by degrees sometimes to one part, sometimes to another, though over all the Kingdom at Times, yet this is not sufficient to make a Law. For that Act which is unreasonable in it self, and not agreeable to Justice, will never make a Law, for a Law will never arise out of an Act illegal. Now, my Lords, when a Charge is laid upon Parts of the Kingdom, which the whole should beat, it is not unreasonable. I will not deny, but in Manors, where you are to have a Custom, sometimes on one Piece, and sometimes on another; this may be good, though it goes not over the whole Manor; because in this Act there is nothing against Justice, for here one Man doth not bear the Charge for the whole, but otherwise in our Case.

My Lords, I shall go further; as for the Inland Towns, so for the Sea Towns, we do not find a general Practice of all Sea Towns together, sometimes to one, sometimes to another, if any to all, yet not to all oftentime

My Lords, admitting Arrays would be material in this Case, as I conceive they will not; yet under Favour they will be no Precedent for

the defending of the Sea, the Case doth differ.

For though the King be Lord both of Sea and Land, and hath in them both the sole Dominion. So in the Sea he hath the whole Property, and in a manner all the considerable Profit and Privilege; the Subject hath but the Passage of the Sea and the *Minima* to take Fish, not considerable in Point of Benefit: But for the Land, that is our own, and the Land of the Kingdom is the House of the Kingdom. As for the Charge of the Land to find Shipping, there will be a great deal of difference between Sea Towns and Inland Towns: As those that live in Sea Towns are in more Danger from the Sea, so they have more Profit and Privileges; and that is the Reason of that in the Parliament 13 *Ed.* 3. that the Sea Towns should do it in regard of their Profits and Privileges.

And for the Command to find Ships, the positive Law is to make those to find Ships which are chargeable as your Sea Towns, and for Inland Towns to find Arms; because both are not fitted alike, there is no Reason that they should be charged alike. Upon this Reason is the Case of *Beverly* put before 2 *Ric.* 2. where the Complaint is, that they are charged for Shipping, being a dry Town, they say they were charged *indebite*, 10 *Ed.* 3. *Shoreham*, they plead they never found Arms, but Shipping and a good Discharge. And in *Matth. Paris*, upon Wars with *France*, the Sea Towns complain, and desire Help; so that the Burthen lies on them if on any. My Lords, I have gone over in a general Way, as well as I can, and endeavour'd to answer the Practice; to have gone over all in particular would have required longer Time than your Lordships can spare.

The Reasons now only rest to be examined; for if no full Authority, nor sufficient Practice, Reason alone will not argue against a fundamental Rule; for we are not now to examine on Reason what is fit, and what not, but to see what is the Truth.

The first is, that *Salus Populi suprema Lex*: The Question is not what we are to do by Necessity, but what is the positive Law of the Land? The Question must now be as before; What Power is in the King, and our Forefathers in that Time of Peace and Government did leave in the Crown, not in Case of Necessity and publick Danger; when with them, *Salus Populi* was *Suprema Lex*, and upon that they did ground the Rule of Government? In this Case, whether or no, in their Consideration, they did conceive for the publick Good, to leave the Power in the King, or not to lay a Charge on the People; there the Rule came in *Salus Reipublicæ Suprema Lex*: And that which they looked on most, was the Benefit of the Multitude. So that now, my Lords, it is not to dispute, whether it be better or worse, but that it was.

And to shew there was no such great Necessity as can countervail the Possibility of Prejudice the other way. If there do come such a Danger, then the Subject is at that time under a Law of Preservation of Life; and all which makes the Subject as willing to obey, as to submit to Government in the Creation; this Law is of an higher Force than any positive Law can be.

But admit that this cease in this Case, and all positive Laws of Property, yield to the Law of Necessity; yet I admit nothing, though I might admit much, and not prejude the Case.

Though no positive Law doth charge, yet in Case of imminent Danger, if I should say my private Property is become publick, it is no Mischief, for so it is in some Cases: For in this Time of imminent Danger, the King and Subjects are under a Law of absolute Necessity, and publick Safety. In all human Reason, when the Danger is in *Proxima potentia*, we may prevent it thus, as if another Man's House be on Fire, mine may be pulled down to stop it; so that we may see by what Grounds we do go in case of absolute Necessity. If the King doth command any thing concerning the Property of Goods, in respect of Danger, the Execution may not be by any positive Law meerly, which in such Cases do cease in *furore Belli*; for those are acted by Formalities, and *inter Arma silent Leges*. And in these Cases, as the King may command my Property, so may the Subject command the Property of another: The Books are so, 8 *Ed.* 4. for hindering the Landing of an Enemy, Bullwarks may be built on my Land without Consent; so the Power is not only in the King in these Cases of Necessity, but in the Subject: And the Books say not that the Power is only in the King, but I can do it, and the Law of Necessity is the Warrant.

Then, my Lords, it resteth considerable in this Case, what shall be said to be a Time of Necessity. I speak still by way of Admittance, for I grant nothing.

It must be in a Danger now acting, or in *Proxima Potentia*; as Fire, though not burning, yet ready to burn; that is, there must be a War, *Furor Belli*. *Note*, That when the King makes Proclamation of War, or the King in the Fields, and that indeed was not Mr. *St. John*'s Meaning, it was taken further than he meant it.

It must be in such a Danger, when this Power is of Necessity to be used, as in Case of Fire; there must not only be Fear of Fire, for one House must be first actually on Fire, before the House can be pulled down, withal such a Danger, that if this be not pulled down, the other will be lost. And as in Case of an Enemy, a Subject, out of Fear of an Enemy, cannot build a Bullwark on another Man's Land, but when he is of coming; so that none of these Cases will match ours.

The Property yieldeth not in Fear of Danger; but such a Danger, as Help must come in *Nunc aut nunquam*. This Time is not when the King will think there is Occasion to exert this Power, as in the Case in 88. though the Queen and State did command the burning of those Goods and Provisions, if an Enemy landed; which was a lawful Command, and justifiable to be done so they did land; but could not command them to burn their Corn before an Enemy did come.

Your Lordships know the King may Command in Case of Danger the Destruction of all Suburbs, rather then an Enemy should come in them. But if there be a fear only of Wars, if the King should Command it, how far that is justifiable, I leave it to your Lordships Judgments. All this Difference appears out of the Case of the *Gravesend*-Barge *Duffeilds* Case, 12 *Jac.* If there be

be a Storm, or a Leak in a Ship, that the Danger be actual, it is justifiable for the Master to throw out the Goods; but if he sees a Cloud arise, and out of Fear of a Storm he threw out the Goods, I doubt on a Jury which way this will go with the Bargeman; but if a Storm do come, or a Leak spring in, in that Case the Bargeman may do it. So you see upon what Law my property yieldeth.

That Position generally taken, as it is said, may be of a great deal of Consequence; for it doth not rest there, solely upon yielding of the Laws of Property; for all positive Laws do cease in that Danger, then the positive Laws of my Liberty and Person also do cease.

Now, whether or no you conceive all Laws of Liberty and Person cease in this time of Danger, when the Danger was but conceived and not actual, that I leave to your Lordships Judgments. And if that Rule be general, then why not the other?

So we may see the difference from our Case; for in that Case there is no manner of loss to the Subject, for he shall have Allowance for his Loss, or make Suit to the Parliament, and they can recompence him; for what is taken for the Publick Good is but borrowed. As in Case of Shipping, if my Goods be cast out to save the Ship, every one of the Ship is to bear a share; so in our Case, either the King must do it, or the Parliament, so there is no Prejudice.

So upon the whole, my Answer is, admit the Rule of *Salus populi suprema Lex*; yet the Law of Practice doth not yield, till there be an actual Enemy, or *Flagrans Bellum*. It is not enough that there be but an Apprehension.

There were divers other Reasons urged, (but those two of *Salus populi suprema Lex*, and of private Property must yield to publick Safety) which were the two *Rationes Cogentes*, the other were but *a pari & a simili*, and all those I shall pass over which were only for Convenience, as the granting of Toll, or a Corporation to make Ordinance for the good of the Corporation, all these will not come home in the Manner. My Lords, in all these Cases *a minore ad majus non valet, negativum valet*.

But there are only two Reasons urged, which require an Answer. The Trust that the Laws put in the King in greater Matters, *viz.* the shutting of the Port, and the *Droit* Royal of Wars and Peace.

For the shutting of the Port, there is more difference in point of Prejudice of the King than the Subject. The King cannot shut the Port but to his own Prejudice. Again, the shutting of the Port without Cause of Necessity, the King hath the Loss as well as we; for by that he loseth his Customs, and by shutting them he can gain nothing at all. And besides, there is no Law at all that hinders him from that. But there is a Law saith, that he shall not Tax the Subject without Consent in Parliament.

The next is the *Droit* Royal of Wars and Peace. It is one thing to say, the King can make War and Peace; another thing to say, he can Charge. In War and Peace the King is equally charged with the Subject, nay more; and for those things there are no great Reasons, but that in the first form of Government they might be well suffered. For that Cause touching the King's Power over Coinage, there was a Necessity to counterpoise the like thing in another State; in that Case the King looseth and we loose. The King may dispense with Penal Statutes, and make them as none. Doth any Laws say he shall not do it? The Reason differeth in that Case, there is a common Necessity that there should be a Power in some Body, for Acts of Parliament are but *leges temporis*. It is one Thing for the King to have Power in point of Favour, and another Thing in point of Charge; so in Case of Pardon, there is no hurt if he doth Pardon, God forbid that he should not have Power to shew Mercy.

My Lords, there are in the Case two Points more which I shall move. Whether or no, admit the King could Command the Subjects to find Ships, he can give Power to the Sheriffs to make the Assessment as in the Writ? The Ground is upon this, that in all Cases of Politick Charges the Law takes an especial Care to make an Equality. In Parliaments of old, they were always careful to make Provision that way, as upon Fifteenths and Subsidies. And in *Danegelt* they went such a way, as there could be no inequality; they went by taxing of Hides. Now if the Law doth make this a legal way of Charging, it allows the like way for Assessment that is allowed in other Cases, such a way as wherein there can be no Inconveniency. Now how a Sheriff hath that Knowledge to lay it on Mens Estates and Lands, I cannot tell.

My Lords, not to leave a Power in the King to lay an Arbitrary Charge; but in the Sheriff to lay more or less on any Man, though the Law may trust the King; yet it is a Question, whether it will trust the Sheriff.

Nay, I ask if the Sheriff be an Officer of Law in this Case; yet the King may Command any Man as well. Assessments are usually made by others, and not so much by the Sheriff. So I do conceive that this is a Thing that doth properly belong not to the Sheriff, he is not an Officer Sworn; and it resteth not only in the Sheriff, but the Under-Sheriff. So that if the Law doth trust the King, yet whether or no this be the way to Charge it, I leave it to your Lordships Judgments. If a Hundred be charged, they have ways to lay it on themselves proportionably.

The next Thing is this, admit a Levy may be well made, whether the Money thus paid may be brought into the Exchequer by a *Sci. Fa.* I do think that this is the first Writ that ever was of this kind, I do not find it regularly.

My Lords, I think it is hard to find where there is a Writ that Commands and Prescribes the manner of Levy. It not only gives you Power to Levy, but sets the way of Levying, by Imposition, by Distress, by Selling; for my part I know no Case can match it.

The First Days Argument of Sir John Banks, *Knight, his Majesty's Attorney-General on behalf of his Majesty; before all the Judges in the* Exchecquer-*Chamber, in the great Case of Ship-Money.*

May it please your Lordships,

THERE was a *Sci. Fa.* brought against Mr. *Hambden*, and divers others, to shew Cause why those Sums of Money assessed upon them by the Sheriff of *Bucks* should not be paid and answered; it beareth Teste the 22*d* of *May* 13 *Car.* and *a Sciri Feci* returned.

Mr. *Hambden* demandeth *Oyer* of the Original Writ, 4 *Aug.* 11 *Car.* and of the *Certiorari*, and the *Mittimus*, and of their several Returns. The Writ 4 *Aug.* which went out to provide a Ship of 450 Tons, with Victuals, Men, Ammunition, *&c.* that Writ giveth Power to the Sheriff to make an Assessment upon the County, and giveth Power of Distress and Imprisonment in Case of non Payment. He demandeth *Oyer* of the *Certiorari*, which consists of two Parts; the one to certify the Sums assessed, the other to certify the Names of the Defaulters. And the Names of those that made Defaults were returned, and Mr. *Hambden* amongst others. He doth demand *Oyer* of the *Mittimus* which doth recite the Tenor of the first Writ.

Upon *Oyer* of all these, both of the Writ, 4 *Aug.* of the *Certiorari*, *Mittimus*, and *Sci. Fa.* and their several Returns Mr. *Hambden* hath demurred in Law.

The Case that riseth upon the Record is thus. The King is Lord of the Sea (for that is part of the Record) the Seas are infested by Pirates and *Turks*, which commit Depredations, and take Goods and Merchandizes, both of the Kings Subjects and others that Trafick here, and carry them away into Captivity. There is Preparation of Shipping and imminent Danger, for so the Writ reciteth. A Danger that the King's Dominion of the Sea should be lost, or at least deminished. There was a further Danger, that *Salus Reg. periclitabatur*, whether in this Case the King *pro defensione Reg' Tuitione Maris securitate subditor' & salva Conductione Navium*, may Command his Subjects *per totam Angliam*, by Writ under the Great Seal to provide Ships at their own Charge and Cost. And this do, when the King in his own Judgment conceiveth such a Danger, as doth necessarily require that Aid. That under Favour is the Question upon the Record.

There is in this Record, whereof your Lordships are Judges, Four Writs. First, That of 4 *Aug.* 11 *Car.* which goeth out of the *Chancery*, for setting forth this Ship of 450 Tons. Secondly, the *Certiorari* 9 *Martij* 12 *Car.* Thirdly, the *Mittimus*, 5 *Maij* 13 *Car.* And Fourthly, that of the 22 *Maij*, 13 *Car.* which is the *Sci. Fa.*

The Second and the Fourth Writ, which is the *Certiorari* and *Sci. Fa'.* they are returnable. The First and the Third Writ, which is the Writ 4 *Aug.* and the *Mittimus*, they have no Returns; but they give Command, and require Execution shall be done, *prout de jure & secundum consuetudinem Reg' Angliæ fieri consuevit.*

The First Writ, which is the Ground of this Business, it standeth upon two Parts. A Preamble, and the Body of the Writ. The Preamble that containeth, First, A Direction, and Secondly, the Causes and Motives of the issuing of this Writ. The Body containeth Six Parts. First, the Direction that is unto the Sheriff of the County of *Bucks*, *nec non* unto the Bailiffs and Burgesses of the Borough of *Buckingham*, and Mayor and Burgesses of *Chipping-Wiccomb*, alias *Wiccomb*, and *probis hominibus* of all the County. Secondly, the Motives and Reasons inducing this Writ, which are Nine in Number. 1 *Quia Pirati & Maris Grassatores*, &c. That these commit Spoils and Depredations by Sea, and take the Goods of the King's Subjects. 2. Because they carry the King's Subjects into miserable Captivity. 3. Because of the Preparation of Shipping that is made *undique* to infest the Coasts. 4. *Quia pericula imminent*, &c. 5. *Quia pro defensione Reg. tuitione Maris*, &c. 6. *Quia pro debellatione quorund' hostium satagent*, &c. 7. *Quia Progenitores nostri Reges Angliæ dig' Maris temporibus*, &c. 8. *Quia onus defensionis*, &c. 9. The most prevalent, *Quia hoc per legem & consuetudinem Angliæ*, &c. The Body of the Writ contains also several Mandats to the Sheriffs and head Officers, *quod fide & legiancia*, &c. *& sicut nos & honorem nostrum diligitis.* The Mandats are, *Rex.* 1. To provide a Ship of 450 Tons well manned and furnished with Provision, and that was to be in readiness by the first of *March*, to continue for the space of Six and Twenty Weeks, *ad proficiscendum cum Navibus nostris*, &c. *pro tuitione Maris*, &c. 2. That the Sheriffs and head Officers meet within Thirty Days, and set down what shall be taxed upon the incorporate Towns. 3. A Command to the head Officers of those Incorporate Towns, that within their Baliwick they make an Assessment upon particular Persons, and compel them to pay the same. 4. A Power to the Sheriffs to assess all the rest within the County, *juxta statum & facultates.* 5. A Command for the levying of these Sums by distress, *& quos rebelles inveneris* to imprison their Persons. 6. That no part of this Sum collected shall be converted to any private Use; but if any Money shall be remaining, it should be paid *inter solvendos.*

My Lords, the Reasons expressed in this Writ might justly satisfy any Mans Judgment without further Argument; but I shall clearly manifest there is no Clause or Practice by this Writ, but is verified by many Records, and is *secundum legem & Consuetudinem Angliæ.*

The

The Question that is made, is of a high transcendent Nature, it concerneth the King, both in his Ordinary and Absolute Power. Whether the King in those Cases where he in his Royal Judgment shall conceive a Necessity for the Defence of the Realm, may Command Ships in this Kind; whether by his Royal Power he may do it, or must require the Aid *per commune concilium* in the Parliament. And I conceive his Majesty may do it, not only by his Kingly Prerogative, but *Jure Majestatis.*

This Power is not only *inter prerogativa Regis, sed inter jura summæ Majestatis*, I find by many Records, that these Writs have issued out in all Succession of Times; In The times of the *Saxons* before the Conquest: But I never find that this Power was judicially questioned in any Court at *Westminster* before now. I find Questions made touching Assessments, whether they have been equal, touching the Levying, whether within the Warrant of the Office, touching the Discharging of some, by Reason of a Grant of Exemption; but to Question the main Power, whether the King by his Royal Power might Command this for the Defence of himself and the Kingdom was never disputed before now. But his Gracious Majesty who hath declared himself, that he will Rule his People according to his Laws, for the Satisfaction of the People, and to clear his Justice and Judgment do suffer these Writs to go forth, to which Mr. *Hambden* hath Demurred, and to be questioned by this legal Way to be determined by your Lordships, to which I hope you give a clear End.

My Position shall be thus, that the King, as he is King of *England*, *pro defensione Reg' tuitione Maris*, &c. when his Majesty in his Royal Judgment conceiveth it a Time of such Danger, as doth necessarily require the Aid commanded in this Writ, that he may command and compel his Subjects *per totam Angliam* to set forth Ships with Men and Ammunition and double Skippage, and this may be done, as well by the King's Writ under the Great Seal, as by Consent in Parliament.

For the Proof of this Position I shall reduce what I have to say to these Heads. First, That this Power, it is *Inter jura summæ Majestatis*, innate in the Person of an Absolute King, and in the Persons of the Kings of *England*. That this Power is so inherent in the King's Person, that it is not any ways derived from the People, but reserved unto the King when positive Laws first began. And that in this Case the King is sole Judge of the Danger; and how this Danger is to be prevented and avoided, this is my first Ground.

The Second is this, that the regal Power is not confined to the Politick Advice, that the King must be *in Cathedra* sitting in Parliament; but that it hath been always done, either *per ipsum Regem, aut per Regem & Concilium aut per Dominos suos, aut per Regem*, when he shall please to call a Consultation of Merchants and Portsmen experienced in the Service.

My Lords, I shall present unto your Lordships, that this Power is so inherent in the King, that during the time of Parliament, and in those Years when Parliaments were sitting, these Writs issued out by a Regal Power, without any Aid or Power from Parliament, and that Advice was not, though necessary in former Times.

I shall also shew unto your Lordships, that this Power is implied out of the Sovereign's Titles given unto him by the Common Laws of *England*.

And also I shall insist upon Precedents; and herein I shall desire your Lordships to take notice that these Writs have not issued out at the first upon any suddain Advice; but that there was a great search made: First, By my Predecessor Mr. *Noy*, a Man of great Learning and profound Judgment, other Searches made by the King's Counsel and some others; and a great Number of Records were considered of maturely before these Writs issued; so nothing was done upon the suddain; and we that are of the King's Counsel did think it fit that most of these Records should be cited in the first Argument by Mr. *Solicitor*, to the end that the Counsel at the Bar might give an Answer to them in their Reply; many more have been added by Mr. *Solicitor*, and many more I shall cite which have not been remembred.

My Lords, in the vouching of these Records, I shall observe Eight Things. *First*, That the Records we insist upon, they are not grounded upon any private Custom, or upon any Charter, or upon any Covenants, but upon the Laws of the Land; and there is not in any of these Records any recital that these Writs went out upon any of these Grounds.

Secondly, That in all Ages before the Conquest, and in the time of *William* 1. that these Writs have issued *per ipsum Regem, per Regem & Concilium*, and did not issue upon any Advice of Parliament.

Thirdly, That these Records and Writs were sent out, not in Case of *Hanibal ad Portas*, or an Enemy discovered, or suddain Invasion; but upon Case of Rumours, and in that a Danger might happen; so not in approaching of an Enemy, but in Case of Preparation to provide against an Enemy.

Fourthly, That the King did Command Shipping to be set forth in those Years, wherein there were Parliaments, and sitting Parliaments by his Royal Power, without Advice of Parliament.

Fifthly, That when great Subsidies and Aids have been given unto the King by Parliament *pro defensione Reg'*, in the same Year that Writ went forth for the Defence of the Kingdom.

Sixthly, That these Aids have not been required only from the Maritime Parts, the Port, nor from the Inland Counties only, but *per totam Angliam.*

Seventhly, That many Times when these Writs issued, there have been no such Causes declared, as hath been in this Writ. I shall observe, that in many of these Writs no Cause at all is set forth in them, but only that they should repair to the place of Rendezvous, and there receive further Directions.

Eighthly, I shall verify every Clause of this Writ by many Precedents. A *Mandamus*, and not a *Mandamus Rogantes*, Shipping at the Charge of the County, and Assessments made by the Sheriffs, as Commoners, and a Penalty greater, not only Distress and Imprisonment, but Extent of

Lands, seizing of Goods, 'till the King was paid. These are the Things I shall observe out of the Precedents, when I shall come unto them.

My Lords, in the fifth Place, when I have laid these Foundations, I shall then dispel those Mists that have been raised, remove those Forces that have been mustred, and answer the Objections of those Gentlemen, that will not be satisfied by the King's Writ under the Great Seal: And in this give a particular Answer to the Acts of Parliament that they have cited, to the Records that they have insisted upon, and to the Reasons and Authorities they have alledged.

In the seventh Place, I shall answer their Exceptions, that have been taken unto the several Writs, Records, and Proceedings thereupon, that have been produced by us.

And in the Eighth Place, I shall collect some Conclusions and Reasons out of the Premisses, and cite unto your Lordships some Judicial Records, that may satisfie your Lordships, in Point of Judgment: These are my Materials, I shall proceed to the Building.

My Lords, my first Ground was, that this Power is innate in the Person of an Absolute King. All Magistry, it is of Nature, and Obedience, and Subjection. It is of Nature. And before any municipal Law was, People were govern'd by the Law of Nature, and Practice did rule according to natural Equity: This appeareth in the Reports of Sir *Edw. Coke*, written by him when he was Chief Justice. 7 *Report, Fol.* 13. I will not take occasion to discourse either of the Law of Nature, which doth teach us to love our Country, and to defend it, to expose the Hand to Danger, rather than the Head should suffer; nor of the Law of God, which commandeth Obedience and Subjection to the Ordinance of our Superiors; nor of the Law of Nations, which doth agree, that there must be Protection from the King, and Obedience from the People; and without Defence there can be no Protection; and without Aid of the People there can be no Defence: Nor of the Imperial Law, which saith, that in Cases, *pro communi utilitate*, the King may *Statuere* alone.

My Lords, upon this Subject I will confine my self to the Law of the Land, and insist upon such Records, and such Precedents, and such Reasons, and such Authorities, as I find both by Records of former Times, and in our Books.

First, In the Original Government of this Nation, I do not find that it was a Monarchy; I find the contrary, that there was a great Number of petty Regiments. And when *Julius Cæsar* invaded this Realm, he writeth there were Four Kings in *Kent*; and *Strabo* saith the like, *Lib.* 4. so those Times will not be material. During the Domination of the *Romans*, which continued five hundred Years, the *Romans* had their Prefects here in *England*. No Man will doubt but that they might command what they pleased, *Notitia utriusq; Imperij, Fol.* 161. that in their Times there were special Officers, called *Comites, &c.* Officers appointed by Sea, and other Officers by Land. Those that succeeded the *Romans* were the *Saxons*; and in their Times both by ancient Grants, and by Edicts of the Princes of those Times, it appears, that this Naval Power was commanded by them for the Defence of the Realm.

First, To begin with King *Inas*, *Anno. Domini*, 725, King of the *West-Saxons*. This King in that Year made a Grant to the Abbot of *Glassenbury*, *Quod, &c. sint quieti ab omnibus Regijs exactionibus & operibus quod indici solent*, except *Expedit' Arcium Pontium & constructionem sicut in antiquo, &c.* which shews that these Expeditions were accustomed to be done. *Wuldredus*, who was King of *Kent* in the Year 742, granted unto his Churches, *quod sint liberi ab omnibus secularibus servitijs*, except *expedit Pontiv. &c.* so in that Grant these Expeditions were excepted. *Etheldredus*, King of the *Mercians*, *Anno.* 749. granted *Monasteriis de, &c.* except *ut supra*. So as in those Times these Services were common, and were done by a *Dicto Regis*. That the Churches should be free from all Services, except these three Expeditions of Building Castles, Bridges and Forts; *a quibus nulli unquam laxari possunt*. *Egbert*, *Anno.* 840. commanded a great Navy to be provided; and that for the Defence of the Realm, and Safeguard of Ships. *Ethelwald*, that was King of the *West-Saxons*, *Anno.* 854. granted to the Church, that it should be free from all Service Temporal, except *Regalibus Tributis*. In the Time of King *Alfred*, who was the first Monarch, and King of all *England*; one who was a Privy-Counseller in his Time, and wrote the Story of that Time: He, in the ninth Page of his Book, saith, *Quod Rex* Alfredus *missit Galleas longas Naves & Cymbas edificari*; and agreeing with this, is the History of *Assermenivensis*, *Florentius*, *Wigornensis*, 316. and *Huntingdon*, 351. wherein your Lordships may see by the Record, it was done, *ex precepto Regis per totum Regnum*. This King made a Law, which is not remembred by *Lambert* in his *Saxon* Laws, to this Effect; that no Man, by Summons, by the Horn or Word of Mouth, should sit still in Matter of Theft, Bloodshed, or going to War, whensoever his Expedition should require; and there he doth mention it to be upon Pain of Forfeiture of Life.

King *Edgar*, who stiled himself *Angliæ Basilicus*, he in the Year, 959. provided a great Navy of 3600 Ships, as saith *Wigornensis*, and *Matth.* of *Westminster*; and he gave a Command, that every Year, at *Easter*, a Navy of three or four Thousand, should be set out, and divided into three Parts, *East*, *West* and *North*: The Ships in those Times were not so great as now they be. The same *Edgar*, in the Year 973. granted to the Abby of *Thorney*, all manner of Immunities, and that it should be free from all Services, except those three of building Bridges, Castles and Forts. And the same King, in his Charter to the Church of *Worcester*, granteth them to be free, *ab omnibus exactionibus*, except *constructionem Pontium Arcium, &c.*

My Lords, by all these several Grants, and what hath been done by those Kings, it doth appear that these three Fundamental Services were ever reserved unto the Crown, saving the Grants to two or three Abbies, which had some particular Exemption. In the Year 1008, which was remembred by Mr. *Sollicitor*, there was then a great Navy provided by King *Etheldred*. The Words are thus: *Rex* Etheldredus *per totam Angliam ex.* 310 Hides. *Navem unam, &c. pre-*

parare

parare fecerat, &c. that was for every 310 Hides of Land to build one Ship; and every Eight Hides of Land to find a Man and a Costlet, and to meet at *Sandwich* for Defence against the *Danes*: This appeareth in *Huntingdon*, 360. *Matth.* of *Westminster*, 387. *Hoveden*, 426. and *Malmsbury*, 100.

In this Record these Things are observable, *Rex parare facit, & Rex eos missit*; then *per totam Angl.* all *England* was to be charged. By the *Glossary* of that Learned and Judicious Antiquary, Sir *Henry Spelman*, it appears that *Virgata terræ continet*, 24. *Acras quatuor virgatam continent unæ. hidam, & quinq; hidas Feod. Militar.* Upon casting up of this, it doth appear, that there be in *England* 363600 Hides of Land, and every 310 Hides being to set out one Ship, the whole Number amounteth to diverse Thousands, 11072. And every Eight Hides, to set forth a Soldier, amounts to 45450 Men; but it is not the Number, but the Matter that is done by the King's Command, *per totam Angliam.*

In the Thirtieth Year of King *Etheldred*, he made an Edict, which Mr. *Solicitor* caused to be read in Court, saying he had it out of an old Book in *Cambridge*, *Quod instaurunt tiel*, Number *del Naves per singulos annos.* I read it to this Purpose, to shew, that in the Thirtieth Year of his Reign, there was a Naval Expedition to be always ready at *Easter*, and sheweth the Penalty of such as did depart without License.

King *Canutus Lambert*, *Fol.* 117, 118. *Ex sapientum Concilio, &c.* ordained a Command amongst his Temporal Laws, *Cap.* 10. *quod precidij fiant, &c.* commands Ships to be provided; and *Fol.* 118. a Penalty upon all those that refused to pay 120*s.* which was a great Sum in those Days.

That which I observe out of these Two were these: *First*, That they were made by the King, by the Advice of his Lords, that there was to be yearly Preparations for Shipping: And those that departed out of the Service without License, were to incurr the Forfeiture of all their Estates. If these Edicts were Acts of Parliament, they stand unrepealed; and if no Acts, then they stand by Command from the King's Power.

My Lords, I have shewed you the Practice, as it was before the Time of *William* the First: He did not abrogate the former Laws, but was sworn to perform them. Nay, it was said that he did confirm *Antiquas Leges & Consuetudines Angliæ.* So then, if these were the Laws, and this the Power that the Ancient Kings of *England* had before his Time, he did ratifie and confirm it. but not diminish it.

This Power of Commanding of Shipping, for the Defence of the Realm, it is a principal Part of the Power Royal. This Kingdom, it is a Monarchy, it consists of Head and Members; the King is the Head of this politick Body, it consists of Clergy and Laiety: The Head, it is furnished with entire Power and Jurisdiction, not only to administer Justice in Cases Criminal and Temporal unto his People, but likewise for Defence of both; and he may command the Power both of the one and the other: This Power I find to be mentioned in the Register of Original Writs, written before the Conquest, 127. *b.* it reciteth, that *Nos considerantes quod ratione Regiæ dignitatis maxime ad providendum Salvationi Reg' nostri circumquaq; astringimur.* It appears by *Stamford*, in his Prerogat. *Cap.* 1. that as the King is the most excellent and worthiest Part of the Commonwealth, so is he also the Preserver, Nourisher, and Defender of his People. I find it in *Fortiscue*, that they have cited; that a Commonwealth, without this Head, is but a Trunk, as the Natural Body is a *Cadaver.* I find it in *Fitz-Her Na. Br. Fo.* 73. or 173. that the King of Right ought to save and defend the Realm, as well against the Sea as against the Enemies, that it be not surrounded nor wasted.

How is this Defence against the Sea and Enemies of the Kingdom. Is the King bound to defend the Kingdom by Sea Walls at his own Charges?

No, the Power of Defence is a Superintendent Power in his Majesty, to authorize Sheriffs and Commissioners to see it done, but by his Power; yet at the Charge of the People. Register 127. *b.* it appeareth there, where the King commandeth the People by his Writs; the one directed to the Sheriff, and the other to Commissioners, and in both willeth and commandeth, *quod distringat. A. B. & al'*, to distrain the Lands of all those that may receive Damage to repair the Sea Walls, as well as the *ter' Tenn'*. This Writ was before any Statute concerning that, for the Register was before the Conquest; and the first Statute that concerneth Commissions of Sewers, was made 6 *Hen.* 6. So it is by the Power the King had at Common Law, and not upon any Statute: And this was to the Sheriff, as well as to Commissioners, and that it was done at the Charge of the Country, and not at the King's Charge. *Pat.* 33 *Ed.* 1. *M.* 4. *Dorf.* agreeth with the Register. The King doth there recite, *Quod ratione Dignitatis Regis, &c. & per Juramentum sumus astricti ad providendum Salvationi Reg'*, and there he giveth Power to Commissioners to distrain the People to make Defence against the Sea, at their own Charges, *Pat.* 2 *Ed.* 2. *pars* 2. *M.* 5. *Dorf.* in the Case of *Wiseman's* Report, *Fol.* 15. the King, *ex officio*, ought to govern his Subjects in Peace and Tranquility. 7 Report, *Fol.* 9. Protection of the King is general over all the Kingdom, there is Reason why it should be thus: For the King of *England*, he hath an entire Empire, he is an absolute Monarch; nothing can be given unto an absolute Prince, but is inherent in his Person, as may appear by Books, Records, and Acts of Parliament, *Bract. Lib.* 2. *Fol.* 55. *b. Sciendum, &c. Dominus Rex super omnes qui ad Coronam pertinnet.* This appears likewise in the Statute, 24 *Hen.* 8. there it is declared that this Realm of *England* is an Empire, and hath been so accepted in the World. *Stat.* 25 *Hen.* 8. *Cap.* 21. 1 *Eliz. Cap.* 1. 1 *Jac. Cap.* 1. the Crown of *England* is affirmed to be an Imperial Crown; and Acts of Parliament are Proofs of the highest Nature, 16 *Ric.* 2. *Cap.* 5. that the King holdeth his Empire immediately of the God of Heaven: And at his Coronation, his Crown is elevated as a Signification thereof. This is likewise acknowledged in the *Irish* Reports, *Fol.* 60. *Rex Angliæ est absolutus Monarcha in Regno suo. Fortiscue* saith, the King of *England*, as well as any other King or Emperor, hath all the Liberties within his Kingdom in *Imperio suo.* The Law of *England*

land makes the King of *England* not as his Subjects are, a Natural Body, but a Body Politick, freeth him from all Imperfection and Infirmity; he is immortal and never dies; the King ever liveth, *Com.* 177. 11 *Report. Fol.* 7. 21 *Ed.* 4. and other Records.

My Lords, as he is an absolute Monarch, so all these; *Jure summæ Majestatis*, are given unto his Person by the Common Law.

First, He hath supreme Dominion, both by Sea and Land, as is proved by the Mirror, the greatest Part whereof was writ before the Conquest. Some things are added to it by *H. Horne*, in the Reign of *Ed.* 4. he holdeth, that all Lands, and all Jurisdiction, and all Dominion is derived from the Crown: That whatsoever was not granted from the Crown, remaineth in the Person of the King. This *Supremum dominionum* is so inherent in the King's Person, that if the King grants away his Lands, *Absq; aliquo reddendo*, yet the Tenure must still remain to the King; 8 *Hen.* 7. 12. 30 *Hen.* 8. 45 *Dyer*; this Dominion is not only upon the Land, but it is upon the Sea. And so the King he hath not only a Dominion at Sea, but he is *Dominus Maris Anglicanæ*; he is both Owner of the Sea, and of the Soil under the Sea. And so it was resolved lately, by my Lord Chief Baron, and the rest of the Barons in the *Exchecquer*, in the Case of *Sutton Marsh. Michaelmas*, 13 *Car.* That the Soil of the Land, so far as the Sea floweth, is the Kings, and the King is seized thereof, *Jure Coronæ. Mirror.* 8. *Bract. Fol.* 8. *Temps Ed.* 1. *Avowry*, 46 *Ed.* 3. *Com.* 3. *b.* That not only the Dominion of the Sea, but the very Soil belongeth unto the King.

In the next place he hath, besides his *Supremum Dominion*, a Sovereign Jurisdiction, and that extends both by Sea and Land.

First, For Creation of all his great Officers and Judges; Creation of the Admiralty, time out of mind. 20 *Hen.* 7. *Fol.* 8. 12 *Hen.* 7. *Fol.* 17. Power to make Justices could not be granted, and all these Powers resumed in the Statute, as inherent in the Crown. 12 *Hen.* 7. *Fol.* 17. there is said by *Fineux*, that at the Beginning all Administration of Justice was in one Hand, that is, in the Crown. And surely this Jurisdiction did not begin in the Time of *Ric.* 1. when those Laws were renewed by him at his Return from the Holy Land; but there were Admirals in *England*, and the Admiral Law by Sea long before. 27 *Ed.* 1. a famous Record in the Tower, that the Commissioners for the Emperor, *Spain* and *France*, did appear before the King's Commissioners, and did acknowledge the Soveraignty of the King of *England* upon the Sea, did belong unto him Time out of Mind. And for further Proof of this, it likewise appeareth in that Learned Book of Mr. *Selden*'s, called, *Mare Clausum*.

My Lords, the next Inherent Power of the Crown are Pardons of Offences and condemned Persons, and Restitutions, which none can do but the King himself, 1 *Hen.* 4. *Fol.* 5. 20 *Hen.* 7. 8.

The next is *Jus nummi percutiendi*, a setting of a Royal Stamp upon his Coin, the Advancing of the Value of his Coin, and the Debasing of it. 21 *Ed.* 3. 6. That the King only can put a Value upon it. 5 Report, *Fol.* 114. That the King, by his absolute Prerogative, may make any foreign Coin lawful Money of *England*, by his Prerogative, *Davies* Reports, *Fol.* 20.

The next, *Jus summæ Majestatis*, is that of concluding War and Peace, which is absolutely inherent in the King's Person, which he may do without calling his great Council, 19 *Ed.* 3. 6 and 7 Report 25, that all the Subjects of *England* cannot make a War *Bellum inducere* belongs not to the Subject. And to make *Aliens denisens* is a high Prerogative.

My Lords, this trust that the King hath for making of War and Peace, and for the Defence of the Realm, both by Sea and Land, it is a great Trust, inherent in the Person of the King; no Man ought to mistrust where the Law doth trust.

There is an Objection made, That if it should rest in the Power of the King, that he might do it when there was no ground for it and without Cause; and cause Forces to be mustred, and Ships provided where there is no imminent Danger, in such a Manner, as that it might be grievous unto the People.

These are Objections clearly against Presumption of Law; for where the Law trusteth we ought not to distrust. The King, as appeareth by all our Books, is the Fountain of Justice and Piety, and will do Justice unto all his Subjects. *Com.* 240. All Justice is derived from the King. 13 *Ed.* 4. 8. The King can do no Wrong, *Bract. Lib.* 3. *Cap.* 9. 8 *Hen.* 6. 20. Its Royal Power, *De aver Correction de lay m.* he is the sole Judge, and we ought not to question him. *Bracton*, *Rex non habet superiorem misi Deus.* 11 Report, *Fol.* 72. The King is the Fountain of Justice and common Right: And the King being God's Lieutenant cannot do wrong. 17 *Ed.* 3. 49. The King could not be made an Instrument of Covin and Fraud, but the Patent was void. *Littleton*'s Comment, 99. the 5th Report, *Fol.* 14. That Religion, Justice and Verity, are the sure Supporters of Crowns and Diadems. 24 *Ed.* 3. 42. *Stamford*'s Pleas of the Crown, *Fol.* 72. at the Common Law. The Law doth not distrust where the King doth commit one, but that it is upon just Cause, and so we are not to doubt it. And therefore at the Common Law, *Westminster*, 1 *Cap.* 15. a Man committed by the King was not repleviable: Nay, if he was committed by his Counsel, that was his representative Body, he was not repleviable. Shall we then, when the Law hath committed this Power unto the King, who is the Fountain of Justice and Equity, who is intrusted by the Law of the Realm, and the Commonwealth intrust him. Shall we think that succeeding Kings will do that which is not fit to be done: I say, if the Law trust him we ought to trust him. At the Common Law, if the King commit a Man, *per Bouche*, he is not repleviable.

But for a further Reason, those that are his Delegates or Judges, are not to be mistrusted. That which a Judge doth, as in his Office, shall not be assigned for Error. If it be so in the Delegate Power, much more in the Primitive and Fountain. 5 *Mar. Dyer*, 163. the Court of *Kings-Bench* did receive a Record of *Nisi Prius*, the *Postea* returned by the Clerk, and the Death

Death of the Justice of Assize assigned for Error, and could not be received; and so, 1 *Mar. Dyer* 89. a Writ of Error to reverse a Fine, *pro ut in Dyer*; that is the Reason of the Book. 7 *Hen.* 7. *Fol.* 40. 10 *Hen.* 7. 28. *Fitz-Her. Na. Br.* 126. saith, he cannot assign for Error, nor shall be admitted to allege any thing contrary to the Office of a Judge; as to say, the Judge did not give right Judgment, or the Clerk did not make right Entries, *M.* 7. *Ed.* 1. *B. Rs.* and that is the Reason why a Man of *Non compos mentis* in a Fine, and suffering of a Recovery, it shall not be assigned for Error against the Acts of a Judge. 8 Report, *Fol.* Dr. *Bonner's* Case. Records by a Judge, nor Justice of Peace, not traversable! Good my Lords, then, if by the Laws of this Kingdom, one shall not be admitted to receive an Averment, against any Acts done by your Lordships the Judges, or against Acts done by inferior Judges; surely in this where the King is absolute Judge, it shall not be allowed to say, there was no Cause of Danger, or that is done by the King which ought not to be done, *Bract. Lib.* 1. *Cap.* 24. *est in corona Regis facere Justitiam*, The King is so absolutely trusted with this Defence, that a Subject cannot make a Fort or Castle upon his own Freehold without the King's Licence, that appears in the old *Mag' Char' Fo.* 162. Enquiry made of those that do build Forts and Castles without the King's Licence. *Rot' Parl'* 45. *Ed.* 3. *M.* 34. 6 *Hen.* 4. 19. and a Book of *Long*, 5 *Ed.* 4. *Fol.* 129. that a Subject cannot make a Fort or Castle without the King's Licence; not in his own Ground.

My Lords, the King hath so discharged this Trust, that tho' there were no Account unto the Subject, yet these Ships that have been Commanded were *ad proficiscend' cum Navibus nostris.* The King hath been at greater Charge with these Ships going out, than ever any King of *England* ever was, as will appear by those vast Sums of Money the King hath spent in these Years, besides what hath been contributed to it by the Subjects.

My Lords, I have done with my first Position, that it is an inherent Right in the Person of the King of *England.* And that the King is the sole Judge, both of the Danger, and when and how it is to be avoided.

It hath been objected, that the King of *England* may do it, but how? It must be according to the Institution of the Laws of the Realm; there must be a concurrent Power, a Politick Advice in Parliament, and so it may be done. But the King, either by his ordinary Power or absolute, without the Assistance of the great Council, he cannot do it, as hath been objected.

And therefore in the second Place, I shall come to the second Thing I did propose, that was; that the King, as he is King of *England*, that he alone for this Common Defence of the Realm without the Aid of Parliament may *Statuere*, &c. That the King, by the Advice of his Council, when he please may do it, that he may ordain several Ways by the Institution of the Common Laws, by his Ordinance, by his Proclamation, by his Patents, by his Writs, and in legal Matters by his Judges, that this may be done by him.

First, It is agreeable to Reason; for Kings were before Parliaments, and then surely they might have done it. As Justice doth flow from the Crown Originally, as it was in *Moses*, so it is in the King of *England*, only in the King's Person. But afterwards the King did depute his Deputies, and gave others Power, this is no conceit of mine, 12 *Hen.* 7. *Fol.* 17. *b. per Fineaux*, there was a Time when there was no Municipal Laws, when positive Laws were not established, when Kings did rule their People according to natural Equity; and then surely the King might Ordain. No Man will Question it: since there have been positive Laws and municipal Laws, the Kings of *England* they have ordained, as by those several Records cited appears. It appears by the Practice that hath been since the Time of *William* 1. that the Kings of *England* in all those Writs that they have ordained, and have prescribed the Time for issuing of these Writs, the Numbers of the Ships, the Times of meeting, the manner of Munition, and to stay for the Defence *quam diu nobis placeret.* I have made a Collection of what have gone out by the King himself, what *per Regem & concilium*, and what by Advice of his Counsel, and with the Advice of Merchants and Portsmen; but they are so infinite, and so many of them, that I will not trouble your Lordships with the Repetition of them.

These Ordinances for the Defence they are so suitable and agreeable to the Ordinance that the King maketh in other Cases where the King alone doth ordain as by his Proclamation, *Claus.* 24. *Ed.* 3. *Pars* 2. *M.* 2. *Dors.* The King by his Proclamation Commanded all Earls, Barons, Knights, Esquires, and other Men at Arms, that none of them should depart into Foreign Parts *Fitz. Na. Br. Fo.* 85. he agreeth it, and saith the Book, he that transgresseth this Proclamation shall be fined for his Disobedience. And this Command may be under the Great Seal, Signature, or Privy Seal; for saith the Book, the Subject is to take Notice of any of the King's Seals; so in all Ages he hath commanded no Victuals shall be transported, *Claus.* 24 *Ed.* 3. *M.* 7. *Dors.* 5. *Dec.* 4 *Hen.* 8. 11. *Hen.* 7. 23. the King granted a Proclamation for a Justing. And if one of the two that be fighting be killed, it is no Felony, 5 *Report* 114. the King by his absolute Power may make any kind of Money Current by his Proclamation. In the next Place, the King may Ordain by his Patent alone 40 *Ed.* 3. *Fol.* 17, 18. the King did grant a Priviledge unto the Scholars of *Oxford*, that they should have the Choice of the Inns in *Oxford*, which was before there were any fair Colleges in *Oxford*; saith the Townsmen, this is my Freehold, the King cannot do it; say the Judges, this is by the Kings Patent, and is in favour of Learning, and therefore a good Ordinance; so the Justice in Eyre may take up the Principal Inn in a Town. Is there any thing more usual then for the King to give Power to a Corporation to make Ordinance for a common Good, 49 *Ed.* 3. 162. shall it be so in the Creature, and not in him that makes the Creature, a Case or two upon every one of them. The King may Ordain by his Writ, and that appears 9 *Ed.* 3. 16. a Writ of *Cessavit* against the Tenents of *Northumberland.* The Tenents had been mightily oppressed by the *Scots*; they petitioned the King, and said, they were not able to pay their Landlords their Rents, by Reason of those Incursions

upon them of the *Scots*, and desired stay of Suit, and there it appeareth, that the King did Ordain by his Writ, that those Suits upon those Reasons should not proceed against the Tenents for Non-payment of their Rents; out of the same Reason are the Writs of Protection.

Then the King and his Council may Ordain, for that I find, *M.* 4. *Hen.* 3. *Fitz. Her. Na. Br. Dower* 179. A Writ of Dower there brought by a *French* Woman. The Tenent of the Writ pleaded, that there was an Ordinance of the King and Council, *Quod nullus de potestate Regis Franciæ respondeatur in Anglia antequam Angl' respond' de jure suo in Francia*, that is, We *Englishmen* should not be compelled to answer any *Frenchman* or Woman in a legal Way, till the *English* were answered in *France* to their Suits there, 39 *Ed.* 3. 7. *per Thorp.* the King and his Lords may make an Ordinance which shall be as binding as a Statute, *Rot. Franc.* 72 *Ed.* 3. *M.* 6. The King by the Advice of his Council did ordain *quod omnes Magnat. & al' qui habent terras & tenementa continue morat'*, &c. upon this Ordinance I can shew above 40 Writs that have gone out to the Nobility, Clergy, Archbishops and Bishops, and to all the Kings Subjects too that had Houses in the Maritime Parts, *Rot. Franc.* 22 *Ed.* 3. *M.* 16. and 50 *Ed.* 3. *M.* 47. *dors.* 24 *Ed.* 3. *M.* 6. that of 24 is to the Inlands within 16 Miles of the Sea Coasts, 40 *Ed.* 3. *M.* 37. the like Writs awarded to most Maritime Countries, upon pain of Seizure of their Lands and Goods. So likewise for Provision for the Army; the King and his Council have ordained, both for Markets to be kept within such a Distance of the Army, and Wine to be sold there, and no where else, *Rot. Scoc.* 10. 12 *Ed.* 2. *M.* 13. *dors.* so they have set down the Number of the Men of Arms that every Town should be charged with, *Claus.* 13 *Ed.* 3. *pars* 1. *M.* 14. *dors*, with a Command that they should strain the Commonalty of that County for the Wages of those Men at Arms.

My Lords, if the King may at any time of Danger by his Proclamation, by his Patent, by his Writ, by the Advice of his Council; surely in Case of Necessity it is much more Lawful, for *necessitas est lex temporis*, where a Defence by Sea and Land is required, 5 *Ed.* 4. 6. 14 *Hen.* 7. 29. Jurors by Law are to hold together till they give up their Verdict, yet otherwise, if the House be like to fall upon their Heads, 38 *Hen.* 6. 11. upon a Precip, the Tenent may be excused if he could not pass the Waters.

My Lords, I find that in legal Matters the King and his Judges make certain Explanations upon the Statute of *Gloucester*, as appears by *Mag' Char'*. And what was done then by the Judges Advice, hath the Force of a Law at this Day. So as you see by the Laws of *England*, as well in other Cases, as in Cases of Defence, the Law hath given the King of *England* this Power to Ordain for the Good and Safety thereof.

I find that in all Ages, and in all Times, the Incidents to a Defence, as well as this principal Part hath been given unto the King himself, as he is King of *England*.

First, For the Murage of Towns: That the King hath Commanded the Murage of Towns to be done at the Peoples Charge; the Precedents are so many, I will mention none of them; and shall he not Command for the Defence of the Wooden Walls of the Kingdom? *Rot. Alm'* 12 *Ed.* 3. *pars* 2. *M.* 10. The King Commands by Writ to be fortified towards the War; and every Man having Rent there, to contribute, or to be compelled thereto by Distress; this was Commanded to be done by Writ, *Pat.* 12. *Ed.* 3. *pars* 3. *M.* 5. it appeareth it was done. The King imposed a certain Rate upon all Goods and Merchandize that came unto *Kingston* upon *Hull*, and commanded this should be employ'd to the Walling of the Town, this was *De voluntate Regis*, this appeareth *Rot. Pat.* 19. *Ed.* 3. *pars* 1. *M.* 12. there was the same Command for other Towns, as *Dover*, &c. the said Roll, *M.* 22. *Pat.* 12. *Ed.* 3. *pars* 3. *M.* 14. *dors.* A Writ for the Repairing of the Walls of *Winchester* at the Subjects Charge, *Rot. ib. M.* 15. the King by special Grant gave Power to the Mayor and Burgesses to Assess the Inhabitants towards the making of the Wall, and the Defence of the Town, *Claus.* 1 *Ric.* 2. *M.* 12. *Oxford* was Commanded by the King to be fortified at the Inhabitants Charge, *Claus.* 12 *Ed.* 3. *pars* 3. *M.* 32. the King Commanded particular Subjects to fortify their Castles at their own Charges in Time of Danger, *Pat.* 18. *Ed.* 3. *M.* 9. the King taketh the Castles of the Subjects into his own Hands in Time of Danger, *ad evitandum damna & pericula quæ nobis evenire possint*, *Claus.* 13 *Ed.* 3. *pars* 1. *M.* 36. *dors.* the King by Advice of his Council did Ordain, that the Town of *Southampton*, *pro salvatione ejusd'* should build a Wall.

My Lords, if the King may Command the Walling of a Town at the Charge of the Inhabitants, he may likewise Command the Defence of the Kingdom by Sea; so for other incidents of Defence: As for erecting Beacons upon the Sea Coasts, *Rot. Vas.* 11. 12 *Ed.* 3. *M.* 29. *de Communibus in singulis*, *Claus.* 1 *Ric.* 2. *M.* 4. *dors. De Ordinatione per Regem & Concilium pro vigiliis faciend'*. So likewise the King in all Ages hath commanded the imbarring of Ships for the Defence of the Realm, and for all Publick Service; this appeareth *Claus.* 14 *Hen.* 3. *M.* 17. *dors.* all Ships arrested that could carry 16 Horses, *Rot. Sco.* 10 *Ed.* 3. *M.* 2. *dors. Omnes Naves pro defensione*, &c. *Rot. Alm.* 12 *Ed.* 3. *M.* 23. *pars* 1. & 12. for the imbarring of Ships for the Defence of the Realm.

So likewise the King commandeth and appointeth who shall be Officers, who shall be Admiral of the Fleet, who shall be *Custodes Maris*, as appears *Pat. Ed.* 2. *M.* 7. *dors.* and in the same Roll, *M.* 10. *Pat.* 15. *Johannis*, *M.* 10. *Pat.* 48. *Hen.* 3. *M.* 5. *Claus.* 23 *Ed.* 3. *M.* 5. *dors*, and an infinite Number more.

Then that the Country paid the Charges of those who had *Custod' Maritime* that appears, *Rot. Fra.* 12. *Ed.* 3. *M.* 31. *dors. Claus.* 13 *Ed.* 3. *pars* 1. *M.* 14. *dors.* the King when there was Cause he moderated the Expence. *Claus.* 25. *Ed.* 3. *M.* 16. The King did order how much, and how long the County should pay for Wages; and commanded the stay of those that could have been gone before their Time; and this appeareth *Pat.* 48 *Hen.* 3. *M.* 4. *Claus.* 48 *Hen.* 3. *M.* 2, 3. *dors.*

Then it appeareth by many Records, that this Guard of the Sea-Coasts was to be according as the King should Order and Direct, sometimes *per Regem*, and sometimes *per nos & Concilium*, and this appeareth *Claus.* 23 *Ed.* 1. *M.* 5. *dors. Claus.*

13 *Ed.* 3. *pars* 2. *M.* 14. *dors. Pat.* 29 *Ed.* 1. *M.* 1.

Sometimes the King out of his Royal Power hath been pleased to give Discharges unto particular Men, to be discharged from this *Custod' Maritime*, this appeareth *Claus.* 23 *Ed.* 1. *M.* 5. *dors. Portsmouth* discharged, because their Ships were in the King's Service, *Claus.* 8 *Ric.* 2. *M.* 3. a Discharge for the Abbot of St. *Albans*, *Pat.* 12 *Ed.* 3. *pars* 2. *M.* 8. *Pat.* 12. *Ed.* 3. *pars* 1. *M.* 14. Discharges *de Custod' Marit.*

Then the Power of the Punishing of those that should neglect those Commands hath been always in the King, and to be Punished by his Commissioners, or by his Writs, and that in a high Manner.

That there hath been Commands by Distress, by Imprisonment, by Seizure of Lands, Goods, and Forfeiture of all that they had, this appeareth, *Pat.* 48 *Hen.* 3. *M.* 5. *dors. Claus.* 48 *Hen.* 3. *M.* 3. and a great Number in the Times of *Ed.* 2. and *Ed.* 3.

The King hath so far medled in this Business, that though it hath been the Money of the Country, yet the King hath appointed the Pay-Master, *Claus.* 48 *Hen.* 3. *M.* 20. *Claus.* 16 *Ed.* 2. *M.* 13.

So all Arrays for mustering of Men between 16 and 60. have been in all Ages, and by the Kings Command to be in and continue in readyness so long as the King shall Please, *Rot. Alm.* 12 *Ed.* 3. *pars* 2. *M.* 6. *dors.*

So, my Lords, it doth appear by these Precedents that have been cited, by these Records, and by these Book Cases, that the Kings of *England* have in all Ages given Command, and made Ordinances by their selves, by their Council, by their Judges, and by their Peers; and these Ordinances have been obey'd.

My Lords, I promise upon this Head to make it good, that in these Times, and in these Years, wherein there were Parliaments, that though the Parliaments did determine Matters concerning the Land Forces, and the going of the King's Army into *Scotland*, that yet sitting the Parliament, the King hath Commanded the setting forth of Ships by his Writ; this was ever left unto the Royal Power: For the Proof of this, there was the 24 *Ed.* 1. a Parliament, as appears in the Printed Books of that Year; and in that Year the King Commanded Ships by his Writs at the Charge of the Subjects, *Pat.* 24 *Ed.* 4. *M.* 17. Command to take up a Hundred Ships; and in *Pat.* 24 *Ed.* 1. *exparte Regis Rem.* Exchecquer Roll 22. Command *pro Custod' Marit' Hill'* 9 *Ed.* 2. a Parliament holden at *Lincoln*, and yet in the same Year Writs went out to provide Shipping, as appears by *Rot. Pat.* 9 *Ed.* 2. *pars* 2. *M.* 26. I find there was a Parliament held 12 *Ed.* 2. this appeareth in the Book of Statutes, *Rot. Scoc.* 11, and 12. *Ed.* 2. *M.* 8. the King recites certain Inroads made upon the Men in *Northumberland*, *& quod de communi concilio*, held at *York ordinavimus*, *&c.* and assigues the Earl of *Pembroke*, and Bishop of *Norwich*, *ad requirend' Norff' & Suff' juxta discretiones vestras subsidium facere per Naves*, &c. *per tempus tres vel quatuor Mensium.* At this Time there was a Provision by Parliament for the Kings Service by Land, and for his Armies to meet him at *Newcastle*; and for two Reasons why *Navale subsidium* should be necessary. First, to hinder the bringing of any Victuals into *Scotland.* Secondly, For the free entercourse of Trade; so as you see in this Year wherein a Parliament was holden, this *Navale subsidium* was Commanded by the King's Writ without an Act of Parliament, though this Writ was for *Norfolk* and *Suffolk*; yet the like was for *Dorset*, *Somerset*, &c. It appeareth likewise 10 and 11 *Ed.* 2. which were those great Years of sending out of Writs, that then Parliaments were holden. And so it doth appear by the Printed Book of Statutes; yet in that Year of 10 *Ed.* 3. *Claus.* 10 *Ed.* 3. *M.* 37. *dors.* A Writ directed to the Mayor and Bailiff of *Bristol*, with a Command, that all Ships of 40 Tons *& ultra*, should be seized, 10 *Ed.* 3. *M.* 21. *dors.* Command that the Ships should be sent forth for the preventing of Danger, and that no Foreigners Ships come in to Aid the *Scots*, *M.* 21. *dors.* the same Roll Command to the City of *London* to set out Ships at their own Charge, *Sco.* 10 *Ed.* 3. *M.* 21. *dors.* Writs to the Sheriffs of *Bucks* to send Horsemen and Footmen to the County of *Southampton*: So there were Men drawn out of their County, and the Refusers there were called Rebels, *Rot. ib.* Writs *de Navibus pro defensione Regni.*

My Lords, there was something more observable in this Year of 10 *Ed.* 3. for some of the Writs that went out bears Teste, 3 *Octobris*, 10 *Ed.* 3. and mentions a Parliament, but did not go out by any Ordinance of Parliament; so that the awarding of these Writs, 10 *Ed.* 3. were sitting the Parliament, and by the Royal Power, which is a strong Argument, there needeth not Aid of Parliament, for the King to Command his Forces. 11 *Ed.* 3. there was likewise a Parliament, as appeareth in the Printed Books of Statutes, yet Writs dated 10 *Januarii*, 11 *Ed.* 3. *per ipsum Regem*, Ships are commanded *pro guerra super Mare. Rot. vas.* 20 *Ed.* 3. *M.* 6. *dors.* Proclamation to several Counties, that all Ships be in a Readiness. In the 12th Year of *Ed.* 3. there was a Parliament at *Northampton*, *Claus.* 12. *Ed.* 3. *pars* 2. *M.* 1. the same Roll *pars* 2. *M.* 32. and yet the same Year the King Commanded Shipping at the Charge of the Counties, as appeareth *Rot.* Parliament, 12 *Ed.* 3. *pars* 1. *M.* 12. *Claus.* 12 *Ed.* 3. *pars* 3. *M.* 29. And in the 13 Year of *Ed.* 3. there was likewise a Parliament holden, as appeareth 12 *Ed.* 3. *M.* 9, 10. but Printed Statutes make no mention of a Parliament then.

My Lords, in this Record these Things are observable, cited, and made Use of by the Defendents Counsel, a strong Record as any can be against them. In that Parliament the King he did pray the Advice of the Commons in Parliament touching his War with *France*, and the guarding of the Sea Coasts; the Commons they make Answer, *Prient les Commons que ils ne Counsel doner al choses de quel ne pass Conuzance*, &c. They say further, And they grant that the Maritime Towns ought to make the Guard upon the Sea without Wages, and the Inland Towns upon the Land.

Two Things are observable in this Record. *First*, When the King doth descend so low as to pray the Advice of his Commons in Parliament, and Assistance for the Gaurding of the Sea; the Commons disclaimed it, and said, they have no Conuzance, *&c.* and yet the Defendent's Counsel did press, that now the King should ask the Advice of the Commons in Parliament, a Thing disclaimed by the Commons in Parliament,

ment, 13 *Ed.* 3. to have any Cognizance of. *Secondly*, That by this Record, the Maritime Parts ought to gaurd the Sea at their own Charges: This, though it was granted in their Petition, it was not granted by the King; for it appeareth in the same Year, *Rot. Alm.* 13. *Ed.* 3. *M.* 13. *Dorf.* that the King that Year hearing of some Preparations in *France*, commanded Ships for three Months. *Clauf.* 13 *Ed.* 3. *Pars.* 1. *M.* 14. That in several Counties Men were distrained for not Payment of Wages for the Archers and others that gaurded the Sea Coasts. It appeareth by these Records, that both the Gaurd of the Sea, and the Sea Coasts, was done *juxta Ordinationem nostram*, Order made by us and our Council, *Rot. Alm.* 13. *Ed.* 3. *M.* 15. *Dorf.* the King appointed the Arch-Bishop of *York*, *Hugh De Percy & al'* for that purpose, *&c.*

So, my Lords, I have done with the second Ground, that is, that the King is the sole Judge of this without his Parliament. That the Commons in Parliament have disclaimed to have any Cognizance of it. That in the same Year, when Parliaments were holden, the same Year these Writs have issued without Advice of Parliament.

The third Thing I did propose was those supream Titles, which the Common Law of *England* giveth unto the King, which may enforce this. *Bract. Lib.* 2. *Cap.* 24. saith, that the King he is *Vicarius Dei*; his Power, as was agreed, is *Jure Divino*. God is the God of Hosts, and the King is a Model of God himself. 40 *Ed.* 3. *Fol.* 18. The King is the chief Guardian of the Commonwealth. The Sheriff hath *Posse Comitatus* under the King, the King's Vicegerent in the County: And he hath this Power, not only for the Execution of Legal Process, but for the Defence of the Realm. 12 *Hen.* 7. *Fol.* 7. This Delegate Power of the Sheriff, is as well for Defence, as for the Execution of Process. Shall the Sheriff do it, and not the King? 10 *Hen.* 3. *Fol.* 1. *B. Hen.* 7. *Fol.* 1. The King is the Conservator of the Law. 20 *Hen.* 7. *Fol.* 4. *Rex est Capitalis Justiciarius totius Angliæ*; he is not only to maintain Justice in the Courts of Justice, but to protect and defend his People. *Stamford's Prerogat. Cap.* 1. The King is the most worthy Part of the Body of the Commonwealth, Preserver, Nourisher, and Defender of it: And by this they enjoy their Laws, Goods and Lands. 11 *Report*, *Fol.* 70. *b*. *Magdalen-College's* Case, *Rex est Medicus Regni & sponsus Reipublicæ.* It is the Part of a good Physician, as well to prevent Diseases, as to cure them. And the Office of a good King, as well to prevent Danger, as to remedy it. *Com. Fol.* 130. He is the Soul that animates the Body of the Commonwealth; and we ought to move as he moves. 11 *Report*, *Fol.* 72. The King is the Fountain of Common Right, therefore we have no Reason to stain the Fountain.

I am now come unto my fourth Proof, which is by Precedents, wherein I shall be somewhat long.

The Second Days Argument of Sir John Banks, *Knight, his Majesty's Attorney-General, before all the Judges in the* Exchecquer-*Chamber, on the behalf of his Majesty in the great Case of Ship-Money.*

May it please your Lordships,

TO remember I shewed by Charters, Aids, and a great Number of Precedents, that this Royal Power was in the King of *England* before the Conquest: And that though some were exempted from the setting forth of Ships by Grant unto some particular Men, or some particular Churches; yet these three fundamental Services of Expedition, repairing of Castles, and making of Bridges, were always exempted.

Then I shewed, by a great Number of Precedents, that not only the Principal, but all other Necessaries that concern the Defence of the Realm, both by Sea and Land, hath been always commanded by the King's Writ: For the Fortifying of Towns and Castles, and the Murage of Towns, the Appointment of Admirals of the Fleet, and those that should be Guardians by Sea and Land; the Imbarring of Ships, and Arrays of Men, the Erection of Beacons, and Discharging of some upon just Cause, and by punishing of those that were refractory: And all this was done by the King's Command, *per ipsin Regem*, or *per Regem & Concilium*, without any Aid of Parliament.

Likewise, I have made it appear unto your Lordships, that the King is the sole Judge of this Defence: That the King is not to be mistrusted in the Execution of his Office, as King; nor your Lordships as Judges, are not to be mistrusted. I have then shewn out of Precedents, that in those Years, wherein there have been Parliaments, and sometimes sitting the Parliaments, Writs have issued *per ipsam Regem*; and *per Regem & Concilium.*

I shall proceed to make good other Particulars, which I have opened unto your Lordships. *First*, That these Precedents that have been shewed, and which I shall shew unto your Lordships; that they have not been grounded upon any particular Covenant or Charter of Custom, but upon the Law of the Land, and upon such Reasons as are irreversable, and binds all the King's Subjects, as well Clergy as Laiety. For this I shall remember. *Clauf.* 48 *Hen.* 3. *M.* 3. The Writs do recite, *quod tum Milites & liberi Tenentes quam omnes alij, &c. ad defensionem Regni teneantur. Clauf.* 9 *Ed.* 3. *M.* 11. *pro defensione Regni omnes teneantur. Scot.* 10 *Ed.* 3. *M.* 12. *quia consonans Rationi quod omnes tangit per omnes supportari debet:* And the same Roll, *M.* 20. *Dorf. ex legiantia ad defensionem contra hostiles ingressus inimicor' manus exponere adjutrices, &c. Rot. Alm'* 12 *Ed.* 3. *M.* 1. *Dorf. omnes & singuli tenentur &c. Se & Sua exponere* the same Roll, *m.* 12. *Dors'. Omnes & Singuli ad defensionem Regni astricti.* And I think every Man will acknowledge himself to be bound out of his Allegeance. *Rot. Alm'.* 13 *Ed.* 3. *M.* 13. *Dorf. ex legiantia ad defensionem Regni & vestri & vestrorum.* Same Rolls *M.* 17. And there be Writs unto all the Bishops, of

of *England, quod invenerent homines ad arma pro defensione. Francke Almoigne tenure* was no Plea against this Service. *Rot. Franc.* 46 *Ed.* 3. *M.* 34. There was a Writ directed to the Bishop of *Canterbury*, for the Arming and Arraying all Criminal Persons within his Province: The like to the Bishop of *York* in the same Roll. So it extends to all the King's Subjects, as well to the Clergy as the Laiety.

Nay, Ports that were obliged to do particular Service, yet in case of extraordinary Defence, that there the Writs went out, not only to perform the ordinary Services, but Services, *Ultra debitum.* The Cinque Ports, by their Charter of *Ed.* 1. were to set forth 52 Ships at their own Charge for fifteen Days; yet we find by several Writs, and in several Kings Reigns, that the Cinque Ports have been required to do further Services. Arrests have been of their Ships, *Ultra servitium debitum. Scot. Roll*, 10 *Ed.* 3. *M.* 2. 3 *Dorf.* and 28 *Dorf.* there is a Command, that all their Ships of 40 Tons should be arrested for the King's Service. And so likewise, *M.* 22. that all the Ships of the Cinque Ports, *Tam majores, quam minores*, should be arrested. *Rot. Alm.* 13 *Ed.* 3. *M.* 13. *Omnes Naves quæ transiree poterint*, arrested and brought to the Cinque Ports.

So then, to tell of particular Rolls, that these and these Towns were obliged to do these Services. This, under Favour, is no Argument. For although they be obliged to do the Service, yet upon other Occasion, the King took all their Ships, *Ultra servitium debitum. Claus.* 16 *Ed.* 2. *M.* 13. *Dorf.* The King writeth to diverse Earls, Barons and others in this Manner, *Quod sint tam citius quatenus poterint parati*, beyond your Service, with Horse and Arms, and come to our Town of *New-Castle upon Tine.* So as this Writ was directed to all the Lords Spiritual and Temporal, and all the King's Subjects; not only with their due Service, but beyond their Service, to be at *New-Castle.* So your Lordships see the Motives, and Grounds, and Reasons of these Writs are universal; they concern not a particular Part and Subject, but all the King's Subjects; and they are *Legiantia sua debita.* So that is the first Thing I would observe unto your Lordships, that these Writs and Precedents are grounded upon the Law of the Land, and not upon particular Custom.

The second Thing is this: That all these Writs have issued by the King's Mandate, either by the King only, or by the King and his Council, without Advice in Parliament; of which I have made a Collection: And it is better for me to attend your Lordships withal, than to cite them; because they are above 500, wherein I have distinguished what have been *per Regem*; and which *per Regem & Concilium*, and where the Advice of particular Merchants and Portsmen were required, *Scot.* 11 *Ed.* 3. *M.* 2. *Dorf.* 19 *Ed.* 3. *Pars.* 1. *M.* 26. *Dorf.* And in these, the Advice of particular Men were called to assist the King and his Council.

Now, my Lords, if before the Time of *William* the First, and since, and for so many hundred Years together, that this hath been done; shall not these Precedents make a Rule.

That Precedents that are not against the Law, nor contrary to the Rules and Reasons of the Law, make a Law: This appeareth by 4 *Ed.* 4. *Fol.* 43. The Lord-Chancellor sent forth a Writ of Error. The Judges took Exceptions both to the Matter, and the Manner, saith the Book, because it hath been always so; the Precedents make a Law. 33 *Hen.* 6. *Fol.* 20. an absurd Return made by a Sheriff, yet because Precedents to warrant it a good Return, 2 *Ric.* 2. *Fol.* 7. where a Duty was to be paid to a Corporation of Mayor and Commonalty, the Duty to be paid to the Body, and an Acquittance to be had from them. But because it had been used, the Mayor alone to give the Acquittance, a good Acquittance. The 2 *Report*, *Haines's* Case, the King shall not part with his Interest without the Great Seal; but yet a Lease for Years, under the Seal of the *Exchecquer*, is good by Custom. 4 *Report*, *Fol.* 9. that the Precedents of the Court are good against the express Words of a Statute. Having so many Precedents, I will not trouble you any longer, though I have reserved a special Place for answering of Objections; yet such Objections, as falls materially in the Way, I shall give an Answer, though I reserve the Answer of the main Objection to the fifth Place.

It hath been said, by Mr. *Holborne*, that here hath been a Discontinuance of Time; and that since the Time of 50 *Ed.* 3. none of these Writs have issued.

Shall discontinuance of Time take away the King's Right? If there have been no Use within the Time of the Memory of Man: Yet if there have have been an inherent Right in the Crown of *England*; shall the Crown lose it by Discontinuance of Time, contrary to the Rule of the Law? 10 *Hen.* 4. *Fol.* 6. Where the King is the Founder of a Bishoprick or Abbey, and is by common Right to have a *Corodie*, though not used, and the King hath not demanded it in time of Memory, yet the King shall not lose it. *Fits-Her. Na. br. Fol.* 5. A Writ of Right brought by the King, where you must allege, *expleis & Seisin*, will not bind the King to allege a *Seisin* in him and his Progenitors: For if once the King had a *Seisin*, Protracts of Time shall not discontinue it. 12 *Hen.* 7. *Fol.* 20. The Statute of *Mortmaine* confineth the Lord to enter within a Year and a Day; but it shall not bind the King; for he may do it at any Time. 35 *Hen.* 6. *Fol.* 26. If a Villain doth alien his Lands, it barreth not the King. Plenary after six Months, no Plea against the King. 6 *Report*, no Discontinuance of Time, if the King hath a Right. 7 *Ed.* 4. 30. If an Alien and another Man purchase Lands together, and the Alien dies, the King shall not be prevented by Survivor-ship, and in personal Good, you shall raise no Prescription against the King, 35 *Hen.* 6. *Fol.* 27. There is no Man can pretend a Title to the King's Goods, for Waifs, Estrays, or Wrecks; for no Prescription can invade the King's Profit.

But then they say the Precedents are not in all Times; for we have not shewn, nor cannot shew that in all Times these Writs have issued.

A strange Objection in all Times! My Lords, it is a casual Service. In all Times, God be thanked, not that Occasion or Necessity of this Defence. Will you have us shew you Precedence for a casual Service done at all Times. 4 *Report*, *Fol.* 10. If a Man hold to do Service to his Lord, to go with him into the War of the King, this is out of the Statute of Limitation; for it may happen

not once in two or three hundred Years: Therefore the Law doth not require we should have a Seisin, for this very Reason, because it is casual. 33 *Hen. Br. Fealty* 15. That for Homage and Fealty, casual Service, they are out of the Statute of Limitations: So as now, by the same Reason that they would tie us to Precedents where there was no Occasion; by the same Reason the Tenents are to do Homage, or go into Wars when there was Occasion.

But besides, he is much mistaken, these Precedents do not end with *Ed.* 3. 7 *Ric.* 2. *M.* 18. 13 *Hen.* 6. *M.* 10. 14 *Hen.* 6. *Pars.* 1. *M.* 14. a great Number of Ships commanded then in the King's Service.

But it hath been said, that the People have always petitioned against it, and there hath been a decrying by the People; and they have petitioned in Parliament against it. And these Things that must be made good by Custom, must gather Strength by a Consent. And further, that when Petitions have been preserved, the King hath not denied the Petition expresly.

My Lords, I shall shew, when I come to give a particular Answer to those Records and Petitions that they have mentioned; that notwithstanding these Petitions, this Service hath been always continued. And for the Answer that he speaketh of, that they have not been denied; these are the very Words of the Answer, *Le Roy se avisera.* We know whether this be an express Denial or no: So though the King took Time to advise of the Petition of his Commons, this is no Argument, but that it is a mannerly kind of Denial. Besides, in these very Years of 10, 11 & 12 *Ed.* 3. the Writs went out for the Shipping Business, by the Royal Power.

Then it hath been said, that we can make no Precedents of these; for though Writs have gone out, yet it doth not appear that these Writs have been put in Practice, or that any Execution of them have been done.

But the Service hath been done, as doth appear by the Monuments of those Times. Then it doth appear by other Records, that the Wages of Mariners have been paid by the Country. These very Years, *Rot. Claus.* 20 *Ed.* 3. *M.* 6, 7. It doth appear, that some particular Men had particular Discharges, either because they were in the King's Service, or in *Gascoigne*, or lived in the Sea Coasts; that they pleaded their Discharges, and had them allowed for that Reason, 23 *Ed.* 3. *M.* 14.

So as, my Lords, upon this second Ground, that these Writs have gone forth thus constantly in several Ages; that there being such a Number of Precedents, that the Discontinuance hath ever been, when there was no Occasion. That the Precedents of the Courts of Justice make a Law, and Discontinuance cannot take away the King's Title. This is the second Thing I do insist upon, that these Precedents make a Law.

The third Thing I shall observe upon these Precedents is, that these Writs have gone forth, not only in Cases of an actual War, or in Cases of an Invasion, when the Enemies Fleet hath been upon the Sea; but by way of Preparation before hand, when the Enemy meant to come, and in contingent Cases, when the King might conceive any Danger might insue: But in these Cases Writs have issued out will appear. *Rot. Claus.* 48 *Hen.* 3. *M.* 2. The Writs are here in Court: *Cum necessit ad defensionem Regni esse promptum, &c. Claus.* 23 *Ed.* 1. *M.* 5. There were several Writs directed to diverse Earls, Bishops and others, *de custod. marit*, the Words are thus, *Quia volumus quod partes marit' in Com'* Essex, *&c. contra Inimicos diligenter custodiend. forsan si in partes illas venire contingent.* 24 *Ed.* 1. Remembrancer in the *Exchecquer*, upon Information given, that there were 1000 Men in *Flanders* made Preparation to come unto *Yarmouth* to burn the Town. Writs sent forth by the Treasurer and Barons, *ex officio*, to be in Readiness in case there was an Invasion. *Pat.* 9 *Ed.* 2. *Pars.* 2. *M.* 26. Writs directed to all the Port Towns between *Southampton* and *Thames*, to set forth Ships at their own Charge, for the better Defence of the Kingdom; and against that commit Depredations upon the Sea; as well to Men of this Kingdom, as to others coming to this Kingdom. *Rot. Scoc.* 11 & 12 *Ed.* 2. *M.* 8. The King, by severl Writs, directed to several Commissioners in several Counties, reciteth the Provision made for his Army at Land at the last Parliament, and saith, *Nos considerantes ad expeditionem pred. tam ad impedend. Scotos. quam pro custodiend. Maris, &c.* and so commandeth for that Purpose, that Ships should be sent out of several Counties for these two Causes; the one to hinder Victuals from going into *Scotland*; the other for free Intercourse of Trade. It appeareth, 10 *Ed.* 3. that the Ships of *France* were not upon our Sea Coasts, but were in *Brittain* in *France*; and yet the King upon Relation, that they had an Intention to invade the Realm, did send forth for the providing of Ships in most Parts of the Realm; this was only upon Information, *Rot. Scoc.* 10 *Ed.* 3. *M.* 30. *Ut audivimus: M.* 23. *Ut intelleximus; M.* 16, 22. *Quod audit. M.* 18. *Dorf.* 12. *Dorf.* 5. *Dorf. in partibus transmarius* So by these Records, this Preparation of Shipping was only upon Information. *Franc.* 26. *Ed.* 3. *M.* 5. *Quia vulgaris oppinio Regnum nostrum Angliæ invadere*, therefore commandeth Shipping by Sea, and Forces by Land. *Rot. Franc.* 10 *Ric.* 2. *M.* 23, 24. *Quia certi rumores quod Franc. infra breve tempus cum magnis Armat' hoc Regnum invadere, &c.* commands the Custody of the Sea and Sea Coasts: So as it doth appear, by these Records, that upon an Information, or Conjecture of the King; that he may send forth these Writs, and command his Subjects to be in Readiness, in case that Danger might happen; better so, than to receive a Blow, and then to make Preparation for Defence; we should buy that Wit with Repentance. *Prudentissima ratio quia timor Belli, &c. preparavit.* And surely when the King sees those Preparations Abroad, those great Armies in adjacent Countries, *qui nocere possunt*, great Reason we should be in Preparation.

This is not only consonant to Precedents, Wisdom of Times, Policy of State, *Venienti occurrere morbo*, but to the Reason of our Common Law. If a Man be in Fear, that another Man lieth in Wait for him to do him a Mischief, shall he stay 'till he receive a Wound? 17 *Ed.* 4. 4. In this Case he may have a Writ to bind him to the Peace, 13 *Hen.* 7. *Fol.* 17. If a Man have a Warranty for his Land, shall he stay 'till he be impleaded? No, a *Warantia Charter* lieth 'till he be impleaded. If Lord and Tenent, in ancient Demesen, and the Lord shall require more Service of the Tenent than

than he ought to perform; shall the Tenent stay 'till there be a Distress taken? No, he shall have his *Manstraverunt*. *Fitz-Her. Na. Br.* 40 *Ed.* 3. *Fol.* 45, 46. and this only upon Verbal Demand of Service.

Shall then the Common Law of *England* secure the Subject not to stay 'till a present Danger, but he shall have his *Warantia Charta*, and *Monstraverunt* before distress taken: And shall not the Common Law provide for the King, that he, in his Expectation of Danger, may make his Preparation against it? So surely these Precedents are according to Reason of Law.

The next Thing that I did observe out of these Precedents was, that in these very Years, wherein there have been Aids granted to the Crown, *pro defensione Regni*; in those very Years these Writs have issued out by the Royal Power, *Claus.* 48 *Hen.* 3. *M.* 2, 3. *Dors.* There was then a Tenth given by the Clergy, *pro defensione Regni*; and yet in that Year he did command the Defence of the Realm, both by Sea and Land; and that appeareth, *Pat.* 48 *Hen.* 3. *M.* 6. *Dors.* and *Claus.* 48 *Hen.* 3. *M.* 30. In the 22 *Ed.* 1. the King had given him in Parliament, *pro subsidio guerræ*, a Tenth of all moveable Goods, which was to be collected in the 23d Year, as appear, *Pat.* 22 *Ed.* 1. *M.* 2. My Lords, this very Year, when this was paid, he commanded a great Number of Shipping for the Defence of the Coasts, and that appeareth, *Pat.* 23 *Ed.* 1. *M.* 6. Writs were directed unto diverse Counties, as *Sussex*, *Southampton*, *Dorset*, *&c.* commanding them to be aiding and assisting unto *William Thornton*, in the Taking of all the Ships in those Counties, *Pat.* 23 *Ed.* 1. *M.* 7. *a Com' Radolpho de Salwico ad providend. de Navibus ita quod prompti sint quandocunq; mandamus.* So to be in Readiness with all Ships in those Parts, that were of 40 Tons, *M.* 8. Some Roll-Writs directed to most of the Sheriffs of *England* to be assisting to *John de Barwicke*, to the choosing and sending forth of Archers, *ad proficiscendum cum Fleta nostra.* So as they were not only brought out of their own Counties, but all the Counties of *England*, *ad proficiscendum.* My Lords, this 23 Years, when this great Aid of Tenths, and Part of all the Moveables were granted, *Pat.* 23 *Ed.* 1. *M.* 7. The King writeth to all the Archbishops, Earls and others, reciting that he hath committed the Custody of the Sea to *William de Stoaks*, *Ita quod idem Willielmus vos omnes* naming the Archbishops, Bishops, Earls, *&c. prout necesse fuerit.* So as you see the greatest Subject is not exempted from these Commands, but should be *Auxiliantes respondentes & intendentes. Claus.* 23 *Ed.* 1. *M.* 5. *Dors.* The King commanded the Bishops of *London* and *Norwich*, for the Safeguard of the Sea Coasts. *Pat.* 23 *Ed.* 1. *M.* 1. A Command to all Archbishops, Bishops, Abbots, Earls, Barons, Knights and others; commanding them to be aiding to *Adam de G. Ita quod idem Adam compellere possit quoties necesse, &c.* So *Claus.* 23 *Ed.* 1. *M.* 5. *Dors.* the like Commands: So as, my Lords, in those Times, which was 23 *Ed.* 1. when there was an Aid granted by Parliament, it doth appear, those great Defences, both by Sea and Land were commanded.

My Lords, 10 *Ed.* 3. in a Parliament holden at *Nottingham*, there was a Fifteenth granted to the King for three Years, and so it was recited in the Record. And it appeareth likewise, *Pat.* 12 *Ed.* 3. *M.* 2. *Pars.* 3. *Claus.* 12 *Ed.* 3. in 28. *Pars.* 3. it appeareth, that a Tenth and Fifteenth were granted to the King in Parliament; and this was *tam pro defensione quam arduis Negotiis*, 12 *Ed.* 3. The Prelates, and Lords and Commons at a Parliament holden at *Westminster*, gave the King ten Thousand Sacks of Wool, said to be given *pro defensione Regni medietem lanarum*, the Moiety of all their Wooll, *M.* 31, 32. In the same Year the Clergy, they gave the King in Parliament, *medietatem lanarum usq; vigint mille saccar*, as appeareth, *Rot. Claus.* 12 *Ed.* 3. *Pars.* 3. *M.* 13. *Rot. Claus.* 12 *Ed.* 3. *Pars.* 2. *M.* 1. *Dors.* And in this Year the King collected a Tenth and Fifteenth, that was granted to him by the Laiety in Parliament for two Years; as appeareth, *Claus.* 12 *Ed.* 3. *M.* 30. And besides all this, the Clergy gave the King a Tenth, *Claus.* 12 *Ed.* 3. *Pars.* 3. *M.* 30. These I cite the more particularly, because no Memory of them in the printed Statutes.

Were all these Aids granted, 10, 11, 12, *Ed.* 3. *pro defensione Regni*; and shall the King in those very Years send forth Writs for the Defence of the Sea and Kingdom? And may not the King do it now, when he seeth such great Cause?

Now, my Lords, in this 12 Year, when all these great Aids were granted, *Rot. Alm.* 12 *Ed.* 1, 3. *Pars.* 1. *M.* 12. *Walter de M.* was appointed Admiral of the Fleet towards the *North*, and appointed Commissioners, *ad assidendum villas bona & Cattalla ad contribuendum, &c.* and commandeth all Sheriffs and Officers to be aiding and assisting. So in this Record it doth appear, that in these 10, 11 and 12 Years, Ships and Forces were commanded. *Claus.* 12 *Ed.* 3. *Pars.* 1. *M.* 17. *Dors.* Command by the King, that the Men of *Surrey* and *Sussex* should have their Goods seized, and Persons imprison'd, if they refused to contribute towards the Charge of Shipping, *Rot. Alm.* 12 *Ed.* 3. *Pars.* 1. *M.* 2. A Commission to *William de B.* and others, *ad assidendum omnes homines juxta statum*, and to seize their Goods and Chattels, if they refused to contribute for the Wages of Mariners for the Ships.

So as your Lordships see by these Records, though there be Aids, Tenths, Subsidies and Fifteenths, granted by the Clergy and Laiety; yet in that very Year, if an extraordinary Occasion comes, though Ships not upon the Sea, the King hath commanded the Defence of the Sea and Land at the Charge of the Counties. I have done with the fourth Particular.

The fifth Particular is this. This Aid, and these Contributions, they have not been required only from the Maritime Towns, but from the Inland Counties, *per totam Angilam.* And this is materially to be insisted upon, because we are now in an Inland County, in the County of *Bucks.*

My Lords, That this was done before the Conquest, your Lordships have heard. For *Alfred*, the first Monarch, *Anno.* 827. *missit Limbas, &c. per totam Angliam*, *Assermenevensis*, *Fol.* 9. *Wigor. Floren.* 316. *Huntington* 351. That King *Ethelred* did the like, *Anno.* 1008. *per totam Angliam*, every 310 Hides of Land to find one Ship. *Floren. Fol.* 9. *Matth.* of *Westminster* 387. *Huntingdon*, *Fol.* 360. The Decree or Council, which was held at *H.* about the 30th Year of King *Etheldred* was, that Ships should be prepared against *Easter.* And those Laws, which are remembred in *Lambert*, which were before the Conquest, *Cap.* 10. *Fol.* 106. *Quod presidii, &c.* so it was general and universal throughout the Realm, concurring with those ancient Precedents and Council, since the Time of *William* the

the First; *Claus.* 48 *Hen.* 3. *M.* 2. For where a Record is to be applied unto several Purposes, I must mention that Record again. It appeareth by that Record, that *Bedfordshire*, which is an Inland County, was charged with the Guard of the Sea Coast, and paid for Wages: Same Roll, *M.* 3. *intus M.* 2. *Dorf. Rutland*, *Oxfordshire*, *Dorsetshire*, Inland Counties charged for the same Service. *Pat.* 48 *Hen.* 3. *M.* 7. *Cambridgshire* and *Huntingtonshire* charged for the like Service, and that they should, *prout per Concilium nostrum ordinatum fuerit*, 24 *Ed.* 1. King's Remembrancer in the *Exchecquer*, *Rot.* 77, 78, 79. Title *de ascociando pro custod. Maris*, and Writs went out for Ships in diverse Counties; and amongst others to *Bucks*, *Pat.* 26 *Ed.* 1. *M.* 21. when there was a Complaint that the Subjects did suffer upon undue Service; the Commissions that are directed for Enquiry thereof, are directed to all the Counties of *England*, as well Inland as Maritime. *Pat.* 23 *Ed.* 1. *M.* 5. That Men, to furnish a Fleet, were drawn and commanded from the most Parts of the Kingdom. *Rot. Scoc.* 10 *Ed.* 3. *M.* 14. Inland Counties charged with Shipping for the Defence of the Kingdom; as *Cambridgshire*, *Huntingtonshire*, *Nottinghamshire*, and *Derbyshire*. *Claus.* 13 *Ed.* 3. *Pars.* 3. *M.* 14. *Dors.* and there *Oxfordshire* is charged with *Custod'. maritim'. Rot. Scoc.* 12 *Ed.* 3. *M.* 12. *Dors. Bedfordshire*, *Bucks*, your County, and *Derbyshire* charged there with the same Defence. *Claus.* 1 *Ric.* 2. *M.* 18. There *Cambridge* and *Huntington* were to provide a Barge at their own Charge; and yet Seafaring Men there were none: Writs were then also directed to *Nottingham*, and *Derby*, though they had no Seamen, yet they had Money and Means to provide them, *Rot. Franc.* 7 *Ric.* 2. *M.* 18. The King sends his Writs into most Counties of *England*, as well Inland as Maritime, reciting that the King of *France* was gone with an Army into *Flanders*, and that *Calais* was in Danger; and commandeth all Knights, Esquires and Archers, and every of them, according to his Estate and Faculty, to be sufficiently arraied and armed, and come to the Port of *Sandwich*, *ad proficiscend'*. My Lords, in this Record there was mentioned *Bucks*, *Bedford*, *Huntington*, *Cambridge*, *Nottingham*, *Derby*, *Leicester*, *Rutland*, *Northampton* and *Berks*, all these Inland Counties. The Words of the Writ are *Quod omnes tenentur pro defensione Regni*, *&c. Claus.* 9 *Ed.* 3. *M.* 12. *per omnes supportari. Rot. Alm'.* 12 *Ed.* 3. *M.* 12. *vel* 20. *quod*, *&c.* All and every of our Kingdom, out of their Allegience, to be ready to defend the Realm. 13 *Ed.* 3. *Dors.* a great Number of Ships.

By all which it doth appear, *First*, That the Service was commanded from those Inland Counties. *Secondly*, That the same Reasons which are given to bind the Inland Counties, are given to bind the Maritime Counties, *Pat.* 23 *Ed.* 1. *M.* 6. for the Taking of Ships in *Sussex*, *Devon*, *Middlesex*, and other Counties. If so be the Maritime Counties be in danger, surely the Inland Counties cannot be in Safety. We are in an Inland County, and the Entry of an Enemy upon any Part of it, concerns the Safety of us all. And by the Rule of the Law, every one that is to receive a Benefit is to give a Contribution. As the Case of 16 *Hen.* 7. *Fol.* 13. all Feoffees, whose Lands were liable to a Statute; the one shall have Contribution against another. If four or five Cognizors in a Cognizance, all shall have Contribution one against another. 40 *Ed.* 3. Parceners, upon whom a Warranty descendeth, they shall be equally charged. If a Man bind himself and his Heirs in an Obligation, having Lands partly by his Father, and partly by his Mother; and they descend to several Heirs, both shall be equally charged as it is. The 3 *Report*, *Fol.* 13. *Herbert's* Case.

So I go upon these Reasons, that it is consonant to Reason of Law, besides these Precedents, that where a Danger is to all, and all receive a Benefit, all are to be equally charged.

My Lords, to illustrate it by further Reasons, that though the Inland Counties, and Maritime Counties be charged, I find that the Ports, by the Charter of *Ed.* 1. were to find 52 Ships. I find that when the Necessity of the Service did require it, then all their Ships were seized in the King's Service. I find likewise, that when there had been a Disability in the Ports to perform the Service, as now they are not; for then the main Part of the Trade was in the Port Towns, but now it is gone from thence, and gone to *London*; and a few Ports have the Trade, but *London*, *Newcastle*, *Bristol* and *Hull*; and shall it not now be required of the Inland Counties, since there is a Disability in the Ports, *Rot. Franc.* 21 *Ed.* 1. *M.* 23. I find there, that *Plymouth*, and some of the Port Towns, did bear more than *London*; for *Plymouth* found 4 Ships, *Dartmouth* 6, *Bristol* 4, *Newcastle* 3, *Norwich* and *Yarmouth* 4, *London* 2, *Hartle-Poole* 2, *Sandwich* 2, *Dover* 2, *Rye* 2, *Shoreham* and *Arundel* 2, and other Places found but one. It appeareth, *Rot. Alm'.* 13 *Ed.* 3. *M.* 3. *Dors.* that *Yarmouth* furnished, at their own Costs, 4 Ships, *Kingston* 2, *Boston* 2, *Lynn* 2, *Harwich* 2, and *Ipswich* 2.

My Lords, are these Ports able to furnish the King with so many Ships in these Days to do their Service? The Wealth of one Portsman in those Days, was worth the Wealth of a whole Town now.

Admit the Maritime Towns were bound unto it; yet if there be a failing of their Ability, that they cannot do it, shall it not elsewhere be required, that is agreeable to the Rule of the Law, before any Commissions of Sewers, where particular Men are bound to defend the Sea-Banks? Yet before any Statute, in case the Man was not able, the Service was required from the County; for by it they might have either Gain or Loss. This appeareth by the Rules of the Common Law, before any Statute; *Register*, *Fol.* 123. *Quod distringat omnes*, *&c.* when one Man was to maintain the Banks against the Sea; if not able to do it, the rest that had Benefit by it, were to be distrained to do it. 5 *Report*, *Fol.* 99. 10 *Report*, *Fol.* 140, 141. the Case of the Isle of *Ely* agreeable, that all that have *Salvationem & Damnificationem* shall contribute.

To this purpose are those two Records mention'd by Mr. *Solicitor*, *Rot. Parl'.* 7 *Hen.* 4. *M.* 18. that where there was a Subsidy granted to the King for the Defence of the Realm, it was assigned to Merchants, yet with a Salvo, unless Royal Power came. *Rot. Franc.* 6. *Ric.* 2. *M.* 8. certain Merchants had the Custody of the Sea, except *Regalem potestatem*.

So the Conclusion is, if an extraordinary Defence, there may be no Cause to go into the Inland Counties; but if a Royal Power, or extraordinary Danger, though not imminent, the King may require, and extraordinary Contribution, *per totam Angliam*, from all his Subjects.

But

But this hath been objected against it, and some Records vouched; that is, say they, we will shew you many Precedents, wherein *Navale subsidium* hath been required from Inland Counties, and they have been discharged thereof, as *Pat.* 2 *Ric.* 2. *Pars.* 2. *M.* 42. *Dors.* The Town of *Beverly* petitioned, because they were to contribute, being an Inland Town, towards the finding of a Ship with the Town of *Hull*, and were discharged thereof.

This is Truth, but not the whole Truth; for the Town of *Beverly* was discharged by Reason of a Charter of Exemption granted unto them, *In honorem* St. Johannis *de* Beverly, the King's Confessor upon that Charter, they were discharged.

They have objected likewise, the Town of *Bodmyn*, an Inland Town in *Cornwall*, were discharged *a Custod'. Maris:* For this *Claus.* 13 *Ed.* 3. *Pars.* 2. *M.* 14. was vouched for it, that the Town was discharged of this Contribution.

For Answer unto that, it will appear, that one *Trussell* was Admiral then of the Fleet, and was by his Commission to be furnished from the Ports at their own Charge for three Months. My Lords, this appears, *Rot. Claus.* 13 *Ed.* 3. *Pars.* 1. *M.* 35. and so that Town, an Inland Town, was to be dischargea. My Lords, likewise there were other Discharges; upon this Reason *Norwich* was discharged from finding of Men for Maning of Ships, because the Admiral's Commission did not warrant it, *Rot. Scoc.* 10 *Ed.* 3. *M.* 15. for it only extended to the Ports; but yet *Norwich* was charged to find Ships, *Claus.* 13 *Ed.* 3. *Pars.* 2. *M.* 14. So *Colechester* was discharged for finding of a Ship, but it was because they were not within the Words of the Writ, as appeareth, *Rot. Claus.* 13 *Ed.* 3. *Pars.* 1. *M.* So as to tell your Lordships a Story of a great Number of Land Tenures, discharged *De Custod'. Maris*, and not to give your Lordships the Reason, it is nothing to the Purpose.

So, my Lords, having verified these five Points by the Precedents, and justified them by these Reasons, and answered these Objections, I shall now come unto the sixth Matter upon this Record; and that is, though no Cause be declared in the Writ, no Danger manifest, nor against what Enemies: That yet the King by his Writs hath commanded Shipping for Defence of Sea and Land; and in the King's Wisdom the Danger hath been reserved in his Breast, and not communicated to his People by his Writs.

First, I find that ancient Precedents have been so, that it hath been reserved unto the King himself, and those that he did depute to take care thereof; this appeareth, *Rot. Claus.* 14 *Johannis M.* 2. the King directed his Writs to *Herbert*, with a *Mandamus*, to make ready all Ships for our Service, when we shall command; not a Word of the Cause declared, or an Enemy proclaimed. The same Roll, *M.* 6. the King by Writ, directed to several Parts, causeth all Ships that could carry six Horses or more to be sent unto *Portsmouth*; and the like Writs were directed unto other Ports, *Rot. Pat.* 15. *Johannis*, *M.* 4. The King appoints a Gaurdian upon the Sea Coasts, and commandeth all Men that they should be *intendentes*; and other Writs in the same Roll, directed into many Counties with a *Mandamus*, *Claus.* 17 *Johannis*, *M.* 7. *Dors.* Writs for taking of Ships, and bringing them into the *Thames* Mouth, without shewing any Cause: All this was done in the Time of King *John* In the Time of *Hen.* 3. *Rot. Pat.* 13 *Hen.* 3. *M.* 5. a Writ, commanding the Sheriff of *Kent* and *Sussex* to arrest all Ships in those Counties to be at *Portsmouth*, to be ready to go into that Service we shall command. And it appeareth in the same Roll, that these Ships were able to carry but six Horses: So *Rot. Claus.* 14 *Ed.* 8. *M.* 13. To our Bayliff of *Portsmouth*, and Keeper of our Navy, to make ready one good Ship, and to be ready to go in our Service, whether and when we shall command it. *Rot. Claus.* 23 *Ed.* 1. *M.* 5. *Dors.* The King declares that he will have the Sea Coasts in *Essex* guarded against the Enemy; and there commandeth them to be obedient unto such an one, who had the Custody, *Rot. Pat.* 23 *Ed.* 1. *M.* 2. The King writeth unto all the Archbishops, Bishops, Sheriffs, Knights, and others, to be assisting unto *William de S.* who had the Custody of the Sea. So as by all these, it appeareth the King did give no Account to his Subjects, either of the Service, or the Time when. *Rot. Scoc.* 10 *Ed.* 1. *M.* 13. The King commanded all Ships to be arrested, and Men and Mariners to be sent unto the Admiral of the Fleet, *ad proficiscend.* The same Roll, *M.* 5. *Dors.* a Matter fit for the Council, and not for the People to know. Same Roll, *M.* 20. that they should do *prout nobis, &c.* the King oweth no Account unto his Subjects of these Things, 24 *Ed.* 1. *M.* 19. The King having commanded *E. S.* to take up 100 Ships fit for his Service, commandeth the Sheriff of *Northumberland* and others to be assisting. Same Roll, *M.* 17. A Command to the same Effect; that all Ships should be taken between *Lynn* and *Barwick*. It was so likewise in the Time of *Ed.* 2. *Pat.* 9 *Ed.* 2. *Pars.* 2. *M.* 26. Ships taken up at the Charges of the Inhabitants, to defend the Sea against Malefactors and Pirates. *Rot. Claus.* 12 *Ed.* 2. *M.* 11. *Dors.* Writs directed to the Mayor and Bailiff of *Sandwich*, to make ready all Ships within their Port of 40 Tons. *Ita, &c.* that they be ready within three Days Warning to go, as we shall more fully declare; but the Service that was to be done, not mentioned, so it appeared by other Writs to other Towns in the same Roll, 17 *Ed.* 2. *M.* 11. *Dors. Pat.* 14 *Hen.* 6. *M.* 14. *Rex quia quibusd'. Arduis Causis, &c.* doth assign *John Hoxam* to take up all Barges of 10 Men and upwards.

So in all these Times of King *John*, *Hen.* the 3d. *Ed.* 1. *Ed.* 2. *Ed.* 3. and *Hen.* 6. Writs have gone out generally; that the Service hath been concealed; and for Instruction, they were referred to the Council.

It standeth with Reason, for Resolutions of War are not to be communicated; his Majesty hath a separated Council of War from the Body of his Privy-Council.

Now, my Lords, for the Objection that hath been made against the first Writ of 4 *Aug.* 11 *Car.* that is, That the King hath not declared sufficient Cause for the issuing of this Writ. The King hath not communicated to *J. S.* and *J. N.* what the Imployment must be; he must satisfie the Council at the Bar, which he ought not to communicate to his Privy-Council, but is reserved for his Council of War.

This is a Writ to command Obedience from his Subjects, and upon such Reasons as may satisfie any reasonable Man; and if fewer Reasons, it had been the better agreeable to all former Writs.

For the next Matter, out of the Precedents, which is, that during the Times of the Sitting of

Parliaments, that these Writs have issued out by Command from the King, I have made it good upon my former Head.

The last Thing I observe upon the Precedents was this; that there was no Clause, no Particular in the Writ of 4 *Aug.* 11 *Car.* but was warranted by many Precedents: And that in this Thing the King doth but *Jubere per legem.*

First, For the Direction: It is as in this Writ, sometimes upon one, or *Probis hominibus* of such a County, sometimes the Direction is to Commissioners; sometimes one way, and sometimes another; and of this of the Precedents themselves, when your Lordships come to see them, I shall speak. They would have the King descend so low, as to give them a Reason why he doth it; some Reasons are expressed in the Writ; as *quia periculum imminens, quia pro defensione Regni, tuitione Maris, securitate subditorum, Salva conductione Navium, &c.* My Lords, all these are expressed in the Record, 9 *Ed.* 3. *M.* 12. *Scot.* 10 *Ed.* 3. *M.* 20. *Rot. Alm'.* 12 *Ed.* 3. *M.* 1. *Rot. Alm'.* 13 *Ed.* 3. *M.* 13. I find in these Writs the same Matter, Power of Assessment, sometimes Levies by Distress and Imprisonment; nay, Seisure of Lands and Tenements, Goods and Chattels, that are expressed in former Writs; and that it was at the Charges of the Counties, both Inland and Maritime; this appeareth, *Rot. Scoc.* 8 *Ed.* 2. *M.* 9. *De Navigio providend. Pat.* 9 *Ed.* 2. *M.* 26. *Pars.* 2. *De Navigio providendo pro Custod'. Maris.* Many more of these, *Scot.* 10 *Ed.* 3. that the Wages of the Men that went in the Ships, and guarded the Coasts, were at the Charge of the County: This appeareth 10 *Ed.* 3. *M.* 2. *Dorf.* 60. Men appointed and sent to *Portsmouth*, and they refuse to go without Wages; but a Command came from the King, and commandeth the Counties to pay them Wages, 10 *Ed.* 3. *M.* 21. *Dors.* And his Predecessors not to bear any Charge whatsoever, though *pro defensione, Rot. Alm'.* 12 *Ed.* 3. *Pars.* 1. *M.* 2. Those of *Lynn*, who refused to contribute towards the Charge they were assessed by the Commissioners, *juxta quantitatem*, were compelled to contribute; so *Rot. Claus.* 12 *Ed.* 3. *M.* 8. the like *pro Custod'. Maritim'.* I might be infinite in these Particulars, but I will not trouble your Lordships.

Here they have made some Objections; though to answer the main Objection, I am not yet come. They say, this Power of Assessing the People for Sums uncertain, ought to be no more than Escuage uncertain, and must be assessed in Parliament. And this Assessment for Defence, ought not to be by Commission, or the King's Writ. *First*, for the Authority, which is *Litleton*, he saith, *Fol.* 20. *Que communiter dit que Escuage serea assesse pur Parliam'.*

I do not find by the Register where these Writs are; neither do I find them grounded upon any Act of Parliament. Some that are grounded upon Acts of Parliament, do recite them. Bnt what if it be by Act of Parliament? A Service that is to be done by the Tenent to his Lord; what if this be so, that it must be assessed in Parliament? Your Lordships know that the Tenents must do according to the Original Duties of them. And if this be, that the Lord shall not assess them but in Parliament, is that an Argument from a Tenent to a Lord in this Case?

This is a Service commanded not by Tenure, but by a King from his Subjects; this is suitable to the Reason of Law in other Cases: For those ancient Aids, which the Law doth require for the making of his eldest Son a Knight, or *pur file marier*; are not those certain at the Common Law? Must there be an Act of Parliament to to assess those Aids? The Books are otherwise.

But the King at the Common Law might require an Aid uncertain, and might assess it as he please. *Glanvile Lib.* 9. *Cap.* 8. *Brit. Fol.* 57. *Cap.* 27. *Bract. Lib.* 4. *Cap.* 16. So as at the Common Law they were uncertain. 11 *Report, Fol.* 68. *D.* It is said there, the Statute of *Westminster*, 1 *Cap.* 15. which puts reasonable Aid incertain, doth not bind the King, a *fortiori* we must not bind him to a Certainty for the Defence of the Realm. No Man can tell what the Preparation must be, or the Charge thereof. If they can shew an Act of Parliament, that limits the King for the Defence of the Realm, they say something.

But they say the Sheriff is no proper Officer, not sworn to execute this Writ.

This is as wide as the other: For, my Lords, the Sheriff is sworn to execute all Writs that shall be delivered to him for the King's Service. And surely this Writ, if it come unto him, he must at his Peril execute it.

First, The Direction of those Writs have been many times as well to the Sheriffs as the Commissioners, *Rot. Scoc. Ed.* 3. *M.* 13. *Claus.* 15 *Ed.* 3. *M.* 17. The King commandeth the Sheriff of many Counties to furnish Men with Arms, Victuals, and other necessary Provisions, both for Sea and Land. 23 *Ed.* 3. *M.* 5. *Dors.* 24 *Ed.* 1. *Rot.* 7. 9. *Ext'. Remem'. Regis* 11. The Lands of the Sheriffs, and other Officers, were extended because of their Negligence in their doing of their Duties concerning those Writs, 25 *Ed.* 1. *Ext'. Remem'. Regis.* A Commission went out to enquire of the Execution of the Officers in the Duty of their Places.

Besides these Writs at the Common Law, this is seconded by the Authority of the Common Law, Register 122, or 127. The Writs that go out unto the Sheriff (for they go out unto the Sheriff as Commissioners) it is left unto the Discretion of the Sheriff or Commissioners, as occasion shall require, *Register* 191. *Bre. de partitione*, before any Statute was made concerning the same. That Writ went out generally unto the Sheriff; so that in all Times and Ages it hath ever been in these Cases, where no Certainty left, to the Discretion of the Sheriff and Commissioners.

My Lords, for the Manner of the Levying *per Districtiones*, and by Imprisonment of those that do refuse. Is this new? It hath been so in all the Precedents that have been vouched, both by Distress and Imprisonment. For the Distress: If the King makes a Corporation, and gives them Power to ordain for the Common Good of the Corporation; and if they make an Order for the Payment of Money; and that those that do not pay the same, shall be distrained. And is not this adjudged a good Ordainance. 5 *Report, Fol.* 64. *Clark's Case, Trin.* 7 *Hen.* 7. *Rot.* 3. There is a Benevolence granted to *Ed.* 4. for his Voyage into *France*, one *T. R.* did deny Payment, and he was distrained for his Proportion.

They except to the Penalty of the Writ.

The Penalties of former Writs have gone higher *Inter Commun'.* in the *Exchecquer*, there was a *Manda-*

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mus to assess those that were employed in the Provision for Shipping, and the *Mandamus* was *sicut nos & honorem nostrum & salvationem Regni diligitis.* In that Roll that is so often remembred, *Rot. Scoc.* 10 *Ed.*3. *M.* 11. *Dors. quod, &c.* their Lands, Goods, and Chattels to remain seised in our Hands. And *M.* 2. under Pain of Forfeiture of Life, 11 *Ed.* 3. *M.* 2. to cast those in Prison that did refuse, *Rot. Claus.* 12 *Ed.* 3. *M.* 18. *Dors.* Writs directed unto *Henry Hussey*, and others, to punish those that refused to contribute; and to imprison them, and to seise their Lands and Goods into the King's Hands, *Claus.* 13 *Ed.* 3. *pars.* 1. *M.* 36. *Dors.* to seise into their Hands the Lands and Tenements of the Refusers, *Rot. Franc.* 21 *Ed.* 3. *pars.* 1 *M.* 11. the King commands Ships, under Pain to lose Life, and all their Estate, *Rot. Franc.* 10 *Ric.* 2. *M.* 23. to imprison those that are contrary, under Forfeiture of all they had. So as your Lordships see Mr. *Holborne* was very far mistaken.

My Lords, in the next Place, they have laid Hold on the Distance of Time: They say, there was seven Months between the *Teste* of the Writ, and the Time of the Rendezvous; that the King in that Time might have called a Parliament, and there might have an Aid been granted, and the Service performed in a Parliamentary Way.

But they may remember the 40 Days between the *Teste* and the Return of the Writ for summoning a Parliament, then the Time spent in presenting of a Speaker; the Solemnity used before they begin their Grand Committee; their Reading of a Bill thrice, the Debate about Passing of it in both Houses before it be granted; and after all this be done, and the Parliament ended, a Time for the levying of the Money must be had, and when it is levyed, Time for the Return of it; and when it is returned, Time for the expending of the Money. And the Preparation will go slowly on 'till the Money be returned, 48 *Hen.* 3. *M.* 4. *Dors.* There was a Command for guarding of the Sea-Coasts, *Claus.* 23. *Ed.* 1. *M.* 5. *Dors.* The Port of *Yarmouth* commanded to find Ships for a certain Time, *Rot. Scoc.* 11, 12, 13 *Ed.* 2. They are put down in that Roll, *M.* 8. that there was a Command for a *Navale Subsidium* for three or four Months.

So as, my Lords, for the Time of Preparation, and for the Time of the Continuance it hath ever been referred to the Wisdom of the King. My Lords, for the *Spanish* Invasion, that hath been so late in our Memory, I find by the Books that are kept by the Council-Chamber, that the Preparations were in *Octob.* 87. against the coming of the *Spanish* Fleet in 88, which did not set forth 'till *June.* I find no Parliament called that Year. And by Letters and Orders from the Council-Board, those Ships, and Defence that was made, was *ad sumptum* of the Subject.

So, my Lords, by this that hath been said, it doth appear unto your Lordships, that there is not any Clause in this Writ, either for the Direction, Motives, Mandates or Penalties, but are warranted by former Precedents in a higher Degree.

My Lords, these are the Precedents that I have collected and reduced, unto these several Heads. I shall now remember unto your Lordships divers others. And in the first Place observe, that *William* I. came not to abrogate any former Law, but was sworn to observe *Antiquas leges Anglicanas*, that appeareth in *Lambert*, *Fol.* 125, *prout.* So every Man by this Law, that was but a Confirmation of former Laws, must provide *pro viribus & facultatibus.*

I find by the Grant that *William* I. made to his Abbey of *B.* of his own Foundation, a Charter to be free from *Danegelt & omnibus auxiliis.* If they had not been freed they had been subject, I find *Pat.* 7. *Johannis M.* 3. the King authorised *Walter Scot* and others, *quod omnes Naves, &c.* which they should find, to arrest, and command all to assist, as they love us and our Peace in our Realm, 14 *Johannis*, *M.* 6. as your Lordships have heard, all the Ships were arrested, that could carry six Horses, and to be at *Portsmouth*, *M.* 2. all the Ships in the Port were to go in his Service, without expressing for what, and unlade, *Claus.* 12 *Johannis*, *M.* 7. *dors.* commanded all Ships to be brought into the *Thames* Mouth, so here was not a laying down, but a Continuance of it. So in *Hen.* 3d's Time, *Claus.* 14 *Hen.* 3. *M.* 12. *Dors.* All Ships taken that could carry sixteen Horses, *Claus.* 15 *Hen.* 3. *M.* 17. *Dors.* Command for the furnishing of Arms, Men with Victuals, and other Provisions, for forty Days. And here was the like Command to Sheriffs in several Counties, *Claus.* 26 *Hen.* 3. the King commandeth the Men of *Yarmouth*, to have their Ships ready with Men and Arms; the same Roll to find ten Ships to go to *Picardy*, *Pat.* 48 *Hen.* 3. *M.* 3. *Dors.* Writs to the several Port-Towns, that no Ships should go beyond Sea, but all to stay at Home, *M.* 5. *Dors.* Those that returned from guarding the Sea-Coasts without Leave, were punished, Seisure of Goods, and Chattels, *M.* 4. Same Roll, *Dors.* Provision to be made 'till further Orders be had, so it was not confined to Time, but Occasion, as Need should require. And there be divers others in the Time of *Hen.* 3. upon other Occasions, which I have remembred. In the Time of *Ed.* 1. 21 *Ed.* 1. *M.* 23. It appeareth there, that all the Port-Towns were appointed by the King and his Council, how many Ships every one of them should set forth, *Rot. Vas.* 22 *Ed.* 1. *M.* 11. *Dors.* The King of *England* in that Writ stileth himself *Dominus Regni Scotiæ, &c.* And sends his Writ to the King of *Scotland*, to let him know, the King of *France* had taken Part of *Gascoigne*, an Inheritance of the Crown of *England*, that he should *in fide & homagio*, be at *London* with Horse and Arms, *&c.* This Writ is very observable, the King of *England* is *Superior Dominus Scotiæ.* A Part of *Gascoigne* was then lost. The King of *Scotland* was required by this Writ, as well as requested, to give him Aid for the Recovery of those Grounds taken from him in *Gascoigne.* My Lords, this Power is not confined only to *England*, but it reacheth, as GREAT LORD, into *Scotland.* Also into *Ireland*, *Vasc.* 22 *Ed.* 1. *M.* 5. *Dors.* The King by his Writ commandeth divers Earls, and others, in *England* and *Ireland* to do the like, to send Men to *London* with Horse and Arms. The same Roll, *M.* 13. *Dors.* All that claim to be of the Liberty of the Port so commanded, *Pat.* 23. *Ed.* 1. *M.* 1, 5, 7. All Ships of 40 Tons were to be furnished and provided for the King's Service, *Claus.* 23. *Ed.* 1. *M.* 5. Every Man is compelled to contribute the same Poll, *M.* 4. those that did not inhabit in Maritime Towns, yet if they had Lands there, they must contribute, resident, or not resident, within, or without the Liberty, all must contribute:

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My Lords, in that Writ, which is *Clauſ.* 23 *Ed.* 1. *M.* 5: *Dors.* I will obſerve theſe Things: *Firſt*, A Command to all Biſhops, Abbots, Lords Spiritual and Temporal, *Quod ſint intendentes & reſpondentes ad cuſtodiam Maris. Secondly*, In contingent Cauſes; *Cauſa, &c. Thirdly*, The Writ ſaith, *quod omnes ad arma, &c. ſecundum Statum, &c. ad transfretandum nobis*, and Poſſeſſion of Goods, and Lands to be taken for the Cuſtody of the Sea, as in former Times they were accuſtomed; ſo it is to be done in this manner as in Times paſt. In the 4th Place, the Writ was directed to ſeveral Sheriffs, *per Corpora bona & terras*, to diſtrain.

Next, 24 *Ed.* 1. *M.* 15. the King commanded the Archbiſhops, Biſhops, Barons, and all the Comonalty, to defend the Maritime Parts. *Clauſ.* 24 *Ed.* 1. *M.* 19. *pro cuſtodia Marit.* There was another of *Symon de Spencer*, which I remembred before. 24 *Ed.* 1. *Rot.* 76. Another of the like *Ext'. Remem. Regis. Clauſ.* 25 *Ed.* 1. *M.* 26. *Dors.* the King moderateth the Expences of the Country when the Danger ceaſeth. *Clauſ.* 25 *Ed.* 1. *M.* 12. The King commanded the Sheriffs of ſeveral Counties, and others, to bring all the Ships to be ready when ſoul, when we command, *M.* 26. The like Command, *De cuſtodia Marit. Pat.* 31 *Ed.* 1. *M.* 20. Power given to *Thomas de B.* to raiſe Forces in *Cumberland*, to reſiſt the *Scots*; and thoſe that did refuſe, to ſeize their Goods. In the Time of *Ed.* 2. *Clauſ.* 2 *Ed.* 2. *M.* 21. the King commandeth diverſe Towns to ſet out Ships againſt the *Scots*; and after, by ſpecial Writs, ſome of thoſe were diſcharged, *Rot Pat.* 9 *Ed.* 2. *Pars.* 2. *M.* 6. *Pat.* 16 *Ed.* 2. *M.* 11. A Writ directed to Sir *Thomas Weſton* and others, to array all between 16 and 60, or to take their Lands and Goods, if they did refuſe; *Pars.* 1. *M.* 7. of the ſame Roll, *Clauſ.* 20 *Ed.* 2. *M.* --- the King doth there declare that thoſe that ſtay at Home ought to contribute to ſet forth Ships, and for the Wages of the Men employed, *Clauſ.* 20 *Ed.* 2. *M.* 6. Writs directed unto the Scholars at *Oxford*, they were not exempted, but commanded to keep *Southgate* ſafely, *Rot. vaſe.* 18 *Ed.* 2. *M.* 18. The King writeth to the Archbiſhop and others, commanding them to have Horſes and Men in a Readineſs, as often as Need ſhall require. For the Time of *Ed.* 3. *Clauſ.* 2 *Ed.* 3. *M.* 13. and *M.* 22. *Dors.* to *Southampton*, and to ſeveral other Towns, for their Shipping, above 40 Tons. *Pat.* 3 *Ed.* 3. *Pars.* 2. *M.* 6. The King commandeth the Sheriff of *Cornwall* to diſtrain Knights and others, that abide not upon their Lands in Maritime Parts, and to impriſon. Thoſe Years of 10, 11, 12 and 13 of *Ed.* 3. have been remembred, 21 *Ed.* 3. the King, concerning the Defence of the Sea and Sea Coaſts, gave ſpecial Rules to be obſerved, both for the Number of the Ships, and the Men, and the Quality of their Perſons, and for the Proportion of their Wages; as appeareth, *Pat.* 21 *Ed.* 3. *Pars.* 1. *M.* 26, 17. where there was ſpecial Order taken for the guarding of the Sea and Sea Coaſts at the Charge of the Inhabitants, *Rot. Franc.* 21 *Ed.* 3. *Pars.* 1. *M.* 11. Command to the Sheriff of *London* to arreſt all Ships in *London* to be ſent to *Calais* to reſiſt the Enemies againſt us then about to come, *Rot. Franc.* 25 of *Ed.* 3. *M.* 9. The King reciteth, that *France* made a Preparation to invade the Realm, and gave a Power to ſome to raiſe Forces; and commandeth the Sheriffs to raiſe *Poſſe Comitatus*, to aſſiſt the Commiſſioners, *Pat.* 26 *Ed.* 3. *Pars.* 1. *M.* 7. The King, by his Writs to ſeveral Counties, commanded all Men between 16 and 100 to be in Readineſs, to reſiſt the *Scots*, *Rot. Franc.* 25 *Ed.* 1. *M.* 31. commanding all Officers and Miniſters to aſſiſt *Andrew De Gulpho*, in the raiſing of Forces for Shipping. So as in that Roll likewiſe, your Lordſhips ſee that the Inland Counties were commanded for Shipping, *Rot. Franc.* 28 *Ed.* 3. *M.* 6. the King appointed *Ro. Co.* and *Ro. A.* to arreſt all Ships of 20 Tons and upwards, between ſuch a diſtance, and to bring them to *Southampton*, *Rot. Scoc.* 29 *Ed.* 3. *M.* 13. Several Writs were directed to the Biſhops of *Durham* and *Carliſle*, and others, for the Arraying of Men, *Rot. Franc.* 40 *Ed.* 3. *M.* 37. The King ſent forth diverſe Writs, commanding *quod, &c.* with all their Forces, they ſhould aſſiſt to the ſafe keeping of the Sea Coaſts, to reſiſt the Malice of the Enemies, *Rot. Franc.* 50 *Ed.* 3. *M.* 47. *Dors.* Command to make Proclamation, that all that have Land upon the Sea Coaſts ſhould repair thither with their Families: So in all Ages, and at all Times, Writs have iſſued both for the Defence of the Sea and Land by the King's Command. In the Time of *Ric.* 2. *Rot. Parl.* 6 *Ric.* 2. *M.* 42. that was objected as a Record againſt the King, but maketh clear for him: *Que dit que le Roy perſons aſſembles en Parliament, eſt deſire de vivere del reveneus del Corone car Eſcheats Marriages & Forfietures ſont pur le Defence noſtra Royalms.* The King anſwers, *Le Roy, volet de fairs in ceo Caſe come per de adviſe del Sen.* &c.

Your Lordſhips ſee they deſire of the King, that he would live of his Revenues, that the Profits of Eſcheats, Wards, *&c.* might be kept for the Defence of the Realm. The King giveth them this Anſwer, That he will do in this Caſe by the Advice of his Lords, as ſhall be moſt for his Honour and Profit: So no Reaſon to make any Enforcement out of this Record; that the Profits of Eſcheats, Wards, *&c.* ſhould go for the Defence, becauſe the King maketh no abſolute Denial unto it, ſaying, that he will do as he ſhall be adviſed by his Lords, *Rot. Franc.* 7 *Ric.* 2. *M.* 18. That the Lords beyond the Seas be arrayed and armed according to their State and Faculties, *Pat.* 8 *Ric.* 2. *Pars.* 2. *M.* 15. A Command, that all between 16 and 60 be in a Readineſs, *Rot. Franc.* 10 *Ric.* 2. *M.* 23. Arrays through all *England*. And ſo in the Time of *Hen.* 4. *Rot. Parl.* 5 *Hen.* 4. *M.* 24. for the Arraying of all Men throughout *England*, and thoſe that were impotent, and could not go to contribute unto it, 3 *Hen.* 5. *M.* 36. *Dors. Pat.* 13 *Hen.* 6. *M.* 10. General Commiſſions for the Arreſting of Ships, without declaring the Cauſe, *Pat.* 14 *Hen.* 6. aſſigned *Joh. de N.* to arreſt all Ships in the Port of *Southampton*, to do Service as the King ſhall command, there was no Cauſe declared, *Pat.* 28 *Hen.* 6. *M.* 2, 13. Commiſſions to array, and thoſe arrayed to keep in Array, with diligent Watches into ſeveral Counties, 1 *Hen.* 7. *Pars.* 1. The King Writeth to Sir *Fitz Hugh*, to array Archers and Horſemen.

So that it appeareth by thoſe Precedents, in all Ages, that thoſe Defences which have been made by Sea and Land, are not confined to Port Towns, and Maritime Places, but *per totam Angliam.*

In the next Place I ſhall give a particular Anſwer to ſome Objections that have been made, as have not fallen in my Way: And to the Acts of Parliament, Reaſons, Records and Book-Caſes, urged by the other Side.

The Third Day's Argument of Sir John Banks, *His Majesty's Attorney General, before all the Judges in the* Exchequer-*Chamber; on the behalf of His Majesty in the great Case of Ship-Money.*

May it please your Lordships,

THE Matter that I did propose to insist upon this Day, was the Answering of the Objections. I shall use no Preamble, no Repetition to introduce what I have to say; but in the answering the Objections, I shall first give answer to the several Acts of Parliament insisted upon, then unto the several Records and Reasons that have been urged on the other side. And in the last place, I shall answer the Exceptions that have been taken unto the Writ, 4 *Ang.* 11. *Car.* Writ, and Form of Proceedings.

The first Act they have insisted upon, is that of *William* the first, call it what you will, an Act or a Charter. The Words of it are verbatim in *Math. Paris. Volumus & Concedimus quod omnes liberi homines sint quieti ab omni tallagio &c.*

It doth no way trench upon the Royal Power; for as in the beginning of my Argument, I open'd unto your Lordships, that this Power was inherent in the Kings of *England* before the Conquest; here is only a Concession that they shall be free, *ab omni injusta exactione.* Now this is no unjust Exaction, for it is of common right. And then the other part of that Law doth explain it; for it doth say, *Quod sumus Fratres Conjurati, &c.* so for the defence of the Realm. By the same Law they would urge to take away the power, by the same Law it is reserved.

The next thing they insisted upon, was the Charter 17 *John.* or on *Magna Charta* as they call it; which indeed is mentioned in *Math. Paris*, and may be under the great Seal. The words of that are, *Nullum Scutagium vel auxilium nisi per commune concilium, nisi ad primum filium militem faciend' & maritand' fil', &c.*

This Charter as it was acknowledged by themselves, was granted at *Rumney Meads*, where the Banners were displaid, when there was War or Rebellion between the Barons, Commonality, and the King. It was not assented unto, the King sitting in Parliament: For Parliaments are not called with Arms, and in the Field. It was in truth, an inforced Act from a distressed King. Shall this bind the Crown? I shall remember the Act of Parliament made, 15 *Edw.* 3. and there only were things that were in Parliament enacted derogatory to the Crown, as this is; that no Peer should be questioned but in Parliament; that no great Officer be removed but in Parliament; that no Clergy-man shall come before Temporal Judges. These were Things that were much derogatory to the Perogative of the King, 15. *Edw.* 3. That King the same Year when he was better advised, did make a Charter which is in print for the recalling of this prejudicial Act of Parliament still in force. It appeareth by the Parliament Rolls and Printed Books, where the King declareth it was drawn from him with an unwilling Mind, and was prejudicial to the Prerogative of his Crown; and therefore by that Charter it was repealed.

But my Lords, if that Charter 17 *Johannis* should be in force, why hath there been no Confirmation of it in so many Parliaments since? The Statute of *Magna Charta*, 9. *Hen*, 3. hath been confirmed one and thirty Times; why no Confirmation of the Charter, 17 *Johannis?* And why have we not heard of it since that Time? The Reason for it is, that it trencheth too much upon the Prerogative of the King and Crown.

But take the Words as they are, What be they? *Nullum Scutagium vel auxilium nisi per Commune Concilium, Reg. nostri.* If this were an Act, doth it extend to take any thing away that belongs of common Right unto the Crown? and that hath been the Exposition of my Lords the Judges, of Acts of Parliament; that Aids due of common Right, are not taken away by general Words, *Commune, &c.* And therefore these Aids due of common Right as this is, are no way taken away.

Besides for the Statute of *Magna Charta*, it is made 3 *Hen.* 3. *Cap.* 29. *Nullus liber homo capietur, aut imprisonetur nisi per legem &c.* the general Words of this Act of Parliament do no ways impeach the Royal Power, for this Royal Power is *Lex terræ.*

Besides in these Precedents, 14. *Hen.* 3. 15. *Hen.* 3. 26. *Hen.* 3. 48. *Hen.* 3. and all the succeeding Kings remembred in all of them, that these Writs went out to provide Shipping, at the charge of the Inhabitants; so, surely, if they had been taken away by *Magna Charta*, the Writ after *Magna Charta*, would not have used it.

But then there hath been objected, the Statute, *de tallagio non concedendo.* If it be 25. *Edw.* 1. as it is Printed, or 34 *Edw.* 1. or as the Petition of Right doth recite it *temp' Edw. primi*, be it when they will, under favour, there is nothing in that Act, doth take away this Power: The Words are thus, *Nullum tallagium vel auxilium sine voluntate Episcopor' Baron' Burgens' &c.* Mr. Sollicitor in his Argument upon probable Grounds, did make question whether this was an Act of Parliament yea or no: *First*, in respect it was not inrolled amongst other Acts of that Time. *Secondly*, because by the Penning of it, it may seem rather to be an Abstract. *Thirdly*, because when the other Acts of those Times were sent over to *Edw.* 1. to be Sealed and Confirmed, no such Act was sent over.

My Lords, I will not lay hold on this, but will admit with them that it is recited in the Petition of Right to be an Act of Parliament: So I will admit, yet to wave nothing that hath been said, but, by way of Admittance I give this Answer.

First, that it taketh away no Aids that are due by the Laws of the Realm; yet the Words are general: *Nullum tallagium vel auxilium nisi assensu Parliamenti, &c.* Here is not in this Act of Parliament so much as any Exemption of an Aid to Knight the Kings Son, or to Marry his Daughter; yet in this the Law is observed,

that these Aids are not taken away; and so it is declared, 25. *Edw.* 1. *Cap.* 11. which doth reduce these Aids unto certainty; so as your general Words of *Nullum auxilium* will not do it, if this be an Aid due by the Laws of the Land.

Then I say this is not properly an Aid, but a Contribution of King and People, for the Defence of the Realm, it is *ad proficiscendum cum Navibus nostris*: then I say this Power is *Inter jura summæ Majestatis*, one of the highest Prerogatives of the King, and shall never be taken away from the King, 17 *Hen.* 7. Statute *Quia Emptores terrar'* doth not extend to the King to take away his Tenure. If you will have such a high Prerogative taken away, you must shew it in the Acts of Parliament. Nay my Lords, I say that in the Time of *Edw.* 1. this Royal Power is expressly reserved by Act of Parliament unto the Crown; and therefore in after Times never intended to be taken away.

First, I shall inforce it out of the Statute of 25. *Edw.* 1. *Cap.* 5. 6. that doth recite, that Aids and Taxes that have been given unto us towards our Wars and other Business of our own Grant and good Will, howsoever they were made, might turn to a Bondage, *&c.* We have granted that we shall not draw these Taxes into a Custom, *&c.* And do grant that for no Business henceforth, we shall take such manner of Aids, but by a common Consent of the Realm, *&c.* saving the ancient Aids due and accustomed.

Vide les parols del Statute.

This Aid is not taken to be an Aid, for this was never given unto the King of *England*, but taken by Royal Power; the Statute of 25. *Ed.* 1. speaketh of such Aids as have been given, and excepteth such Aids as have been due and accustomed. And by the Precedents shewn, it appeareth these have been due and accustomed. It hath been desired in *fide legiantiæ*, and with a *Mandamus* 2. *Edw.* 1. *cap.* 1. this Statute doth confirm the great Charter, and the Charter of the Forests; but in the End of it in the Parliament Roll, that notwithstanding all these things before mention'd, both the King and the Council and all they present at the making of this Ordinance, will intend the Prerogative of his Crown to be saved unto him.

A further Answer to the Statute *de tallagio non concedendo*, the practice that hath been since the time of *Edw.* 1. in the time of *Edw.* 2. *Edw.* 3. *Rich.* 2. and the practice since doth shew plainly, that it was never intended by the Statute to take away this Royal power.

But then there was a Thing materially objected, if the Records would have warranted what had been said, and that was, *Rot. Parl.* 29. *Edw.* 1. and then it was said, That though there be a Saving, 25 *Edw.* 1. and 28 *Edw.* 1. yet here is no Saving in this Act; so then if not for the Act, 29. *Edw.* 1. all was lost.

My Lords, to this I say, *Nul tiel Record.* And therefore I shall desire, that this which they call an Act, 29. *Edw.* 1. I may attend your Lordships with. By this Record it doth appear, that it is only a Record of the Perambulation of the Forest, and no repealing of any former Law, neither is any thing enacted by that Law, derogatory to the Crown.

The next Statute objected, is 1. *Edw.* 3. *Cap.* 5. the Words are these: That 'no Man 'shall be charged to Arm himself otherwise than 'in the time of the King's Progenitors; and 'that none be compelled to go out of his Shire, 'but where necessity requires, and the sud-'dain coming of strange Enemies within the 'Realm."

So this Statute is relative to what hath been formerly done: What hath been found done formerly, appeareth by the Records of King *John*'s and *Ed.* the First's Time, that the Subjects were to set forth Shipping at their own charge; then those Writs went out in King *John*'s and *Edw.* the First's Time, as hath been shewed. And then this Statute alloweth in two Cases, one where Necessity requireth, the other upon coming of Strange Enemies; and this Writ requireth no other, but where there is Necessity in the King's Judgment.

The next Statute is the 1. *Edw.* 3. *Cap.* 7. which was objected, where Men at Arms were conveyed into *Scotland* and *Gascoigne* without Wages; the King saith it shall be done so no more.

The Statute mentioneth *Scotland* and *Gascoigne* Foreign Wars, and so Foreign to this Business; for though *Scotland* was subject to the Dominion of *England*, yet it was a divided Kingdom, 8. *Rich.* 2. Continual Claim, *Com.* 376. That a Fine shall be paid by a Stranger, because he was in *Scotland* at the time of the Fine levied, *Bract.* 436. An Abjuration into *Scotland* is good, 6. *Rich.* 2. Protection, 46. That *Scotland* is out of the Realm, therefore this Statute that speaketh of *Gascoigne* and *Scotland*, speaketh of Foreign War not of Defence.

The next Statute is the 18. *Edw.* 3. *cap.* 7. Men of Arms, Hobellers and Archers, shall be at the King's charges; the Statute speaketh likewise of going out of *England.*

But he that is upon the Defence at Sea of the Kingdom, it is no going out of *England*; for that see 6 *Rich.* 2. *Protection.* 40. the sending of Men and Ships for the Defence of the Coasts, is no going out of *England.*

The next Statute is the 25. *Edw.* 3. *cap.* 8. No Man shall be compelled to find Men of Arms, Hobellers or Archers, otherwise than those that hold of such Service, without consent.

My Lords, this Statute of 25. *Edw.* 3. doth not take away former Laws. In that Statute, 4 *Hen.* 4. these three former Statutes of 1 *Edw.* 3. 18 *Edw.* 3. and 25 *Edw*, 3. are recited in the Statute, 4 *Hen.* 4. and Enacted, they shall be firmly holden and kept in all Points; so if these Statutes must be kept firmly in all Points, then the Statute of 25. *Edw.* 3. doth not repeal any of these. Now that of the 1 *Edw.* 3. *cap.* 15. reserveth a Power unto the Crown where Necessity requireth, and where suddain Enemies come, 26. *Edw.* 3. those Ships were sent forth and commanded for the defence of the Realm, at the charge of the Subjects, *Rot. Franc.* 26 *Edw.* 3. *m.* 4. 5. *Rot. Franc.* 28 *Edw.* 3. *m.* 6. so as clearly there is no part of this Power impeached by this Statute of 25. *Edw.* 3.

Then

Then they have objected *Rot. Parl.* 2. *Rich.* 2. *m.* 3. That upon a Council of a great many Earls, Barons, and Sages of the Realm, Assembled by the King's Privy Council; it was there declared what Danger the Kingdom was then in, and that Money was wanting; they declared they could not remedy these Mischiefs, without charging the Commons, which could not be done, but by a Parliament.

This is no Act of Parliament, it is but a Parly, or Discourse, or Communication between the Lords and Commons; it was 2 *Rich.* 2. in the Non-age of a young Prince who did not assent. For there was no Royal Assent unto it, so no Proof in this Case.

The next Record they objected was, *Rot. Parl.* 9. *Rich.* 2. *m.* 10. there was a Tenth and a half, and a Fifteenth and a half granted unto the King, upon Condition contained in the Schedule; which is, that the King should assent that the great Officers of the Kingdom should be named by Parliament. And Servants appointed for dispence of the Money.

If the King doth accept of the Subsidies and Aid upon condition, doth this take away his Royal Power? There is no more done in this than was in the Parliament, 21 *Jac.* for there the Officers and Treasurer were appointed by the Houses of Parliament.

But then further it doth appear, that this was granted, *pro viagio Johannis Regis de Castile*, &c. so that it was not granted for the Custody of the Sea, but for that Voyage.

The next Record they insisted upon was, *Rot. Parl.* 8 *Hen.* 4. *m.* 2. a Tenth and a half, and a Fifteenth and a half granted with a Protestation, that this should not be brought into Example.

This is nothing, no more than the other. A Parliament grants a Subsidy, with Condition it should be thus and thus employed, and the Protestation can no ways prejudice the Crown in this.

And 7 *Ed.* 4. *Rot. Par. m.* 7. hath been objected; there the King's Speech is entred upon the Roll, that he will not charge his Subjects but upon great and weighty Occasions.

My Lords, this is nothing but a gracious Speech of the King unto his Subjects, that he would charge them but in such Cases as should concern the Defence of the Realm.

The Statute next objected was, 1 *Rich.* 3. *cap.* 20. that the Subjects from henceforth shall in no way be charged by any such Exaction or Imposition.

This is no Benevolence, but a Legal due.

Next they object, the Statutes of Tonnage and Poundage granted to the Crown, for the Defence of the Realm.

First, In Answer to this, I say, that there is no Act for Tonnage and Poundage that is now in Force, neither are any Duties taken to the Crown upon any Act of Parliament. Those Acts for Tonnage and Poundage that have been granted, make for the Crown. And therefore, if your Lordships look the Statute, 1 *Eliz.* and 1 *Jac.* it was given towards the King's Charges, for the Defence of the Realm and Safe-guard of the Sea. It was given towards his Charges, it was not intended of extraordinary Defence. So, my Lords, these Acts, when they were in Force, did give this but towards the Charges. It is so now, for this which is done, and those Contributions levied, are but towards his Charges; and that will appear upon Account, that His Majesty for these three or four Years, hath expended more upon the Sea, than any of his Progenitors.

Besides, an Acknowledgment in those Acts, without the intolerable Expence of His Majesty; these Aids are of Necessity, and are not to be lacking at any time.

My Lords, in the next place, they insisted upon the Petition of Right, 3 *Car.*

It was never intended, that any Power of the King, by his Prerogative, should be taken away or lessened by it. I dare be bold to affirm, for I was of that Parliament, and was present at the Debate, that there was never a Word spoken in that Debate of taking away any Power of the King for the Shipping business.

Besides it is declared, assented unto, and denied by none, that there was no Intention by the Petition of Right, to take away the Prerogative of the King. The King thereby did grant no new Thing, but did only confirm the ancient and old Liberties of the Subject.

My Lords, these were the Acts of Parliament that have been objected and insisted upon by the other Side.

In the next place, for an Answer to scandalous Objections. It hath been said by Mr. *Holborne*, that these Statutes of the 25 *Ed.* 1. and 28 *Ed.* 1. that at the Times of the making of these Laws, they were positive, no such *Salvo* was in them of the King's Prerogative That the Acts before *Hen.* 4. were penned by the King's Council, and those Clauses of a *Salvo* crept in by the King's Council.

These were bold and presumptuous Assertions of the Acts of Parliament made in that time of *Ed.* 1. that there should be any Clauses added by the King's Council, that should not be added to the Record. I have here the Parliament Record, that these Exceptions are Recorded as fully as any part of the rest of the Record. And those Laws confirmed since, therefore to make any such Assertions against Records, ought not to be done; he may object the same against *Magna Charta*, which is for the Liberty of the Subject.

In the next place they have objected out of the Parliament Books, 33 *Ed.* 1. that upon a Petition made to the King, to have Restitution of Money taken, that the King did ordain the Treasurer should give Satisfaction.

I shall desire it may be read, and you shall see, those Moneys for which direction was given for Satisfaction, were for Goods taken for the King's Use, *Rot. Parl.* 33. *Ed.* 1. *fol.* 105. *Dorf' per scrutin' pro guerra &c. Response per Regem, Rex ordinavit per Concilium quod satisfactio fact' tam cito quam poterit*; so this Record was for Monies taken for the King's Use, therefore Reason Satisfaction should be given, *Perambulat' Forrest' Rot.* 20. *Ed.* 1. *de Libertatibus Angl.* 18 *Febr. Lincoln*; so here is no taking away of any former Act of Parliament. It referreth to what shall be futurely amended and revoked.

The

The next they objected was, *Rot. Parl.* 8. *Ed.* 2. *m.* 8. the Fryars of St. *John's* at *Jerusalem* did Petition to have Satisfaction of 2354 *l.* taken by the King out of their Treasury.

Now, because this Record was vouched two Days together, I desire it may be read, and upon the reading, it will appear, to be upon another purpose, *Snr' le Roy*, &c. there was Cause and Reason why the King should make Satisfaction.

The next Record was, *Pat.* 26. *Ed.* 1. *m.* 21. and that was highly magnified by them. That there were several Commissions went out to enquire of *Gravaminibus*, of Wools, and of other Particulars, *de Custod' maris*; and in this it was affirmed, that (as all the King's Council took their Notes) these Clauses were omitted out of the Writ that concerns the Forfeiture of Lands, Goods and Chattels, or Seizures.

This Commission maketh nothing to this purpose, for like Commissions daily come, where there are Taxes laid upon Men heavier than ought to be. Then a Commission to enquire of Grievances in this kind, wherein an Answer of any Thing unjustly taken shall be restored, but not a Word to impeach this Royal Power. And, my Lords, for the Penalties in the Writ, 31 *Ed.* 1. *m.* 20. power to seize the Lands and Goods of the Refusers, 20 *Ed.* 2. *m.* 10. under Forfeiture of all their Goods, 10 *Ed.* 3. *M.* 5. *dorf Claus.* 12. *Ed.* 3. *M.* 18. *dorf* that the Penalties and Commands were as high in this Commission as before.

The next Objection was, that the Kings of *England* have always consulted with their Parliament concerning the Defence of the Realm, and that the Aids and Subsidies for Defence have been granted by Parliament.

This is no Argument to impeach this Royal Power; for if in time of War the King will consent to it, shall this take away his Royal Power? In the Times of *Edw.* 3. and *Rich.* 2. Did that take away the King's Royal Power, that he may not ordain Standards of the Money himself? He may by his Royal Power erect Courts of Justice; Shall that take away this from his Power, because the Court of Wards was erected by Court of Parliament.

Next they objected, *Rot. Alm.* 12. *Edw.* 3. *part* 3. *m.* 22. That *Edw.* the Third was so penitent for what he had done, that he sent to the Archbishop of *Canterbury* to pray for him; and that the People would forgive him for laying those Taxes upon them, which his War compelled him unto, and he would never do the like again.

You shall see, it was only to pray for him for his Voyage into Foreign Parts, (and he caused the Record to be read, beginning thus; *De excusando Regem versus populum*, and ending, *de gravaminibus*,) dated at *Berwick upon Tweed.* Your Lordships see nothing by this Record, but the desire of a Prayer; first to pray for the King for his Voyage beyond Seas; the other, concerning the Charges and Impositions. Surely this Contribution commanded in the Shipping business, was none of these Charges, Talliages, or Impositions. This his Desire to the Archbishop was not only in the 12th Year of his Reign, but the like in *Anno* 25, 26, and 50. so surely those Prayers of the Archbishop were for other Causes, and not for this, which was for the Defence of the Realm.

Next they do object, *Rot. Franc.* 7. *Rich.* 2. *m.* 13. That the King assigned Tonnage and Poundage to *Henry* Earl of *Northumberland* for guard of the Seas.

My Lords, it doth appear by the very Record it self, that this was only for an ordinary Defence, and not for an extraordinary Defence.

Then they insisted upon the Parliament, *Roll.* 13. *Hen.* 4. *m.* 43. the Office of measuring of Linnen-Cloth, a Half-penny upon the Buyer, and as much upon the Seller, and other Fees upon Long-Cloth. The Parliament, 13 *Hen.* 4. declares it to be a void Office, and that accordingly Judgment was given, 13 *Hen.* 4. out of this he would conclude, that therefore there should be no new Office, and that an Office granted with a Fee, is void in Law.

For answer unto this. *First*, The Reason why that was a void Grant was this; it appeareth, 4 *Edw.* 1. that the Office of Measurage of all Woollen and Linnen-Cloths, were one entire Office. If the King will grant that to another Man which did Intrench upon the former Office, a void Patent; therefore a strange Conclusion, that because this Office was void, therefore no new Office to be granted, 22 *Hen.* 6. *fol.* 9. The Office of surveying the packing of all Cloth, a good Office, 27 *Hen.* 8. *fol.* 28. The King granted to one to be his Surveyor a good Office; *Fitz. Her.* saith, because it had no Fee, therefore it was a void Office. And now at the Bar, it is said, because it hath a Fee, it was a bad Office. If this Reason may hold, all ancient Offices may fall, 34 *Hen.* 6. Office to be Marshal of the *King's-Bench*, 12 *Hen.* 7. 15. To be Warden of the *Fleet.* Nay, it taketh down all Offices that have been erected for the publick Good, and upon just Occasion, as the Office of *Subpœnas* in *Chancery*, *Star-Chamber*, &c. All those within time of Memory must be shaken by this.

In the next place they object, that these Contributions, they are in Substance Impositions; and that the King should not impose upon the Subject by his Charter, or by his Writ, but it must be done by common Consent in Parliament.

Your Lordships have observed in all my Discourse, that I have not insisted any way upon any power of Imposition, neither is it the Question in the Business: For no Man's Property is invaded, no Seizure of any Man's Goods, unless they incur it for Contempt; and by a wilful Contempt, the Subject may loose his Property. Therefore, *Dyer*, *fol.* 16. and 13 *Eliz. fol.* 296. If the King will command his Subject to come into the Realm, and he will not, he shall forfeit for his Contempt all his Goods; or if he be attached to appear in the Courts of Justice, and not appear, he shall forfeit his Goods, 34 *Hen.* 6. 49. 9 *Hen.* 7. 6. If a Man will wilfully contemn the King's Command by his Writ, he may be distrained; this he incurreth not by an Invasion of his Property, but in respect of his Contempt.

Then they alledged, *Rot. Parl.* 50. *Ed.* 3. *M.* 24. the Lord *Latimer*; he was Sentenced for perswading the King to lay Impositions on the People.

My

My Lords, I have looked upon the Record, and there the Case of the Sentence is declared, that he himself laid the Impositions, and did take upon him Royal Power, and therefore he was justly Sentenced.

And for the Sentence of Dr. *Manwaring*, 'tis nothing to this purpose. This Writ denieth not the Property to be in the Subject, but saith, the Subject hath the Property, and therefore commandeth the Sheriff to distrain him if he will not pay.

And for the Commission 2 *Car.* for the borrowing of Money for the *Palatinate*, this was for the Recovery of the *Palatinate*, and not for the Defence of the Realm; and besides, it was called in by special Order.

In the next place, they objected and shewed divers Records, that the King hath paid the Wages of divers Mariners and Soldiers. And I do agree it. Is that an Argument that he may not command the Mariners to be sent at the Charges of the County to furnish the King's Ships? This is against the Records that I have remembred.

So likewise they have cited 21 *Ed.* 3. *Rot.* 77. *Exts. Remem' Regis.* the King commanded the Constable of his Castle of *B.* to build Ships, and the King to pay for them. So he doth at this Day. He hath built the *Sovereign of the Seas*, and paid for it.

They have objected Dr. *Cowell*'s Book which was called in. I wish they had read the Proclamation: There are three Causes expressed. First, Because he had writ Things derogatory to the Crown. Secondly, For ——— ——— And, Thirdly, For speaking irreverently of the Common Law. Just like unto the Men who do not spare to wade into all the deep Mysteries of Princes who are Gods upon Earth.

For their Objection that the King hath a Revenue belonging to his Crown, for the defraying of all ordinary and extraordinary Charges, and for the Guard of the Sea, as Tenures by Knights Service, Escuage, Wards, Marriages, ancient Demesne, *&c.* Tonnage and Poundage, Service of the Ports, and Profits of the Sea.

My Lords, it is not for us that are Lawyers to look into the Secret of the King's Revenue, he hath high Officers, as Treasurer, and Under-Treasurer, that look unto the Secrets of his Estate, and they know well whether his ordinary or extraordinary Revenues do answer more than his annual Expence. The Story of *Actæon* might deter Men from looking into the Secrets of Princes.

For his Tenures, that Knight-service Tenure was originally instituted for the Service of *Scotland* and *Wales*, 19 *Rich.* 2. *Fitz. her. gaurd.* 165. And old Tenure, *Fo.* 10. The Duties of Tonnage and Poundage are not given now unto the King by Acts of Parliament, and when they were given, it was for the great Charges of this Defence. And besides, those Acts of Tonnage and Poundage, only concern the ordinary Defence, the sending forth of the 75 Ships out of the Cinque Ports, it was but for fifteen Days, at their own Charges. And for the Profits of the Sea by Sturgeons, Whales, *&c.* it's a proper Defence for a Kingdom. And for the Service of the Port, you may remember by the Records shewed, they were several Times commanded *ultra servitium debitum.*

But then they have granted one Case, and, I think, but one; that the King may ordain a Toll in a Fair or Market, or grant Pontage, or the like, because there is an *ad quod damnum*, and thereupon shall an Enquiry *si Patria gravatur.*

The King may grant a Fair, without an *ad quod damnum*, if in his Judgment, *&c.*

Rot. Scoc. 1. *Ed.* 3. *m.* 8. a Writ directed to the Treasurer to pay for the Shipping at *Yarmouth:* My Lords, it doth particularly appear in the Record, that *J. S.* was Admiral, and going into *Scotland*; so the Defence was for a Foreign War.

It hath been mightily insisted upon, that here needeth no Command to furnish Ships, by the King's Writ, every Man, by the Instinct of Nature, will do it, where there is a Necessity, no need of a Royal Power to command it.

Surely this Argument is made by the People, or to please the People. What will the Consequence of it be, but the introducing of a Democratical Government, when every Man shall be his own Defender? The God of Hosts chose Captains and Leaders to go before his People, and command them. But to give the People this Liberty, that every Man shall do as he pleases, and make a Defence by an Instinct of Nature is a strange Position.

But it hath been said in these Cases, it is better to sustain a Mischief than an Inconvenience: By this Inconvenience every Man's Property is taken away from him, as often as the King pleaseth, and in what Proportion he pleaseth.

This though a Maxim in Law, yet it goeth but unto Particulars: But the Loss of a Kingdom is both Loss of Liberty and Estate, this is not to be reckoned among the Mischiefs, for this Mischief destroyeth both Head and Members. Therefore I do marvel to hear the Rule of Mr. *Holborne*, Suffer a Mischief rather than an Inconvenience.

The next Objection, was the Parliament *Roll.* 2. *Hen.* 4. *m.* 22. *Pur faire des Barges*, this was the Petition of the Commons, that the Commissions granted to Burroughs, Cities and Towns, for building of Barges, should be repealed. The King's Answer for the present is, they should be repealed, but for the future, for Case of Necessity he would advise with the Lords.

It doth not appear that these were granted for the building of any Ships for the Defence of the Realm. These are the Objections that have been made out of the Acts of Parliament out of the Records and Reasons they have insisted upon.

Now I come to their Exceptions and Objections against the Writs and Proceedings in this Matter. First they say there was no sufficient Danger represented by the Writ 4 *Aug.* 11 *Car.* they say a Supply by the *Mittimus* comes too late. And that the Words of the *Mittimus* are not a good Affirmative, *quia salus Regni periclitabatur.* And it doth not appear there was any Danger, 4 *Aug.* 11 *Car.*

For this I have given it an Answer, That it was not necessary to represent the Danger in the Writ. The King he hath secret Intelligence, he hath his Spies abroad, his Ambassadors beyond Seas; he knows the Danger, we know not; nay, he knows that which is not fit to be discover'd, and those Dangers by Preparation perhaps diverted another Way: It's not fit by a publick Writ to reveal the Danger. But, my Lords, for the Satisfaction of his People, he hath expressed sufficient Cause enough in the Writ: *Quia Salus Regni periclitabatur.* They say there was no Danger represented at this Time when the Writ went out. That is mistaken, for the Writ of *Mittimus* doth recite the Writ 4 *Aug.* and that saith, *quod quidam Prædones Pirati, &c.* Which shews the Danger was the Cause of the issuing of these Writs.

Then they except at this Word, *Salus*; it is a Physical Word, and signifieth Health, and you must have no Metaphors in Writs.

Surely the Grammarians tell us, that *Salus* is taken *pro Incolumitate*, as well as for Health, as for Safety. Metaphors are usual in Writs; I dare be bold to speak, there are more Metaphors in the Register, than in any Book, *Register* 61. *Turba, &c.*

Then they have left no Stone unrolled in this Case: Now they say the King's Testimony, by his Writ, is insufficient for that. Under Favour, the *Teste me ipso* is without Exception; we are bound to give Credit unto it, 1 *Eliz. fo.* 105. *Ne exeat Regno*, the King affirms, *J. S.* will go beyond the Sea, saith the Book, this Averment of the King in his Writ is not traverseable, you shall not averr against it. The Case remembred by Mr. Solicitor, was mistaken by Mr. *Holborne* in the Answer, *Hill.* 20. *Ed.* 1. *Coram Rege Rot.* 14. he saith these Words vouched in the Record, were but the Saying of the King's Council, and not the Opinion of the Court. Clear otherwise, for it was the Saying of the Judges, and then agreed, *Quod Dominus Rex est superlativum Record' et præexcellens*, Will your Lordships give Credit to the Marshal of the King's Host, to the Certificate of the Captain of a Company, if the Men be in the King's Service, as 11 *Hen.* 7. *fo.* 5. to the Certificate of a Bishop as in Case of Bastardy, to the Certificate of a Mayor and Alderman, by the Recorder, as 5 *Ed.* 4. 30. and will you not admit of the Certificate of the King by his *Mittimus?*

The next Exception was taken to the *Scir' Fac'* that this *Scir' Fac'* ought not to go forth for this Debt, and gave two Reasons for it. First, The Writ of 4 *Augusti* doth direct a Form of levying, which is by Distress or Imprisoning those that are Rebels. Secondly, It is no Debt to the King, and therefore ought not to be levyed by *Scir' Fac'*.

My Lords, for this, this Duty is a Duty to the Commonwealth, it is *pro defensione Regni Thesaurus publicus, respicit Regem*; whosoever shall detain any publick Duty, he may be questioned by the King, as the Head of the Body Politick, for that it appeareth, 27 *Ass. Pl.* 17. it was declared that *J. S.* and *J. D.* had levyed 100 Marks on the County, for the Array of certain Archers; which Money did not come for the Profit of the King. Out of which I observe two Things.

First, This Money that was for Archers: The Money was levyed on the Body of the County. Secondly, Recover'd by an Indictment at the King's Suit, 27 *Ass. Pl.* 17. 11 *Hen.* 4. *fo.* 2. The Fees of the Knights of the Shire that serve in Parliament, they are reckoned among publick Duties, therefore the Goods of a Stranger may be taken within the Town to pay those Fees, if the Money be not paid, the Distress may be sold, for it is for a publick Duty, 11 *Hen.* 4. 2. So are the Books *Regist.* 19. the King may command the Sheriffs to levy these Fees, as well within his Liberty, as *extra*, *Hill.* 23. *Ed.* 3. *Rot.* 57. *Coram Rege Juratores hundredi de S.* they make a Presentment that *J. S.* and *J. D.* Chief Constables of *E.* paid Wages to Archers which went not beyond Sea. So as by this Record it appeareth, these publick Duties are recoverable at the Suit of the King, *quia ad opus Domini Regis*, *Pat.* 14. *Ed.* 1. *M.* 1. 14. the King commandeth an Account to be taken of the Murage, and how the Sums levyed have been employed, *P.* 15. *Ed.* 1. *coram Rege* 70 *dors. Rippon* was besieged, they gave Hostages, Promise made by the Town that these Hostages should be redeemed, they were not, Complaint is made to the King, and it came to the *King's-Bench*, and these Monies being 700 *l.* that was promised by the Town for the bringing back those Hostages, was ordered to be paid, because it was for the publick Service. So for other Things that are *pro communi utilitate, inter Communia Hill.* 5. *Lib.* 4. *Rot.* 4. *Aurum Reginæ*, due unto the Queen, may be levyed by Process out of the Exchequer in the King's Name, nothing more usual.

This *Scir' Fac'* is grounded upon the whole Matter, the Writ 4 *Aug. Certiorari*, and *Mittimus*, and commandeth that the Defendents shall shew Cause why they should not pay the Monies assessed upon them for the Publick Service.

My Lords, I have done with the Objections. I shall come to the judicial Records, 24 *Ed* 1. *Ad custodiam Maris. Berks*, an Inland County, refused to contribute; the Names of those that made Default, were certified into the Exchequer, it appeareth by the Records, that Process went out of the Exchequer in the strictest Manner, *A capias in manus*, of their Lands, Tenements, Goods and Chattels, and that their Bodies, with Horse and Armour, be sent to *Portsmouth*; for besides the doing of their Service, the Seisure of their Lands and Goods, 24 the same Year, *exts. Remem. Thesaur.* on the other side, *J. de S.* gives Information to the Chancellor of the Exchequer, and Barons, in Absence of the Lord Treasurer, of the Preparation of Men in *Flanders*, (this being remembred before to another Purpose.) It appeareth that after Consultation had, they did resolve to send forth two Writs, one was to the Town, the other to *T. H. Custos Maris*, to call all for Defence of the Maritime, *&c. exts. Remem' Regis*; 24 *Ed.* 1. *Rot.* 80. *Henry Hussey* was seized, of the Mannor of *W.* in *Berks*, he was assessed to find a Horse, *pro custod' Marit'* he complained in the Exchequer, that

that he had not the whole Mannour, and yet he was assessed to find a whole Horse; he did not come and say, I ought not to be Taxed, but submitted to the Power, and desired a mannerly Contribution, 28 *Ed.* 1. *Rot.* 72. the Abbot of *Robertsbridge*'s Case, remembred on both sides, divers Times; under Favour, the joining of the Issue in the Record is a very full Proof in the Cause, he brought a Replevin against *J. S.* for taking his Goods in an Inland Town in *Kent*; he pleadeth the Contestation between our King and the King of *France* and *Leighorne*, assigned Keeper of the Sea, that the Plaintiff was assessed unto, 7 *s.* 7 *d.* *Anno* 22. to 13 *s.* *Anno* 23. to 15 *s.* and the Defendant being Collector did Distrain; the Plaintiff did not say in barr of this, that he ought not to be taxed, but that he was assessed *ad inveniend' &c.* for such Lands; the Defendent saith, the Plaintiff holds other Lands in the County, and for that Land he was assessed. Now this doth admit the Power of Taxing, *Hill.* 16. *Ed.* 3. *Rot.* 23. *Coram Rege.* The Jury of *Suffolk* did present that *J. Russell*, and others, 8 *Ed.* 3. were Hobbellers, elected in the Hundred of *T.* and staid at home: They plead, Not Guilty. The Jury finds that *J. Russell* did perform the Service, but *J. S.* did not perform it, therefore committed to Prison, and paid a Fine unto the King. By this Record it appeareth, the Money paid to the Archers and Hobbellers was at the County's Charge. Methinks that the Disclaimer that is by the Commons, 13 *Ed.* 3. *Rot. Par.* 9. *et* 11. is in Nature of a Judgment in this Case, for there they did disclaim, they had no Cognizance, and there likewise upon their own concession that the Maritime Parts ought to defend at their own Charges, as the Inland Parts, the Inland Counties. This Concession, 13 *Ed.* 3. is a strong Argument, *Parl.* 21. *Ed.* 3. *Rot.* 20. when the Commons did petition for a Guard for the Sea: The Answer is, *Soit gaurd fait*, and that was at the Charge of the Counties, as your Lordships know. 20 *Ed.* 3. divers Ordinances made, which Ordinances made had the Force of a Law: The King and his Council did ordain, *Quod omnes illi &c.* which have such a Quantity of Land should be assessed to find one Archer *decem l.* two Hobellers *vigint. libr. unum hominem ad arma* 25 *l.* this appeareth *Rot. Franc.* 20. *Ed.* 3. *part* 1. *m.* 17. in the Counties of *Bedford* and *Bucks.* In the same Year, another Ordinance, that those that did reside with their Families, *cum toto posse*, within six Miles of Maritime Parts, were excused from finding of Men without.

My Lords, upon the Occasion of this Service, there were divers Refusals made, Certificate by *Mittimus* of their Names, into the Exchequer; as in this Case, *J. T.* and *W. G.* were certified for Defaulters amongst others; upon this, the Court of Exchequer they award Process against those Men and others, which was a *Capias in manus*, Seisure of their Lands and Goods; they came in, and pleaded, they resided *infra sex leucas*, with their Families and all their Powers: Issue joined, upon this, the Jury impannelled, and it appeared, those that were found within six Miles Judgment, *Quod sine die*, but for others, they were imprisoned and fined, for so much Land as they had without the six Miles, for that they were charged. If I should number unto your Lordships all the Judgments in this Kind, I might speak here till to Morrow-morning, *P.* 22. *Ed.* 3. *inter Communia*, in the Exchequer, *P.* 25. *Ed.* 3. *M.* 27. *P.* 27. and *P.* 28. *Ed.* 3. and there is a Number more in other Years, as 29 and 30 *Hen.* 4. And, my Lords, according to those Judgments, *Trin.* 31. *Ed.* 3. *Rot.* 3. the Writ went forth for discharging of such as have resided upon their Lands, within six Miles, 21 *Ed.* 1. *Pipe Roll.* some discharged because they were in the King's Service.

So as, my Lords, out of these Records thus much may be collected. First, They affirm the King's Power in assessing and levying. And, Secondly, That they are grounded upon those Ordinances made by the King and his Council. Thirdly, The Process went out of the Exchequer, and in the King's Name, *M.* 22. *Ed.* 3. *Parl. coram Baro.* Issue joined, whether *J. S.* had Lands to the Value of 40 *l.* to find Hobbellers, if he had, then he was to do it.

My Lords, I have now done with the Judicial Precedents; I have cited some few, amongst many others. It is now time, after so long Premisses, to draw to a Conclusion, wherein your Lordships have heard, First, That the King of *England*, that he is an absolute Monarch, and that by the Common Law of *England*, all those *Jura summæ Majestatis* are inherent in his Person. This *Supremum Dominium* for all the Land that any Subject holdeth, it is derived from the Crown, and, as *Plowden* putteth it, 12 and 13, that there is a tacit Condition Law, annexed to his Grant, that his Officers may do Justice to execute Process surely upon his Grant. This tacit Condition may be subject unto a Common Defence. Supreme Jurisdiction, both by Sea and Land was never yet impeached, and from him lyeth no Appeal. And originally, by the Institution of the Laws of this Realm, what was once in his Hand, and was never granted from him, is still in him; he hath absolute Power of concluding War and Peace: All these are in him as he is an absolute Monarch, and holdeth his Kingdom under none but God himself. It hath appeared also, that a principal Part of this Kingly Office consists in the Defence of the Realm; that as his Jurisdiction is by Sea and Land, so is his Defence. And this hath been made appear unto your Lordships, both by Precedents before the Time of *William* the First, and since; *pro communi utilitate*, and, in Case of Necessity, the Kings of *England* may ordain, by their Proclamation, Writs or Patents, by the Advice of their Council, or Judges, in legal Matters. That the King is the sole Judge of this Danger, both for the prevention of it, and for the avoiding of it. Therefore for us to distrust that he will command too great a Power or Aid, it is a Presumption against the Presumption of Law.

It hath appeared likewise that all the incidents of Defence, are likewise inherent in his Majesty,

Majesty. We cannot build a Fort or Castle on our own Ground, without License from him. Your Lordships have heard the Precedents, particular and general. Precedents which have universal Reasons, *quod omnes ex debito astricti sunt*, Writs awarded by the King's Royal Power, in Times of Parliament, when Parliaments were sitting, and in those Years when great Aids and Subsidies were granted to the King, many times no Cause declared, nor the Occasion discover'd.

There is no Act of Parliament made to take away this Power: And the judicial Precedents which your Lordships have heard have affirmed this Power.

My Lords, if there were no Law to compel unto this Duty, yet Nature and the inviolate Law of Preservation ought to move us. These Vapours that are exhaled from us, will again descend upon us in our Safety, and in the Honour of our Nation. Therefore let us obey the King's Command by his Writ, and not dispute it. He is the first Mover amongst these Orbes of ours; and he is the Circle of this Circumference; and he is the Center of us all, wherein we all, as the Lines, should meet; he is the Soul of this Body, whose proper Act is to command.

But I shall need to use no Persuasions to your Lordships to do Justice in this Cause: And therefore I shall humbly desire Judgment for the King.

The Argument of Sir Francis Weston, *Kt. one of the Barons of His Majesty's Court of* Exchequer, *in the great Cause of Ship-Money.*

IN *Easter*-Term last, there was a Writ of *Scir' Fac'* went out of the Exchequer, directed to the Sheriff of *Bucks*, reciting, That whereas divers several Sums of Money, specified in a Schedule annexed to the Writ, by vertue of the Writ 4 *Aug.* 11 *Car.* was assessed upon the several Persons, in the Schedule named, towards the providing of a Ship of War mentioned in the Writ, which Sums being so assessed, and not paid, by Writ of *Certiorari*, 9 *Martii.* 12 *Car.* under the Great Seal of *England*, the Names of those several Persons and Sums assessed are certified into the Chancery, and by Writ of *Mittimus* dated 5 *Maii.* 13 *Car.* sent into the Exchequer, and there to be proceeded upon according to the Course of Law. The Sheriff of *Bucks* is commanded to warn the Parties named to appear, and shew Cause why they should not be charged with those several Sums assessed upon them.

Hereupon Mr. *Hambden* appeareth and demandeth *Oyer* of the Writ, 4 *Aug.* of the *Certiorari* and *Mittimus*, and their several Returns; they being all read unto him, he saith that these several Writs, and the Returns thereof, and the Schedules thereunto annexed, do not contain any sufficient Matter to charge him to pay the 20 *s.* and thereupon demurred. Mr. Attorney General saith, that they do contain sufficient Matter to charge him. And thereupon the Demurrer is joined.

The Demurrer being joined, the Record was read in the Exchequer, and the Cause appearing to be of great Weight, it was adjourned unto this Place in the Exchequer-Chamber, to have the Advice of all the Judges of *England*.

Upon this Record, I am to deliver my Opinion, and I take it there is sufficient Matter to charge Mr. *Hambden* with this 20 *s.* And so I give Judgment for the King.

Here hath been twelve Days spent in the arguing of this Case at the Bar: I will confine my self unto two Hours and less, though not tyed unto any Time. The way to be short, is shortly to find out the Points.

But I must first observe, in what State this Cause cometh in Judgment before us. There is a Rule in Law, That if a Man shall demurr generally unto the Writ, he doth confess all other Matters in Fact that are alledged. The Reasons of it are apparent, Because Matters of Fact are to be tried by Jury, and Matters of Law by the Judges. So in this Case all the Danger alledged by the Writ, is confessed; and the Matter in Law is that which we that are Judges are to deliver our Opinions upon.

It hath been objected, by Mr. *Holborne*, That we are tied unto the Writ 4 *Aug.* for that Writ is the Ground of all, and upon that doth all the rest depend. It is true, that if he had relyed upon the Writ, it had been so. But his Demurrer is this, That the Writ, and the rest of the Proceedings, with the Schedules, do not contain Matter sufficient: So that now they have not put unto us the Writ 4 *Aug.* alone, but all the rest, to give Judgment upon. For the Writ of *Mittimus*, it is confessed, That in that there is an Expression, that *Salus Regni periclitabatur*, which is not in the Writ 4 *Aug.*

To this he hath taken Exception, that *Salus Regni periclitabatur*, the Danger is at the present Time of the *Mittimus*, and doth not say, *periclitatur*, 4 *Aug.* 4 *Car.* and therefore this Expression now in the *Mittimus* cannot make good the Defect thereof in the Writ of 4 *Aug.*

To this I answer, That the demurring to all, hath confessed all, and yet the Matter in the Writ is sufficient to express the Danger.

Then he objected, That *Salus* signifies Health, and not Safety, and that the Physicians term it so.

But *Salus* signifies Safety, as well as Health. So it is Englished in *Cooper*'s Dictionary, and so

ſo it is taken by Poets and Hiſtorians, for Safety.

The next Objection was to the Writ 4 *Aug.* That if there were a Danger, it muſt be plainly expreſſed in the Writ, *&c.* the Words are, *Datum eſt nobis intelligi, &c.* How cometh the King to underſtand it? the Danger muſt be fully expreſſed.

For this I hold it more fit for a Stateſman than my ſelf to give an Anſwer unto, that the King ſhould diſcover his Intelligence; whether it is fit to make known to all the World the Danger the Kingdom is in. But yet I find that in the ſaid Writ 4 *Aug.* there is expreſſed both Danger by Pirates on the Sea, and that the Dominion of the Sea is like to be loſt: And that theſe are Dangers to the whole Kingdom. For the *Certiorari*, I find it is directed to the Shire, and the Writ of *Mittimus* to the Court of Exchequer, and therefore he could not take Exception to theſe Writs; whatſoever I ſhall take Advantage of, it muſt be contained in the Writ 4 *Aug.*

In this Writ, Three Things, as Dangers, are expreſſed. Firſt, The Danger by Pirates. Secondly, The Danger of loſing the Dominion of the Narrow Seas. And, Thirdly, The great Peril in this Time of War.

For the Pirates, I ſhall not meddle with them; they are but petty Robbers, and ſtill running away: The Ports muſt defend themſelves againſt theſe; the Inland Counties are in no Danger of them.

I will not inſiſt upon the Dominion of the Narrow Seas, though that is conſiderable; for in the Defence of that conſiſts much the Preſervation of the Kingdom. But I ſhall inſiſt on the Danger of the Kingdom expreſſed in the Writ 4 *Aug.* thus, *Conſideratis etiam periculis undiquaque, &c.* there is Danger, there is Peril round about us, and it is by reaſon that there are now Times of War, we ſee Danger on every Side.

There are two Things trouble this Point. Firſt, The Subject ſuſpects that this is only a Pretence, and that the Kingdom is not really in Danger.

Secondly, That there being great Sums of Money raiſed upon this Occaſion, that this, in the End, will be drawn to be annual and perpetual: But if they were ſatisfied that the Kingdom were really in Danger, likely they would be content to pay the Money till the Danger be over.

For my part, I anſwer to theſe Objections, That it is an unworthy Suppoſition. I muſt be ſatisfied, and I am, that the Kingdom was in Danger for two Things: One Reaſon is, Becauſe it is ſo expreſſed in the Writ 4 *Aug.* It cannot be denied, but that the Kingdom may be in Danger. It hath been Conquered, and ſo it may be again, therefore it is neceſſary it ſhould be foreſeen and prevented; and ſome Body muſt do it, and who better than the King, that hath the Care and Charge of the Kingdom? He ſaith the Kingdom is in Danger, and hath ſo declared it by his Writ, why I ſhould not believe it, when the King hath declared it to be ſo by his Writ, I know not.

My other Reaſon that the Kingdom is in Danger is, That it is ſo *de facto.* It cannot be unknown to any Man, that theſe three or four Years laſt paſt, great Navies have been at Sea, and great Forces on Land. If we ſhould have but an ordinary Defence at Sea by Shipping, no Man can tell or ſuppoſe, but that thoſe Navies, being ſo great, may land where they will, and in as many Places as they will; what Spoil would they make before ſuch time as any Reſiſtance could be made againſt them?

They objected here, That theſe Navies at Sea, they are engaged in War one with another, we are ſafe enough, we need not fear them.

I anſwer, They are, I think, engaged in good earneſt; but who knoweth how ſoon theſe Wars may end? They may end by the Mediation of Friends, or the Death of ſome one Perſon. And when there is a great Navy at Sea, and Forces at Land, how eaſy is it to remember an old Quarrel, or to pick a new one?

Theſe Things do perſuade me that the Kingdom is in Danger, and a very great and juſt Cauſe to make Preparation for Defence. And if every Man would be ſo perſuaded, they would not deny the Payment of the Money. An Example of this Nature hath happen'd in former Times: In *Henry* the Seventh's Time, it appeareth, by a Record on the King's Part, *Pat.* 1. *Hen.* 7. *pars* 3. *duo*, there were Wars between the King of the *Romans*, and the King of *France*; they were both Friends unto *Hen.* 7. they ought him no Ill-will; yet by reaſon of theſe great Wars, great Forces at Sea, and great Forces at Land, the King would not truſt them, but ſent forth his Proclamation, to command, that Watch and Ward be kept over the Sea Coaſts, and Command was to all his Subjects, that upon ſhort Warning, they ſhould be ready for Defence of the Kingdom; ſo this may well be an Example for the Courſe that is now taken, for Defence of the Kingdom.

I ſhall now come unto thoſe Reaſons, and unto the Records that have been objected on either Side. I ſhall begin with the King's ſide, becauſe that layeth a Charge on the Defendent.

It hath been objected, That ſome of them are not warranted by the Record. Firſt, ſay they, there is a Ship commanded to be provided, and Money muſt be levied: But in the End, when this great Sum of Money is collected, it muſt be disburſed, no Man knows how. No ſuch Thing in the Record.

To this I anſwer, The Record ſaith, a Ship muſt be provided, and the Sheriff is to Rate the County, *ſecundum facultates*, towards the ſame; not a Word of any Money to be paid unto the King. It is a Ship that the Sheriff is to build, and to aſſeſs Money towards it.

They have ſaid beſides, Here is in the Writ a Command for the Impriſonment of the Party, and that his Liberty is taken away, dearer to him than his Life and his

Goods, wherein he hath an absolute Property, shall be taken away. These Things, they say, are not warranted by the Writ, nor by any thing in the Record.

I answer, It is not warranted by the Proceedings in this Case, for the *Scir' Fac'* is not to shew Cause why the Party's Goods should not be sold, or he imprisoned, but, why he should not be charged with the Money assessed upon him.

They say, That the general Defence of the Sea lyeth upon the King; because he hath wherewithal to do it.

I would willingly disburthen my self as much as I can of the Objections: A general Answer I shall give to these Particulars.

They say, The King hath Personal Service, the Service of Tenents, by Knights Service, Escuage, Castle Guard, Grand Serjeancy, Petty Serjeancy.

Is the King bound by these to the Defence of the Kingdom? He that doth look on their Originals will not say so: For these are Tenures reserved upon the several Grants made by the King, and no more Reason is there that the King, by this, should be tied to defend the Kingdom, than there is for the Lords, that are Subjects, that have the like Tenure, that they should be bound to the Defence of the Sea.

They say, He hath, besides these Wards, Marriages, Reliefs, Fines, Issues, Amerciaments, primer Seisin, Fines of Alienation, Respites of Homage, all Fruits of the Tenures, and therefore must go towards the Defence of the Kingdom.

I answer, These Profits are casual; besides, if he be not bound in respect of the Tenure, as aforesaid, he cannot be bound by the Fruits of them.

It hath been objected, That the King hath the Profit of the Sea, as Royal Fishes, Whales, *&c.* Wrecks at Sea, Treasure Trove, Royal Mines, *&c.*

I answer, These he hath by his Prerogative, and not for the Defence, neither are they fit for a Subject to have.

You say, He hath particular Service from the Cinque Ports and other Places. As from *Malden*, *Colchester*, and other Places, and besides, he hath all manner of Customs, and in Regard of these he is bound to provide for the Defence of the Sea.

It is true, the King must, for an ordinary Defence, use the Means the Law hath allowed him; but that is not now the Question: It is for an extraordinary Defence. The Question now ariseth, if it were asked any Man, Whether they do think in their Conscience that the King is able of himself, out of these, to prepare a Royal Navy, without Help from the Subject? None are so senseless as to think it.

There be some other Things, to which I shall give a general Answer.

It appeareth by many Records, that the King hath paid Wages unto Soldiers, and some times hath hired Ships, and unless there had been a Consideration, the King would not have done it.

To this I answer, It was for ordinary Defence, and he is bound to do it; and if he engaged himself by Promise to repay unto them their Charges, I can say no more but this, That every honest Man that makes a Promise will perform it, and so is the King bound to perform his Promise; for that which Honesty binds others to the Performance of, Honour binds the King.

I shall come to those Things to which a more particular Answer is to be given. The Charge lieth General, upon the whole Kingdom, which I shall divide into three Parts. First, The Ports. Secondly, The Maritime Counties. And, Thirdly, The Inland Counties: And to these three I will apply the Records.

First, For the Ports; they are of two Kinds, the Cinque Ports, and the Ports at large. What Services are due from the Cinque Ports, is expressed *in libr' Rubrico*, in the Exchequer, that they were to find 52 Ships, and 24 Men in every Ship, for fifteen Days, which cometh to 1188 Men.

The Ports at large are tied to no certain Service, it will appear by most of these Records which I shall apply, that the Cinque Ports have been charged with more than their due, and the Ports at large equally with the Cinque Ports, *Pat.* 25. *Job'. m.* 6. the King sent his Writ unto the Cinque Ports, and thereby commandeth, *quod omnes Naves paratæ, &c. & homines*, he doth not here tie them to a Number, but all must go, *Claus.* 17 *Johannis*, *m.* 7. here the King sent his Writ *Baronibus suis de Rye*, a Member of the Cinque Ports, *Quod venire faciatis omnes Naves apud Quinque Portus*, this was general as the others. All the Ships not tied to the Number of 52, *Claus.* 14 *Hen.* 3. *m.* 13. A Writ went out unto *Portsmouth*, being a Port at large, to provide a Galley, *& eam munire faciant cum hominibus & quod prompti & parati sint ad proficiscend' cum necesse fuerit.* So here is a particular Charge upon *Portsmouth*, not bound unto it, to provide a Galley with all manner of Munition, *Claus.* 25 *Ed.* 1. *m.* 5. *dors.* A Writ went unto *Guernsey*, a Port at large, to make a Ship ready as often as Need should require, *de contributione faciend' pro Navibus quoties opus fuerit*, *Pat.* 9. *Edw.* 2. *pars.* 2. *m.* 26. A Writ goeth forth, and that was directed, *Ballivis & probis hominibus comit' Southhampton*, to make *Provisionem Navigii sumptibus propriis*, no Promise from the King to pay this again. *Claus.* 20. *Edw.* 2. *m.* 7. A Writ goeth to the Sheriff of *London*, and that reciteth a Charge formerly laid upon the City, and upon *Kent*, for finding of 12 Ships; *London* to find 9 Ships, and *Kent* 3, and forty Men in every Ship, *ad sumptus illarum*, *Claus.* 20 *Edw.* 2. *m.* 8. A Writ directed to the Bailiff of *Yarmouth*, which is none of the Cinque Ports, and they were charged with two Ships at their own Costs. And the same Command, in the same Roll, for all Ships of 50 Tuns to be ready, *Rot. Scot.* 10 *Edw.* 3. *m.* 12. that Writ reciteth the general Obligation that they are bound in to defend the Kingdom, almost in the same Words mentioned in this Writ; it reciteth, that every Man should be assessed *juxta statum & facultates*, so there was a Contribution; then cometh in the Clause *ultra illam pecuniæ summam debit' pro ser-*

servitiis. It is true, indeed, the King did pay towards this, but it is expressed to be of his meer Grace and Favour, 10 *Edw.* 3. *m.* 2. *dors.* A Writ unto *Winchelsea*, a Member of the Cinque Ports, and that was *Quod omnes Naves sint paratæ*, both of the Ports & *aliarum villarum*; and the Reason is expressed, Because without their Help the King was not able to defend the Kingdom; and appointeth them, by that Writ, that the Ships should be ready Victualled for thirteen Weeks; whereas the ordinary Time was but for fifteen Days. *Vass.* 12 *Edw.* 3. *M.* 8. there a Writ goeth forth to the Sheriff of *Kent*, and to the Barons of the Cinque Ports, whereby they were all commanded to look unto the Custody of the Sea Coasts; here are the Maritime Towns and Port Towns joined together. 25 *Edw.* 3. *M.* 22. *dors.* A Writ to *Southampton*, *ad Congregandum Naves*, in the same *Rol. M.* 8. more Writs to other Towns, *Pat.* 12 *Edw.* 3. *pars.* 4. *m.* 3. there was a Command that all that dwell within the Isle of *Thanet*, that every one, from Sixteen to Sixty, should be ready to defend the Sea Coasts, and this was *juxta statum & facultates. Rot. Alm.* 13 *Ed.* 3. *m.* 12. *Yarmouth* charged with 4 Ships, and in each Ship 24 Men; whereas usually it was but 21 Men in a Ship; now I think they are come to six Score Men in a Ship; there are an infinite Number of Rolls to this Purpose, to charge the Port Towns.

I come now to my second Division, which is Maritime Towns. *Pat.* 48 *Hen.* 3. *M.* 4. *Dors.* A Writ went to the Sheriffs of *Norfolk*, reciting, That Ships and Soldiers had staid there long, and that they were intended to depart, because their forty Days were past, command was, that they should stay, *Donec aliud inde mandatum fuerit. Claus.* 23. *Edw.* 1. *M.* 5. *Dors.* There were Writs directed to the Sheriffs of *Southampton*, *Dorset* and *Wilts*, these three Counties are all Maritime Counties. A command, that they should raise three Thousand Men to defend the Coasts, *Pat.* 24 *Edw.* 1. *M.* 17. A Writ directed unto the Sheriffs of *Lincoln*, *York*, and *Northumberland*, to assist certain Commissioners to take up an Hundred Ships, with a competent Number of Men, these are to Maritime Counties: The like Writs go to the Sheriffs of *Sussex* and *Southampton*, and these for the Preparation of Ships, and to take them wheresoever they are to be found. *Rot. Pat.* 25. *Edw.* 1. *M.* 6. Writs went to *Southampton*, *Devon*, *Cornwall*, *Dorset*, and many other Places that were Maritime Towns, for arresting of Ships, and raising of Men. But the Rolls, I might most insist upon, are only these; I'll but name them, *Pat.* 24. *Edw.* 1. *M.* 16. *Exts. Remem' Regis. & Rot* 78. *Claus.* 25. *Edw.* 1. *M.* 26. *Claus.* 13. *Edw.* 3. *M.* 14. *Pars.* 1. *Dors. Scot.* 10. *Edw.* 3. *M.* 22. By all which it appears, not only the Ports, but the Maritime Counties have contributed towards the Charge of the Defence of the Kingdom. And the other Side do hardly deny it, but that the Maritime Towns may be charged.

I will open it plain, that it is for their Ease to bring in the Inland Counties. This Cause is not of so great Consequence, as is conceived; for if the Port Towns and Maritime Towns may be charged, then it bringeth but in the Inland Counties. In *England* and *Wales* there are Fifty-two Counties, Thirty-three of these are Maritime Counties, so the Inland Counties are but Nineteen at the most, and they contribute but to a fourth Part of the Charge, for the Defence of the Kingdom; and so much to my second Division of Maritime Towns.

To the third Division, which is of Inland Counties, that they have been charged; I shall make that appear, that the greater Part of them have been charged formerly for this manner of Defence.

They object, that the County of *Bucks* is an Inland County, and that Mr. *Hambden* dwells there; and therefore no Reason he should contribute to the Defence, no Inland County ever did it, say they.

There may be two Reasons, wherefore, in former Times, the Writs for the most part went to the Ports and Maritime Counties. *First*, Because they have the Benefit of the Seas by Exportation and Importation of their Goods. And, *Secondly*, Because they are continually in Danger of Pirates and Robbers, and far nearer for a sudden Defence, than the Inland Counties are. But this cannot be held for a sufficient Reason, that they only that are near the Danger, should be put to defend the whole Kingdom. I am sure the Inland Counties receive great Gains and Profits by the Commodities from the Port Towns, and they are the more in Safety, the stronger the Sea Coasts are kept. And therefore no Reason, but that they should contribute towards the Charge of the Defence of the Sea. For all the Writs, save one Commission, have gone to be for the general Defence of the Kingdom; then no Reason but Inland Counties should be charged. If they say they never did it, it is a strange Prescription; that, because they never did it, they never will do it. A Man cannot excuse himself, that, because he never paid Tythe to such a Vicar, or such a Parson, that therefore he will never pay it.

I shall go to the Records that charge the Inland Counties. *Claus.* 48. *Hen.* 3. *M.* 2. A Writ directed to the Mayor and Bailiff of *Bedford*, an Inland County, it doth recite, that divers of that Town were called to go with the King towards the Sea Coasts, *Contra hostilem invasionem & nunc necesse est, & causas fortuit' ut levari fac' & expensas*, and appoint at what Rate they should Levy it, the Horsemen were to have eight Pence *per* Day, and the Footmen four Pence. *Claus* 48. *Hen.* 3. *M.* 7. A Writ directed unto the Sheriff of *Huntington*, thereby the Men of that County were commanded to go to *London*, and from thence unto the Sea Coasts, for the Defence of the Kingdom. *Rot. Scot. Exts. Remem' Regis.* 24 *Ed.* 1. *M.* 78. *Dors.* A Writ is directed to the Sheriff of *Berks*, and this is to distrain Men to make good the Custody of the Sea Coasts. *Rot.* 26. *Ed.* 1. *M.* 5. The like Writs were directed to the Sheriffs of *Hertford*, *Essex*, *Nottingham*, *Derby*, *Huntington*, *Cambridge*, &c. and almost to all the Inland Counties, *pro custodia Maritima*, all to come to *London*, and to go from thence to the Sea Coasts, for the Defence thereof, *Claus.* 13 *Ed.* 3.

Pars.

Pars. 1. *M.* 14. *Dorf'.* A Writ goeth out to *Oxford*, *ad diſtringendum*, for Wages, *pro cuſtodia Maritima*, one Man was diſtrained, and he pleaded, he had been charged in *Wilts*, and ought not to be charged in another County, and for this there went a *Superſedeas*. *Rot. Viagii* 1. *Hen.* 4. *M.* 10. A Writ was directed to the Sheriffs of *Nottingham* and *Derby*, two Inland Counties, and this was to proclaim *quod omnes homines, inter* 16 & 60 *parati ſint*, &c. to go with the King, within the Kingdom, where he pleaſed. *Clauſ.* 1. *Rich.* 2. *M.* 18. Writs were directed to the Mayor and Bailiffs of *Huntington* and *Cambridge*. This Roll is cited by the Council of the Defendent, and in part it maketh for the Defendent, and in part againſt him. The Effect of it is this, the Writ is directed to the Bailiff of *Huntington*, and this recites a former Writ to provide Barges, called *Ballingers*, with forty and fifty Oars a-piece, like unto a Galley, at the Charge of the moſt rich Men, and this was *ad Cuſtod' Maris*. And the like Writs went unto the Towns of *Nottingham*, *Glocester*, and *Warwick*, and divers other places; theſe Veſſels were not deviſed then, I find them uſed before in King *Edward* the Third's time. In the Parliament Rolls, 2 *Ed.* 4. *M.* 22. the Commons did complain, that a Commiſſion was gone forth for the making of theſe Barges. True, upon a Petition of the Commons, the King ſaith, he will adviſe with his Lords, there is no more done, but upon this they ceaſe. I have now done with the Precedents on the King's Side.

I ſhall now come to that which hath been ſaid on the Defendent's Side for their diſcharge. And, *Firſt*, For the Acts and Petitions in Parliament, which are weighty and conſiderable.

Firſt, For the Statute *de tallagio non concedendo*, which was in the time of *Edward* the Firſt, it hath been doubted, whether this be a Statute or no. I ſee no Colour of doubt, but that this is a Statute, it is printed amongſt the Statutes, and ever accounted for a Statute. And in the Petition of Right, it is recited for a Statute. And to ſay it is no Statute, is becauſe the Parliament Roll is wanting, if it ſhould be diſallowed, it would draw a great Inconvenience with it, for private Men might embezzle the Records, and then if the Records were wanting, the Acts of Parliament ſhould be void.

It is an Act of Parliament no queſtion; but the Queſtion is, whether the Proviſion made by this Writ, be within the meaning of this Statute.

And I conceive it is not; for there are two Words in this Statute obſervable, *Talliage and Aid*. By *no Aid* here, will you take away the Aid *pur fils marrier*, or *pur faire Fitz. chivalier?* By no Talliage, will you have it ſo, the King ſhall demand no Sum of Money; then if you will give it this large Conſtruction, you will take away all Fines and Amerciaments that are due unto the King, all lawful Impoſitions; and ſurely this was not the Intent and Meaning of this Statute: But it was only to take away all Taxes and Talliages that were unlawful. If they were lawful, this Statute meddleth not with them.

Now, that no Talliage is to be taken, it appears in the Parliament Rolls, 13 *Hen.* 4. *M.* 42. where an Office was granted by the King, with a Fee, for the meaſuring of Linnen-Cloth, that the Subject ſhould pay unto him a certain Sum of Money for every Piece meaſured; whereupon, at the Parliament, the Commons complain, that this was an unjuſt Impoſition, and they deſired that they might not be charged with this kind of Talliage, which, as was apparent, was unjuſt, and ſo they had preſent Relief againſt it.

The next Act of Parliament is, 14 *Edw.* 3. the ſecond Parliament of that Year, three Parliaments being held that Year. The Commons, they grant unto the King a certain Sum of Money, for the great Buſineſs he had as well on this Side the Sea, as beyond; but after a Ceſſation of the Troubles, then the King is to be at the charge of the future Defence, thereupon the King granteth this ſhall not be had in *exemplum*, and that they ſhall not afterwards be taxed without Parliament; and this is the ſtrongeſt Thing that I have heard objected.

It requireth a good Anſwer, the Words are plain, no Charge, no Queſtion; but this is a Charge. I looked into the Petition of Right, and it is not there mentioned, nor amongſt thoſe Acts of Parliament that are in the Margin; but the Reaſon why it was omitted, I know not.

I obſerve in this Act of Parliament a ſubſequent Clauſe, that will go far to the anſwering of this Objection; for neither in the Acts of Parliament, nor in the Petition of Right, is there any mention made of the Defence of the Kingdom, if the King had been bound to defend the Kingdom, could the Parliament have accepted this as a Kindneſs at his Hands? 14 *Edw.* 3. This Act was made, yet the Aids continued, none of theſe Writs found 'till 24 *Ed.* 3. *Rot. Franc.* 24 *Ed.* 3. *M.* 9 & 26. there went out Commiſſions to array Men to the Counties of *Suffolk*, *Dorſet* and *Somerſet*, for the Defence of the Maritime Parts; within eleven Years after the making of the Statute, *Rot. Franc.* 26 *Ed.* 3. *M.* 5. The like Writs to the Earl of *Huntington*, *Conſiderantes quod omnes incolæ tenentur de jure ad defendend' in periculo*; and that they ſhall array the Men in this County, and to bring them *ad Cuſtodiend' mare*; and by this it is recommended for the Erecting of Barons, which is the firſt Direction of that Nature: So here is a new Charge, and within eleven Years after the making of the Statute, the ſame Year likewiſe there went Writs to the Sheriffs of *Nottingham*, *Derby*, *Salop*, *Berks*, *Middleſex*, *Bucks*, *Northampton*, &c. So although theſe Writs go almoſt into every County, and diverſe other Writs of the like Nature, as *Rot. Franc.* 28 *Edw.* 3. *M.* 34. yet, as I ſaid, in no Act of Parliament extant, nor in any Writ that ever went forth that I can find, there is any Thing appears to charge the King with the Defence of the Kingdom, and in all of them, no Diſtinction made between the Port-Towns, Maritime-Towns, Counties, and Inland-Counties; but that all of them are generally chargeable. And for the reſt of the Acts of Parliament, they are all mentioned in the Petition of Right, and therefore I paſs them over. There is in thoſe Acts, Proviſion againſt Loans and Grievances;

vance; but this Clause, for the Defence of the Kingdom, I find it mentioned in no Act of Parliament but this of the 14 *Edw.* 3. before mentioned.

I will now come to the Petitions in Parliament, *Rot. Parl.* 13 *Edw.* 3. *M.* 9, 11. It was there declared unto the *Commons*, that the *French* had Invironed the Island of *Guernsey*, and all this was for Default of a Navy upon the Sea, and therefore it was needful to consider how this might be regained. It was answered by the *Commons*, That concerning the Right and Guard of the Sea, they desired to give no Advice, saying, they have no Cognizance of Things concerning the Sea. But if there be Occasion, the *Cinque*-Ports are to be charged; and said further, that in the Marches of *Scotland*, they were to defend the Kingdom against the *Scots*: But that this kind of Defence should lie upon them, was never heard of.

I will give you an Answer to your Acts of Parliament, and Petitions of Parliament, by putting of a Case. I will admit that you have an Act of Parliament as strong as you can make it, that the whole Charge of the Defence of the Kingdom should lie upon the King, and not upon the Subject, in case of any sudden Invasion. Admit there was a greater Power at Sea, than the King was able to make Defence against; then, I pray, whether should this not give way to the present Necessity, or the Kingdom should be lost? Is it not better to indure a Mischief, than an Inconvenience.

Then, if you say, the Acts of Parliament should give way to Necessity, then you have answered all you have objected.

This is not the only Case of Necessity. I shall put you another Case, when Acts of Parliament must give way to Necessity. That if a Man be Attainted of Treason, he is disinabled to inherit by Act of Parliament. But if the Kingdom should descend to such a Man, then the Act of Parliament should give way unto it. And shall not the Acts of Parliament give way unto Necessity for Defence of the Kingdom? What though there have been Petitions in Parliament to have it decreed, that this kind of Charge should not be laid upon the Subject? Admit it had been so decreed in Parliament, yet by the Law of Equity they ought to be charged, and in all Reason they ought to be charged towards the Defence of the Kingdom, and that for three Respects.

First, For the Reason given in the Writ, *Quod omnes tangit per omnes debet supportari*; which is but Equity.

Secondly, The King is trusted with the Defence of the Kingdom, and therefore 'tis fit he should have Means wherewith to do it.

But you say he may call a Parliament, and they will give him Means wherewith to do it.

'Tis true, this Thing in Question, if it had been done by Parliament, it had been done by the happiest Means; but because he might have it by Parliament, must he therefore have it no otherways. The Question now is, whether what is done, may be done without a Parliament or no? What is done, is done by the great Seal, which is the next Authority unto a Parliament. What if an Enemy had come before the Parliament had met, or before they had granted any Aid, should the Safety of the Kingdom depend upon such Contingencies? God forbid. Will you have Forces on both Sides, and restrain the King to this Power by Parliament, which may be so dilatory, that the Kingdom may be lost in the mean time?

Thirdly, Many Inconveniences might happen both to the King and Subject, if this should be suffered: If the King should be restrained of his Royal Power, it would turn to his Contempt, both at home and abroad. And all this while the Matter is not so great, it is but parting with a little Money *secundum statum & facultates*.

It is true, as Mr. *Holborn* hath said, that in former Times they have been careful not to leave too much Power unto the King; but you would leave so little as would bring him in Contempt both at home and abroad. The worst that comes to the Subject, is but to yield their Help to the King, in such Times of Danger, with a small part of their Estate, and then it would make Foreign Nations that know of it afraid of us, which now by this Occasion have Encouragement to attempt that which otherwise they would not.

It hath been objected, That if the King may raise Moneys in this Manner, many Inconveniences would follow, and it would be a Means to keep back Parliaments.

To this Objection I answer, It is no Means to keep back a Parliament, for there are many other Causes of calling a Parliament, besides for the Defence of the Kingdom; as, For making good Laws, redressing of Grievances, *&c.* the King may be engaged in a Foreign War, and the Subject must help him. But to call a Parliament always is not necessary; for when the Kingdom was in the greatest Danger that ever it was, as in 88, and the Rebellion in the *North*, yet no Parliament was called in either of these Dangers.

Next they object, That if this Course be admitted, the King may pretend a Danger when there is none; or a great Danger, when it is but small; and so may raise a great Sum of Money, and the Subject shall have but little Benefit thereby.

I shall give three Answers to this Objection. *First*, If this Power be in the King, and that Power be just and equal, then it is not to be taken from him, because he may misemploy his Power. If he misuse his Power, the Fault is his.

In the next place, this Objection cannot be made unless you suppose Injustice in the King: Make what Laws you will, if the King be unruly, he will break through them.

Thirdly, If it so falls out, that the Writ going out upon this Pretence, and that great Sums of Money are levied, and the Monies employed to another Use, it were a great Inconvenience; but in this Case there is no such Fear, for the Writ is expresly to make a Ship, and if they would have taken any Advantage upon that, the Council ought to have pleaded it, and the Judgment ought to appear there upon Record. There appears no Money in this Case to

be coming unto his Majesty's Hands, but it is said in the Writ, *volumus autem, &c*, we will that no part of the Money be converted to another Use than to the building of a Ship.

Then they object, That by the same Reason that the King commandeth his Subjects to provide one Ship now, by the same Reason he may command two Ships the next Year.

To this I answer, If the Danger be greater, the Defence must be greater, and then the Supply must be greater; and no Man can suppose that the King will impose that on his Subjects when there is no need.

I shall now come to the two last Exceptions. *First*, That the Power cannot be given to the Sheriff by the Writ 4 *Aug.* to Tax every Man *secundum statum & facultates*; that this is too great a Power to be committed to the Sheriff.

To that I answer, That I conceive the Sheriff to be the fittest Man, and most indifferent for that Purpose; for if there were Commissioners, or many Men appointed for doing thereof, they might, perchance, be partial to their Friends: And the Sheriff having all the Freeholders Names, and the Bailiffs for his Ministers, that know the Estate of most Men; therefore out of all doubt he is the fittest Person.

For the Exception to the *Scir' Fac'* it hath been objected, That the King cannot by that Course levy Moneys, because the King having no Interest in the Money, he cannot levy it by *Scir' Fac'* neither doth it appear in the Writ, to whom this Money is to be paid.

I confess this Point, though not spoken unto by the Defendent, is of most Difficulty.

Though no Person certain is named, to whom this Money is to be paid, and the Sheriff is only to levy it according to the Writ, and the King providing a Ship, I suppose that *Scir' Fac'* may issue for it; for if a common Person claim any thing, or be wronged, or debarred from his Right, he hath, by the Law, a Writ for his Remedy, and shall not the King have the like Remedy for this Ship, being for the Defence of the Realm in general, for which he is intrusted, to prevent a Wrong to be done to this Commonwealth?

But in this Case, the *Scir' Fac'* is not for Mr. *Hambden* to shew Cause, why he doth not pay the Money to the Sheriff; but, why he doth not pay the Money he was assessed towards the making of the Ship; which, for ought I know, when it hath done the Service, is the Subject's again, at whose Cost it was provided, for they might either have hired a Ship or bought a Ship, *In. Fitz. her. Na. br.* it is held, the King may, for the Good of his People, send forth Writs for removing common Grievances, and for repairing of Bridges, and the like: And why may not the King send forth Writs for so necessary a Service as to defend the Kingdom? *Claus.* 1 *Rich.* 2. *M.* 7. A Writ went out to the Mayor and Bailiff of *Oxford* to repair the Walls and Ditches about the Town, and why not as well to repair the wooden Walls of the whole Kingdom, as the Walls and Ditches of a Town? The King hath Charge and Power over all, to see all done.

But it hath been said, When this Money is gathered, we know not what becomes of it.

I answer them, with the common Roll in *Scac'.* 24. & 25 *Edw.* 3. where a Commission went forth to levy Money for Maritime Defence, but what was done thereupon is not expressed. But at that Time there was a Cause adjudged in the Exchequer, it is a Norffs Cause, where divers being commanded to go to the Wars against the *Scots*, and had thereupon Armour and Wages allowed them: Afterwards comes a Counter-command to some of them not to go, and two Men that had Wages went not. Whereupon a Writ went out against them, and the Jury found the one Guilty, and he was ordered to pay back the Money; but the other going to the Wars, afterwards, by a second Direction, was quit: And the first gave Security for the Repayment of his Wages, being 30 *s.* and also for the Armour.

It hath, *Lastly*, been objected, That this Taxation ought to be *secundum legem & consuetudinem Angliæ*, and that ought not to be by Writ, but by Parliament.

To this I answer, That from King *John*'s Time to *Henry* the Fourth's Time, there hath been an Usage and Custom to send forth Writs of this Nature, and since that Time till now not the like Command.

About *Henry* the Fourth's Time, began your Tonnage and Poundage; so long as he had that, the Defence was at his own Charge. There is no Act for taking this Charge by Writ away; it is become a general Custom, and the general Custom makes the Law of *England*, and we are to examine and try new Causes by the old Law, and now compare this with what hath been done in former Times.

I shall make an end: For my own part, I am persuaded in my Conscience that there is eminent Danger: I am satisfied in it, both by the King's Writ, and that which is apparent to every one, and there is a Necessity this Danger should be prevented: I do conceive this Writ to be grounded upon this Danger of Necessity; and that the Danger appears sufficiently in the Writ.

Therefore I conceive that the Proceedings are legal, and that there is good and sufficient Cause to charge Mr. *Hambden*, and that he ought to pay the 20 *s.* assessed upon him.

The

The Argument of Sir Francis Crawley, *Kt. One of the Justices of His Majesty's Court of Common-Pleas at* Westminster, *in the Exchequer-Chamber, in the great Cause of Ship-Money.*

THE Record hath been opened, therefore I shall spare that Labour. I conceive the Case in Question to be this.

Whether the King, by his Right of Sovereignty, may charge the Subject, in Case of Necessity, to contribute with him to the necessary Defence of the Kingdom, without the Subjects Consent in Parliament.

Mr. *St. Johns*, whom I take to be the Mouth of the Defendent's Council, confesseth, That this Question is not so much *De Re*, of Necessity, but *De modo*, if done without Parliament.

This is one of the greatest Cases that ever came in Judgment before the Judges of the Law. The King's Right and Sovereignty, in a high Point, is concerned, and the Honour and Safety of the Kingdom, on the one Side; and the Liberty of the Subject, in the Property of his Goods, on the other Side.

This is the first Cause that ever came to Judgment, of this Kind, that I know of. Kings have not suffer'd their Rights of Sovereignty to be debated at the Bar, as now it is, for these are *Arcana Regni*, not fit for publick Debate. The Use of Law was to have Causes debated, as saith one, No Man knows what Metal the Bell is of, until he hears it ring. This Bell hath been rung very roundly and laboriously on both Sides.

The Subjects have objected, That they may bring Actions against Officers of the King for Assessments, by vertue of this Writ. But for that I find no Precedents, save only one, which is in the 25 *Ed.* 1. the Abbot of *Robertsbridge*'s Case; and he was taxed double for this Matter of Defence of Sea, and Land, in two several Places: And therefore he brought his Action to be discharged in one Place. But in Cases of this Nature, they petitioned in Parliament, to the King, for Redress, as appears by many Precedents.

In *Bracton*, who wrote after *Henry* the Third's Time, and inclined to those Times, when the Liberty of the Subject was strongly maintained, he saith, *Totum Regnum petatur*, *&c.* they used to petition the King, but now you have Actions brought against the King's Officers in the King's-Bench, Common-Pleas, and here in this Court, and it pleaseth the King to bring this *Scir' Fac'* to the end that the Right of this Cause may be tried by the Judges of the Law.

In the 11 *Report*, and *Coke's Comment on Littleton*, its said, *fol.* 10, That the Laws and Customs of the Parliament are obscure, *lex est consuetudo Parliamenti quærenda est ab omnibus, ignota a multis, & cognita a Paucis.* As *Tully* said of one that would define *Anima*, and said it was *Musica Harmonia*, that was, *a Musician*, *Homo non multum recessit ab arte sua*; I, for my own part, will keep my self to my own Art of the Books of the Law and Statutes. And if I use the Help of others, I hope you will pardon me for that.

I will briefly propound my Order and Method, throughout the Case. *First*, I will remove some few impertinent Discourses, which are not in the Record, as being out of the Ring of this Bell.

Secondly, I shall propound, that the sole Care of Defence, at Sea and Land, *Jure Regio*, appertains to the King, and none other; and that he is the sole Judge of this.

Thirdly, That the sole Charge of Defence, in ordinary Cases, regularly and legally appertaineth to the King.

Fourthly, That the extraordinary Charges of Defence ought to be supplied by the Parliament, and upon this Rule, *Quod omnes tangit ab omnibus debet supportari.*

Fifthly, If the Defence be of Necessity, and the Danger great, and so great as the King's Revenue is not sufficient to supply the Occasion, then the Rule comes to be in Use, *Qui sentit commodum sentire debet & onus*; and if it be general, *Quod omnes tangit ab omnibus debet supportari.*

Sixthly, That in the Defence where all ought to join, the Sea and Land ought to assist and contribute the one to the other.

Seventhly, I say, there are some particular Cases, in which this Charge of Defence cannot be imposed by Parliament.

Eighthly, That the King solely is intrusted, by the Law, to impose this Charge upon the Subject.

And, *Ninthly*, These being my Generals, I shall come to my Minor, and conclude that this Charge is justly imposed by the King, without Parliament.

As to the first Impertinency, you speak of, Tonnage and Poundage. Is there any such Grant on Record? Shall we take Notice of a Thing that is not *in Rerum natura?* I say, I wish it had been granted, for *Qui adimit medium demit finem:* He that taketh away the ordinary Means of Preservation, is the Author of Ruin and Destruction; you see it is taken, but you cannot tell by what Right. If this were material, you wronged your Client, you pleaded it not. And if it is not material, you wronged

wronged us, and your Auditors, and your selves, to talk of it.

You say, This Ship-Money hath been charged for these three Years together: Is this Discourse within the Record? If not, you speak without Book.

You say, The King hath imposed great Sums of Money upon Merchandizes: But what is this to the Business now in Question?

Then you talk of a Property the Subject loseth thereby; but this rather to abuse the People, without either Colour or Shadow. It was *ad faciendum*, or rather, *inficiendum Populum.* If you, at the Bar, had not spoke it *Argumenti gratia*, it could not have proceeded out of the Depth of Malice, or Ignorance, or both. If one be found Guilty of Murder, and the Judge knoweth the contrary, what shall be done? He ought to acquaint the King therewith, for it is the King's Right of Sovereignty to pardon, but the Judge hath no such Power. I say, the whole Care appertaineth to the King only, and he is the sole Judge both of the Defence at Sea and Land, *Fitz. Na. Br. fol.* 113. *Le Roy de droit Savior & defensor son Realme al bien vers la Mare come vers les enymies. Regist. fol.* 127. *Rex, &c. pro eo quod nos Dignitatis nostræ Regni ad providend' salvationem Regni nostri circumquaq; sumus astricti.* Fortiscue, cap. 37. *Omnes Potestat' Regis deferre, &c. in Defensione & tuitione Regni.* I think no Man can well oppose this.

But we will come to the *Third.* The sole Charge of the Defence regularly and legally appertains to the King, *Bracton, fol.* 1. *In Rege, qui recte regit hæc duo sunt necessaria, Arma & leges, &c.* with which Words accords *Justinian*, in his *Proœmium*, from whence that is taken in *Plowden, fol.* 315. in the Case of Mines. One Reason why he saith Royal Mines belong unto the King, is, Because he is the Head, and the People his Members. And he is to preserve the Subject two ways: By Arms, to defend them against all Hostility; and by Law, to preserve them from Injuries. 3 *Report. fol.* 11. the Body, Lands, and Goods of the King's Debtor were liable to Execution, *Quia Thesaurus Regis est pacis vinculum & Bellorum Nervi. Report.* 11; The King's Treasure is the Ligament of Peace, the Preserver of the Honour and Safety of the Realm, and the Sinews of Wars, and is of high Estimation in Law, in respect of the Necessity thereof, that the imbezling of Treasure Trove, though not in the King's Chest, is Treason. And Treasure, and other valuable Things, are so incident to the Crown, that they cannot go from the Crown. He hath on the Land, Wardships, Escheats, Amerciaments, *&c.* for the Maintenance of his Honour and Dignities Royal. For the Sea, he hath Whales, *&c.* these do little towards an Army to defend the Sea. The Reason why the King hath the Customs, is for the Protection of Merchants upon the Sea, against Pirates and Enemies of the Realm. So I shall conclude this Point, That the ordinary Defence, both for Care and Charge, of Sea and Land, doth appertain unto the King.

The next is this, which is my *Fourth* Head: That the extraordinary Charge of Defence regularly ought to be supplied by Parliament, and cannot be done without it. Albeit Subsidies be of Gift and Grant, yet this is of Right and Reason; the King is *Pater Patriæ.* If the Son give unto the Father when he wants, it is his Duty. 19 *Hen.* 6. the Rector of *Cheddington's* Case, whether the King may grant a Discharge of a Fifteenth? If the King may grant a Discharge to one, so he may do to all. It is against Law the King should not have Subsidies of his People, in Case of Necessity and Danger; the same Law that willeth the King should defend the People, the same Law tells us we should grant unto the King Aids for the Defence. This is to be done in Parliament, regularly, and that this extraordinary Charge cannot be imposed, but in Parliament, these are their Objections.

I come now to the Statute *De tallagio non concedendo*, which without Question is a Statute, being in our printed Books, and in the Petition of Right, 3 *Car.* it is recited as a Statute, and established; the Words of that are, *Nullum tallagium sine assensu Parliamenti.* And 14 *Ed.* 3. *cap.* 1. there the King expresses himself, he will not impose any Charge or Aid on the Subjects, but in Parliament. *Fortiscue* reciteth this to be the Law, No Charge without Parliament. And *Bodinus, lib.* 1. *fol.* 97. saith, "That the Statutes of *England* are as a Buckler to defend the Subject against the King, for laying any Charge upon them but by Parliament." And in his Sixth Book magnifieth this Kingdom for the due observing this Law. Other Kings, in this Point, have no more Power than the King of *England*; for that it is not in the Power of any Prince in the World, at his Pleasure to raise Taxes on the People, no more than to take another Man's Goods from him. And yet, nevertheless, if the Necessity and Danger of the Commonwealth be such, as it cannot stay for the calling of a Parliament, the King in his Wisdom and Foresight may lay a Charge, without their Consent, and this is by the Law of *Jus Gentium*, the Rule of Law and Reason holdeth, *Quod omnes tangit ab omnibus debet supportari.*

And so I come unto my *Fifth* Head, If the Defence be of Necessity, and the King's Treasure doth not suffice to defray the Charge, then, instead of the Rule *Quod omnes tangit, &c.* this Rule succeeds, *Qui sentit commodum sentire debet & onus.* If the Treasure of the King will not defray the Charge, I do not conceive he is bound to sell or pawn his Crown, or his Lands, though some Princes have been so curteous to do it, and paid it again.

You say at the Bar, He must spend all, and more if he had it. I will put this Case in the 10*th Report*; One is bound at the Common Law by Prescription to repair a Wall against the Sea, yet in Case of Necessity, in avoidance of publick Mischief, the Prescription ceaseth; yet in this Case, if Reparation must be done, then cometh this Rule, *Quando Impotentia excusat tunc qui sentit commodum sentire debet et onus.* And if he be not able to do it, the Charge being so extraordinary, shall he not have Contribution? the Law compelleth not Impossibilities. So the

the King is bound to defend the Kingdom by Land and by Sea: But if the Defence be so great, and the Danger tends to the Subversion of the Kingdom, and the King not able to make Defence, the King and his Subjects ought to contribute to this Charge, in due Proportion. *Ubi est eadem ratio, ibi est eadem lex.* If the Law shall make this Provision for a small Level of Ground, *a fortiori* for the Commonwealth, in the Time of extraordinary Danger and Necessity.

Sixthly, In this joint Charge of Defence, the Land ought to assist the Sea: Nay, it is not possible that any Island should be defended without the wooden Walls of the Navy at Sea. *Canutus* the *Dane* entred the *Thames* Mouth with an Army, and afterwards went and landed in *Dorsetshire*; and again shipped his Men, and entred the *Severn*; then he went into *Worcestershire*, then he sailed back again unto other Parts of the Kingdom: So he that is Master of the Sea may make great Spoil upon the Land at pleasure. The *Netherlands* having a great Navy, the *Spaniards* fortified strongly, as soon as the Wind served set Sail, and were Fourscore Miles off before the *Spaniards* could march with their Forces, to make Resistance, they presently got a strong Place, and afterwards sailed to another Place, and took that also. These are no new Examples for Islands to be Masters of the Sea. Our Grand Army in 88, at *Tilbury*, what Good had they done, if the *Spaniards* had been Masters at Sea? It is not possible for an Island to be safe, without a Navy at Sea, as appeareth in Sir *Walter Rawleigh's History of the World*, and if the Sea must defend the Land, why should not the Land be contributary for the Defence of the Sea and Land? There are several Precedents where Writs have gone to Inland Counties, to charge them to go unto the Custody of the Sea, *Claus.* 48 *Hen.* 3. 24 *Edw.* 1. 26 *Edw.* 3, *&c.* Writs have gone into *Berks*, *Oxon*, *&c.* Inland Counties, to command them to contribute towards the Defence of the Sea.

To the *Seventh*, That in Case of instant Danger, the Imposition cannot be by Parliament. I will here consider the Nature of the Danger, as Mr. Solicitor readily pursues it. If it concerns the Essence, Subversion, Destruction and Ruin of the Kingdom, or the Dishonour of the Kingdom. *Quando Hannibal ad Portas*, for the Senators then to sit down in their Robes, is rather a Charge to the Commonwealth, than ought else. It is no Time then to call a Parliament, no well-advised Man will think it fit; here are *Pericula visa*, the Danger is certain, none will say it is fit to call a Parliament.

This Kingdom of *England* hath been four Times conquer'd, and therefore we have Reason to foresee the Danger, first, by the *Romans*, then by the *Saxons*, then by the *Danes*, and last by the *Normans*.

The Moralists do make three Parts of Providence. First, *Memoria præteritorum*. Secondly, *Perspicientia præsentium*. And, Thirdly, *Providentia futurorum*. It much concerns the King, the Head of the Common-wealth, to be circumspect in the Prevention of publick Danger; Conjectures and Probabilities are to be regarded. Now put the Case upon a probable and violent Presumption: A potent Enemy is prepared and ready to come. Is it not fit there should be a Defence prepared instantly? Besides, there may be just Reason of State, why an Enemy is not fit to be revealed in Parliament; for if great Preparations be, and very probably against us, then to discover them to be an Enemy, is to give them Occasion to become a Challenger. No Man can know the certain Event of Things future. One may be a Friend, in shew, to the Kingdom, or a Neuter, not yet openly discover'd, yet we may be mistaken in our Opinion of them. I leave this to your Consideration, whether it be fit, or no, to discover our Thoughts, in Parliament, of an Enemy?

The *Eighth* Thing is, That in these Cases of Necessity and Danger, the King, *Jure Gentium*, may charge the Subject, without his Consent in Parliament, by his Regal Prerogative; for in the King there are two Kinds of Prerogatives, *Regale & legale*, which concern his Person, Lands and Goods.

Now for the Prerogatives Royal of a Monarch, they may be resembled unto a Sphere, the *Primus Motor* is the King. It is observed, that every Planet but one hath a little Orb by it self, that moveth in its petty Compass: So the Center is the Commonwealth, the King is the first Mover. I will repeat some of these Prerogatives, for they are by all Laws, and by our Laws.

The first Regal Prerogative is this, that containeth all the rest, That the King may give Laws unto his Subjects: And this doth not detract from him, when he doth it in Parliament. *Secondly*, To make Peace and War, 19 *Ed.* 4. 6. *Thirdly*, To create Supreme Magistrates. *Fourthly*, That the last Appeal be to the King. *Fifthly*, To pardon Offences. *Sixthly*, To coin Money. *Seventhly*, To have Allegiance, Fealty and Homage. And, *Eighthly*, To impose Taxes, without common Consent in Parliament. These are the principal, and there are many more of them, and allowed by Law. *Comines*, *fol.* 179. saith, "That if the "Cloud be seen but afar off, the King, without "the Consent of the Subjects cannot tax them; "but if the Cloud be over head, the King may "call certain wise Persons unto him, and tax "his Subjects."

You say, That if the King doth move a War Offensive, there's Time enough to call a Parliament; if Defensive, the Cloud is seen long before.

But, Oh, Good Sir! is this always true? Is not the Cloud sometimes even over the Head, before descried? If you read *Comines*, he will tell you, That in Times of Peace we ought to fortify. "But in these Cases, where the Dan-"ger is imminent, saith *Bodinus*, *lib.* 1. *cap.* 47. "the King ought not to expect a Parliament, "but is to raise Moneys suddenly, and such "Impositions laid upon the Subjects are just "and necessary." This is the Opinion of those Writers, who wrote not according to the Law of any one Kingdom, but according to the Law of Reason. I could vouch these two Authors, concerning the Right of Sovereignty

 which

which they gave to Kings, to impose Charges on the Subjects, without Consent of Parliament, in Time of Necessity.

But what if the King will levy Money, upon Pretence of Defence, in Time of Danger, and dispose of it otherwise, and the Danger not so apparent.

I say, So pious and just a King will never pretend a Danger, if it were not *Re vera*. And if any Man will think the King will charge himself and his Subjects to no purpose, far be it from my Thoughts to think so. This Money thus taxed, is employed accordingly, for the Defence of the Kingdom, together with the King's own Money. Which he would not do upon Pretence.

Again, The King is *Pater Patriæ*, therefore, by the Law of Nature, he is intrusted with the Defence of the Kingdom. And this Power to tax his People is but a Consequence of that.

To say in Time of extraordinary Danger and Necessity, *Boni viri sunt sibi leges*, I say, for every Man to be his own Judge, is for every Man to do what he listeth. Mr. *Holborne* tells you, That if it rests in the King's Power thus to tax the Subjects, whereas Mr. *Hambden* is now taxed 20 *s.* he may the next Year be taxed at 20 *l.* for saith he, "If the King may tax "when he will, then he may what he will." Its an ill Consequence you make of it; you magnify Parliaments, great Reason we have for it; let us do so of Kings; let none think dishonourably of Kings; no Question they will regard the Laws of God, and to make such Objections, is not handsomely handled.

Now we come to Precedents, and Acts of Parliament. For Precedents, my Brother *Weston* hath taken pains to repeat them, therefore I shall not.

Two Precedents the Defendent's Council have much relied on, *Rot. Parl.* 2. *Rich.* 2. *Part.* 1. I have here the Record, and in truth, it were a great Ease to the Judges, and to the Cause, to avouch them truly. This of *Richard* the Second, was in his Minority; and no Order being taken for the Defence of the Kingdom against the next Summer, and nothing was found in the King's Exchequer: A Council was called; and for Conclusion they say, They cannot remedy this Mischief without a Parliament: Whereupon a Parliament was called; and in the mean Time the King having Monies lent him, he gave Security to repay it.

Consider this, the King was at this Time but an Infant, it was in a very troublesome Time, many of those that were Parliament-Men made Default to attend, excusing themselves, That they had other Business. This then that was done was but a Resolution in troublesome Times, this is no such binding Business, that it should be made so much of.

And *Rot. Parl.* 2 *Hen.* 4. *M.* 22. a Commission went forth for the providing of Barges, and the Commons petitioned to avoid this Charge, and pray'd that the Commission might be repealed. And the King, upon this, calls in the Commission. Shall this be a Disclaimer of the King's Right? He saith he will speak with his Lords. This is only a satisfactory Answer. Besides, the King was but an Usurper. Now to say this Answer of the King's is a Resolution in the Case, is a great Mistake.

He that will go through this Load of Precedents that have been vouched on both Sides, he had need to have more Time than Mr. *Holborne*, who spent four Days.

You have alledged Precedents both before the Conquest and since: That of the Danegelt, though it was a heavy Yoke, yet it was necessary to be born: Whether it was granted by Parliament or no, *non constat*. I say, it is a good Precedent, and I hold it good without Parliament.

Some distressed Kings, as King *John*, *Henry* the Second, and *Richard* the Second, they did, indeed, do that by Borrowing, which they might have took of Right.

Now, to give an Answer to the Statutes of 25 *Edw.* 1. and 14 *Edw.* 3. and the Petition of Right, 3 *Car.* Admit, I say, there were an express Act, That the King, were the Realm in never so much Danger, should not have Aid from his Subjects, but in Parliament, it is a void Act; will any Man say such an Act shall bind? This Power is as inseparable from the Crown, as the pronouncing of War and Peace is: Such an Act is manifestly unreasonable, and not to be suffered; saith Doctor and Student, To follow the Words of the Law, were, in some Cases, Injustice, and against the Good of the Commonwealth; wherefore, in some Cases, it is necessary to leave the Words of the Law, and to follow that which Reason and Justice requireth; and to that Intent Equity is ordained, which is no other but an Exception of God, or Law of Reason, from the general Rules of the Law of Man: Which Exception is tacitly understood, in every general Law. This Imposition without Parliament appertains to the King originally, and to the Successor *ipso facto*, if he be a Sovereign in Right of his Sovereignty from the Crown. You cannot have a King without these Royal Rights, no, not by Act of Parliament.

Again, These Acts bind not, for that a favourable Construction, in Case of the King, is to be had in all Cases, *Doctor and Student*, *fol.* 27. 'Tis not possible to make any general Rule in Law, but it shall fail in some particular Case: If a Law were made in a City, That no Man, under pain of Death, should open the Gates of the City before Sun-rising, yet if the Citizens, before that Hour, flying before their Enemies, come to the Gates of the City, and one, for saving the Citizens, open the Gates before the Hour appointed, yet he offendeth not the Law, for that Case of Necessity is excepted from the said general Law by Equity. So for the Statute in *Edward* the Third's Time, not to give any Relief to a sturdy Beggar, upon Pain of Imprisonment; yet if one relieves him with Cloaths, in the Extremity of cold Winter, to save his Life, he shall be excused, by the same Statute: By such an Exception of the Law of Reason and Equity, as aforesaid, is this Power reserved to the King.

Impossibilities are to be excepted out of all Laws,

Laws: *Nemo tenetur ad impossibilia*, Poverty and Impossibilities, as one answered, were more mighty Goddesses than either Force or Love.

But now you will say, Where is this Danger? How doth this Necessity appear? If you would find it, you need not to enquire for it either by Sea or Land; but in this very Record, the Writ sheweth, and the most favourable Construction is to be had for the King, as in *Plowden's Comment*, 336. the Case of Mines of Gold and Copper.

Now all this while I have been in the General, and in a manner in Propositions; I come now to Application. Before I descend unto it, I shall shew upon what part of the Record I shall ground my self. Though in the *Mittimus* it be *Salus Regni periclitabatur*, which is said to be Metaphorical, for that it asketh no great Answer. It is good enough as in the Writ of *Oyer* and *Terminer*, *omnes qui habent damnum vel salvationem*, are bound to contribute; will you bind the King to the Language of *J. S.*? May he not express himself in what legal Manner he pleaseth?

You say, That this Phrase of *Salus Regni* is too general: If it be alledged, and you demurr upon it, you confess this for the most Advantage for the King; as in the Case of Mines. It is not alledged in the *Scir' Fac'*; this might have been made a good Question.

But without all these, I conceive the Writ 4 *Aug* containeth the Causes for this great Preparation, and expresseth them in particular. What if it were no more but this, Lest we should lose the Dominion of the Seas? What is it to be called *Dominus Maris*, and not to maintain it, but to suffer this Princely Honour to perish, and others to become Masters of it? What Havock and Confusion would follow? And this is the true Intention of the issuing forth of this Writ.

Next, *Consideratis etiam periculis, &c.* that is, The Danger is so evident, and so great, in these Warlike Times, that of Necessity Defence must be made, both by Sea and Land.

Next is great Oppression used at this Time, *Datum est nobis Intelligi quod Prædones, &c.* that the Pirates do take and spoil our Merchants, carry our Men into Captivity: What will you say to this? Let them take our Men, and let us have a Parliament, and we will bring them home again: The Land was never without Thieves, nor the Seas without Robbers.

Next *paratum periculum & preparantur, &c.* now these Ships goe for the Defence of the Sea against this Danger, *& vestrûm & vestrorum*, the Writ saith the whole Kingdom is in Danger, both by Sea and Land; and you have confessed this by your Demurrer.

But you complain before you are hurt, because you have seven Months Liberty, a Parliament might be called in that Time: Now in this Time of imminent Danger it is no Time to call a Parliament.

You say it hath continued for three Years. Put the Case the Danger continueth for three Years, and then ceaseth, and then the King ceaseth to lay a Charge, and the Danger begins again the next Year; what! Shall not the King repuire Aid as the Danger increaseth?

And now to conclude, without Repetition: It doth appear by this Record, that the whole Kingdom is in Danger, both by Sea and Land, of Ruin and Destruction, Dishonour and Oppression; and that the Danger is present, imminent and instant, and greater than the King can, without the Aid of his Subjects, well resist: Whether must the King resort to Parliaments? No. We see the Danger is instant, and admits of no Delay. Shall we go home, and sit together in careless Security? Not so. But let us resort unto our pious and just King, whose Prerogative and Right of Sovereignty is to defend the Realm, and to maintain his Subjects Liberties. And so I give Judgment for the King.

THE

THE

ARGUMENT

OF

Sir Robert Berkley, Kt.

One of His Majesty's Justices of the Court of King's-Bench,

ON

February 10. being *Saturday*, 13 *Caroli Regis*, *Anno Dom.* 1637.

IN THE

EXCHEQUER-CHAMBER.

The CASE.

3.

4 Aug. 11 Car. *The Teste of the Shipping Writ.*

IN *August*, 11 of the King's Reign, there issued out of the Court of Chancery, his Majesty's Writ, directed to the Sheriff of the County of *Bucks*, and the head Officers of Villages and Boroughs in that County, *& probis hominibus*, that is, To all the King's good Subjects, *in omnibus Villis, Burgis, & aliis locis in Com' Bucks.*

I may call this Writ, a special Writ, or a Commission upon the Case. It is not a *sic volo*, it beginneth with divers weighty Reasons or Causes, *pro ratione* of the issuing of it; as,

1. His Majesty had Intelligence that certain Pirates, *& maris grassatores*, as well *Mahometans* as others, were *congregati* upon the Sea, *quod ab olim per gentem Anglicanam defendi consuevit*, and did daily rob and spoil the Ships and the Goods of the Subjects of the King, and of his Confederates, and did captivate the Persons of those whom they took.

2. His Majesty did *conspicere*, that those Men did *navigia indies preparare, ad mercatores ulterius molestandos & ad Regnum gravand' nisi citius remedium ponatur.*

3. His Majesty did consider the Perils, *quæ undique illis guerrinis temporibus imminebant ita quod regi & subditis suis defensioni maris & regni omni festinatione qua poterit conveniebat accelerare.*

4. His Majesty's Royal Resolution was, *Defensioni regni, Tuitioni maris, securitati Subditorum & salvæ conductioni navium & merchandizarum providere.*

Maxime pro eo quod the King and his Progenitors *Domini maris predict' semper hactenus extiterunt, & plurimum tæde & Regem, si honor iste regius, suis temporibus disperet, aut in aliquo minuatur.*

5. Lastly, his Majesty called to Mind, a *Regula juris & rationis*; *Onus istud defensionis quod omnes tangit, per omnes debet supportari, Prout per legem, & consuetudinem Regni Angliæ fieri consuevit.*

Upon these solid Reasons, as upon a firm Foundation, the *Mandamus* of the Writ is grounded, and followeth in the next place.

The *Mandamus* is,

1. That all they to whom the Writ is directed, should among them, *providere unam navem de guerra,*

For this matter, see the Writ.

Guerra, of such a Burthen, and with so many Men, and other Particulars, as are mentioned at large in the Writ.

2. That this Ship, so furnish'd, be ready at *Portsmouth*, by the 1*st* of *March*, then following, and from that Time, for 26 Weeks, to go with His Majesty's and other Subjects Ships, and to attend the Direction of those to whom His Majesty should then commit the Custody of the Seas, for Tuition of the Sea, and Defence of the Realm.

3. That all this be performed, *ad custagia* of themselves *tam in victualibus quam hominum salariis, & aliis ad guerram necessariis.*

After the *Mandamus*, an *Assignavimus*, or Commission to the Sheriff and the head Officers cometh, and then Directions to them.

The Commission to the Sheriffs is *inter alia*,

That he shall make an Assessment *Secundum facultates cuiusque*, for Contribution to the Expence of the Provisions aforesaid, shall appoint Collectors, shall levy the Money to be assessed (if it be denied) *per districtiones aliosve modos debitos*, and shall *carceri mancipare* those who shall be *contrarii & rebelles.*

The Directions to the Sheriff begin with a Clause of *Nolumus.*

The King forbids that the Sheriff shall levy more than is necessary for the Expences. That any Money levied shall be appropriate to any other Use, *quovis quæsito colore:* And then, lastly, in Case that more be collected than shall be useful, the King commands that Restitution be made of it.

9 Martii. 12 Car. *The Teste of the* Certiorari.

After this Bill, 9 *Martii* 12 of the King (which is above a Year after the Ship should have been ready at *Portsmouth*) a Writ of *Certiorari* issued out of the Chancery, directed to the several Sheriffs *pro tempore* of *Buckinghamshire.*

That *Certiorari* recites, the Writ of *August* 11. And for that the King was informed, That some had not paid the Sums assessed upon them, but refused to do the same; the King commands the said Sheriffs respectively to certify into the Chancery, the Names of such Refusers, and the Sums assessed upon them

The Sheriffs accordingly make Returns in a Schedule annexed to the *Certiorari.* In one of the Schedules there is, *inter alia, Stoke Mandevile*, Mr. *John Hambden*, 1 *l.*

5 Maii. 13 Carol. *The Teste of the* Mittimus *into the Exchequer.*

After this, by Writ of *Mittimus* out of the Chancery, tested in *May* last. The Tenure of the Writ of *Aug.* 11. with these Words, *quod quidem brev' pro eo quod regn' nostr' Angliæ & popul' nost' ejusdem periclitabatur emanari curavimus inter alia brevia ad humoi provisionem, & assessament' faciend' per singulos comitatus Angliæ, &c.* And also this Record of the Writ of *Certiorari*, with the Return of it, and Schedule annex'd, are sent into the Court of Exchequer.

By that *Mittimus* the King commands the Lord Treasurer and Barons, *quod inspectis* those Records they should *facere ulterius inde pro levatione collectione & receptione* of the Sums unpaid, *prout de jure, & secundum legem, & consuetudinem regni Angliæ fuerit faciend' & non aliter.*

By which (*prout*) but especially by the (*non aliter*) the King's Honour and Care of Justice are singularly eminent; for the levying the Money anew is not commanded, nay, it is forbidden, unless *Jus, Lex, & consuetudo Angliæ* do warrant it.

22 Maii. 13 Car. *The Teste of the* Scir' Fac.

After this, and in the same Month of *May* last, the Barons awarded a Writ of *Scir' Fac'* into *Buckinghamshire* against those whose Names are in the Schedule aforesaid, thereby commanding the Sheriff to warn them to appear in the Exchequer by a Day, to shew Cause, if they can, why they should not be charged with the Payment of the Sums of Money assessed upon them and unpaid.

The *Scir' Fac'* is always a judicial Writ; and certainly the Barons have proceeded very judicially and gravely, in awarding of it. In weighty Cases, especially, if they be not of common Impression, proceeding *Lento pede* is truly judicial.

The Return of Sc' Fac'.

Upon that *Scir' Fac'* Mr. *Hambden* is returned garnisht.

Mr. Hambden's *Demurrer.*

He appearing, and having heard the several Writs and Records beforementioned, without taking the common or any other Protestation, hath demurred generally.

The Words of his Demurrer are,

That *materia contenta* in the same Records, *minus sufficiens in lege existit ad ipsum onerandum.*

He doth not say, that *materia* is *minus vera*, but, acknowledging the Matter contained in the Writ to be true, he putteth the Cause *de bono & malo*, upon Sufficiency or Insufficiency, in Point of the Law, for charging him.

Mr. Attorney for the King hath joined in Demurrer.

Upon this Demurrer, one main or grand Question, and some other inferior Questions have been started.

Because I have Time little enough for the grand Question, I will not trouble you with arguing, or so much as singling out the other inferior Questions. My Brother *Weston* hath spoken to some of them, I concur with him.

The grand Question is shortly this,

Whether, as this Case is, or in this special Case, (as it is upon the pleading) the Charges imposed by the King upon his Subjects, for Provision of Shipping, without common Consent in Parliament, be good in Law; yea, or no?

This is a Question of extraordinary Weight, of infinite Consequence, the greatest that ever came before Judges of ordinary Courts of Justice.

Qui ad pauca respicit, facile pronunciat, but he that will determine in this Question, must *respicere ad multa, eaque magna & ardua.*

Upon the Debate of this Question at the Bar; elaborate, learned, and strong Arguments have been made on either Side.

And truly, for my part, I have laid the Question to my Heart.

All the Arguments which have been made in it, I have been present at, and specially heeded.

All the Records which have been brought to the Judges, on either Side, I have read over, as seriously as I could.

I have likewise considered of the Reasons and Authorities in Law, pertinent to this Case.

And upon my Pains, Deliberation and Study, I have concluded with my self, and in mine own Understanding am satisfied, and think I shall satisfy others, that as this Case standeth, upon the Records in the Pleading, or in this special Case; the Charge imposed is good in Law, and consequently that Judgment ought to be given against Mr. *Hambden, Quod oneretur.*

For my clearer Delivery and Expression of my self, I divide all that I shall say into these Four Heads.

First, *In the first Place, I will state the Case, and will settle the proper Question of it, as the Pleadings are.*

(The true stating and settling of a Case conduceth much to the right Answer of it)

Secondly, *I will consider the Policy and fundamental Rules of the common Law, appliable unto that which upon stating of the Case shall appear to be the proper Question.*

Thirdly, *I will consider the Acts of Parliament, the Answer to Petitions in Parliament, and the several* Magna Charta's *of the Liberties of* England, *which concern the King's Proceedings in this Case.*

Fourthly, *I will answer the material Objections, which have been made on the other side.*

Upon my First *General Head.*

I Hope that none doth imagine, that it either is, or can be drawn by Consequence, to be any Part of the Question in this Case, Whether the King may at all Times, and upon all Occasions, impose Charges upon his Subjects in general, without common Consent in Parliament? If that were made the Question, it is, questionless, That he may not.

The People of the Kingdom are Subjects, not Slaves, Freemen, not Villains, to be taxed *de Alto & basso.*

Though the King of *England* hath a Monarchical Power, and hath *jura summæ majestatis*, and hath an absolute Trust settled in his Crown and Person, for Government of his Subjects, yet his Government is to be *secundum leges regni.*

It is one of the Questions in the *Juramentum regis*, at his Coronation. (See the old *Magna Charta*, *fol.* 164.) *Concedis justas leges & consuetudines regni esse tuendas.* And the King is to answer, *Concedo.*

By those Laws the Subjects are not Tenents at the King's Will, of what they have.

They have in their Lands *Feodum simplex*, which, by *Littleton*'s Description, is *hereditas Legitima, vel pura.*

They have in their Goods a Property, a peculiar Interest, a *meum & tuum.*

They have a Birthright in the Laws of the Kingdom.

No new Laws can be put upon them; none of their Laws can be altered or abrogated without common Consent in Parliament.

Thus much I speak to avoid Misapprehensions and Misreports upon that which I shall say in this Case, not as if there were Cause of saying so much, upon any thing challenged on the King's Side.

We have in Print His Majesty's own most gracious Declaration, That it is his Maxime, That the People's Liberties strengthen the King's Prerogative, and that the King's Prerogative is to defend the People's Liberties.

Secondly. Tho' Mr. *Hambden*'s Counsel have spent all their Powder in citing a Multitude of Records, beginning with one in King *John*'s Time, and so downwards, to prove,

That the King's Ministers have paid, that the Barons have been by Writs commanded sometimes to pay, sometimes to make Allowances, } Out of the King's Moneys or Dues,

In Cases of { Foreign, Auxiliary, Voluntary } Wars.

In Cases of particular or ordinary Defence of the Realm, as upon Rebellion of Subjects, or Inroades by Enemies, into Parts Marches, or Maritime; such Enemies I mean, as are not greatly formidable, as are apt to run away when they hear of any Force coming against them.

In Cases of setting forth Ships, for scowring the Seas from petty Pirates, so that Merchants may have safe Passage.

In Cases where Victuals, or other Provisions, were taken from particular Persons, by way of Purveyance, for Soldiers, or for the King's Army.

In Cases of borrowing of Money by the King's Officers, for War, or ordinary or extraordinary Defence.

In Cases of taking Money or Goods against the Owner's Consent, by Warrant, for the King's Use, for War, or other manner of Defence

In

In Cases where particular Men's Ships, Horses or Armour, were lost in the Wars.

In Cases where private Mens Houses were used in the King's Service.

Lastly, In Cases of general and extraordinary Defence, where the King had sufficient Aids for that Purpose, granted to him in Parliament.

Although I confess it be true, that the King, in all these cited Cases, must pay of his own, without imposing upon the Subject, yet I say, that those Cases come not close to our Case; for every of those Cases hath a manifest, particular, and just Reason, but none of these Reasons are appliable to the Case now in Question, as is easy to demonstrate, if a Man would enter into every of these Particulars; which I forbear, for saving of Time.

And these Records being taken away, the Multitude of the Vouchers on Mr. *Hambden*'s Side will be greatly abated.

Thirdly. The Case of the ancient Tribute called *Danegelt*, of which Mr. *Hambden*'s Counsel hath spoken, though it come nearer than any of the former mentioned Cases, yet it much differs from the Charge imposed in our Case.

It hath been said on Mr. *Hambden*'s Side,

First, That *Danegelt* was not imposed, but by common Assent of Parliament.

Secondly, That after it was so imposed, it was released by *Edward* the Confessor.

Thirdly, That it hath been now so long uncollected, that it is scarce known what it was.

To the *First* I answer, That the Proof urged, that it was created by Parliament, is, at the best, but a Conjecture: It hath been said, That the Words of *Leges Edw. Confessoris*, *c.* 12. are in one Place, *Statutum est Danigeldum annuatim reddi, &c.* And in another Place, *Danigeldi redditio primitus instituta est, &c.* And *Statutum* is a proper Word for an Act of Parliament, a Statute.

But in my Understanding it is apparent, that it had not Creation by common Assent in Parliament, but only by Regal Authority, or at the most by the King, with his great Lords Assents, which in those, and after Times, was frequent. My Reasons are,

1*st*, In *Tilburiensis*, or the black Book of the Exchequer, *l.* 1. *c.* 28. the Words are express, *A regibus Anglicis statutum est, &c.* no mention of any others who joined in that *Statutum*.

2*dly*, It appears, by the said *Leges Edw. Confess. c.* 12. that at the beginning of *Danegelt*, *omnis Ecclesia libera erat*; the Reason given, *quia magis confidebant Ecclesiæ orationibus, quam armorum defensionibus*; and yet in the Addition to the said *Leges*, it appears, that *William Rufus* imposed that Tribute upon the Church also, and that without common Assent: For the Words are, *Danigeldum concessum est ei a Baronibus non lege statutum neque firmatum*; and certainly those Barons by whom it was *concessum*, were not all the Baronage, for it is plain, that the Bishops and Mitred Abbots did not consent.

3*dly*, In that Clause where *statutum est* is used, in *Leges Edw. Confess.* the *Danegelt* is said to be 12 *d. ex unaquaque hida*; and afterwards it doth appear that it was made 4 *s.* by *William Rufus*, *ex unaquaque hida, Ecclesia non excepta*; which Increase was most unjust, if no more but 12 *d.* was limited by common Assent at first.

To the *Second*, I answer, with Sir *Henry Spelman's* Distinction, There were Two Kinds of *Danegelt*; one, *ad pacandos Danos*; another, *ad arcendos Danos*, and other Pirates. It may be, that the Confessor releas'd that *ad pacandos*, for the *Danes* troubled not this Kingdom in his Time, they had enough to do then at home, and so there was no Cause of Collection of any Taxes *ad pacandos Danos:* And though it was *de facto* exacted by the *Danish* Kings before *Edward* the Confessor, *viz. Canute, Harold, Harefoot*, and *Hardicanute*, it was unjustly taken by them, the Cause of Grant of it ceasing in their Time of Sovereignty here; and that might be the Cause of the Confessor's Dream, That he saw the Devil dancing upon the Money collected in his Time for *Danegelt*; which Supposition of a Vision occasioned him to release it, as it is written: But certainly the *Danegelt ad arcendos, &c.* was not released by *Edward* the Confessor; for it appears in *Tilburiensis* before-cited, that *Danegeldum sub indigenis regibus solvebatur usque ad tempus Willielmi primi*, if *sub indigenis regibus*, then under the Confessor.

Again, it appears in *Leges H.* 1. *c.* 16. that *Danegelt* was in that King's Time a Duty to the King: For the Words are *Danigeldum si ad terminum non reddatur recta emendetur Ergo* not released by his Predecessor *Edward* the Confessor.

I further find in *Ranulphus Cestrensis*, that *Stephanus Rex, Regnum iniens, Danigeldum*, 1 2 *s. ad hidam, quos antecessores sui singulis annis accipiebant, in æternum condonavit*, which (*condonavit*) shews that he, as a King *de facto*, had a Right to it, *ergo*, not formerly released. But for the Validity of such a Release by K. *Stephen*, a manifest Usurper, tending to the Diminution of the Crown, especially if it were of a Tribute granted to the Crown, by Act of Parliament. See 9 *E.* 4. *f.* 2.

To the *Third* I answer, That it is true, it is obscure what the *Danegelt* was, you have heard by what has been cited, mention of 1 *s.* 2 *s.* and 4 *s.* to be the Sum of it, and truly, I think, it was more and less, according to the Occasion of Money for Defence; the Tribute *ad pacandos Danos*, I believe at first was but 12 *d.* out of every Hide, yet afterwards increas'd by the Three successive Kings, *Danes* themselves, for I find that it was at first but about 10000 *l. per Annum*; it after was raised to 30000 *l.* then to 40000 *l.* and, lastly, to near 50000 *l.* Which huge Sum was in these Times a Burthen insup-

portable

portable to the People: But howsoever, the Uncertainty of the Sum, (especially if you understand that which was collected *ad arcendos Danos*) is a clear Proof, that it was not created by Act of Parliament, for then the Sum thereby certain could not be mounted.

All Historians do agree, that the original Time of *Danegelt*, was in King *Ethelred*'s Reign. I observe, that King *Ethelred* shewed himself weak and improvident, in that he looked not to raise Means for Defence of his Realm against the *Danes* in Time; but when the *Danes* were Masters, then he began to provide against them. And for that Cause divers of our Historians write, that he was called by a Nick-name, *Ethelred the unready*. But, on the other Side, we the Subjects of *England*, who enjoy ourselves and what we have in Peace, through His Majesty's Royal Care and Providence, have Cause to yield unto our Sovereign King *Charles*, the Honourable Name of *Charles the ready*, or, *Charles the provident*.

But to return, The Differences between the ancient *Danegelt* and the Charge in our Case, are apparent and many, for

The *Danegelt* was,
- 1. Annual: Ours is due only in Case of Necessity.
- 2. It was collected out of Hydes of Land, and thence called, *Hydage:* Ours is collected out of Personal as well as Real Estates.
- 3. It was a Tribute of Money: Ours a Provision of Shipping and Armour in Kind.
- 4. It was against Pirates: Ours is for common Defence of Sea and Land.
- 5. It was not general; Clergy, and Clergy-men were originally exempt: Ours is general, upon all without Exception.

Lege the Words of the Authorities underwritten, from whence many Observations, and good Conclusions may be drawn, touching *Danegelt*.

LEges Edw. Confess. c. 12. *Danigeldi redditio, propter Piratas primitus instituta est, patriam enim infestantes vastationi ejus pro posse suo insistebant, ad quorum insolentiam reprimendam statutum est Danigeldum annuatim reddi sc. 12. denarios ex unaquaque hida totius patriæ, ad conducendum eos qui piratarum irruptioni resistendo obviarunt. De hoc quoque Danigeldo libera erat omnis Ecclesia quia magis confidebant Ecclesiæ orationibus, quam armorum defensionibus.*

This is an Addition. *Hanc Libertatem tenuit Anglorum Ecclesia, usque ad tempus Willielmi Junioris.*

By way also of History. *Danigeldum concessum est ei a Baronibus non lege statutum, neque firmatum, sed habuit necessitatis causa ex unaquaque hida 4 solidos, Ecclesia non excepta.*

This Book was written, King H. 2. The black Book of the Exchequer, in that Part which is *Tilburiensis* Work, or the *Magister, & Discipulus*, it is *lib. c.* 28. not *c.* 11. as it is misprinted, in Learned Sir *Henry Spelman's* Glossary.

Ad Danos arcendos, a Regibus Anglicis statutum est, ut de singulis hidis jure quodam perpetuo duo solidi argentei solverentur in usus virorum fortium, qui perlustrantes maritima impetum hostium reprimerent.

Quia igitur principaliter pro Danis institutus est hic redditus Danigeldum dicitur, hic sub indigenis regibus solvebatur usque ad tempora Regis Willielmi primi. Ipso namq; regnante, tam Dani quam ceteri terræ marisq predoni, hostilis cohibetur incursus. Cum ergo diu solvisset terra, sub ejusdem Regis imperio, noluit hoc ut annuatim solveretur quod fuerat urgente necessitate bellicæ tempestatis exactum, nec tamen omnino propter inopinatos casus dimitti.

Raro igitur temporibus ejus vel successorum ipsius solutum est, hoc est cum ab exteris gentibus bella vel opiniones bellorum insurgebant.

Verum quocunq tempore solvatur ab ipso liberi sunt qui assident ad Scaccarium, ut dicitur, & vicecomites, &c.

Leges H. 1. c. 16. *Danigeldum 1 12 d. ex unquaq; hida per annum, si ad terminum non reddatur, vita emendetur.*

Fourthly. I affirm, with some Clearness, under Favour, That the Charge now demanded, is not within the ancient Acceptation or Signification of the Words, Aids, Mises, Prises, Taxes or Talliages, which it is to be agreed cannot be exacted by the King, without Consent in Parliament. Neither is it within the Compass of the Word Subsidy, which may not be levied, but upon Grant of it in Parliament.

Aids, if you take the Word in a general Sense, they were of two Kinds. 1. Such as were Aids and Services too, as *pur fair fiz Chevalier, pur file marier*. That Kind of Aid, common Persons, who had Seigniories, had Right unto, as well as the King. No Colour of comprehending this Kind of Aids, within the Word (Aids) pertinent to this Question.

To the 2*d.* Kind of Aids, were Sums of Money from the Subject to the King, by way of Help, *ad agenda Regis*, as for making of Castles, building of Bridges, Helps for Voluntary or Auxiliary Wars, or for the King to do his Pleasure with, and the like.

See *Parl. Roll.* 11 *H.* 4. *n.* 45. 20000 Marks granted to the King, by the Name of an Aid, *Ent a fair son Pleasure*. And *Rot. Parl.* 25 *Ed.* 3. *n.* 12. where the Application of the Word Aid, to such a Purpose is distinguish'd from other Payment to the King.

Mises were Presentations in Kind, of a Benevolence, upon a King's first coming to his Crown; such are yielded at this Day in *Wales*, to a Prince of *Wales*.

Prises are taking of part of the Subjects Goods from them to the King's Use, without Pay, hence Prisage of Wines at this Day.

Taxes & Tallages, in Quinzim, B. 9. 34. *H.* 8. *Nota per exposition de ceux del Eschecq; que tax et Tallage nest auter, mes dismes, quinzim, ou auter Subsidie, grant' per Parliament. Et le Quinzim est des Layes Et le Disme est de Clergie et est dee levy de leur terr, Et' le disme et le Quinzim de Laies est del biens sc. decimam partem bonorum in Civitatibus*

tatibus et Burgis, et 15 partem bonorum des laies in priam que fuit levy in aucuns temps sur lour biens, viz. del aids sur lour terres que fuit vald troublous, mes ors cest levy, secundum ratum terrarum suarum per verges de terr' et auter quantites, issuit que ore, tout scient lour certenty in chun. vill et pais par tout le realme mes il est encore levy in ascuns lieux sur lors biens, mes inplusiors lieux, sur lors ters.

Subsidies quid chun consist, sc. certaine some sur le pound del rat' de terr' ou biens, coe app' in les Act de Parliament de grt del subsidie.

Fifthly, It cannot be said, that the present Case is to be stated so, as unless the Charge commanded be obeyed, an assured infallible Ruin and Subversion of this Kingdom will happen, and that instantly. In such a Case, *Quid non* is lawful, and happy he who by doing any Exploit, can save the Ship from sinking, the Body from falling.

Sixthly, It is to be observed, That the principal Command in the Shipping-Writ, is not to levy Money; it is to provide a Ship, which Ship being to be provided at the Charges of a Multitude, in Regard the Thing cannot be done any manner of way, but by the Means of that which is *mensura rerum*, namely, Money, therefore the Instructions in the Shipping-Writ, are not only apt, but necessary; that an Assessment be made, whereby proportionable Sums of Money may be collected, for the Provision of the Thing commanded: And thereupon it may be said, That the Sum assessed upon every one, and in our Case upon Mr. *Hambden*, is not a Debt *vi termini*, but is rather a Duty to be performed, as a Means conducing to the principal End: The Refusal of Performance of which Duty, is a Refusal to obey the principal Thing commanded, *Qui negat medium, destruit finem.*

And the principal Thing commanded, being of a Kind concerning the Commonwealth; the King, who is the Head, the Sovereign of the Commonwealth; and who hath, as incident to his Regal Office, Power of Coercion, is by Law to exercise such his Power of Coercion, to inforce such as refuse to join with others in Performance of that which is commanded, for the Commonwealth.

And this being the true State and Way of the Proceedings, in the present Case; It is apparent, that though the *Scir' Fac'* against Mr. *Hambden* be in the King's Name, yet it is not to have Execution as for the King's Money, or as for a Debt due to the King from Mr. *Hambden:* But as is manifest, if the whole Contexture of the Writ of *Scir' Fac'* be observed, it is nothing else, but to bring on a Declaratory Payment, That Mr. *Hambden* ought *onerari* to the Payment of the 20*s.* assessed upon him. So that, with his 20*s.* together with the other Money of *Buckinghamshire*-Men, assessed also upon every of them particularly, the Ship commanded from the County of *Buckingham* may be provided.

Seventhly and lastly, Having declared of what Nature our Case is not, I come now to tell you what the State of it is.

The true State of our Question must be made out of the whole Record, or Pleading of the Case, the Matter of Fact wherein the Defendent hath confessed, (as I noted in the beginning.)

In the Writ of *Aug.* 11 *Car.* and in the Writ of *Mittimus*, there are Causes expressed, of the issuing of the Writ of *Aug.* 11. or the Shipping-Writ; those Causes are several, but not to be severed, all of them are to be laid together into the Ballance.

1. *Piratæ congregati*, upon the *English* Seas.

2. *Piratæ navigium indies præparantes, ad mercatores ulterius molestandos & ad regnum gravandum.*

3. *Pericula* are *Undique regno Angliæ, in his guerrinis temporibus.*

4. Those *pericula* do *imminere regno, nisi citius remedium ponatur*, where the Word *citius* is a comparative Word, relative to slow Ways of Remedy, amongst which Parliaments is one.

5. *Regi & subditis convenit, omni qua poterint festinatione accelerare, ad regni defensionem, maris tuitionem, & securitatem subditorum.*

Out of all those Positions it appears,

That there is in the Case real and manifest Peril; not *panicus terror*, Fear without Cause, *Tempora* are *de facto guerrina*, there is *de facto, navium congregatio.*

Again, we must observe, That in this Case,

1. The Command is, *ad proficiscendum cum navibus regis:* So the King himself is to join with the Subject in the Common Defence: Here is not a *Quod tibi fieri non vis:* Here is rather a *Contributio*, than a *Tributio.*

2. The Ships and Arms to be provided are to continue the Subjects own in Property: The King doth not assume the Property of them to himself; he only commands them to be made and used for the common Defence. This appears by the Words (*ad proficiscendum cum navibus nostris.*) So the Writ sets a Distinction between (*naves nostræ*, that is, the King's) and the Ships to be provided. See the like of this *M.* 28. & 29 *E.* 1. *Communia*, with the King's Remembrancer, for Galleys commanded upon the like Occasion; and *P.* 5. *E.* 2. and *P.* 13. *E.* 2. with the King's Remembrancer, *inter brevia directa Baronibus.*

3. The Subjects are commanded, in this Case, to be at the Expences, *tam in victualibus, quam hominum salariis ad guerram necessariis.* This I shall prove clearly anon, to be consonant to Law, and warranted by many Precedents, in the like Cases.

4. All the Counties of the Kingdom, that is, all the Kingdom in general, is charged, not any spared; the Clergy, the King himself, are to join in the Provisions.

5. The final End and Scope of all this Preparation is, *Defensio Regni, Tuitio maris, Retentio dominii maris, securitas subditorum, salus Reipublicæ.*

But Mr. *Holborne* hath objected, That *salus Reipublicæ periclitabatur* is not to be taken as part of this Case, because it is not in the Writ of *Aug.* 11 *Car.* but is inserted into the *Mittimus*, above two Years after; and he saith, That Mr. *Hambden* could not know 11 *Car.* that at that Time *salus reipublicæ periclitabatur*, and therefore he not to be blamed, for refusing to pay his Assessment, which was before the *Mittimus*, and grounded only upon the Writ of *Aug*' 11 *Car.*

He further observed, That in the subsequent Shipping-Writ, that Clause is expresly now put out.

To this I answer,

1. It is true, that *Salus Regni* is not in express Terms, or in those identical Words, in the Writ of *Aug.* 11. but it is express'd in that Writ in Words equipollent.

2. If it were not contained in that Writ in Words equipollent, yet it inforces the Words in that Writ, in Matter pursuant, or not new, or different from it; and so is out of the Rules of Departure, wherein if it were, it were a good Exception in Strictness of Pleading.

3. That Clause is in the *Mittimus* by way of Declaration or Signification to the Barons, what the Reason was, that moved the King to issue the first Writ, and the Barons are to take Notice of it, as well as of the other Clause in the *Mittimus*, whereby the King signifieth to them, that he had sent the like Writs as that of *Aug.* 11. to all the Counties of *England*: And this is a Declaration of that Meaning which the King had in the beginning.

By *Dowman's Case*, *Co.* 9. after Assessment executed, or a Fine levied, a Declaration may be made, to what Use that Fine or Assessment was.

In a Word, the State of our Case is thus: *Dominium maris & salus reipublicæ periclitabatur, convenit Regi & Subditis, omni qua poterint festinatione accelerare ad defensionem regni tuitionem maris & securitatem subditorum.*

Now whether to set the Commonwealth free and in Safety, from this Peril of Ruin and Destruction, the King may not, of his own Royal Authority, and without common Assent in Parliament, impose a Charge upon his Subjects in general, to provide such Shipping, as is necessary, in his Royal Judgment, to join with His Majesty's own Ships, and to attend them for such Time as His Majesty in his Royal Wisdom shall think fit, and also to injoin them to be themselves at the Expences, *tam in victualibus quam hominum salariis, & aliis ad guerram necessariis?*

I would be loth to irritate any, differing in Opinion from me, with provoking or odious Terms; but I cannot more fully express my self, (and so I desire it may be taken, as an Expression, and not as a Comparison,) than in saying, That it is a dangerous Tenet, a kind of judaizing Opinion, to hold, That the Weal Publick must be exposed to Peril of utter Ruin and Subversion, rather than such a Charge as this, which may secure the Commonwealth, may be imposed by the King upon the Subject, without common Consent in Parliament. So that the Security of the Commonwealth, for the very Subsistence of it, must stay and expect until a Parliament provide for it, in which Interim of Time it is possible, nay, apparently probable, yea, in a manner to be presumed, that all may be, yea, will be brought to final Period of Destruction and Desolation.

All know, that the Jews were so strict, that they would not use Means for Defence of themselves and their Country, upon their Sabbath. Their Enemies took the Advantage, and ruined their State.

The Second *General Head.*

The Second *General Head.*

I Now come to my *Second* General Head, wherein I proposed to my self to consider of

The fundamental Policy, and Maxims, and Rules of Law, for the Government of this Realm, and of the Reasons of Law pertinent to our Case, which are very many. I will briefly and severally point at those which make Impression in me.

First, It is plain, that as originally, even before the *Romans* Time, the Frame of this Kingdom was a Monarchical State, so for divers Hundreds of Years past, upon the *Romans* Desertion of it, and after the Heptarchy ended, it was and continued and still continueth Monarchical. And our Gracious Sovereign is a Monarch, and the Rights of free Monarchy appertain unto him; and yet still with this, that he must *Leges & consuetudines regni servare, & precipue leges & consuetudines & libertates a glorioso Rege Edwardo*, (that is, *Edward the Confessor*) *clero, populoque concessas*; as appears in the old *Magn. Chart. fol.* 164. *tit. Juramentum Regis quando coronatur.*

Secondly, Where Mr. *Holborne* supposed a fundamental Policy in the Creation of the Frame of this Kingdom, That in case the Monarch of *England* should be inclined to exact from his Subjects at his Pleasure, he should be restrained, for

for that he could have nothing from them, but upon a common Consent in Parliament?

He is utterly mistaken herein.

I agree the Parliament to be a most ancient and supreme Court, where the King and Peers, as Judges, are in Person, and the whole Body of the Commons representatively. There Peers and Commons may, in a fitting Way, *parler lour ment*, and shew the Estate of every Part of the Kingdom, and, amongst other Things, make known their Grievances (if there be any) to their Sovereign, and humbly petition him for Redress.

But the former fancied Policy I utterly deny. The Law knows no such King-yoaking Policy.

The Law is of it self an old and a trusty Servant of the King's; it is his Instrument or Means which he useth to govern his People by.

I never read nor heard, that *Lex* was *Rex*, but it is common and most true, that *Rex* is *Lex*, for he is *lex loquens*, a living, a speaking, an acting Law; and because the King is *lex loquens*, therefore it is said, that *Rex censetur habere omnia jura in scrinio pectoris sui.*

There are two Maxims of the Law of *England*, which plainly disprove Mr. *Holborn's* supposed Policy.

The first of these Maxims is, *That the King is a Person trusted with the State of the Commonwealth.*

The second of these Maxims is, *That the King cannot do Wrong.* Upon these two Maxims, the *Jura summæ majestatis* are grounded, with which none but the King himself (not his High Court of Parliament without leave) hath to meddle, as namely, War and Peace, Value of Coin, Parliament at Pleasure, Power to dispense with penal Laws, and divers others, amongst which I range these also, of Regal Power to command Provision (in Case of Necessity) of Means from the Subjects, to be adjoined to the King's own Means for the Defence of the Cemmonwealth, for the Preservation of the *Salus Reip'* Otherwise I do not understand how the King's Majesty may be said to have the Majestical Right, and Power of a Free Monarch.

It is agreed, that the King is, by his Regal Office, bound to defend his People against foreign Enemies; our Books are so,

F. Na. fol. 118. *Est a intendre que le rey doit de droit, saver et defendre son realme cybn vers le meere, com' vers enemies.*

Juramentum Regis, cited before, *servabis Ecclesiæ Dei, Clero, & populo, pacem ex integro secundum vires tuas*, if (*ex integro*) then against all Disturbers of the general Peace amongst them, most chiefly, in my Judgment, against dangerous Foreigners.

Bracton and *Glanvill*, in the Front of their Books, published, That the King must have Arms as well as Laws; Arms and Strength, against foreign Enemies, Laws for doing Justice at home; certainly if he must have these two Necessaries, he must be enabled

Temp. E. 1. *Grts.* with Means for them, and that of himself, not dependent *ex aliorum arbitrio*, for it is *Regula juris, Lex est, quando quis aliquid alicui concedit, concedit & id sine quo res ipsa esse non potest.*

Thirdly, Tho' I have gone already very high, I shall go yet to a higher Contemplation of the fundamental Policy of our Laws: Which is this.

That the King, of meer Right, ought to have, and the People, of meer Duty, are bound to yield unto the King, } Supply for Defence of the Kingdom.

And when the Parliament it self doth grant Supply in that Case, it is not meerly a Benevolence of the People, but therein they do an Act of Justice and Duty to the King.

I know the most solemn Form of Parliament, and of the humble Expression of the Commons, of their hearty Affection, and good Will to their King, in tendring to him their Bill of Subsidies or Fifteenths.

Rot. Parl. 9 *Hen.* 4, *numb.* 7. There is a notable Record of the very Right of the Commons in the Form of Grant by Parliament of Supply to the King: Archbishop *Arundel*, then Lord Chancellor, in his Speech to the Houses, took for his Theme (*Regem honorificate*) it being then a Time of instant Necessity.

The Commons, in their Grievances, complained of the Default of Safeguard of the Sea, towards which they had granted a Subsidy before, *Et pur tanti* (*Note this for the Reason, it was not spoken simply, as Mr.* St. John *urges*) but *pur tant que ills ne sont obliges a cel guerre susteyner, mes sont discharg de re exant'* and they petitioned, That accordingly it would please the King to discharge the Commons: But the King did not discharge them, *Quod nota.*

After this (the Record goeth) that there was a Conference between the King and Lords, of the State of the Realm, and of the Defence of it. And in that Conference, the King asking the Lords Advice, they answered, That a Tenth and a half a Tenth was necessary from the Boroughs, and a Fifteenth and half from the rest of the People. This Conference and Advice being reported to the House of Commons, the Record is, *Ils fuer grandement disturbe en dist' ceo destre en grand derogation de Lour liberties.* The Disturbance was so great, that the King himself took Pains to pacify them.

Upon this Record it appears, and I confess, That the Commons offering up of the Bill of Fifteenths, and so of Subsidies, to the King in Parliament, is a most material Form, and serves to make good and happy Expressions of Love and Unity, between the Head and Members, the King and his Subjects. But still I say, That it is the King's Right to have Supply, that Supply is a Duty, not meerly a Benevolence from the People, in Case of necessary Defence of the Kingdom.

And this is not my single Opinion.

19 *H.* 6. 64 *B. Hody Ch. Baron, Le roye est inherite* (that is, hath Right of Inheritance to have Fifteenths in his Court of Parliament: For the same Law which wills that the King defend his People, wills also, that the People grant

grant to him of their Goods, in Aid of their Defence.

Besides, I prove mine Opinion (if any Man deny it) unanswerably, out of the very Writ of Summons of Parliament: In it, *Ardua & urgentia negotia Regem, statum & defensionem regni Angliæ & ecclesiæ concernentia*, are mentioned to be the Cause of Parliament.

Now I pray you observe,

In the Writ of Summons to the Peers of the Kingdom, The Words are, *Super dictis negotiis tractaturi verumq; Concil' impensuri*; but in the Writ for choice of Knights and Burgesses to serve for the Commons, the Words are, *Ita quod milites pro se & Communitate Comitatus predicti, ac dicti Cives & Burgenses pro se & Communitate Civitatum & Burgorum plenam potestatem habeant* (what to do?) *Ad faciendum & consentiendum his quæ tunc ibidem de Communi Concilio regni nostri contigerint ordinari super negotiis antedictis.*

So the Words are, *facere & consentire*, to Matters agreed on concerning the Defence of the Kingdom, there are no other Matters mentioned in the Writ for Summons of their representative Body: No such Words as are in the Peers Writs are in theirs; yet I cannot say, and so I desire to be conceived, but that according to the Record of 9 *H.* 4. the Commons may also humbly offer their Advice to the King; they may shew their Grievances, and the State of the Commons; but it is plain, that the principal Duty belonging to the Commons is, *facere & consentire*, otherwise there would have been in their Writ, as well as in the Peers, *super dictis negotiis tractaturi, verumque Consilium impensuri.*

Upon this I put the Case, and argue thus: The Kingdom wants present Provision, necessary for present Defence, to be in Readiness; this Provision (the Case so falling out) must be so speedily made, as that it would be dangerous, in Regard of what may happen, to stay for an Assent in Parliament. Well, in this Case there is a Duty from the Subject, and a Necessity that the Thing must be done, but the necessary Form for the Subjects Assent in Parliament cannot be pursued; I demand what must be done, or what may be done in this Case, without Breach of Law?

Is the Duty lost for want of Time to observe the Form?

For my part, I understand not any Reason that the Duty, in such Case, should be lost, but I should agree, that were not this a Duty, *vi termini*, which is to come from the Subject, in such a Case, but only a meer Benevolence, then that such Benevolence could not by Law be exacted without the essential Part of it, *viz.* the Subjects Assent in Parliament.

Fourthly, I confess, that by the fundamental Law of *England*, the Parliament is *Commune Concilium Regis & Regni*, that it is the greatest, the most honourable and supreme Court in the Kingdom; that no Man ought to think any dishonourable Thing of it, yet give me leave to say, That it is but a *Concilium*; to say so is no Dishonour to it: The King may call it, prorogue it, dissolve it, at his Pleasure, and whatsoever the King doth therein, is always to be taken for just and necessary.

We must consider, that it is a great Body, moves slowly; sudden Dispatches cannot be expected in it.

Besides, tho' the Parliament cannot err, Parliament-Men may *de facto:* Every particular Member of the House hath his free Voice, some of them may chance to make Scruples, where there is no Cause; it is possible that some of them may have sinister Ends; these Things breed Delays, so they may Disturbances. (I would to God, the late woful Experience of this Kingdom, had not verified these Speculations.)

Yea, there have been, in former Times, Censures of Parliaments themselves: The good Parliament *Tem. E.* 3. *Parliamentum indoctorum, Temp' H.* 4. and in the same King's Time, if we believe my Lord *Coke*, *Brangwit, id est*, the white Crow Act. *Coke* 11. *f.* 113.

These Matters are considerable in such Case as ours is.

Wherein apparently *Mora trahit periculum*, and to follow the Rule, *Festina lente*, is most dangerous.

Fifthly, The Point of *retentio Dominii maris* (which is in the Case) is not of an ordinary Consideration; for, besides the ancient Inheritance and Right which the Crown of *England* hath in it, it is obvious to every Judgment, that in the Continuance or not Continuance of it to the Crown, not only the *bene esse*, but even the *esse* it self of the Commonwealth doth consist; and therefore it behoveth the Subjects *accelerare* to the Tuition of it: Slowness is an Argument of Stupidity, or want of that Sensibleness of the Diminution of that Right which every Subject ought of Right, and hath a concerning Reason to propose to himself.

Notable are the Words in the *Scotch* Rolls, 10 *E.* 3. *numb.* 3. In a Writ by the King, to a great part of all the Kingdom, *Considerato, quod progenitores nostri Reges Angliæ Domini maris & transmarini passagii, totis præteritis temporibus extiterunt, & plurimum nos tæderet, si honor noster regius nostris temporibus in aliquo læderetur. Quodque omnes homines de regno pro Defensione ejusdem, contra hostium invasiones, tenentur exponere se & sua.*

The Writ wherein these Words are, was a Command or Charge laid upon the Subject, without any Warrant of Parliament for it.

It was a Writ directed to all Earls, Barons, Knights, and others, *ab ore aquæ Thamesis versus partes occidentales*, which included divers Inland Counties.

It issued upon Occasion of *David de Bruses*, having a great Navy afloat, and therewith having entred *Jersey* and *Guernesey*.

The Writ is a Command to those to whom it is directed, *Tantis & tam gravibus periculis imminentibus debite ponderatis*, to treat with the Archbishop of *Canterbury*, and other great Men assigned by the King, *super defensione regni & populi.*

The Writ concludes thus, *Scire vos volumus, quod si rebelles aut difficiles fueritis in premissis, in tanto*

tanto & tam grandi necessitatis articulo, the King will repute those *Rebelles, aut difficiles, tanquam suos, & regni inimicos.*

Necessitas non habet Legem.

Sixthly, Not to speak of Necessity in general, which is of it self a Relaxation of Laws, and serves for a Dispensation, even by the Equity of the Law it self: In our Case there is a Necessity in Point of Government.

I shall put you a Case, where an express Clause in an Act of Parliament hath been doomed void, because it was against a Matter of Necessity in Point of Government.

2 *H.* 6. 6. *The Earl of* Northumberland's *Case.*

Nota, 28 *E.* 3. & 42 *E* 3. Penal Acts were made, That none should exercise the Office of Sheriff above a Year, although that he have a *non obstante*, that Clause of (*Although*) is void, and a *non obstante* may be of that *non obstante:* No Reason can be for this, but because it takes a necessary part of Government out of the King's Hands.

Seventhly, *Salus Reipublicæ*, by all Laws, is *suprema lex, & summe necessaria.* It is, where it interposeth, *Lex legis.*

It takes away particular Interests, before it self give place for that Cause.

8 *E.* 4. 36 *H.* 8. *Dyer.*

A Bulwark for Defence may be built upon another Man's Ground, *invito domino.*

No Dower or Thirding to a Woman, of a Castle of Defence, it may indanger *Salus Reipublicæ* by dividing such a Piece.

An Alien amye Merchant takes a Lease for Years, of a House for his Trade; this is a good Lease, so long as he Tradeth, and there is no Enmity between his King and ours; but when he ceaseth Trading, or if War happen, the King shall have the Interest of the Lease: The Reason, It is possible, that *Salus Reipublicæ* may be concerned, if the Alien's Interest in it should continue.

Eighthly, If there were not *Salus Reipublicæ* in our Case, yet there is in it at least *bonum publicum* intended.

I will put a Case, where Subjects are bound without their Assent for the *bonum publicum* sake.

44 *E.* 3. 19. Chamberlain of *London*'s Case, *Coke* 5. *f.* 63.

Inhabitants of a Town, without any Custom, may make Ordinances or By-Laws of any thing, *pro bono publico*, and in such Case, those who are absent, and so unconsenting, are bound, the *bonum publicum* is the Cause.

Ninthly, Prevention of further general Mischief, which may ensue, trencheth, even by Construction of Law it self, upon other Men's Rights.

For that Cause, pulling down a House which is a Fire, to save other Men's Houses, is lawful.

Highley's Case, *Co.* 10. 139. One is bound by Prescription, to make or repair Walls, Dammes, or such like, against Waters, This Man is not able to do it, a small Breach happens, which either must speedily be made up, or a general Mischief will happen: In this Case, by Exposition of the Statute of Sewers, and by an Equity out of the Letters of the Laws, grounded upon *Salus pop.* all those who are within the Level are to be tax'd, and to contribute for present; the Ability of him, whose the Right of the Burden is, *non expectata.*

Tenthly, I find a Writ in the Register *de reparatione facienda*, which is cited in *Bowles*'s Case, *Coke* 11. *f.* 82. 6. whereby, if two Joint-tenents be of a House, the one shall have a Writ of *de reparatione facienda*, against the other; and the Words of the Writ are, *Ad reparationem & sustentationem ejusdem domus Tenetur*; where the Word (*Tenetur*) is observable. Every Man hath an Interest in the Commonwealth, but the King's Interest is incomparably beyond other Mens; therefore the King may, by a like Reason of Law, call upon his Subjects to join in Contribution with him, towards the Reparation and Sustentation of the Fabrick of the Commonwealth.

Eleventhly, In the great and common Vouchee's Case, in the Debate of this Cause of the new-erected Office of the measuring of Cloths in *London*, which was brought to Parliament; It is a memorable Saying of *Gascoigne* the chief Justice, *Nota*, 13 *H.* 4. 14.

"The King may charge the People of his "Realm without special Assent of the Com-"mons, to a Thing which may be Profit to "the Common People."

This Saying is cited and allowed in the Case of Monopolies, *Coke* 11. *f.* 86. *b.* and so it is very commonly, upon Arguments concerning such Questions.

Twelfthly, I observe, that tho' the Precedents of Writs and Execution of them, for assessing the Subject by the King's Command, without Warrant of Parliament, are very many in several King's Reigns, yet there is not any Precedent of any Civil Action brought for any thing done in former Ages, upon such Commands of the King as is in our Case, but only in that one of the Abbot of *Robertsbridge*'s Case, which hath been often cited, and in the Pleading thereof it is acknowledged, that the agisting of Mens Lands and Tenements to contribute, *Ad Custodiam maris*, by the King's Commands, without Tax by Consent in Parliament, was good in Law.

And I note, that that Case happened and was in Agitation, and gave fair Cause of Demurrer, in an opportune Time in demurring, if the Law had been otherwise, for it happened at that very Time, when the Statute *de Tallagio non concedendo* was made or in Hammering.

If only one Action brought heretofore, *unu hirundo*, it were not to be regarded, though it had been against the King's Power, but when that one is assertive of the regal Power, it is to be respected more than as a single, I mean, as a *singularis probatio* of it.

Lastly, I observe, that upon Grievances, or Complaints in Parliaments which have been almost infinite, and upon all Occasions in former Times, no one Record hath been, or I think can be cited, that in Case when Charges have been imposed without Common Assent, for the necessary Defence of the Kingdom in an instant Article of Necessity, any King hath ever answered, or assented, That such Charge hath been against the Laws or Liberties of the Subject.

Neither the Reclamation of the Subject alone on his Side, nor the single commanding Rescripts of the Sovereign alone on his Side, are of Authority to preserve the Law, but if there be a Concurrence of King and Subject, that is it whereby a Judge may ground his Resolution.

As for that one of 2 *R.* 2. which cometh nearest in that Kind, but hath not the King's Acknowledgment; I note, that it was upon a Deliberation, before the Charge imposed: And truly I think that if the Charge in that Case had been first imposed and collected, upon Complaint against it afterwards, it would never have been adjudged for unjust.

Many Things are questioned, and sometimes denied to be lawful, before they are done, which *facta valent*, which being done, are good and valid in Law. If a Question be made of that which of it self is lawful, the very making the Question, makes it questionable, and may draw on an Opinion that it is not lawful.

Rot. Parl. 4 *H.* 4. *num.* 28. *& Rot. Parl.* 6 *H.* 4. *num.* 9. you shall find, that the Commons having considered of the Wars of *Scotland*, the Rebellion of *Wales*, the Safeguard of the Sea, *& especialement*, the Defence of the Realm, they granted a Subsidy, but with Protestation that it should not be an Example to charge the Commons hereafter with any manner of Subsidies, for the Wars of *Scotland*, or *Wales*, or the Safeguard of the Sea, or the Marines of *Calais* or *Ireland*, without Consent in Parliament. I observe, that there is not a Word in this Protestation, that the Subjects should not be charged without Consent in Parliament for the Defence of the Realm, though there were a little before an express Mention of it, and that with an *Especialment*. On the other side, there is a Cloud of Precedents of . . . . . imbarking of private Mens Ships, in Case of Necessity of Defence of the Realm, and Safeguard of the Seas, Command of making Galleys and Ballingers *sumptibus propriis*.

Arraying and Apparelling of Soldiers, and Victualling and Conductiug them in this Case of necessary Defence, *propriis sumptibus*, of several Towns and Counties, as well Inlands as Maritime, the express Words of the King's Commands in such Cases, by his Writs directed to the respective Sheriffs and Head Officers are, That they should *levari facere expensas de comitatibus*, sometimes *comitatuum*, sometimes *villarum*, as the Case was, wherein note the Words, *levari facere*, and in what Manner the Sheriffs Levies are, *viz.* Assessment by himself, and Collection by himself and Ministers, I think few are ignorant.

Amongst which Kinds of Writs, some of 48 *H.* 3. are remarkable for these Words in them, *Cumque adhuc necesse sit propter casus fortuitos ad securitatem, & defensionem regni, defensionem habere promptam, contra Alienigenarum adventum, &c.* So still the Pressure is according to the Occasion, instant Provision raised, whereby a Promptitude may be not staying a Provision by Parliament, which Cunctation might be opposite to Promptitude.

Inter alia sic Rot. claus. 48 *H.* 3. *mem.* 2. A Writ to the Town of *Bedford.*

Also the *French* Roll, 21 *E.* 3. shews, that whereas a Subsidy out of the Wools had been granted to endure for a certain Time only, yet the King, *necessitate compulsus, de concilio Prelatorum, Magnatum & aliorum de concilio suo*, (not *per commune concilium*) did ordain *quod subsidium predictum levetur usque* a further Time.

Ro. Fra. 21 *E.* 3. *pars.* 2. *membr.* 9. *Co.* 11.

Close Roll, 1 *R.* 2. *memb.* 18. many Writs were directed to the Bailiffs of the several Towns of *Cambridge*, *Huntingdon*, *Nottingham*, *Derby*, *Lincoln*, *Gloucester*, *Worcester*, *St. Edmond's-bury*, and *Thetford*, reciting a former Command of the King to these several Towns, to provide several Ballingers, *ad custas validiorum et magis divitum hominum*, of those Towns; Now by those Writs, the King declared unto them that *videbatur* to the King and his Council, that they which had 10 *l.* and upwards in Goods, should contribute, and not others, and commands those Bailiffs to compel Men of that Ability to contribute, *per districtionem si necesse foret, & aliis viis & modis, quibus melius viderint expedire.*

I spare Iterations, I conclude my *Second* General Head with my Subscription again proved by my Judgment, by what I have said before.

That when the Good and Safety of the Kingdom in general is concerned, and the whole Kingdom in Danger, The King may, by Writ under the Great Seal, command all the Subjects of the Kingdom at their Charges to provide and furnish Ships, for the Defence and Safeguard of the Kingdom, and may by Law compel the doing thereof.

And that in such Case the King is the sole Judge of the Danger, and when and how the same is to be prevented.

And how many more have subscribed to this Tenet it is not unknown, the Records of the General Courts of Justice of the Kingdom, manifest to such as will look into them.

The

The Third *General Head.*

The Third *General Head.*

I Have done with my *Second* General Head, and come now to my *Third:* Which is, To consider the Acts of Parliament, Answers to Petitions in Parliament, *Magna Charta's* Laws, which concern the King's Proceedings in this Case.

First, St. *Edward's* Laws have *Danegelt* mentioned in them; see *cap.* 12. but not another Syllable pertinent to this Case, saving that the Church and People are free, have Liberties and Customs belonging to them of Right, which is not by any denied.

Secondly, I find that there was a *Magna Charta Libertatum Regni* made by King *Henry* the First, the *beau Clerke*, in which is this Clause, That *Milites possiderent terras dominicarum suarum quietas ob omnibus Geldis* (*Guelt* signifieth a Sum of Money.)

And yet amongst the Laws of his Time, as appeareih by *Leges Hen.* 1. *c.* 16. this is one which I cited before, *Danigeldum* 1. 12 *d. de unaquaque hida per annum si ad terminium non reddatur vita emendetur* (which signifieth an Amerciament.)

Thirdly, The *Magna Charta* of K. *John*, made at *Ronney-mead*, hath been cited by Mr. *Hambden's* Council, and urged to be an Act of Parliament, the Words inferred out of it are, *Nullum scutagium, vel auxilium capiatur, in regno nostro, nisi ad corpus nostrum redimendum & primogenitum filium militem faciendum & ad primogenitam filiam nostram semel maritandam & ad hoc non fiat nisi rationabile auxilium, &c.*

The Words pinch'd upon are, (*Nullum auxilium*) a general Negative; I have touch'd before the Signification of the Words (*Ayd auxilium*) I will answer the Words farther anon, together with other Statutes, which have as general and further negative Words.

Observe, But there is no Question but *Romney-mead Mag. Ch.* was no Statute, not ever was taken for one, saving in those Parts wherein it and *Mag. Ch.* of 9 *H.* 3. do concur to give but one Reason, tell me when, after King *John's* Time, were 25 Barons appointed, according to that which is contained in *Romney-mead Magna Charta.* If there were any great Matter in *Nullum auxilium*, it is observable that those Words are not in *Magna Charta* of 9 *H.* 3. and that is the *Magna Charta* which hath the frequent Confirmations

In Confirmatio Chartarum, 25 *E.* 1: there is mention of that *Magna Charta* of King *Henry* 3. by Name, and none of that King *John's Magna Charta.*

Certainly there were some *Iniqua* in the *Magna Charta* of King *John*, the Barons did in that King's Time *iniquum petere ut æquum ferrent*, otherwise that *Magna Charta* would have been also confirmed, as well as his Successor *Henry* the Third's.

And I pray you note, That after the *Nullum auxilium* there follows on *Nisi ad corpus nostrum redimendum:* If for that, then certainly much more for the redeeming of the whole Body of the Commonwealth, which is our Case.

Fourthly, The *Magna Charta* of 9 *H.* 3. which is the often confirmed *Magna Charta*, though it allow all the Liberties of the Subjects then claimed, hath no special Words pertinent to our Question, which is a Matter observable; for Charges for the Defence of the Kingdom, commanded by the King out of Parliament, were frequent both at and before that Time.

In it there are only general Words of *Habeant libertates suas*; out of which Word (*suas*) I do observe, First, A Right of the Subject in his Liberties, they are (*suæ*). Secondly, Those Liberties which the Subjects must *habere*, must be (*suæ*,) that is, such Liberties as are fit for a Subject, as are compatible with the Relation between a King and a Subject. The Words are not *omnes libertates*, all manner of Liberties, but (*suas*,) that is, Liberties proper for them, or such Liberties as they are, in good Construction, capable of.

And indeed *Quicquid recipitur, ad modum recipientis recipitur.*

The Abbot of St. *Bartholomew's* had a Charter from King *Henry* 2. that he should be as free in his Land, as the King was in his Crown, yet these general Words pass for no more than a Subject is capable of, he must notwithstanding those swelling Words, pay Fines for Alienation without Licence, admit the King's Valect to a Corodie, and such like. 14 *H.* 7. *f.* 11.

But in that *Magna Charta* of 9 *H.* 3. *cap.* 20. there is this Clause, (*Et si nos adduxerimus vel miserimus eum in exercitum, &c.*) which proves the King's Right, even by that Statute, to dispose of the Bodies of his Subjects for his Army.

Also *Cap.* 30. There is a Clause, that *omnes Mercatores* shall have safe Conduct, and Liberty *ad emendum vel vendendum, sine omnibus malis tolnetis per antiquas & rectas consuetudines preterquam tempore belli*, which shews, that in *Tempore guerræ mala tolneta*, might be set up, they were not then *mala tolnet' Dominus opus habet*, made them *Tolerabilia & toleranda*; in our Case, we have *tempora guerrina.*

Fifthly, *Confirmatio Chartarum* which was 25 *E.* 1. is the next Statute whereof there is any Colour for Mr. *Hambden*, the Words thereof are,

Que pur nul besoigne tielx maners de ayds, mises, ne prises, ne prenderomer forsque de com' assent de tout le realme, saves les anc aydes & prises dues & accustomes. But this Statute hath not been stood upon, because of the *Saves les anc aids, &c.* That which is saved or excepted is clearly out of the Body of the Law.

Sixthly, But then comes the Statute *de Tallagio non concedendo*, which of what Time it was;

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non constat. It was between 25 & 34 *E.* 1. I do agree that to be a Statute or an Act of Parliament: The Recital in the Petition of Right, 3 *Car.* binds up my Judgment to affirm otherwise.

The Words of that Statute are general, without any saving or Exception, *Nullum Tallagium vel auxilium, per nos vel heredes nostros in regno nostro ponatur seu levetur sine voluntate & assensu Archiepiscoporum, Episcoporum, Comitum, Baronum, Militum, Burgensium & aliorum liberorum communie de regno nostro.*

These Words indeed are general, but for a true and just Exposition of them, the Occasion of the hard Pressing to have that general Statute is to be considered.

K. *E.* 1. had Right to Dukedoms and Earldoms in *France*, and great Wars he had with the *French* King about them.

Great Troubles also he had out of *Wales* and *Scotland.*

He was in *Flanders* about auxiliary Wars against the *French* King, both at the making of *Confirmatio Chartarum*, and of *Tallagio non concedendo.*

He had a little before, in the 22d of his Reign caused Scrutinies to be made throughout the Kingdom, to raise Moneys for Supply of his great and pressing Occasions for these Wars, which in Truth did not immediately concern the Defence of his Kingdom; for if he would have let those Wars alone, he might have had Quiet enough for his Kingdom of *England.*

Upon the said Scrutiny Search was made, where and in whose Treasuries or Hands Moneys were, whereby the King might be furnish'd; and indeed, the King's Ministers took the Moneys they found upon the Scrutiny as borrowed for the King, though it were against the Owners Wills to lend them: And amongst others, for the most part, they lighted upon the Treasures of Religious Houses, many of which had Coffers well stored. The Religious Men being thereupon oppressed themselves, incensed the Great Men against the King; and by that means, and the Palpableness of the Injury, the great Lords, especially the then Constable and Marshal of *England*, *Bohun* and *Bigott*, stood out against the King with a great deal of Stiffness, and at last the King being in a Streight, and to pacify one Extremity, with yielding to another, passed the Act *De Tallagio non concedendo*, without the Exception or saving of the ancient Aids, which was in *Confirmatio Chartarum.*

But it is plain, that these general Words were never meant, either on the King's, or on the great Lords and other Subjects sides, to be absolutely general for all Cases, for notwithstanding those Words, the Aids *pur faire fitz Chevalier & pur file marier*, continued, and so did the King's Power to array and send Soldiers, *sumptibus villarum & comitatuum*, into remote Parts of the Kingdom, out of their proper Counties, for the Defence of the Realm, as appeareth in the continual Practice in that King's and his Successors Times; as, if I had Time, I could make good by a long Succession of Precedents, appearing upon Records.

See a notable Apology or Remonstrance publickly made by King *Edw.* 1. *M.* 25. *E.* 1. enrolled, concerning his Proceedings at that Time in this Business, whereby that is made good, which I have before alledged.

But besides this Answer, I shall give a further Answer to this and the other Statutes, when I shall have perused all of them.

Seventhly, The next Statute urged is 14 *E.* 3. in the Second Parliament of that Year, in which Statute there is a Recital of a Grant in the same Parliament, of the ninth Part of the Goods of the Commons for two Years; the King, willing to provide for the Indempnity of the Commons, willeth and granteth to the same Prelates, *&c.* (wherein note the Word, *the same*) that the said Grant which is so chargeable, shall not be another Time had in Example, nor that *they* (which must be construed) the same Prelates, *&c.* be from henceforth charged, nor grieved, to make up any Aid, or to sustain any Charge, if it be not by common Assent, and that in Parliament. And that all the Profits rising of the said Aid, and of all Wards, Marriages, Customs and other Profits rising out of the Realm of *England*, shall be spent upon the Maintenance of the Realm, and of the Wars in *Scotland* and *France*, and in no Place elsewhere, during the said Wars.

Note that the general Clause which is urged to be in this Statute, cometh in the middle part of the Statute, and is coupled with other Matter, which was but temporary, and therefore in my Judgment that general Clause meant to be but temporary, *viz.* during the Continuance of the Wars which were then on foot; and was never meant to be a perpetual Discharge for ever of all manner of Charges and Aids, as appeareth, for that, notwithstanding that Clause, K. *E.* 3. did shortly afterwards, and during all his Reign, as frequently charge the Subjects for Defence of the Kingdom, as ever he had done before: He had also his Aids *pur fair fitz Chevalier et pur file marier* after that, which if the Words were to be expounded generally and perpetually, neither he nor his Successors could have had.

And it is worth the Observation, that this Statute is never mentioned in the Petition of Right, as *Tallagio non concedendo*, and 25 *E.* 3. by Names are, and yet if this had been a perpetual Statute, there was as great Reason to have mentioned it as any other Statute.

Eighthly, The next Statute urged is the Petition of Right, 3d of the King's Reign.

This Petition reciteth the Statute *de Tallagio non concedendo*, and the Statute of 25 *E.* 3. against Loans and other Things. Then cometh the Petition it self, which is an humble Prayer to His Majesty, by his Subjects, That no Man hereafter be compelled to make or yield, any Gift, Loan, Benevolence, Tax, or such like Charge, without common Consent by Act of Parliament: And his Majesty's gracious Answer in Parliament is, *Soit droit fait comme est desire.*

After this, His Majesty, that knows his own Heart and sincere Meaning best, in his second Speeches to both Houses, amongst other Things, sayeth, and that most justly and truly, 'That 'it must needs be conceived that he had granted 'no

no new, but only confirmed the ancient Liberties.

I obſerve, there is no expreſs Clauſe in any of thoſe Statutes which I have before cited, that no Charge ſhall be impoſed without common Conſent, no, not for neceſſary Defence of the Kingdom: And if ſuch a Clauſe had been offered to have been expreſt, beſides that I doubt of what Validity it had been; I certainly believe, that neither K. *E.* 1. nor K. *E.* 3. nor our Sovereign, would ever have yielded to ſo diſhonourable and unjuſt an Expreſſion.

But all theſe ſeveral Statutes being general, and having no particular Expreſſions, I conceive that according to all Rules of Law for Expoſition of Statutes, thoſe three Statutes, *de Tallagio non concedendo*, 25 *E.* 3. and the Petition of Right, muſt have a reaſonable Intendment, and that by a common and juſt Equity, for Expoſition of thoſe three Statutes, Aids and Charges, for ſo neceſſary a Purpoſe as the Defence of the Kingdom; and *Salus Reipublicæ* will be clean out of the Law as fully as if they had been preciſely excepted, and if other Expoſition be made according to the Letter only, it might truly be ſaid of ſuch a literal Expoſition, That *Litera occidit*, that Laws made for the Good of the Commonwealth, will prove the Bane and Ruin of it.

I will give you a Taſte of ſome Expoſition of Statutes, with Reſtrictions of the Generality of the Words of them, though they be general Negatives. The Caſes I could put are very many, but I will cite only a few, and thoſe ſuch as are appliable to the Reaſon of our Caſe.

20 *Ed. Dyer*, 361. The Statute of *Glouceſter* ſaith, That Tenents for Lives or Years, *Nullum facient vaſtum*, yet a Waſte whereby the Land leaſed *melioratur*, is no Waſte within that Statute.

The Statute of *Weſtminſter* the ſecond ſaith, That Tenent in Tail ſhall not *per factum, vel feoffamentum*, do any Act to the Prejudice of his Iſſue.

43 *E.* 3. Yet *Octavian Lambert*'s Caſe is, Tenent in Tail of Lands whereto a Stranger hath Title of Entry; to gain a Releaſe of this Title, and for Defence of his Eſtate, by his Deed granteth a Rent Charge out of the Lands intailed, this Grant bindeth his Iſſue, ſo that he ſhall hold the Land charged, notwithſtanding the general Words of the Statute.

4 *E.* 4. 3. *E.* 3. There was a Statute made 14 *E.* 3. That for every Sack of Wool carried out of the Realm, the Merchant ſhould find Surety to bring into the Kingdom Bullion, that is, Silver, to the Value of 2 *Marks*, and to take for it 2 *Marks* in Coin, 36 *E.* 3. An Act was made, That whereas the Commons had granted a great Subſidy out of their Wools to the King for three Years; the King granted, that after thoſe three Years, nothing ſhall be taken of the Commons, but the ancient Cuſtom of 1 *Mark*, for a Sack of Wool; and 45 of *E.* 3. another Act was made, That no Impoſition or Charge ſhall be put upon Wools, other than the Subſidy and Cuſtom granted to the King, *ſans Parliament*.

Upon long Debate adjudged, That notwithſtanding theſe two latter general Statutes, yet the finding of Sureties for bringing in of Bullion, enjoined by the 14 *E.* 3. was not taken away, by either of thoſe two latter Statutes. And in that Caſe, beſides the former Rule of Equity put by me for Expoſition of general Statutes, another Reaſon is given, appliable alſo to our Caſe, namely, That every Statute ſhall be taken the moſt beneficially for the King.

Paſch. 13 *Jac.* In the Star-Chamber, whereas the Statute of 1 *R.* 3. *c.* 2. ſaith, That the Subjects ſhall not be charged, by any Charge, Executions or Impoſitions, called a Benevolence, nor by ſuch like Charge, yet one Mr. *Oliver St. John*, a *Wiltſhire* Gentleman, being brought to the Bar, *protenus*, for writing a Letter to the Mayor of *Marleborough*, againſt a Courſe then holden, for trying what Money rich and able Men would give unto King *James*, of their voluntary free Will, it was reſolved by the whole Court of Star-chamber, with the then chief Juſtices Advice, That a Commiſſion to treat what Men would give voluntarily to the King, was not within the Statute of 1 *R.* 3. though the Words were general, and Mr. *St. John* was grievouſly cenſured for his inveighing by his Letter againſt the awarding of the Commiſſion.

I conclude this Matter, with an Anſwer by Mr. Solicitor, aptly given to Mr. *St. John*, who urged this Clauſe out of the Laws of King *W.* 1. *c.* 55. *Volumus ut omnes liberi homines regni noſtri habeant terras ſuas, bene & in pace, liberi ab omni exactione injuſta & ab omni Tallagio, ita quod nihil ab eis capiatur vel exigatur niſi ſervitium ſuum liberum, quod de jure nobis facere debent, & prout ſtatutum eſt & a nobis eis datum & conceſſum jure hereditario per commune concilium totius regni.*

You ſee here are general Words referring to a general Act of Parliament, yet afterwards, *c.* 59. are theſe Words, *Statuimus ut omnes liberi homines totius regni ſint fratres conjurati ad monarchiam noſtram & ad regnum noſtrum pro viribus ſuis & facultatibus contra inimicos pro poſſe ſuo defendendum & viriliter ſervandum.* This latter Clauſe ſhews the Intention of the Act of Parliament formerly ſet down, that notwithſtanding the general Words of the Act, it extendeth not to Caſes of common Defence of the Kingdom, or where *Salus Monarchiæ Regis* or *Reipublicæ periclitatur.*

I have now done with the general negative Statutes, ſtrongly urged, and I think I have exempted the Queſtion of our Caſe, from the Purview or Intention of thoſe Statutes.

But beſides thoſe Statutes, Mr. *Hambden*'s Council hath urged ſome Statutes that no Soldiers, or Men at Arms, ſhould be enforced to go out of their proper Counties, without Wages from the King.

I will not let thoſe, becauſe urged, tho' pertinent in the Generality only of the Peoples Liberties, to paſs unexamined.

13 *E.* 1. *c.* 6. The Statute of *Wincheſter* was cited for that Purpoſe.

The Words are, 'Every Man ſhall have in 'his Houſe Harneſs to keep the Peace, after the 'ancient Aſſize.' And ſheweth what the ancient Aſſize was. And then there is a Clauſe for freſh Suit after Felons, from Country to Country; and indeed, in Caſe of freſh Suit after a Felon,

none is bound to go out of his County. But as to the Point of going without Wages, out of the Counties for Defence of the Kingdom, not a Word in my Book in that Statute.

Then cometh 1 *E.* 3. *c.* 5. the second Parliament; the Words are, 'The King wills that no 'Man be charged to arm himself, otherwise than 'he was wont, in the Time of former Kings 'of *England*, and that no Man be compelled 'to go out of his County, but where Necessity 'requireth, and sudden coming of strong Ene-'mies into the Realm; and then it shall be 'done as hath been used in Times past, for the 'Defence of the Realm.'

Nota. Note that before this Statute, the use was for Men to go in such Cases, *propriis sumptibus* as appeareth by many Precedents.

In the same Year, 1 *E.* 3. *c.* 7. the Commons complained of Commissions to prepare Men at Arms, and to convey them to the King into *Scotland*, *Gascoigne*, or elsewhere, at the Charge of the Shires, and that the King hath not before this Time given any Wages to the Preparers and Conveyers, nor Soldiers, whereby the Commons have been at great Charge. To this the King's Answer is, The King wills that shall be so done no more.

Nota. But note by the very Complaint, that neither the Complaint nor Answer are appliable to Case of Necessity, for Safeguard of the Kingdom.

Then 18 *E* 3. *c.* 7. That Men of Arms chosen to go in the King's Service out of *England*, shall be at the King's Wages, from that Day that they depart out of the Counties where they were chosen, till they return.

This Statute extendeth not to Case of necessary Defence. Besides, the Provision is against going out of *England*, which is not in our Case.

Then 25 *E.* 3. 8. No Man shall be constrained to find Men of Arms, other than those that hold by such Service, if it be not by common Assent and Grant in Parliament.

This extendeth not to Defence of the Kingdom.

Besides, it is a Provision for particular Men, specially required.

Likewise it is only against finding the Bodies of Men of Arms. But pressing of Soldiers or Men of Arms, to serve in all manner of Wars, hath been always so frequent, both in old, late and modern Times, that it were a needless Labour to prove that which every Man knoweth.

All these Statutes of 1, 18, and 25 *E.* 3. are confirmed by Parliament, 4 *H.* 4. *c.* 13. and yet *Rot. Parl.* 5 *H.* 4. *numb.* 24. (which is observable for the Time, being presently after 4 *H.* 4.) it appeareth, that there had been Commissions directed to Gentlemen of the Countrey, for arraying, arming, and conducting of Soldiers to the Coasts of the Sea, and elsewhere, in divers Counties. And that there were many Forfeitures and Clauses comprised in those Commissions. The Observation of which was perilous to the Commissioners.

The Commissions were brought into the Commons House, and by them entertained as Grievances. The Commons, upon Deliberation, did obliterate certain Clauses in those Commissions, and prayed the King, that from thenceforth, no Commissions of Arrayage should issue, otherwise than was contained in an amended Copy, which they humbly offered ready drawn. And that Copy was agreed to by the King in Parliament, after Conference with the Judges and Advice with the Lords thereupon, and the Tenor of the said Copy was enrolled.

And in the Precedent thereof, appearing in the Parliament-Roll, and being as for the County of *Bucks*, fifteen Gentlemen of the Country are made Commissioners, amongst them I find the Name of *Hambden*, I believe an Ancestor of Mr. *Hambden*, the Party in our great Cause.

But to return: In that Commission, there is a Recital of Invasion and Burnings, which had been by Enemies: And that to resist them if they should again invade *ac pro salvatione, & defensione regni, & ligeorum*, the King assigneth Commissioners *ad araiandum & triandum omnes homines ad arma; & ad armari faciendum omnes illos qui de corpore sunt potentes, qui de suo proprio non habent, unde seipsos armare possint, viz. quilibet eorum, juxta statum & facultates suas, & ad distringendum omnes illos qui in terris & bonis sunt potentes, & pro debilitate corporis impotentes ad inveniendum armatos pro illis qui non sunt habiles*, (where, by the way, I note, that in Case of common Defence, the People, not the King, are to be at the Costs.) And the Commission directs further, That the Commissioners shall train and divide the Soldiers, and shall *conducere eos tam ad Costeram maris, quam alia loca, ubi, & quoties necesse fuerit*, (here is sending out of the County of *Bucks*, I am sure) and shall muster them; and that the armed Men shall be armed with their own proper Arms, and not with the Arms of others, upon Pain of Forfeiture of them, (note the Clause of Forfeiture,) *& ad arrestandum & capiendum omnes qui fuerint Rebelles seu contrarii & prisonæ committendum, ibidem moraturi quousq; pro eorum punitione aliter duxeriimus ordinandum*, (here is Power of Imprisonment.) That Commission commands likewise the Commissioners to array themselves, *& insuper*, to make Beacons, whereby, *gentes patriæ de adventu inimicorum poterint congruis temporibus præmuniri*, and a further Clause, that the Commissioners shall *ducere* the Soldiers *cum periculum advenerit, ad costeram maris & alia loca, in defensionem regni & patriæ. Ita quod pro defectu armationis & ductionis damna patriæ non adveniant ullo modo.*

The Commission I have taken, and now repeat at large, because offered by the Commons themselves in Parliament, instantly after the Confirmation of *Edw.* the Third's Laws, 1, 18, & 25 of his Reign beforementioned, and all by the Judges Advice.

All Powers of Command imply the Duty of Obedience; I say no more, but as Arms and Travelling by Land are necessary for the Defence of Land, so Ships and Sailing, Ordnance and Tackling, and the Necessaries mentioned in the Shipping-Writ, are most requisite for Defence at Sea.

And thus I have passed all the Acts of Parliament cited or pertinent to our Case; I confess they are *leges ligantes*, and I think that in my Answers

Answers to them, I have not broken the Bonds of them, with the which I acknowledge both my Conscience, as a Judge, and my Estate, as a Subject, obliged.

The Fourth *General Head.*

The Fourth *General Head.*

I Come now, in the *Last* Place, to my *Fourth* General Head, which is, To answer the Objections made by the Council on Mr. *Hambden's* Side.

The Objections were of three sorts: Some grounded upon Reasons of Law; some upon Authorities and Inferences upon Records; some upon Mischiefs and Inconveniences pretended.

Objection 1. 2 *R.* 3. *f.* 10 & 11, was objected; where, upon the Distinction of *potestas in Curia, & potestas in Camera*, concerning the assessing of Fines, it is said, that *Justiciarii Regis per eorum discretionem assideb' finem & non dominus Rex per se in Camera sua, nec aliter coram se, nisi per Justiciarios suos, & hæc est voluntas Regis, viz. per Justiciarios suos & Legem suam unum est dicere.* And it was said, that in the present Case, the King hath not proceeded *per Justiciarios*, but *per se* or in *Camera.*

Answer. I answer, That in our Case there is not any thing done in *Camera*, the Shipping-Writ issueth out of the Court of Chancery: Besides we are not now in the Case of assessing a Fine.

It is true, that if a Presentment, Indictment, or Information, be depending in the King's Court, and so far proceeded in, as that Judgment of a Fine is to be given, this not to be assess'd by the King in *Camera*, but by the King's Justices in *Curia.*

8 *E.* 4 *touching the Chancery.*

Howsoever, if we go to Distinctions, there is *potentia absoluta*, and *potestas ordinaria*; I hope none will deny, but that the King hath *potestatem absolutam*, in many Cases.

Stat. Westm. 1.

It appears a Man may be committed *per specialem præceptum domini Regis*, and is not in that Case Bailable.

20 *H.* 7.

The King is *Capitalis Justiciarius Angliæ.*

I put you the Case of *H.* 2. *E.* 3. *p.* 6. One having Money of the King's wherewith to pay Soldiers, misused it, and committed many Outrages in *Lancashire*; a Writ issued to the Sheriff of *Lancaster* to attach him; being by vertue thereof attached, and brought to the King's-Bench, he was there discharged; the Reason given by *Scroope* the Chief Justice was, Because the Attachment being grounded upon a Suggestion, was against the Law: No such Writ ought to have issued, unless there had been some Indictment, Presentment, or Information depending. But I doubt not, if the King had by his absolute Power made a special Precept in his Chamber for Commitment of this Man, he could not have been discharged.

The Truth is, The Objection upon the Distinction of *Curia & Camera*, is not rightly applied to this Case: It might as well have been urged against a Commission of Sewers, issuing at common Law, out of the Chancery. The Matter is, What the Law is concerning the King's Power, for Provision towards necessary Defence.

Object. 2. It hath been said, that divers Payments and Promises of Payments have been made by the King in all Ages; upon Occasions of his Wars and Provisions for the Defence of the Realm and Sea: And many Records have been vouched to that Purpose.

Answ. I answer, *First*, It is true; but more Payments have been made by the Subjects also in the same Cases, as will appear, if we go to vie by Records, Multitudes have, to that Purpose, been cited on the King's Side.

Secondly, In some Cases, as of borrowing, purveyance, or the like, Payment by the King was of Right; but in the Cases meerly for necessary Defence, his Payment, or Promise of Payment, was of Courtesy and Grace, and is not binding in Precedent, no more than in the Case of Mines Royal: It appears by many Precedents, cited in the Case of Mines common, That many Subjects, Owners of Land wherein were Mines of Silver, shared with the King, some had a twentieth, some a greater, some a lesser Part; and this was objected against the King's sole Interest, which notwithstanding was adjudged, and the Answer made to those Records was, That it was of the King's Courtesy and Grace, not of Right: One may do with his own what he pleaseth.

But I will put you at large one of the Records which hath been cited, and let it be considered for whom it maketh.

23 *E.* 1. *Rot.* 77. *Ex parte rememorator' Regis.* There Writs issued to divers Mayors and Bailiffs to make Gallies, ordained by the King, and *concilium suum*: It doth not say, *commune concilium*, to be made *pro defensione regni & securitate maris*, and in the Record there is a Clause, *Custum quod ad hoc posueritis, cum illud sciverimus, vobis in exitibus ballivæ vestræ allocari faciemus*, but note that here is a Command they shall first lay out the Money: And note, that there is this further Clause in the same Writs, *Volumus autem quod bordas & meremium, quæ ad hoc competunt, ubicunque ea inveniri contigerint & cujuscunque fuerint in villa predicta vel extra pro galeis illis faciendis capiatis.* I pray you note that Clause, for the express Words of *Magna Charta* are, *Nos non capiemus boscum alicujus ad castra vel ad alia agenda nostra, sine voluntate ejus cujus boscus fuerit*, and yet it is commanded, that they shall take *boscum alienum* in this Case, and I think warrantably, for the Words in *Magna Charta* are, *ad agenda nostra*, but the making the Galleys commanded, was not *agendum regis* within, but *agendum regni*, without the Meaning of *Magna Charta.*

Object. 3. Disusage, or no Precedent for many Years of this Course now attempted, hath been objected.

Answ.

Answ. I answer, as it is said 11 *H.* 4, 7, & 38. upon that Objection against the Force of the Statute of 14 *E.* 3. about the King's Presentations to lapsed Churches, that an Act of Parliament disused, may be put in use, and so that Law disused may be put in use, especially in the King's Case, for *Nullum tempus, &c.*

Also, the Thing hath been done, tho' not this particular Way, Supplies have been made other-ways, sometimes by Collection of Moneys and Means without Warrant of Parliament, sometimes by liberal Provisions and Grants in Parliament, in late King's Reigns by Benevolences, before *Rich.* the Third's Time, in a Manner commanded, and after treated.

Object. 4. The several Means and Incomes, which the Crown hath, have been distributed, as that it hath Tenures and Escuage for Wars, Customs and Tenures for Defence at Sea, Fines in the Hanper for the Charge of his Justice, and thereupon it hath been said, there is no Cause, if these Incomes were well imployed, to raise Moneys thro' new Ways.

Answ. Utinam those great Means and Incomes could serve the turn.

My Brother *Weston* made a Computation what the five Ports Service cometh to, and thereby it falleth short to be to any Purpose.

As for Escuage, it is Attendance out of the Realm, but for forty Days; and that in case of mean Tenures, if the Tenents proper Lords attend the King, for therein every one is to defend his own Seignor for that Time. Alas! What is that for a Kingdom? Besides, Are we sure the Occasion of Defence will press but for forty Days? Again, What if the mean Lords themselves go not in Person?

But since I have Occasion of Speech of Escuage, I must put you in mind of two sorts of Escuage, by the Law.

The first is that before touched, and is commonly called *forinsecum servitium:* And it is only for *Wales*, *Scotland*, and other the King's Foreign Territories.

The second is of another Kind, and is appliable to this Case, in regard of charging the Subjects, without their Parliament Consent. It hath not been called for these many Ages, but in the black Book of *Tilburiensis*, *l.* 1. *c.* 26. you shall find concerning it in these Words, *Fit interdum, ut in imminente vel insurgente in regnum hostium machinatione decernat Rex de singulis feodis militum summam aliquam solvi, marcham scilicet vel libram unam, unde militibus stipendia, vel donativa succedant, Mavult enim princeps stipendiarios quam domesticos, bellicis apponere casibus. Hæc itaque summa, quæ nomine scutorum solvitur scutagium nuncupatur; ab hac autem quieti sunt ad scaccarium residentes.*

Object. 5. This is a general Charge; it appears by the *Mittimus*, That every County in the Realm hath the like Writs, amongst which many, as this of *Bucks*, are meerly Inland Counties, they have no Places to make Ships in, no Means to convey their Ships (if they could make any) to the Sea: They have no Mariners, nor Tacklings, *&c.* and so an Impossibility, or, at least, an improper Charge is put upon them, the Cinque Ports, the Maritime Towns and Counties are furnish'd, and are aptest to be put to this Service.

Answ. I answer several Ways.

The Inland Counties may provide all those Things which they have not of their own, with their Money, *Pecuniæ omnia obediunt, nummus*, is, *mensura rerum.*

Also there is great Reason they should join, by the Rule of *Qui sentit commodum, &c.* I am sure if Defence be not made, they may *sentire incommodum.* So by the Rule *Quod omnes tangit, &c.*

The Reason in Law of charging Heirs in Gavelkind, and of Contribution to Charges upon Land, equally liable, cometh to this Case. 11 *H.* 7. *Sir* Will. Herbert's *Case.*

Also the whole Realm is but one Body; the Division of it into Counties, was by King *Alfred.* The King may make a County *de novo*, by taking out of another, may make two Counties of one, or one of two, if he please.

Then take the whole as one Body, the several Members center in it; if one Member suffer, every Member of the same Body suffereth with it.

But methinks there is more Reason to excuse, than to charge the Ports and maritime Parts, in this Case they stand between the Enemy and the Inland Parts, they are the next Door to Danger, and it is fit they should not be let Blood, but should keep it all, to serve themselves and the Inlands, and not have Means taken from them, whereby they may be disabled.

Besides, I refer my self to the several Precedents, singled and at large, cited by my Brother *Weston*, by which it appears, that the Inland Places have heretofore been charged with Provisions of Galleys, Ballingers, *&c.* for the Seas.

By the Commission of Sewers, it appears, that this Course agrees with Proceedings in like Case, by the common Law.

All who are within the Level of an Inundation, rich or poor, without Respect of Persons, are to be proportionably assess'd, upon that Commission. *F. Nat. Register.*

P. 15. *E.* 2. *Rot.* 70. *in bk. w.* The Case of *Ripon* in *Yorkshire*, is notable upon this Reason; by it, it appears, that the Law was, that all that had Salvation by the Plaintiffs being Hostages to the *Scots*, were by Law compellable to bear their ratable Shares, to raise Moneys for the Plaintiff's Ransom.

23 *E.* 1. *cl. Rot.* 1. *memb.* 4. *dors.* In a Writ to the Archbishop of *Canterbury*, the Words and Matter are notable also to this Point, *Sicut lex justissima provida circumspectione sacrorum principum stabilita hortatur, & statuit ut quod omnes tangit ab omnibus approbetur sic & innuit evidenter, ut in communibus periculis per remedia provisa communiter obvietur.* As to the Objection out of the Records, *(per remedia provisa communiter)* that should be by Parliament. I think the contrary is apparent out of the Writ; for the Writ requires the Archbishop, with the Clergy of his Dioceses, (not Province) by their Proctors. Inasmuch as the King of *France*, *Classe maxima & bellatorum copiosa multitudine, congregatis, proponens linguam Anglicanam omnino de terra Anglicana delere*, to come, by a short Day ensuing, to *Westminster*, *tunc ibidem ad tractanda, ordinanda & facienda nobiscum & cum ceteris prælatis & aliis incolis regni qualiter*

qualiter sit periculis hujusmodi obviandum. Note, here is no mention of *Proceres*; and besides, Clergymen have no Capacity of Knights or Burgesses Places in Parliament, therefore this was not a Treaty appointed or intended in Parliament; which is further enforced upon the Words (*ad tractand', &c. nobiscum & cæteris prælatis & aliis incolis regni*) if a Treaty in Parliament should have been, it had been readier to have expressed in Parliament, or in *Communi consilio*, and not to have used the other improper Expression.

Besides, I do not find that any Parliament was holden at that Time, nor at any Time between 21 *E.* 1. and 24 *E.* 1. whatsoever was said by Mr. *St. John* to the contrary.

But if this Treaty had been, or were intended to have been in Parliament, it is not concluding, for it could not be but in Parliament, as hath been urged.

Object. 6. This Way draweth on many ill Consequences; for it stirs Murmurings and Grudging of the People, by Reason of the Burthens upon them.

Answ. The Consequence would be worse, if the Kingdom should be lost, (which I cannot mention without a *Quod absit*) and *de malis minimum.*

Besides, popular Grudgings are many, if not most times, causeless; they are not to hinder doing of Right.

Object. 7. This is to become an annual Charge upon the People, there is Cause of thinking so, because since 11 *Car.* we have had every Year new Shipping Writs.

Answ. If the Necessity continues, the Charge must continue. The same Reason serves for the Continuance as was for the Beginning of it. Yet I deny that of it self may be annual.

Cessante causa, cessare debet effectus, but *continuante causa continuandus effectus.*

This must be left to His Majesty's Justice, which God forbid that any should think he will abuse.

Object. 8. It hath been agreed, that if there were *flagrans bellum*, if we had (*quod absit*) a *Hanibal ad portas*, then this Course without Provision in Parliament, were not against the Law. But it hath been said, that we have neither *flagrans bellum*, nor a *Hanibal*, in our Case.

Answ. Let us consider what the Reason is, why it is not against the Law in Case of *flagrans bellum*, or *Hanibal ad portas.* It can be no other but to avoid a further Mischief. The same Reason holdeth in our Case, wherein there is apparently an *initium malorum*, and in such Times as we now live in, or *rebus sic stantibus*, no Man of Understanding, but must acknowledge, that Security is dangerous.

Object. 9. Tonnage and Poundage, which was used in former Kings Times to be granted by Parliament, for a Provision of a Stock, for those Purposes, for which the Shipping Writ now issueth, is taken *de facto* by the King's Majesty, though it be not ye granted him.

Answ. Read the Words of the Statute 1 *Jac. & ult.* at large. In them, observe, 1*st.* a Confession by the Commons, That Tonnage and Poundage hath been paid to the Kings of *England* Time out of Mind: I say it is so confess'd; I do not say, that in Truth it was so.

2*dly*, Observe the Word (*Towards.*)

3*dly*, A Confession that the Tonnage and Poundage are not sufficient for those Purposes, for which it was commonly granted. The Occasions are now for vaster Expences than were requisite at that Time; and what Tonnage and Poundage will not now suffice to perform, must be raised some other Way.

Also it is to be known, for an Answer to the Objection against the taking of it, as if it were not taken *de jure*, That Tonnage and Poundage hath been always taken with a *continuando* upon the Change of a King, before such Time as a Grant came of it by Parliament; upon the Demise of the King, the payment or taking of it never ceased, or was discontinued, until it came to be due by Grant of Parliament.

Object. 10. It appears that a Parliament might have been holden, there are about six Months between the *Teste* of the Shipping Writ, and the 1st of *March* ensuing.

Answ. This receiveth an Answer in it self, for if the King had been pleased to have called a Parliament, to have had Provisions granted, and by or before the 1st of *March*, 11 *Car.* Provision had been granted, yet the Thing commanded by the Shipping Writ in *Aug.* to be ready in *March*, could have but begun in *March*, to have been then prepared, and so a whole Year apparently lost; in which Time, God knows, what might have become of this State.

Obj. 11. But what if the King surmise only, that there is such Danger as must be prevented, when in truth there is no such Matter?

Answ. Hath not the King a Conscience?

The Law believeth his Affirmations, and for that Cause they are not traversable, as appeared by my Lord *Dyer* upon the *Ne exeas regno.*

Rex est recordum superexcellens. Teste me ipso, is his Language; it is against the Duty of a Subject to contest with him.

Again, it is a Rule of Law, *Cuilibet in arte sua credendum est*, it is the King's proper Art, to have Intelligence of Foreign Intentions, to foresee publick Dangers, to conclude and put in Execution what is necessary for the Preservation of his Estate and People.

Tu regere imperio populos, Rex summe, memento:
Hæ tibi erunt artes, &c.

Also Mr. *Hambden*, by his Demurrer in this Case, hath confest all the Matters in Fact, which moved the King to issue this Writ, and are mentioned in the Writ.

Object. 12. 26 *E.* 1. *pat. roll. memb.* 21. hath been urged: There it appeareth that the King, desirous to amend *gravamina populo nomine suo facta*, sent Commissioners to hear and determine what Takings had been from the Subjects made as in the King's Name, but without his Warrant, and to punish it presently, and to do right to the Parties. But as for that which should be found to have been taken by the King's Warrant: *Le Roy voil que soit certifie, & il eut ferra tant que ils se tiendr' apaices per reason.*

Answ. Note the Distinction in this Case between the Repayment and Satisfaction by the Parties; for that which was taken without Warrant, and the Repayment, if it were taken by

Warrant of the King. For in Case that which was taken by colour of the King's Warrant was against the Law, it was as torcious to the Subject, as that which was taken without the King's Warrant; and in all Justice, the Subject ought to have been restored to his Right, with as much Expedition in one Case, as the other.

Also, as hath been already answered, the Words are not (*they shall be paid*) but *le Roy ferra tant que ils se tiendre apaies per reason*; that is, as I conceive it, The King will give them a reasonable Answer.

Object. 13. Upon the Words *Requirimus, & Rogamus*, in Writs to the Bailiffs of divers Towns, when they were sent unto to array and send Men at the Expences of the Towns, it hath been urged, *Ergo* the Thing required a Matter of good Will, and not of Right; in which Case it would rather have been a *Mandamus*, or a *Præcipimus*, then a *Rogamus*.

Answ. Note the *Requirimus* precedes.

Also, The Word *Rogamus* signi-
Linwood. fieth as properly a Commandment, as a Prayer.

Also, The Words are, *effectuose requirimus & rogamus.*

Also, *Cum princeps orat, præcibus precepta colorat.*

But since those Writs are urged, let them be read; and it will appear, that in the Matter of them, pertinent to this Question, they make directly for the King. *Vid.* for that purpose, *Rot. Sco.* 12 *E.* 2. *in* 7 *dorso.* but chiefly *Rot. Sco.* of the same Year, *membr.* 13. *dors.* In the Writ to *London* there, the King reciting that the *Scots fines regni Angliæ cum ingenti armatorum multitudine ingressi*, had taken the Castles of the King, and of his Subjects, and did still hold them; and had besieged more Castles; and that the King of the Counsel of the Prelates, Earls, Barons, and the Peers of the Realm had ordained (not a Word of the Commons) to be at *York* such a Day, with an Army: And they had promised to be there with him *sumptibus suis cum toto posse suo: Nos considerantes quod pro tanta necessitate, fideles & subditos nostros, ut in præmissis manus apponant adjutrices decet requirere & rogare, ac de vobis specialiter confidentes, vos effectuose requirimus & rogamus quatenus ad præmissa consideracionem debitam habentes*, they should instantly Array 500 Footmen, and send them to the King, *sumptibus suis.*

Nota. Note, All this done without Warrant of Parliament, and more Courtlike Words, certainly, were of purpose used in such a Time as that was, of instant Necessity, *ad faciendum populum*, than either needed, or might have been used, if it had been so thought convenient.

Object. 14. Out of *Pas.* 26 *Ed.* 1. *Rot.* 35. *Commun' ex parte Rememoratoris Regis. Reginald Gray* being commanded by the King to Levy and Conduct to the King 1000 Men out of *Bromfield* and *Yale*; He, by his Letter to the King, answered, That he durst not choose 1000 Men there, without Warrant; and that he would not *mewer* (that is move) in those Parts without Pay.

Answ. His Writing that he durst not, is not to the Right, but in his Judgment it was not safe, or might be dangerous.

Also, He durst not without Warrant, it may be, he thought the King's Letter, without his Great, or Privy-Seals, no sufficient Warrant.

Also, It appears in the Record, that the King had sent him Word before, that the Treasurer should ordain Payment; but it seems Pay came not; and then it is likely Soldiers would not stir without Money: They commonly cry *Guelt*, and if they have it not, are apt to disband.

Object. 15. Repayments commanded by the King (*ut conscientia Regis exoneretur*) *Ergo* the King could not take of Right in these Cases.

Answ. The Record is 29 *E.* 1. *Commun' ex parte rememorator', Regis*, there is a Command for Repayment, *Quia pro urgentissimis negotiis & pro utilitate & defensione totius regni*, the King had received of the Abbess and Covent of *Canonlieghe* 612 *l.* and had promised Repayment. *Nota.* Note those Words: And also, for that the Abbess had petitioned the King in Parliament for Repayment. So here was a Promise originally for Repayment also in this Case; a very great Sum of Money it was which was taken from one single Corporation, more than was proportionable for them; and therefore just and conscionable, that Repayment should be; this great Sum was taken upon a Scrutiny, 22 *E.* 1. in Places where it was thought that Money might be had. And upon that the aforesaid Sum was borrowed (unwillingly, God knows, as to the Lender) of this Abbess, and of divers other Religious.

The like Scrutiny was made, *temp. E.* 2. and the like Course for Repayment, as appears, *Rot. Parl.* 8 *E.* 2.

And indeed, it had been before those Times, and so continued, a usual Thing, for our Kings to look into the Treasure of the Religious, when they had Occasion of Money, and sometimes to take their Silver Plate, and rich Offerings, for Supply of instant Wants. And the Religious would not fail to press upon the King's Conscience, until they had Restitution.

Object. 16. 12 *E.* 3. *ro. Alman. membr.* 22. *dors.* A Letter to the Archbishop to move all the People to pray and give Alms for the King.

Answ. I say no more, but will read what the Record is, it self *Loquitur*,

Pater, &c. Cum populus regni, variis oneribus, tallagiis & impositionibus hactenus gravetur quod dolentes referimus, sed (note this but) *inevitabili necessitate compulsi, de eisdem oneribus ipsum relevare non valemus*; (so no Wrong confess'd: Necessity excused it, and Continuance of a Wrong cannot be justified.) The King desires the Archbishop to move the People, *ut tantam necessitatem humiliter, benigne, patienter & charitative sustineant*: Note those Adverbs, specially *humiliter*. And they would have a good Opinion of the King, and would Pray and give Indulgences, to the end he might prosper in his Wars for Recovery of his Right in *France.* (Note, *To the end*, &c.) *Oneribus predictis* (*quæ non ex malitia vel presumptione voluntaria, ipsos gravant*) *non obstantibus.*

Object. 17. Out of the *Parl. Rol.* 13 *E.* 3. *m.* 9. & 11. The Remembrances of the Parliament.

One of the Points to be considered and proposed by the King, was for Course to be taken for a Navy at Sea, and for Recovery of *Jersey*, which the *French* then had Conquered.

Answ.

Answ. In this Proposition the Words of the King are, *Et per tant serr' les Commons discharges del gard del mere*; by which Words it is evident, the King conceived, that the Commons were by Law charged with the Guard of the Sea.

It is true, the Commons answer, They pray *in drt. del guard del mere*, that they be not charged to give Counsel, it being a Thing whereof they have no Cognizance; but they give their Advice, that they think the Barons of the Ports should do it, and therein they confess, that the guarding of the Land belongs to the Commons, *sans gages demaunder ou prender.*

They could not deny but that the Sea must be guarded.

They put not the Charge of that Guard upon the King, but would place it upon the Ports. Of what Strength or Power the Ports were in those Times, I know not; but in our present Age, it is apparent, they are not by many Degrees, near able to defend the Seas, which must notwithstanding be defended, and that Defence can fall upon none but the whole Realm.

Object. 18. Upon the *Parl.* 15. *Pas.* 2 *R.* 2. *pars.* 1. where the Speech of *Scroope* then Chancellor is set down, he therein declared the Cause of the Summons of that Parliament, whereby it appeareth, that a little before there had been a Parliament at *Gloucester*, and no Provision for common Defence was there agreed on; that after the Departure of that Parliament the King had assigned some Prelates and Lords to be of his continual Council, for the Year following, the said Council treating and having before their Eyes, the great Mischiefs and Perils, with which the Realm was on all Parts invironed, and the Summer approaching, and no Ordinance made in Parliament for Salvation of the Realm, and Resistance of the Enemies. And the said Council durst not take upon themselves alone the Ordinances of so perilous and high an Act; but it was advised to them, after Christmas to assemble a great Council, of all the great Lords of the Realm, Prelates, and others; and that upon a second Warning there came well near all the Prelates, as well Abbots as others, the Earls Barons, Bannerets, and other Sages of the Realm, and then and there the great Perils and Mischiefs to the Realm being disclosed, by Reason of the great apparent Wars by Land and Sea, whereof no Ordinance was provided. And moreover, it being declared before them, by the Officers of the King, and Treasurers of the War, of the State of the King, and of the Realm, that nothing remain'd in the Treasury for the War. It was said, in the same Council, *Pur conclusion final, que ils ne poient cet mischiefe remedier, sans charger le Common del realme, que charge ne puit estre fait ne grant sans parliament; & per tant per assent de eux le parliament ore este somon' & in le meane temps que suffic' army ser' ordeine al mere in defence, et salvation del realme et del navie, et del Coasts del mere a quel costages touts les Seignors appromptevant voluntarement al roy, divers grand sommes del money. Et issint sont bon gents de London, et dauters vills, as quod le roy per assent fuit in dit grand Counsell, aurit envoy pur ce' cause. Et ad done a eux son royall grt. pur repayment.* It hath been said, that the present Question is fully answered.

Sages *here are sad Men, not Judges, as was objected.*

Answ. I confess that this Record, hath a great Shew of Proof, that though there be an apparent and instant Time of Danger to the very *Salus Reipublicæ*, yet no Charge upon the Commons may be made, or granted, without Parliament. And indeed, this is the strongest Proof upon any Record, that hath been urged on Mr. *Hambden*'s Side; but I think it will receive an Answer with indifferent Affections, if these Things be observed.

First, That this Consultation and drawing in Question of the using of Means, was before any Charge actually imposed: Which now I insist not upon, because I have formerly touched upon it.

Secondly, The King was then in Minority, the Law was not then clear and settled concerning an Infant King's Power. You see it was debated, and not resolved, until the Time of K. *E.* 6. *vide* the Case of the Dutchy of *Lancaster*, *Plow. Com.*

Thirdly, The Example of *Latimer* was then fresh, and the Lords, it may be, were overwary, upon his Precedent, though it could not parallel with theirs, if they had undertaken, upon so urgent Occasions, to have charged the Commons, without their Consent in Parliament.

Fourthly, Note the Words of the Record, That the Lords, appointed Counsellors, could not advise or find any Means; and it is certain, that no Counsellors, none but the King himself could command so high a Matter. The King then was not there; he was at that Time scarce out of his Nurses Care.

Fifthly, The People at that Time were wavering, and full of Discontents; they had withdrawn themselves from Parliament. *Alice Peers* had a little before plaid her Pranks, and the young King was not fortunate in his then Governing Servants.

Lastly, The Thing necessary, *viz.* Security of the Kingdom, was done by another Way, *viz.* by lending of Money, as in the Record: But put the Case it had not been done one way or other, then of Necessity the People must have been charged, though without, yea, though against their Consent, for the Kingdom must not be lost, an *ultimum refugium* must be found out, rather than so fatal and final a Mischief and Misery must be endured.

Object. 19. *Rot. Parl.* 2 *H.* 4. *n.* 22. Concerning Barges and Ballingers, commanded to be made without Assent of Parliament. The Commons Petition saith, That this had not been done *avant ceux heurs*, and pray'd that the Commissions might be repealed. The King's Answer was, That the Commissions should be repealed.

Answ. It is plain that those Commissions, before that Time, ceased of themselves; for they were made in *Richard* the Second's Time, and died with him. All Commissions from the King are

are but Authorities, which end with that King from whom they issue.

Also note, that the said K. *Henry* the Fourth's Answer in Parliament goeth further, *viz.* But for the great Necessity which the King hath of such Vessels for Defence of the Realm, in Case the Wars should hold, the King would commune with the Lords of this Matter, and after shew to the Commons for their Advice. Which Words are notable to this Question. It cannot be denied, but this Answer to the Commons said Petition in Parliament is, in effect, a *Roy soi avisera.*

I note that *Rot. Parl.* 1 *R.* 2. *memb.* 52. There is a Gratification by the King, in confirming of Franchises to those Cities and Towns, *que sont ore* (that is, now in this Time of Parliament) charged with the making of Ballingers in Defence of the Realm. Here in this Parliament just Occasions were given to the Commons to have complained of this Charge, with the making of Ballingers, charged upon them before the Parliament: If it had been a Wrong, but they complained not of it, for ought appears, and the King's Gratification is no Proof that it was as by way of Recompence for a Wrong; but it is plainly an Argument of the King's Grace to them, by way of Encouragement of them in their Services for the Commonwealth. The like appears, *M.* 3. *R.* 2. *Chegr. K. Rem. Inter brevia directa Baronibus.*

Also it is to be known, that in all King's Times, some Matters have been preferred in Parliament, from the Commons to the King, as *Grievances*, which in themselves have not been Wrongs, or against the Law: We find in our Books, there may be *damnum absque injuria.*

Object. 20. *Parl.* 7 *Ed.* 4. *n.* 7. In the beginning of the Parliament, the King himself spake to the Commons, and, amongst other Things, promised the Commons, He would live of his own.

Answ. The King's Speech stayeth not there, but goeth further, the Words are these: 'I purpose to live of mine own, and not to charge my Subjects, but in great and urgent Causes, concerning more the weal of themselves, and the Defence of them and the Realm, than mine own Pleasures, as heretofore by the Commons of this Land hath been done, and born, to my Progenitors, in Time of Need.' Which Words are remarkable: Not a Syllable in them of doing this only by common Assent in Parliament, but relatively as heretofore, *&c.* which how it hath been *de facto*, you have heard; namely, sometimes in Parliament, and sometimes out of Parliament.

The last material Objection to be answered by my Memory, is the Authority of *Fortescue* in his *de laudibus legum Angliæ*, Where he saith, 'That the King of *England* is *Rex politice Regens*; and not *regulariter*, to do what he please.' This needs no Answer, it is agreed. But he further saith, That the King may not *populi substantias proprias subtrahere, reclamantibus eis vel invitis:* That he may not *Tallagia & cætera onera eis imponere ipsis inconsultis:* That he may not *subjectum populum renitentem onerare impositionibus peregrinis.* *Cap.* 13. *Cap.* 9.

I answer, That 'tis most true *regulariter, & Regula non facit jus, & nulla regula quin fallit.*

Cases of Necessity, Cases of *bonum publicum*, Cases of *Salus Reipublicæ*, are not to be comprised within ordinary Rules. I have spoken so much hereof already, that now I will say no more, but conclude, That in Cases of Necessity, *pro salute Reip.* every Subject must (even by Rules of Law) bestir himself; must contribute his best Abilities; must set to both his helping Hands.

Rich Men must expose their Treasures.

Able Men of Body must put on Arms.

Great Councellors must give their best Advice.

Women must not be idle.

Old Men and Clergymen (if they have no other Powers) must attend their Prayers.

And Judges must press and inforce the Laws upon the Subjects, to compel them to contribute.

And so I have done at this time: And what I have said, I have spoken to the best of my Understanding, and in discharge of my Conscience in a Case of *salus Reipublicæ.*

And it being high time now for me to give over, I conclude upon all my Reasons and Authorities cited, That as this Case is upon the Pleading of it, the Charge of 20 *s.* imposed on Mr. *Hambden*, towards the Provision of a Ship, commanded by the Writ of *Aug.* 11 *Carol. Regis*, is consonant to Law; and consequently, That Judgment ought to be given against him, *Quod oneretur.*

The

4th

The Opinion of Sir George Vernon, *Kt. One of the Justices of His Majesty's Court of Common-Pleas at* Westminster, *delivered in the Exchequer-Chamber, in the great Case of Ship-Money.*

THis is a Cause of great Consequence, and is one of the greatest that ever came in Question in this Kingdom, and the Records are infinite that have been cited on both sides; but by Reason of Want of my Health, and Disability of Body, I have not been able to peruse the Records as I intended, and to have prepared my self, in which I am to argue, and therefore I would desire Time until this Day Sevennight, to peruse Records, and compare my Notes, wherein, as you may see, I have taken great pains, [*Producing his Notes to the Court.*] that I may be the better prepared to deliver my Opinion in this weighty Matter: And then, God willing, I will not fail.

But it was answer'd by the Court, That in Regard certain Days have been peremptorily appointed at first for their Arguments, it could not be altered now, nor could they give him any further Time.

Whereupon he said, ' Seeing I may not have ' any further Time, I must therefore deliver ' my Opinion in brief, according as I have ' conceived it in my Conscience to be, which ' is as followeth, *viz.*

' That the King, *pro bono publico*, may charge ' his Subjects, for the Safety and Defence of ' the Kingdom, notwithstanding any Act of ' Parliament; and that it is warrantable by ' *Gascoigne*, 13 *Ed.* 4. 14. and moreover, that a ' Statute derogatory from the Prerogative doth ' not bind the King; and the King may dispense with any Law in Cases of Necessity, ' 2 *Hen.* 7. 11.' *And so concluded for the King.*

5th

A few Notes of the Argument of Sir Tho. Trevor, *Kt. One of the Barons of His Majesty's Court of Exchequer, in the great Case of Ship-Money.*

AFter he had opened the Record he said, The Question upon it was, Whether Mr. *Hambden* should be charged with the 20 *s.* imposed upon him as this Case is?

This Case, by reason of the Weightiness of it, is adjourned from the Exchequer hither to be argued, and the Advice of all the Judges is required herein; many Days have been spent in the arguing of this Case, as it well deserves; six Days by the Defendent, and six Days on the King's Side.

It is some Labour, in a Case of this Extent, to contract my self, according to my Conscience and best Knowledge: I shall seriously ponder the Weight of this Case, and digest it, as by the Law is warrantable, and so grounding my Judgment accordingly. And the Judgment which I shall give, in fine, is, That Mr. *Hambden* ought to be charged with this 20 *s.* and is to give Satisfaction for the same. My Lord *Coke* saith of a short Case in his 11 *Report*, That though it be as short a Case as ever was argued, yet the weightiest in any Court for Consequence: So it may be affirmed of this Question, for the Sum is but 20 *s.* but the Weight thereof is of far greater Extent: It concerneth the whole Kingdom.

Mr. *Hambden* hath demurred, and thereby hath granted all Matters of Fact to be true. The Defendent's Council have taken much Pains for their Client; and, without Flattery, so have the King's Council.

I acknowledg, the laying of a Charge upon the People by Parliament is a safe Way, if Time and Occasion will permit. *Anno* 1588, when the *Invincible Armada*, so termed, came into *England*, the provident Care for the Prevention thereof was out of Parliament. Alas! it is not Parliaments can keep us safe. Was not that detestable Gunpowder-Treason 3 *Jac.* devised to have been executed in the Parliament-time? The Wisdom of the Parliament did not discover this utter Ruin and Destruction that had like to have happen'd to the King and Kingdom, and to the Overthrow of Religion; but it was the great Mercy of God that did it.

This Kingdom hath been always Monarchical: A Democratical Government was never in this Kingdom. In the Time of the *Britons*, 500 Years before the Birth of our Saviour, when *Brute* came from *Troy* into *Britain* (as one writes) it had a politick and regal Government: This is confirmed by the Letter from the Pope to King *Lucius*. And our King hath as much Power and Prerogative belonging unto him, as any Prince in Christendom hath. It is the King's Prerogative to appoint the Beginning and Ending of Parliaments. So great a Body can move but slowly. A great part of the seven Months would be spent, or the Parliament ended, and then we were but to begin to rig and trim our Ships, to provide Powder, Shot, Cables, *&c.* many of these, perhaps, to

be had in Foreign Parts, Masters and Gunners, *&c.* to be got: Ready Money must be had for the providing of all these; this will require convenient Time before this can be done. What Hazard may the Kingdom run all this while? What Policy is there to make State-Affairs known to the People? They may thank themselves, they would not make a Ship for the Service, and then they might have had it for their own Use afterwards. When the Kingdom is in Danger the King may command a Supply for Prevention thereof; and who can tell better than the King how to prevent the Danger? *Necessitas non habet Legem.* The King then must not forbear. The common Law doth regard the common Good above particular; as in Pontage, Murage and Paveage.

The Provision of Shipping hath prevented us from Danger hitherto, and I hope it will still. It hath increased the Honour of the Kingdom. Its known not only to our selves, but to other Princes, that our Ships are of far greater Burthen, Strength, and better Furnished, than ever was before. All which redoundeth to the King and Kingdom's Honour. The Ship, called *The Sovereign of the Sea*, may be termed *The Sovereign of all Ships.*

To conclude: The Sum assessed for this Business, I wish it may be paid by all chearfully, for it is for a general Good, for the Safety of the whole Kingdom: The Subjects are not prejudiced by it, either in their Dignities, or Properties in their Goods: The King's Prerogatives protect the Peoples Liberties, and the Subjects Liberty the King's Prerogative: 'Tis proper for Kings to command, and Subjects to obey. We that are the Judges of the Kingdom have paid it, and therefore it is fit our Opinions concur with our Actions in this Case. And so my Advice is, That Judgment ought to be given that Mr. *Hambden* ought to be charged with the 20*s.* assessed on him.

The Argument of Sir George Crooke, *Kt. One of the Justices of His Majesty's Court of King's Bench at* Westminster, *in the Exchequer-Chamber, in the great Case of Ship-Money.*

THIS Case of Mr. *Hambden's* stands upon Record, and what Judgment may be upon this Record is the Question. I find no Party in this Case but Mr. *Hambden.* A *Scir' Fac'* is brought against him, to shew Cause why he should not be charged with the 20*s.* assessed upon him, towards the finding of a Ship.

The Occasion of that was the Writ 4 *Aug.* which is the Foundation of all, and that is directed to the Sheriff of *Bucks*, as to other Sheriffs, to prepare a Ship of such a Burthen, for the Reasons mentioned in the Writ, *Quia prædones, &c.* because the Kingdom is infested with Pirates, *&c. Quod datum est nobis intelligi, &c.* for that they do seek to draw Men into Captivity; and also, lest we should lose the Dominion of the Sea; and for these Reasons these Writs are sent forth. For the Time that they were to continue abroad, it is twenty-six Weeks, so long the Payment of the Men to be at their Charge, *& quos Rebelles, &c.* and if any do rebel, that they should be imprisoned. And so the Record setteth forth further, that upon this Writ, a *Certiorari* went forth, and Mr. *Hambden* was certified not to have paid it.

Now upon all, Mr. *Hambden* hath demanded *Oyer* of all the Writs, and hath demurred.

I must confess, this Cause is a very great Cause, and the greatest Cause that ever came in Question before any Judges. And for my own part I am sorry it should come in Question in this Place; more requisite it was to have had it debated in a publick Assembly of the whole State; for on the one side, it concerns the King in his Prerogative and Power Royal; and on the other side, the Subject, in his Lands, Goods, and Liberty, in all that he hath, besides his Life.

For my own part, I am sorry that I am enforced to dissent from my Brothers that have argued before me; a fitter Course it were for me to have argued with them privately, who have argued so learnedly and well. I have studied all that I could to have concurred with them, but, speaking according to my own Heart, (for we are to give Judgment upon our Oaths) in Respect of my Reason and Conscience, I cannot concur with them; it makes me at a Stand with my self, because of the Arguments of so many learned Men before me, and to suspect my Judgment, whether it be erroneous or no. Yet I must set down my own Reasons, and upon them leave them to my Lords that come after me to judge on.

Judgment is of the Lord, the Hearts of Man and also their Judgments, are in the Hands of God, and when Judgment is once past we have done. For my own part, I know in this Case we cannot do so well as we should, but to satisfy our selves in our Consciences and our Understandings, and in this Case we are to give Counsel to the King according to our Oaths, whether this Charge be legal or not. If legal, the Subject ought not to complain: If not legal, then not in the King's Power thus to charge the Subject.

The King's Council have maintained this Writ to be good; and the Judges that have argued, in their Judgments, have maintained it. Then the King is advised by his Judges, Whether this be legal, or no? If legal, it is well; if not, then the Burthen lies upon us. For the King doth nothing but what he is advised.

The Case hath been excellently, learnedly, and well argued on both sides, for that which was pressed by Council, on either side, did not much

much move, for they argue as Council, and we are to give Judgment upon our Oaths, on what they have said.

But the Judges Opinions already delivered do much trouble me. When I have been of Council, I have argued one Way, and have thought my self very clear; when I have come as a Judge, and argued, I have thought clear otherwise of the Case. I desire to give Judgment in this Case according to God's Direction, and my own Conscience, and that is the best. And so I do not doubt but all my Brothers have gone according to their Conscience, which makes me suspect my self. But every Man standeth or falleth to his own Master. I desire God to guide me to a true Judgment, and though, for the Reasons aforesaid, I doubt my self, yet I am not of the same Opinion with my Brothers, but according to my Conscience, I think that Judgment ought to be given for the Defendent: For which my Argument shall stand upon these Points.

First, I hold that this Writ is not allowable by the common Law, but is a Writ absolutely against the common Law.

Secondly, Admit it was good at common Law, yet it is against divers Statutes.

Thirdly, I hold, that no Necessity, nor no Pretence of Danger, can give this Cause for the Writ: For if the Writ be against the common Law, no Pretence of Danger can warrant it.

Fourthly, There is no Warranty by Prerogative of the Crown, nor Power Royal, for this Writ.

Fifthly, That this Writ is the first Writ that ever was devised in this Kind, and first put in Practice, either in Inland Counties or Maritime Parts.

Sixthly, That there is not any one Precedent, nor any one Record Judicial, or Judgment in Point of Law for the Writ; if not, then I hold it not fit to be maintained.

I come now to the Writ it self. *First*, I hold, the Motives of this Writ to be insufficient to warrant the same.

Secondly, The Commands of the Writ are meerly against the Law; because the Commands of the Writ are, to charge the Subject to find a Ship, with Men, Munition, *&c.* against the very Words of the Common and Statute Law.

Thirdly, If they were, yet the Assessments of the Writ are not warrantable by the Law, and so no Assessment. And if no good Writ, then the *Scir' Fac'* will not lye.

Fourthly, I come to the *Certiorari*: And, whether it be well-grounded, or no, is the Question. And I hold, it doth not well issue, as this Case is.

First, For the Point of Law. We that are Judges are bound, according to the Law, not according to our own Imaginations, both to judge according to the Law, and the Law of this Land, either of the Common Law or of the Statute Law; and I see no Book, nor know of any Authority that doth maintain this Writ; but contrariwise, there are Books and Authorities in Law, that say, This Writ ought not to be maintained. It is a Rule in *Littleton*, that *That which was never done before, cannot now be done.*

I say, there cannot be produced an Example of the like Writ, I mean the Writ 4 *Aug.* 11 *Car.* that ever went unto the whole Kingdom, to make Ships, *&c.* nor unto all the Maritime Counties, at one Time; but it is the first Precedent, either for Inland Counties, or Maritime Parts; and if no Precedent before, then not by the Law to be maintained.

Secondly, It is against the Common Law of the Land, which gives a Man a Freedom and Property in his Goods and Estate, that it cannot be taken from him, but by his Consent in Specie, as in Parliament, or by his particular Assent: For the Law puts a Difference between a Free-man and a Bond-man. A Bond-man's Goods may be taken without his Consent; but not so of a Free-man.

Then thus stands the Case, and the Question ariseth, Whether this Writ to command the Subjects in any Inland County, to prepare a Ship, and provide Men, Munition, *&c.* went out by their Consent? And whether allowable or no, if without their Consent, for this is a Charge upon the Subject. And I say no common Charge upon the Subject ought to be, but by a common Consent, or in a Parliamentary Course. Mr. *Lambert* saith, that in the Conqueror's Time the King could charge the Subject with no unjust Taxation, nor Talliage, *sed per commune concilium.* And that was a Law not given by the Conqueror, but allowed by him, as to be the Law of the Kingdom.

In the *Charta* in King *John*'s Time, it is plain, the Liberty of the Subject is there confirmed, *Nullum scutagium nullum auxilium nisi per commune concilium.* It appeareth plainly by the Books that this cannot be done but by Consent in Parliament. *Fortescue* Chief Justice setteth down what the Law of *England* is in that Kind, as Instructions for the Young Prince. Saith he, 'The King governeth his People by Power, 'not only Royal, but also Politick.' If this Power over them were Royal only, then he might change the Laws of his Realm, and charge his Subjects with Talliage, and other Burthens, without their Consent. Thus the King can change no Laws, nor yet charge them with strange Impositions against their Wills. He setteth down, As the Head is the chief of the Body, so the King is the Head of his People: He cannot take any thing from them, without their ordinary Consent; the common Consent it is in Parliament. *Cap.* 3. an express Clause there, *hoc individuo.* Shew me any Book of Law against this, That the King shall take no Man's Goods, but he shall pay for it, though it be for his own Provision, or lay any Burthen upon his Subjects, but he must do it by their Consent in Parliament. If this be the Privilege of the Subject, then it is express the Subjects ought not to have this Charge imposed upon them, but by their common Consent. Though it be said, A Statute is the Act of the King, the Lords and the Commons only give their Consents; I say it is the Act and Grant of the Commons, as well as of the Lords, for what Consent is given there is given by every Man of the Kingdom, by the Power of the Voice which they gave in choosing the Knights of the Shires and Burgesses. There is a Book Case,

13 *Hen.* 4.

13. *Hen.* 4. *fol.* 14. expressly, That no Man shall be charged without his Consent in Parliament. *Gascoigne*, Chief Justice, gave it as a Rule. *Coke*'s Reports, *Clark*'s Case, No Man to be charged in St. *Alban*'s, but with their Consent.

In the Chamberlain of *London*'s Case, to put a small Sum upon a Merchandize, *&c.* when it is for the Good and Benefit of the People, is a Thing to be allowed through a common Ordinance to be Good, so they have no Loss by it; as in Case of Murage, Pontage, Paveage, and Tolls of Markets, Taxes upon the People for these are allowed, because they are Matters for Use of the People, and are not as a Matter of Charge imposed upon the People.

Fitzherb. Na. Br. The King hath the Government of the whole Kingdom, both in time of War and Peace. None will deny but that he may Command, that no Man can doubt of; and therefore, in that kind, in point of Inundation, the King, by his Writ, commandeth, That that shall be stopped, and be done by those that have Benefit or Loss by the Inundation; and those only are to be charged, as come unto *Kent*; If an Innundation be in *Kent* Marshes, shall the County of *Middlesex* be charged therewith? no; but those that have Profit by it, or have Loss by it. *Vid.* the 10*th* Report.

Then here standeth the Case, if that be so, the Question is not now, Whether a common Charge may be levied upon the Subject, without Consent: No question but a common Charge may, if Occasion, and every Man ought to obey it.

But the Question is, Whether, upon the Allegations in this Writ, there shall be a Charge to impose Money upon them in the mean time, without their Assent? I say not but by a parliamentary Course: in that kind the common Law doth not allow it. A notable Case in the 14 *E.* 2. *Banc. R. Rot.* 60. *Heb* and *Lever*'s Case in *Durham*, an Action of Trespass was brought against *Lever* for taking away the Chest of *Heb*'s, with Goods and Money in it; he pleaded not Guilty; the Jury gave a Special Verdict, That the Defendent took the Money; but it was upon this Occasion: The *Scots* had invaded *Durham*, and burnt divers Houses about *Durham*. Upon which the Inhabitants of *Durham* assembled together to consult about their Defence; and took an Oath to obey the Ordinance to be made by Consent amongst them; whereof the Plaintiff was one that swore, and gave his Consent: Whereupon, they made an Order to give the *Scots* a Sum of Money to depart, but they would not be gone without ready Money; whereupon they made a second Ordinance, That every Man's House should be searched, and where they found Money, to take it: Thereupon the Defendent took the Money out of the Plaintiff's House. The Judges asked the Jury, If this last Order was done with the Plaintiff's Consent. They said it was done by reason of the Occasion. Thereupon Judgment was given for the Plaintiff: That because it was not with his Consent, that therefore they ought not to be charged. It came into the King's Bench, and they seeing of this Special Verdict, the Judges of the King's Bench reversed the Judgment; for why? what was done, was done by his own Consent and proper Act, because of his Consent upon his Oath; and therefore (said the Judges) he had means to help himself against the Commonality of *Durham*; and they to pay him again to his proportionable Part. This proveth, that no Man ought to part with his Goods, but with his Consent.

That of *Rich.* 2. which is not a Statute, yet doth shew, that the Law was at that time, as it is the same at this Day. Advice was taken in a great Assembly how to charge the Commons. And it was answered, That they could not be charged, but by common Consent in Parliament. And it was the Declaration of *Scroope* in the Parliament-House, That without Consent in Parliament, the Commons ought not to be charged; because the Commons have a Consent in parting with their Goods. It is said in *Doctor* and *Student*, That the Subject hath such a Property in his Goods, that no Man shall meddle with them, but by his Consent; which is the Reason they recover Damages when they meddle with their Goods, not by their Consent.

Another Reason why the common Law looketh into it is, because of the Inconveniences that might insue; if this should be allowed, To charge one Ship, by the same Reason there might be ten Ships charged. We have a pious King, and tho' he will not do it, yet the Law looketh into this Inconvenience. That of *Danegelt* began in the Year 991. The first Composition was 10000 *l.* The second 16000 *l.* The next 24000 *l.* The next 36000 *l.* And in 10 or 11 Years, by five several Risings, it came to 48000 *l.* And so, for ought that I do know, this may come to forty hundred thousand Pounds. Therefore the Law looketh to make certain the Charges. The first double Subsidy that ever was, was 31 *Eliz.* and the Chancellor of the Exchequer said, It did make his Heart to quake to move for a double Subsidy, one Subsidy being granted so lately. The Reason of it was, because the *Spanish* Invasion was foreseen.

After the *Spanish* Invasion was past, then came the second Grant of a double Subsidy; and he said, he hoped not to live to see a Subsidy granted again. 33 and 39 *Eliz.* it came to three Subsidies, and four Subsidies; but if there had been ten Subsidies, what was done, was done by Parliament; and the Law alloweth it because of the greater Inconvenience. Then it is in the Judgment of the Parliament for the appointing of those Subsidies, as the Occasion requires.

The Statutes of Tonnage and Poundage, as appears by all the Statutes made in *Rich.* 2. and continued till *Hen.* 4, 5, 6, 7. and so downwards to King *James*'s Time, are to the end the King might have Money in his Coffers for the Defence of the Realm, and for the Safeguard of the Sea, that he might not, upon a sudden Occasion, be unprovided; because it is Reason and fitting that Kings should ever have Money ready against any Occasion. But now it is not granted, yet it is taken, the same Profit is made still. And I do not doubt but the King doth imploy it for the Defence of

of the Kingdom, and Safeguard of the Sea. The difference between a Charge and Defence is much; for the First there is no Law to compel the Subject unto it, but by Parliament: For the Second, which is the Defence, every Man's Person is bound in Defence *Exponere se & vitam ipsam*, upon Peril thereof; but he is not bound to any Charge without his Consent. So in this kind I hold, as the Law standeth, that no Charge ought to be imposed, but by their common Consent; for you will make it all one to take away the Property of the Goods, which you do *quodam modo*, tho' not *in Specie*. Power is given to distrain the Goods, and to sell them; and every Man is liable to the Discretion of the Sheriff.

But admit this Charge might be imposed by the common Law, yet I do conceive it is prohibited by the Statute; for I hold, as now my Brothers the Judges have held, that the Statute *de Tallagio non concedendo*, is a Statute, notwithstanding what hath been argued at the Bar to the contrary. It is apparent in our printed Books; and in one of our Books the express Time is mentioned when it should be made, *viz.* 25 *Ed.* 1. then it is said to begin. Talliage is an ancient Aid, and so is *Pur file marier*, and *pur faire fitz chevalier*, but no Talliage without a common Consent in Parliament; so I agree with my Brothers, that it is a Statute.

Next this Statute of 25 *Ed.* 1. which is said to be no Statute, the Kingdom of *England* hath ever held it for a Buckler for them, That no Charge (without common Consent) should be laid upon them. And the Reason wherefore this Statute was made, was in respect of the great Taxes imposed on the Subject without Consent, in time of War.

The next Statute is 14 *Ed.* 3. *cap.* 1. A great Subsidy was then granted. What was then done? the King doth grant for him and his Heirs not to put them to any Charge hereafter, unless it be by common Consent in Parliament.

Oh! but this is but for that King himself alone!

I answer, It is perpetual. If the King doth grant for him and his Heirs, it doth go to all his Posterity, and is a good Act of Parliament; so that is the second Act of Parliament in the Negative, That no Charge shall be laid on the Subject, but by common Consent in Parliament.

That which is stood upon by my Brothers, is 21 *Ed.* 3. That Statute was made to grant a Subsidy upon every Sack of Wool; and also Taxes upon Merchants Goods Transported, 6 *d.* in the Pound. This Statute thus made, the King afterwards, because few of the Sacks of Wool were carried over before *Michaelmas*, sent forth a Proclamation, that 6 *d.* in the Pound should continue till *Easter*, and no longer; but half a Year after, this was complained of to the King, and the King (by Proclamation out of Parliament) did take away the 6 *d.* in the Pound. 22 *Ed.* 3. in the *February* then next following, an express Act of Parliament (this Subsidy so granted) to continue till *Michaelmas*; and by Proclamation to continue till *Easter*. They confirm all till *Easter*, and no further continuance of it to be.

By this appeareth, that for so small a Thing as 6 *d.* in the Pound for such a Time, as from *Michaelmas* to *Easter*, that it was a Charge not to be born, but by Consent in Parliament.

4 *Hen.* 4. *m.* 28. A Subsidy granted, That this should not be drawn into Example to charge the People, but by common Consent, and that in Parliament.

13 *Hen.* 4. *m.* 10. There it is said, Where a Subsidy is granted, it shall not be granted henceforward for Defence of the Kingdom, or Safeguard of the Sea, but in Parliament.

Then came a Parliament. What did they complain of? the Patent of the Office of Alnerage, though it was but a small Charge, yet they set down that this was contrary to the Law, That no Taxes, nor no Aid should be imposed on the People, without Consent in Parliament: The Commons were then very zealous in small Matters.

2 *Hen.* 4. *m.* 22. *Hoc individuo.* At that Time a Commission went forth unto divers Towns in the Kingdom, to provide, *&c.* When there came a Parliament, 2 *Hen.* 4. they complain of those Commissions that inforced them to do that which by the Law they ought not to do; and pray'd those Commissions might be repealed: The Answer is absolute, *Let it be done. Soit Fait.*

The next is 1 *Rich.* 3. True, the King was an Usurper. Benevolences were granted; but that was no Charge, as ours is, and therein the Commons claimed their Liberties.

Lastly, The concluding Law is that of 3 *Car.* the Petition of Right, That no Person shall be Taxed without Consent of Parliament; and when the King was informed of the former Statutes how they were: Thereupon this Statute, 3 *Car.* was made, which reciteth the Statute *de Tallagio*, and divers other Statutes; and it was referred to my Lords the Judges (most whereof are here) whether this Law doth give more than formerly from the King. And we were all of Opinion, that this Law did give no more than what was formerly, and was only but a reviving of the Ancient Privileges of the Subject; it added no more, but only revived what was formerly granted.

I do conclude, that no Charge can be imposed upon the Commons, without their Consent in Parliament. We that are Judges, must go according to the Intention and Meaning of those Laws. The Meaning of the Laws in this kind was, that no manner of Charge, Aid, or Tax should be laid upon the Subject, but by Consent in Parliament. The Judges are to expound them according to their Intention.

But they say the Practice hath been otherwise. We say not now what *de facto*, but what *de jure* was done; and we, as Judges, must not allow *de facto*, *sed quid de jure factum fuerit.*

To answer the great Objection, It is for the Defence of the Kingdom: Here is such a Necessity and Danger, as will not admit the Delay of a Parliament.

I hold, for my part, that no Necessity nor Danger can allow a Charge; which is a Breach of the Laws. I hold it absolutely, that for a general Charge of Money upon the People, it cannot be upon any Pretence of Danger or Necessity. Mens Persons may be used in the case of Necessity

ſity or Danger; for every Man is bound to defend the Kingdom, but no Neceſſity can procure this Charge without a Parliament. The Law provideth a Remedy, in Caſe of Neceſſity and Danger, for then the King may command his Subjects, without Parliament, to defend the Kingdom. How? By all Men of Arms whatſoever, for the Land; and by all Ships whatſoever, for the Sea, which he may take from all Parts of the Kingdom, and join them with his own Navy; which hath been the Practice of all former Kings: In their Neceſſity they have taken Ships from all Parts of the Kingdom. 10 *Ed.* 3. *M.* 2. *Scot.* 10 *Ed.* 3. *M.* 16. when there was a great Navy of *Scots* and *French* appeared, and intended to come and invade the Kingdom, the King appointed two Admirals, one towards the *North*, the other towards the *Weſt*, and to meet together at what Place he pleaſed; and, *M.* 16. ſent into *North-Wales* and *South-Wales* to maintain one Ship, either of them upon their own Coaſts of the Sea, for the Defence of the Kingdom. And in *Rot. Alm.* 12 *Ed*, 3. Writs went for the arreſting of Ships in all Parts of the Kingdom. *Rot. Viag.* 1 *H.* 4. *M.* 12. Writs iſſued to all Archbiſhops and Biſhops, ſhewing imminent Danger, that they ſhould be ready in Arms, to come and aſſiſt *ad cuſtodiendum mare*, whitherſoever he ſhould appoint them. But in that Time, when the Danger was ſuch, yet no Ships appointed to be prepared throughout the Land. And 5 *Hen.* 4. that all the Men of all Parts ſhould come together in ſuch a Place: This was only an arraying of Men to be in Readineſs. 3 *H.* 5. to the ſame Purpoſe. And 1 *Hen.* 7. which was much ſtood upon, of a Rumor of Wars between the King of the *Romans* and the *French* King, which might, perhaps, in the End, tend to an Invaſion of this Kingdom, there was an arraying of Men, from 16 to 60, and gathering of Ships, and taking Order for Watch and Ward upon the Sea Coaſts, but no Command to make Ships. 4 *Hen.* 8. *pars.* 2. there the King, by Proclamation, ſaith, That *the Enemy is ready to enter, Ships are furniſhed with Men of War, to invade the Kingdom.* What then? What was done then? It is no more, but that every County in *England* have Men in Readineſs to aſſiſt, from 16 to 60, to defend the Kingdom, and to have good Watches and Wards upon the Sea-Coaſts.

But, I pray you, in all theſe Times of *Hen.* 8. *Hen.* 7. *Hen* 5. *Hen.* 4. were there ever any Writs went forth for Ships into any County? It doth not appear that any County was to prepare or make any Ships; but only Men in Arms: So the Law makes Proviſion, in Time of Danger, by help of their Perſons, and with Ships, not with a pecuniary Charge, for that cannot hold for any, nor can be done without Parliament. And if new Ships muſt be made, it muſt be made by Parliament. If ſo be the Writs be to make Ships, then let the Sheriffs make them, and ſhew for their Diſcharge upon Record, that they are made and prepared. But to appoint by Writs Ships to be made, and by their Directions appoint the Sheriffs to levy Money to pay off ſome of the Ships, was never yet done, this being a Precedent of the firſt Impreſſion. The Law did always account the Parliament able to provide and to give ſufficient Aid, and moſt fit to conſult *de arduis Regni*, and there is a Conſent of and Grant of the Commons to what is done; they are Actors in it.

By the old Law of *Alfred*, Parliaments were to be held twice a Year, and, by expreſs Statute, made 4 *Ed.* 3. 14. an expreſs Law was made, That every Year a Parliament ſhould be held, eſpecially if Need required. And by another Statute, for avoiding of Grievances that daily happen'd, a Parliament ſhall be held once a Year. Then it is to be conceived, a Parliament may be called, and Things may be charged that way.

And for the Objection, That a Parliament is not the ſpeedieſt way to prevent the Danger; the Imagination of Man cannot invent a Danger, but Courſe may be taken for Defence, till a Parliament be had. So, for my part, I hold this Point of Neceſſity, or Danger, cannot be held a ſufficient Ground for this Writ.

The next Thing is this; Yea, but this is maintained by Prerogative and Royal Power. I ſay for that, by my Oath I am bound to maintain all the true Prerogatives of the King, and we that are Servants to the King muſt maintain his Prerogatives, and, to the beſt of our Skill, not ſuffer them to be diminiſhed. But I hold there is no ſuch Prerogative in this Kind.

The Prerogative is, that which the Law preſumeth, *That the King can do no Wrong:* And ſo it is in *Bracton*, *Rex poteſt facere quod de jure poteſt facere.* 11 *Report Magdalen-College* Caſe, 246. *Plowden's Comment*, The King can do no Wrong, nor any Act to wrong the Subject, *Bracton*, *hoc non poteſt agere quod non poteſt agere juſte.* Therefore if this Charge be againſt the Law, ſo much to the Prejudice of the Subjects as I conceive it to be, the King will never do it, for it is done by Miſinformation that it hath been uſually done, and may be juſtly done. 21 *Ed*: 3. a Patent is made, which is a Wrong to the Subject, the King, *de jure Regis*, ought to revoke the Patent; for the Law hath that honourable Conceit of the King, *That he can do no Wrong.* A King, therefore, to have a Royal Power or Prerogative, to do that by his Writs, to command any thing to be done that is againſt the expreſs Laws of the Kingdom, to the infringing of the Liberties of his Subjects, is not admitted by the Law: The Royal Power is to be taken away, for as it is before ſaid by *Forteſcue*, he can change no Law, nor charge his People, but by common Conſent in Parliament. So, for my part, I hold that this ſame Charge upon the Subjects, by his Royal Authority, it is not allowable.

The King, we know, is a moſt juſt and pious King, that he will do nothing againſt his Laws, if he did know it to be againſt Law, he would never deſire it. When a Judge of the Land was called in Queſtion, in Queen *Elizabeth's* Time, about denying ſome Loan, delivering his Opinion againſt the ſame, he ſaid, It was againſt his Oath, and againſt the Law, to adviſe Her Majeſty unto it. With which ſhe reſted ſatisfied. If the Judges ſay, by Law the King may do this; he may do it: If they ſay no, but by Act of Parliament, he will never do it.

But it is ſaid, The King taketh the Courſe, *More majorum.* There is not any Precedent e-

ſpecially

specially maintained, by any judicial Record, that warranteth this Course; and if there were any Precedents, we are to judge according to the Law, and not according to Precedents, not to judge what hath been done, but what of Right hath been done. 11 *Report*, *Magdalen-College* Case, though there be many Precedents, that maintaineth not a Right, the Question is still, Whether a Right, or not?

But admit that Precedents could make it to be lawful, yet I hold there is not any one Precedent to maintain this Case.

For, *First*, I say there is no one Precedent goeth to Inland Counties all over *England*, before now. I say, to Maritime Counties, to prepare, as my Brother *Berkly* confessed, that he knew none for any Inland Counties, but 1 *Rich* 2. 11. 52, there Writs went out to divers Inland Towns, but not to Counties, to make Ships, and besides these were not any to Inland Counties.

To this I say, Those Writs that went out at that Time, were done by Conveyance in Parliament, for an Order was made in Parliament, That all that had any Charters, the ancient Cities, Boroughs and Towns, that had any Charters of Liberties, should there be examined, and appoints how, and by whom, and have their Liberties confirmed without Fine, if they would produce Ships for the Defence of the Kingdom. But yet in this Record not one Inland County or Maritime County is charged, nor no Inland Town, but those that would have their Liberties confirmed.

Now to look upon the Precedents of K. *John*'s Time, 6 *Johan*', 9 *Johan*', 14 *Johan*', *&c.* here be the six Precedents in Court; and I have looked into every Precedent on the King's side, to satisfy my self, and all those Precedents are only for arresting of Ships, that they should not go forth of the Realm, and, 15 *Johan*', all Ships to be ready as the King shall have Occasion.

Then we come to *Hen.* 3. Time, 13 *H.* 3. *M.* 5. 13, *&c.* there are six of these Records, I have read them all; they are no more, but only to Port Towns, to arrest Ships, and the rest to have Men at Arms in Readiness upon the Sea-Coasts, and that but for forty Days.

Then for the Precedents of *Ed.* 1. Time, all of them being examined, not any one of them go to the Counties. 13 *Ed.* 1. 77 divers Ships are appointed to be made, but it is *ad sumptum Regis*, and only unto Sea Towns, the Record shews, that by the Barons of the Exchequer they have an Allowance for it. 23 *Ed.* 1. *M.* 5. same Roll, a Writ to the Sheriff of *Norfolk*, to compel them to maintain their Sea-Coasts. 14 *Ed.* 1. a Writ *adCongregandas centum Naves Paratas*, and armed Men to be put in them. So to command in that Kind the King may, and we must obey; he commands Ships ready made, not to make them. Afterwards, 14 *Ed.* 1. *Rot.* 17. several Writs to the Archbishops and Bishops, to attend with their Arms, in readiness to maintain the Coasts. 14 *Ed.* 1. *Rot.* 78. a Writ to the County of *Berks*, a Thing much stood on; it is only for Matter of Array, if it be well looked into, and no Matter of making or finding of Ships; and divers other Writs, in this King's Reign, for maintaining of Armies in their proper Counties; and that no Man can deny but that every Man in his proper County is to go to defend the Kingdom. And also for having of all Ships of above 40 Tuns in readiness: But to make new ones, in any Inland County, is not warranted by any Precedent, that I can see; tho' I have looked over all the Records that have been brought unto me; no, not in Maritime Counties, to make Ships.

For the Precedents of *Ed.* 2. Time, 9 *Ed.* 2. *&c.* to put them all together, they are only to congregate Ships to be in Readiness, but not to make new Ships.

To come to *Ed.* 3. Time, 7 *Ed.* 3. *M.* 9. Command is to assist the Admiral with their Ships, as Occasion shall require. 10 *Ed.* 3. 11. a Precept unto Port Towns only, to bring their Ships to *Portsmouth*, for 13 Weeks, furnished with Victuals, *&c.* 2 *Ed.* 3. 16. not to depart without Licence. 10 *Ed.* 3. 12 *Ed.* 3. *Rot. Alm.* Writs only to Port Towns, *ad Custodiend' Mare.* 12 *Ed.* 3. *M.* 12. a Command to *Henry Hussey*, *&c. ad Congregand' homines*, and to attend on the Sea-Coasts. But these were the Causes of making the Law, 14 *Ed.* 3. that there should be no further Charge laid on the Subject, so that all before that Statute do not prove our Case. 15 *Ed.* 3. A Custody of the Ports commanded, and Warrants to arrest Ships. 16 *Ed.* 3. Command to the Earl of *Dover*, *&c.* to prepare Ships against an Enemy that intends to come to subvert the Kingdom, and to set up Beacons, which is the first Original of Beacons that I observe. All these Precedents in *Ed.* 3. Time, were but to keep Men and Ships in Readiness, and to bring them to the Sea-Coasts. 46 *Ed.* 3. *M.* 3. that the *French* made great Preparation, whereupon they are commanded all to array, both Clergy and Laity, to guard the Sea-Coasts. And in those Times, when there was more likelihood of Danger than now, no Writs came out then, but only to array Men, and keep them in Readiness. 50 *Ed.* 3. to array Men in *Norfolk* to defend the Coasts. 29 *Ed.* 3. Command to the Bishop of *Durham*, and into *Cumberland* and *Northumberland*, to have their Men in Readiness. A Number of these Precedents in that King's Reign.

For *Rich.* 2 Time, it doth not appear by any one Record there is any thing for Ships, but only for the Custody of the Sea.

And for *Hen.* 4. *Hen.* 5. *Hen.* 6. Time, until 2 *Eliz.* they are all concerning Matters of Arms, not to make Ships. And when the Rebellion in the *North* was in the Queen's Time, then by Writs Men were commanded to be in Readiness, for Defence of the Kingdom.

The next Thing we come unto is the Writ it self. For my part, I hold it to be illegal; mark the Recital of the Writ, it is no more but *Quod datum est nobis intelligi*, *&c.* not a plain Affirmation, as Apparency of it. Then the Motives are, Because the Pirates do infest the Seas: Such Motives as never were in any Writ before. All former Writs were not to provide great Navies in Respect of Pirates; there is no such great Danger of them. 15 *Ed.* 1. it is there set down, when Pirates infested the Seas, they took Order that there should be only 10 Ships to scowre the Coasts 16 *Ed.* 3, *&c.* Command that Men should be arrayed, lest the Enemy should invade the Kingdom; but no Mention made of Pirates, for they will

will be removed with a few Ships. Mark the Times when great Pirates were upon the Sea, they would be glad to sculk away when the King's Navy came towards them. Now that this should bring the King's Navy to Sea is against the Law of the Land, and are not Motives sufficient to induce a Charge of this Kind.

Secondly, The very Commands of the Writ it self are unlawful, in Respect of the Inconveniences to an Inland County; whereas there was never any Inland County charged in that Kind before, as Coast Towns that have been heretofore charged with Soldiers, and had none, were discharged. When *Bodmin* in *Cornwal* was charged with finding of a Ship, they shewed they never had Ship nor Mariners there, and that divers of them were imprisoned for not finding such a Ship, whereupon Commission issued to the Admiral to examine the Truth thereof: And because it was found they had no Mariners, they were discharged.

But Mr. Solicitor answered, This was done by the Admiral, beyond his Commission; but 13 *Ed.* 3. the same Year there was a Writ awarded to *Chichester* in the County of *Sussex*, to find a Ship, and they complained, they had not any Ships used to arrive there, nor Mariners therein inhabiting; and thereupon they were discharged, upon a Writ out of the Chancery: So I say Inland Counties that are not wont to have Ships, the Law doth not appoint them to do that which they cannot do, nor will not expect from them that which is impossible.

The Pursuance of this Writ is against Law, it appoints them to provide a Ship, hire Men, and provide Victuals and Wages for them, 26 Weeks, *&c.* I say, this is against Law plainly, and against divers Statutes, and no Law doth warrant it; for Soldiers, which are the King's Servants, ought to have their Pay from the King, at the general Rendesvous. 15 *Johan' M.* 3. Ships commanded to be at the Ports upon the King's Pay. Tenents by Knight's Service, after forty Days, were to be at the King's Charge. 17 *Ed.* 1. 16 *Ed.* 3. it appeareth there, the King, upon the Invasion of the *Scots*, many Men being lost, appointed Soldiers, and their Wages paid, and what to *Durham*, and what to *Newcastle*, *&c.* 31 *Ed.* 1. in the Exchequer, Writs went out to levy Men to resist the *Scots*, and they would not stir without their Wages 16 *Edw.* 3. to pay Soldiers Wages. 2 *Edw.* 3. *Rot.* 16. there it is set down in Parliament what Soldiers have received for their Wages. 26 *Stat.* 18 *Ed.* 3. *cap.* 7. Soldiers are not to go out of their Counties without Pay. 10 *Ed.* 3. the Men of *Bucks* stood upon it, and would not go out of their County to the Coasts of *Southampton*, without Wages. *Rot. Alm.* 12 *Ed.* 3. *M.* 12. a Writ to compel all Men to make Munition for Ships, for the Town, and thereupon *H.* and *B.* they were commanded to maintain the Men of the same Town. *Claus.* 13 *Ed.* 3. *M.* 14. Men of Arms for the Defence of the Sea-Coasts complained their Wages were not paid them: Ordered, The Town from whence they came should pay them. The Statute of 11 *H.* 7. *cap.* 1. provides, that Soldiers that go out of their own Counties to attend the King in his War, shall have their Wages from the Time that they go from their Houses, to be paid by the King's own Officers.

I hold that this Assessment is not lawful and allowable; then if the Assessment thus made falls to the Ground, then the Power to the Sheriff to assess doth; and he may do it as he lists, put more upon one than another, therefore an Assessment in that Kind is not legal.

Then the Clause *Si Rebelles fuerint*, *&c.* to imprison them, then to give Power of Imprisonment to the Sheriff: Clauses have been in former Writs, in Cases of Arrays, to distrain, if they refuse to pay; never in Case of levying Money to imprison for it, it is clearly against *Magna Charta* to be imprisoned, unless he be indicted, or by due Process of Law.

The next Thing is the last Clause of the Writ, 'If more be gathered than shall be needful, to 'be returned amongst those that have paid it:' That sheweth the Ship must be done; we are now upon the Record, and by this Record it doth not appear that a Ship is made. It appears Mr. *Hambden* was assessed 20*s.* towards the making of a Ship. It is said, If the Money be paid, others can provide Ships. This is not according to Law, to command a Ship of War of 450 Tuns, and to turn it into Money, for if a Ship were made by a County, the County should have it again, but in this Case it is otherwise; this *Scir' Fac'* is brought to have the Money.

For the *Certiorari*, it is directed to a Sheriff out of Office (*que del residue de ceo*) and ought not so to be, for all Writs are directed to the modern Sheriff, so for the old Sheriffs to shew Cause what they have done, and the new Sheriffs to make their Return, he is the immediate Officer of the Court.

Admit the *Scir' Fac'* should go forth, it would do some thing *onerare*, *&c.* to whom, or how, nothing here but *Scir' Fac' quare onerari non debet*, but to whom *onerari* it doth not appear.

Besides, if the Sheriff levy Money in that Kind, and bestow it on a Ship, it is well. If not so bestowed, then those that received the Money are accountable to those of whom they had it. In *Ed.* 3. Time, Soldiers received Money to go to Service in War, yet staid at home, but were compelled to repay it to the County where they received their Wages. Also two High Constables having received Money for Soldiers, were indicted for not employing it accordingly, and adjudged to restore it to the County where they received it, and to find Sureties: So it doth not appear that this Ship was builded, there is no Preparation for a Ship; the Sum assessed is not legal; then the Writ is not legal, because it varieth from all the Precedents formerly; it varieth in the Time of 26 Weeks, before that but for 13 Weeks; in the Manner for Soldiers Wages, to Inland Counties, which was never before. I say it varieth from all the Precedents in that Kind. And so I hold this particular Writ is not sufficient, nor warranted by the Law, and that Judgment in this Case ought to be given for Mr. *Hambden*.

The

The ARGUMENT *of Sir* George Crooke *Knight, one of the Justices of his Majesty's Court of* King's Bench *at* Westminster, *in the great Case of* Ship-Money, *as it was presented to the King's Majesty.*

The Case is this upon the Record.

THE King by Writ under the great Seal, dated 4 *Aug. Anno* 11. of his Reign directed to the Sheriff of the County of *Bucks*, and to all the Men in that County commandeth them in these Words.

The Motives of this Writ, which are five.

1. *Quia datum est nobis intelligi, quod Prædones quidam Pirati ac Maris Grassatores tam nominis Christiani hostes* Mahumitani *quam alii congregati Naves & bona & Mercimonia non solum Subditorum nostrorum, verum etiam Subditorum amicorum nostrorum in mari quod per gentem* Anglicanam *ab olim defendi consuevit nefarie diripientes & spoliantes & ad libitum suum deportavere hominesque in eisdem in Captivitat' miserrimam mancipantes.*

2. *Cumque ipsos conspicimus Navigium in dies preparantes ad Mercatores nostros ulterius molestand' & ad Regnum gravand' nisi citius remedium apponatur eorumque conatui virilius obvietur.*

3. *Consideratis etiam periculis quæ undique his guerrinis temporibus imminent, ita quod nobis & subditis nostris defensionem Regni omni Festinatione qua poterimus accelerare conveniet.*

4. *Nos volentes defensione Regni tuitione maris, securitate Subditorum nostrorum Salva Conductione Navium & Merchandizarum ad Regn' nostrum* Angliæ *venient' Et de eodem Regno ad partes exteras transeunt'* (Auxiliante Deo) *maxime providere cum nos & Progenitores nostri Reges* Angliæ *Domini Maris prædicti semper hactenus extiterunt & plus inum nos lederet, si honoriste Regius nostris temporibus depereat aut in aliquo minuatur.*

5. *Cumque onus istud defensionis quod omnes tangit per omnes debet supportari prout per legem & consuetudinem Regni* Angliæ *fieri consuevit.*

The Charges of this Writ which are 3.

Vobis Præfat' Vicecom' Balliv' Burgensibus Majoribusque probis hominib' & omnib' aliis, quibuscunque supra m nconat' in Burgis Villis villatis, hamlettis & locis supradictis eorumque Membris. 1. *In fide & legiantia vestra quibus nobis tenemini.* 2. *Et sicut nos & honorem nostrum diligitis.* 3. *Nec non sub forisfactur' omnium quæ nobis forisfacere poteritis firmiter injungend' Mandamus*

The Commands of the Writ which are 5.

1. *Quod unam navem de Guerra Portagii* 450, *doliorum.* 2. *Cum hominib' tam Magistris peritis quam Marinariis valentioribus & expertis, centum & octoginta ad minus.* 3. *Ac tormentis tam majoribus quam minoribus pulvere tormentario ac hastis & talis aliisque armaturis pro bello sufficientibus.* 4. *Et cum duplici Eskippamento, nec non victualibus usque ad primum diem* Martii *jam proxim' sequen' ad tot homines competen'* 5. *Et abinde in viginti & sex Septimanas ad Custagia vestra, tam in victualibus quam hominum Salariis & aliis ad Guerram necessariis per tempus illud super defensionem maris in obsequio nostro, in Comitiva Custodis maris, cui custodiam maris ante prædict' primum diem Martii committemus & prout ipse ex parte nostra dictaverit moratur' parari, & ad Portum de* Portsmouth *circa decimum primum diem* Martii *duci facias. Ita quod sint ib' in eod' die ad ultimum ad proficiend' ex inde cum navibus nostris & navibus aliorum subditorum nostrorum.* 1. *Pro tuitione maris.*

The End for which the Ship is to be.

2. *Et defensione vestrum & vestror'.* 3. *Repulsioneque & debellatione quorumcunq' mercatores nostros & alios subditos & fideles prædict' in Dominia nostra ex causa mercature se divertentes vel ab inde ad proprium declinantes super mare gravare seu mole stare satagentium.*

The Clauses of the Assess.

1. *Assignavimus autem te præfat' vicecom'* Bucks *ad assidend' omn' hom' in villis de* Agmondesham, Wendover *&* Marlow Magna *& in omnibus aliis villis villat' Burgis* Hamlettis *& aliis locis in Com'* Bucks *præd' & terræ tentes in iisd' navem vel partem navis præd' non habentes vel in ead' non deservientes ad contribuend' expensis circa provisionem præmissorum necessar'.* 2. *Et saper' præd' vill' Burg'* Hamlett' *& locor' membris eorumq' sic ut præfertur ad assidend' & ponend' viz. quemlib' eorum juxta statum suum & facultates suas.* 3. *Et porticnes super ipsos assessat' per districtiones aliosve modos debitos levand'.* 4. *Et collectores in hac parte nominand' & constituend'* 5. *Ac omnes eos quos rebelles & contrarios inveneris in præmissis in carcere mancipand' in eod' moratur' quousque pro eor' deliberatione ulterius duxerimus ordinand'.*

The Preclose of the Writ for the Ease of the Subject.

Et ulterius mandamus quod circa præmissa diligenter intendatis & faciatis & exequemini cum effectu sub periculo incumbente. Volumus autem quod non colore præd' mandati nostri. 1. *Plus de iisd' hominibus levari fac: quam ad præmiss' sufficien' ad expensas necessar'.* 2. *Aut quod quisquam qui pecuniam de contribuentibus ad præd' custag' faciend' levaverit ead' vel partem inde penes se detineat.* 3. *Vel ad alios usus quovis quæsito colore appropriare præsumat.* 4. *Volentes quod si plusquam sufficiat collectum fuerit hoc inter solvences pro ratu portionis ipsis contingen' exsolvatur.*

By Virtue of this Writ, Mr. *Hambden* is assess'd to 20 *s.* for his Lands in *Stoake Mandivile* in that County, which, not being paid, is certify'd amongst others into the *Chancery*, upon a Writ of *Certiorari*, dated 9 *Martii*, 12 *Car.* by a Schedule thereunto annex'd. And by a Writ of *mittimus teste*, 5. *Maii*. 13. *Car.* this Writ of 4.

August. 11 *Car.* and the Writ of *Certiorari*, and the Schedule annex'd is sent into the *Exchequer*, with a Command there to do for the levying of Sums so assessed and unpaid *prout de jure & secundum legem regni nostri* Angliæ *fuerit faciend'*; whereupon a *Sci' Fa'* issued out of the *Exchequer*, reciting the said Writ to warn Mr. *Hambden* amongst others, to shew the Cause why he should not be charged with this Money; upon this he being summon'd, appear'd, and demandeth the hearing of those Writs and Schedule; which being read unto him, thereupon he demurreth in Law. And whether Judgment upon this whole Record be to be given against *John Hambden*, that he is to be charged or no, that is the Question; for he is the only Party in this Case. And there is no Cause why any Man should say that the Question is, Whether Judgment should be given for the King, or the Defendant; for as this Case is, the King is no Party to the Record, but only it is a judicial Process out of the *Exchequer*, grounded upon the former Record for the Defendant to shew Cause why he should not be charged, which hath been very elaborately argued by the Defendant's Counsel, who demurred, that he should not be charged; and by the King's Counsel, very learnedly and elaborately argued, that he should be charged.

This Case is a Case of great Weight, and the greatest Case of Weight that ever we read, argued by Judges, in this Place; and therefore, adjourned into this Place for Advice of all the Judges: For of their Side it is alledged, That it concerneth the King in his Prerogative and Power Royal; and on the other Side, That it concerneth all the King's Subjects in their Liberties, their Persons, and their Estates; for which it hath made some of us to wish and move among our selves, that it might have been by his Majesty's Favour, heard and determined in another Place by his Majesty, and his great Council of his Realm, where all Convenience and Inconvenience might have been considered of, provided for, and prevented for present and future Times, and not to be argued only by us, who are accounted his Majesty's Counsel at Law; wherein if any thing be done amiss, the Fault must light upon us, as mis-advising the King therein: But seeing it hath pleased his Majesty, that the same should be argued and determined in this Place, whose Pleasure we must obey. I must give my best Advice upon my Oath to the best of my Skill; wherein I hope not to trench upon his Majesty's Prerogatives, which we are all bound by our Oaths, to the best of our Skills, to maintain, and not to suffer them to be diminished, nor upon his Royal Power, but truly to deliver what I conceive the Law to be, concerning the Case in Question.

Wherein I must confess I have been much distracted, having heard so learned Arguments on both Sides at the Bar, and so many Records and Precedents cited on either Side, but they did not so much move me, for the Council have on either Side proposed such Reasons, as they thought convenient for the maintaining of their Opinions, and perhaps with a prejudicate Opinion, as I my self by my own Experience when I was at the Bar have argued confidently, and as I then thought the Laws to be of that Side for whom I argued. But after being on the Bench and indifferently weighing all Reasons and Authorities have been of a contrary Opinion, and so the Laws hath been adjudged contrary to that Opinion which I first confidently conceived.

But that which hath moved me most, and maketh me distrust my own Judgment in this Case, is, that all my Brothers that have argued before me, who have all argued upon their Oaths, and I presume have seen the Records and Precedents cited on either Side have all argued one way, with whose Opinions I should willingly have concurred, if I could have satisfied my own Judgment with their Reasons, but not being satisfied, I have learned that I must not come with a Multitude against mine own Conscience, for I must stand or fall with my own Master. And therefore I shall shew Reasons, and leave my self to the Judgment of my Lords and others my Brethren. And whatsoever shall be adjudged I must submit unto; and so do with all others, and do now declare my Opinion to be, that as this Case is, Judgment ought to be given for the Defendant. My Reasons and Grounds that I shall insist upon are these:

First, That the Command by this Writ of 4. *Aug.* 11. For to make Ships at the Charge of the Inhabitants of the Country, being the Ground of this Suit, and Cause of this Charge, is illegal and contrary to the Common Laws, not being by Authority of Parliament.

Secondly, That if at the Common Laws it had been lawful, yet now this Writ is illegal; being expressly contrary to divers Statutes prohibiting a general Charge to be laid upon the Commons in general, without Consent in Parliament.

Thirdly, That it is not to be maintained by any Prerogative or Power Royal, nor Allegation of Necessity or Danger.

Fourthly, Admitting it were legal to lay such a Charge upon Maritime Ports, yet to Charge any In-land County, as the County of *Bucks* is, with making Ships and furnishing them with Masters, Mariners and Souldiers at their Charge, which are far remote from the Seas, is illegal and not warranted by any former Precedent.

Fifthly, I shall examine the Precedents and Records cited to warrant this Writ, which have been all the principal Grounds of the Arguments to maintain the same. And I conceive there is the chief ground work being in my Notes but I forgot it.

But before I proceed to the Argument I desire to remove two difficulties; *First*, That by the Demurrer the Danger of the Kingdom is confessed, and so it is to be allowed for a Case of Necessity.

To this I Answer, That the Demurrer confesseth not Matters in Fact, but where the Matter is legally set down; but if it be not a legal Proceeding, then the Demurrer is no confessing of the Matter of Fact. This appeareth in the Book, Case. 5. *Hen.* 7. fol. 1. and *Coke lib.* 5. fol. 96. in *Burton's* Case, That a Demurrer is no con-

confessing of Matters of Fact, but where the Matter precedent is sufficiently pleaded or laid down; and so it is held in all our Books.

The *Second* Difficulty is, That this Case is so resolved by all our Opinions under our Hands, that this Writ was legal, which was much pressed by Mr. Solicitor.

To this I Answer, That it is true that I have set down my Opinion under my Hand unto Two Cases, to the first voluntarily in *Dec*' 1635, which was thus:

I am of Opinion that where the good and safety of the Kingdom in general is concerned, and the whole Kingdom is in Danger, of which his Majesty is the only Judge, there the Charge of Defence ought to be born by all in general.

This I hold to be agreeable to Law and Reason, this Opinion I do still and shall always maintain, for where the Kindom is in Danger the King may command every Person of his Kindom with all his Force to come and defend it at all Times and in all Places of his Kingdom where he pleaseth; and the King is the sole Judge of the Danger, and of War and Peace, and if any do not perform his Commands therein, he is Fineable and Punishable in a deep manner.

The second was in *Febr.* 1636. which is thus, That when the Good and Safety of the Kingdom in general is concerned, and the whole Kingdom in Danger, his Majesty may by Writ under the Great Seal of *England* command all his Subjects of this Kingdom at their Charges to provide and furnish such Number of Ships with Men, Victuals and Ammunition, and for such time as his Majesty shall think fit for the Defence and Safeguard of the Kingdom from such Danger. And that his Majesty may compel the doing thereof in case of refusal and refractorinefs. And that in this Case his Majesty is sole Judge of the Danger, and when and how the same is to be prevented and avoided.

To this Opinion I confess I then with the rest of the Judges subscribed my Hand, but I then dissented to that Opinion, and then signified my Opinion to be that such a Charge could not be laid by any such Writ but by Parliament, and so absolutely in that Point one other did agree with me and dissented from that Opinion; and four others in some other Particulars from that which was subscribed. But the greater part seeming absolutely to be resolved upon that Opinion, some of them affirming that they had seen diverse Records and Precedents of such Writs satisfying of them to be that Judgment; I was pressed to subscribe with them, for that the major part must involve the rest, as it was said to be usual in Cases of Difference, and for that the lesser Number must submit to the major although they varied in Opinion, as it is in our Court, if three Judges agree in Opinion against one or two where there is five Judges, Judgment is to be entered *per Curiam*, if the major part agree, and the other are to submit unto it, and in Cases of Conference and Certificate of their Opinions if the greater part did agree and subscribe, the rest were to submit their Opinions. And this by more ancient Judges than my self was affirmed to be the continual Practice. And that it was not fit, especially in a Case of this Nature so much concerning the Service of the King, for some to subscribe, and some to forbear their Subscriptions. And that although we did subscribe, it did not bind us, but that in point of Judgment if the Case came in question judicially before us, we should give our Judgments as we should see Cause after the Arguments on both Sides, we were not bound by this sudden Resolution.

Hereupon I consented to subscribe, but I then said that in the mean time the King might be misinformed by our Certificate under our Hands concerning us all to agree together, and to give him this Advice under our Hands, and not know there was any dis-assented or was doubtful, but it was then said the King should be truly informed thereof, and thereupon we that did dis-assent did subscribe our Hands with such Protestations as aforesaid only for Conformity, although contrary to the Opinion I then conceived.

But this being before Arguments heard on either Side, or any Precedents seen, I hold that none is bound by that Opinion. And if I had been of that Opinion absolutely, now having heard all the Arguments of both Sides, and the Reasons of the King's Council to maintain this Writ, and why the Defendant is to be charged. And the Arguments of the Defendant's Council against the Writ, and their Reasons why the Defendant should not be charged to pay the Money assessed him, and having duly considered of Records and Precedents cited and shewed unto me, especially those of the King's Side; I am now of an absolute Opinion that this Writ is illegal, and declare my Opinion to be contrary to that which is subscribed by us all. And if I had been of the same Opinion that was subscribed, yet upon better Advisement being absolutely settled in my Judgment and Conscience in a contrary Opinion, I think it no Shame to declare that I do retract that Opinion for *humanum est errare*, rather than to argue against my own Conscience. And therefore none having, as I conceive, removed those Difficulties, I shall proceed to my Argument, and shew the Reasons of my Opinion, and leave the same to my Lords and Brothers. Not one Precedent nor Record in any precedent Time that hath been produced or shewed unto me that doth maintain any Writ, to lay such a Charge upon any County In-land or Maritime.

I have examined this particular Writ and the several Parts thereof, and do conceive it is illegal, and not sufficient to ground this Charge upon the Defendant.

1. The Motives of this Writ are not sufficient to cause such a Writ to be sent forth.

2. The Command of the Writ to prepare a Ship at the Charge of the Inhabitants, which mentions Victuals and Men, is against the Common Laws and Statutes of this Kingdom.

3. That to lay a Charge of finding Victuals, and Wages of Souldiers and Mariners, is illegal, and contrary to the Common Laws and divers Statutes.

4. The

4. The Power of Assessment given to the Sheriff alone, and to distrain for this, is illegal, and not warranted by any Precedent.

5. The Power of Imprisoning is illegal, and contrary to divers Statutes, and not warranted by the Precedents.

6. That the Preclose of the Writ and the Practice of it is contrary to it self, and *oppositum in objecto.*

7. If this Writ were legal, yet the manner of the Assessment by the Sheriff as it is certified, is not warranted by this Writ, for quietly this same cannot be demanded of the Defendant by vertue of this Writ.

8. That the *Certiorari* and *Sci' Fa'* issued not legally, and so consequently no Judgment can be given against the Defendant thereupon.

For the first Point, that this Writ. 4. *Aug.* 11. *Car.* is against the Common Law, my Reasons are these:

First, Because this is the first Writ since the Conquest that went out to any In-land County to prepare a Ship with Men and Ammunition, for ought appeareth by any Record that hath been shewn. And where there was never any Precedent by the Rules of Mr. *Littleton*, fol. 23. the Law is conceived not to allow any such Writ. And Sir *Edward Coke* in his Comment upon *Littleton*; fol. 81. saith, That where there is no Example, it is a great Intendment the Laws will not bear it.

So I conceive here, there never having been a Precedent before of any such Writ to the Sheriffs and Inhabitants of a County, to prepare a Ship with Men and Ammunition upon any Occasion whatsoever, that it is against the Common Law to award such a Writ.

Secondly, For that the Common Law of *England* settleth a Freedom in the Subjects in respects of their Persons, and giveth them a true Property in their Goods and Estates, so that without their Consent, or implicite by a common Ordinance which they consented unto by a common Assent in Parliament, it cannot be taken from them, nor their Estates charged; and for this purpose the Law distinguisheth between Bond-men, whose Estates are at their Lords Will and Disposition, and Free-men, whose Property none may invade, charge, or unjustly take away but by their own free Consent, and therefore not warranted by Law which is proved by these Authorities.

Coke in his Reports, *lib.* 8. *fol.* 92. in *Francis* Case, sets down this Rule, *Quod nostrum est sine facto seu defectu nostro omitti seu in alien' transferri non potest.*

Mr. *Lambert*, *fol.* 24. setting down the Laws of *England* which were confirmed by *William the Conqueror* hath these Words, *Inter alia volumus & concedimus quod omnes Monarchæ Regni sui pred' habeant & teneant terras suas & possessiones suas bene & in pace liberas ab omni exactione injusta & ab omni tallagio* (not mentioning there *injusta*) *ita quod nihil ab eis exigatur preter servitium suum juste debitum.* Hereby it appears there is an absolute Freedom from all Talliage.

17. of King *John*, in *Matth. Paris*, *fol.* 246. the King doth Grant and Confirm unto his Barons and Commons *interial'* these Liberties following, *Nullum scutagium vel auxilium ponamus in Regno nostro nisi per Commune Concilium Regni nostri, nisi ad redimend' corpus nostrum, filium nostrum primogenitum Militem faciend' vel ad Primogenitam filiam maritand'.* By this it appears what was then conceived to be amongst other their Liberties, and then confirmed, which was that no Aid should be laid upon them but by Parliament, for the Parliament was then called *Commune Concilium.*

That the Law is so, appeareth by the Treatise written by *Fortescue*, who had been Chief Justice of *England* in King *Henry* VI. Time, and after Chancellor of *England* when he wrote the Book, intituled, *De laudibus legum Angliæ*, *fol.* 25. *cap.* 9. he saith thus; That the King of *England* cannot alter nor change the Laws of *England* at his Pleasure, for *Principatu Regali sed & politico ipse populo suo dominatur.* If his Power were Royal only, then he might change the Laws, *Tallagia quoq; & cætera onera eis imponere ipsis inconsultis*; but adds, that the King of *England sine subditor' assensu leges mutare non potest nec subjectum populum renitentem onerari impositionibus peregrinis:* And *cap.* 13. *fol.* 31. he compares the King and Subjects of *England* to the Head and Body Natural, *Ut non potest corpus physicum nervos suos commutare neq; membris suis propias vires & propria sanguinis alimenta denegare sua. Nec Rex qui caput corporis politici mutare potest leges corporis illius nec ejusd' populi substantias proprie subtrahere reclamantibus eis aut invitis.* Thus he in this Place, but in *fol.* 84. *cap.* 36. he seemeth to say, *In hoc individuo. Rex* Angliæ *neq; per se nec ministros suos Tallagia, Subsidia, aut quævis onera alia imponit, leges suas, aut leges eor' mutat, aut nova condidit sine Concessione vel Assensu totius Regni sui in Parliamento suo expresso*; Which Words seem so general, that in no Case he can do it.

So it appeareth by the Book, Case 13 *Hen.* 4 *fol.* 14. That the Grant of the King which tenderh to the Charge and Prejudice of his People in general, is not good, unless it be by Parliame . But it is agreed there, That Grants of Tolls, of Fairs, of Pontage, Pickage, Murage, Ferrying, or such like, which are for the Profit, Good, and Ease of the People, and Profit of them that will take Benefit thereof, and not Compulsory to any to pay, but to them that will take the Benefit; and being very small and reasonable Sums, the Law doth give Allowance to them; but if they were great Sums, that tend to the Charge of the People, the Law will judge them void.

This appeareth in Sir *Ed. Coke's* Reports, *Lib.* 5. *fol.* 63. in the Case of the Chamberlain of *London*, That an Ordinance made by the Common-Council of *London*, where they have a Custom by their Common-Council, to make reasonable Ordinances to bind all within the City, concerning Cloaths to be brought to *Blackwellhall*, there to be view'd, measur'd and search'd, before they were sold, and a Penny upon a broad Cloath, appointed for the Officer that did that Service: That such a Charge was reasonable; for that it was for the Publick Benefit of the City, and the Commonwealth, and a Pecuniary Penalty laid for not Performance of that Ordinance was allow'd.

Ibid.

Ibid. Fol. 64. in *Clark's* Case it is resolv'd, That an Ordinance made by the Assent of the *Plaintiff* himself, and other Burgesses of the Town of St. *Albans*, for a small Tax upon the Inhabitants of the Town, towards the Erection of the Courts, and other Necessaries, for the Term to be kept there was allow'd to be good, and did bind the *Plaintiff*, being by the *Plaintiff's* own Consent, and for the Publick Good of the Town.

Also *Coke*, *lib.* 11. *fol.* 86. in *Darcie's* Case, citeth this out of *Fitz. Her. Nat. B.* fol. 122. That every Grant of the King hath this Consideration in it, tacit or express, *Quod Patria per Donationes illius, magis solito non oneretur.* And as by Grant the King cannot Charge his People so neither can he by Writ lay any Charge upon his People, but by their Consent, or where they have apparent Benefit thereby. And that is the Reason of the Writ in the *Reg.* 127. and *Fitz. Her. Nat. B.* 153. where by Breach of the Sea Walls, any Inundation is of the Country. The King who is *Pater Patriæ*, and taketh Care for the Good and Safety of his People, sendeth out his Commission to enquire by whose Default any such Breach happen'd, and to cause all that had Lands or Commons to be contributary to the making up of the Sea Walls, and this is done by a Jury; but this Charge cannot be laid upon a County or Town in general, but upon particular Men that have Loss or Benefit, or may have Loss or Benefit thereby: And this is done by Enquiry of a Jury, before the Sheriffs, or Commissioners appointed. So it is at this Day, upon Commissioners of *Sewers*, as appeareth by *Coke*, *lib.* 10. *fol.* 142. in the Case of the Isle of *Ely*. The Taxation by the Commissioners of *Sewers*, must be upon every particular Man that hath or may have Loss or Benefit by such Inundations, and making up of the Walls, and cannot be laid upon any remote Parts, which are out of the Level of such Loss or Benefit, and it must be certain and particular upon Persons: Certain by Reason of Loss or Profit, and cannot be laid in general upon a Town; but in those Cases there is a particular Loss or Benefit, and in particular Places, and but in petty Charge: And then where the Law alloweth that which in Reason is to be done, that may be done without a special Statute: For, *De minimis not curat lex.* But in this Case there is a general Charge through the whole Kingdom, which the Law doth not permit, without common Consent in Parliament.

But it hath been alledg'd, That this Charge hath been imposed for the Publick Safety, and Defence of the Kingdom: And may not this be done when every one hath Advantage by it?

To this I say, When imminent Danger and Cause of Defence is, there must be Defence made by every Man (when the King shall command) with his Person: In such a Case every Man, as it is said in the Precedents, is bound *per se & sua*, to defend the Kingdom. And I think no Man will be unwise, but that he will *exponere se & sua*, for the Defence of the Kingdom, when there is Danger; for otherwise, he is in Danger to look to *se & sua*; but to lay a Charge in general upon the Kingdom, either for making or preparing of Ships, or Money in Lieu thereof, is not to be done but by Parliament, where the Charge is to be born in general by all the Subjects.

To prove further, That no Man may have his Goods taken from him but by his Consent, appeareth by a Record, *Michis* 14. *Ed.* 2. *Rot.* 60. in the *King's-Bench*, in a Writ of *Error*, brought upon a Judgment given at *Durham*, where in an Action of *Trespass*, by *William Heyborne*, against *William Keylowe*, for entering his House, and breaking his Chest, and taking away 70 *l.* in Money. The *Defendant* pleaded not Guilty; the Jury found a special Verdict, That the *Scots* having entred the Bishoprick of *Durham* with an Army, and making great Burning and Spoils, the Commonalty of *Durham* met together at *Durham*, whereof the *Plaintiff* was one, and agreed to send some to compound with the *Scots* for Money to depart, and were all sworn to perform what Composition should be made, and to perform what Ordinance they should make in that behalf: And thereupon they compounded with the *Scots* for 1600 *Marks*; but because that was to be paid immediately, they all consented that *William Keglowe* the *Defendant*, and others, should go into every Man's House, to search what ready Monies was there, and to take it for the making up of that Sum: And that it should be repaid by the Commonalty of *Durham*; and thereupon the *Defendant* did enter into the *Plaintiff's* House, and did break open the Chest, and took the 70 *l.* which was paid accordingly towards the Fine. The Jury was demanded, Whether the *Plaintiff* was present, and did consent to the taking of the Money, they said No; whereupon the *Plaintiff* had Judgment to recover the said 70 *l.* and Damages; for that otherwise he had no Remedy for his Money, and the *Defendant* committed in Execution for that Sum. And thereupon the *Defendant*, *Keylowe*, brought a Writ of *Error* in the *King's-Bench*, and assigned his *Error* in Point of Judgment, and there the Judgment was reversed, and the Reasons set down in the Record were, *First*, Because the *Plaintiff*, *Heyborne*, had his sufficient Remedy against the Commonalty of *Durham*, for his Money: *Secondly*, Because he himself had agreed to this Ordinance, and was sworn to perform it; and that the *Defendant* did nothing but what the *Plaintiff* had assented unto by his Oath, and therefore is accounted to do nothing but by his Consent, and as Servant unto him. And therefore he was therein no Trespasser; and therefore the Judgment given in *Durham* was reversed, because he had assented unto that Ordinance, though afterwards he was unwilling; yet having once consented, his Goods were lawfully taken: By which it appeareth, That if he had not particularly consented, such an Ordinance would not have been good to bind him; although this was in a Case of great Danger, and for Defence.

2 *Ric.* 2. *Part.* 1. The Parliament Roll proveth this directly, although it be no Act of Parliament; yet the Record is much to be regarded, for it sheweth what the Law then conceived to be: For *Scroope*, the Lord Chancellor, then shewed to all the Lords and Commons assembled in Parliament, That all the Lords and Sages had met together since the last Parliament,

and having conferred of the great Danger the Kingdom was in, and how Money might be raised in Case of imminent Danger, which could not stay the Delay of a Parliament, and the King's Coffers had not sufficient therein. The Record is, they all agreed, Monies sufficient could not be had without laying a Charge upon the Commonalty, which say they cannot be done without a Parliament; and the Lords themselves, for the Time, did supply the said Necessity with Money they lent; which Record proveth directly, That this Charge without an Act of Parliament is illegal.

So upon these Reasons I conclude, That this Writ compulsorily to charge the Subjects against their Wills, is not warranted by any Book, and therefore illegal.

The Inconveniences that will follow if this Writ should be allow'd.

If this Writ should be allow'd, great Inconveniences would ensue, which the Law will always avoid, and not permit any Inconveniences.

First, If any such Charge may be laid upon the Counties by Writ, without Assent in Parliament, then no Man knoweth what his Charge may be; for they may be charged as often as the King pleaseth, and with making of as many Ships, and of what Burdens, and with what Charge of Ammunition, Men and Victuals, as shall be set down. Wherein I doubt not, but if the Law were so, the King being a very Pious and a Just King, would use his Power very moderately; but Judges in their Judgments are not to look to present Times only, but also to all future Times, what may follow upon their Judgments.

That this Inconveniency may be, appeareth by the *Danegelt*, first appointed in Times of Necessity, to redeem them from the Cruelty of the *Danes*, which often changed, and still increased: For *Anno Domini* 991, when it began, it was but 10000 *l.* *Anno Domini* 994, it was increased to 16000 *l.* And *Anno Domini* 1002, it was increased to 24000 *l.* And *Anno Domini* 1007, it was increased to 36000 *l.* And *Anno Domini* 1012, it was increased to 48000 *l.* So if this Writ be well awarded, it may be at Pleasure what Bounds it shall have. Also there was never but one single Subsidy and Two Fifteenths used to be granted in Parliament, until 31 *Eliz.* and then a double Subsidy, and Four Fifteenths were granted: Sir *Walter Mildmay*, then Chancellor of the *Exchequer*, moving for it, and saying, *His Heart did quake to move it, not knowing the Inconvenience that should grow upon it*; he shewed great Reasons for his moving it, it being about the Time of the *Spanish* Invasion, and so it was granted. Afterwards, 35 *Eliz.* Treble Subsidies and Fifteenths were granted. And 43 *Eliz.* Four Subsidies and Eight Fifteenths were granted; and yet these were not accounted grievous, neither would it have been, if it had been Ten Subsidies, because in Parliament, and convenient Times and Means appointed for the Levying of them. Tonage and Poundage were granted to this End in 13 *Rich.* 2. and having continued ever since by several Grants, until this King's Time, wherein it was unhappily question'd in Parliament; but the End thereof was, That the Kings might have Money in their Purses, against Times of Need, for extraordinary Occasions; especially for the Defence of the Realm, and Guarding of the Seas, as it is especially declar'd by the Statute of 1 *Jac.* and former Statutes, and for other necessary Uses, as the King pleased.

Object. But it is said, That Tonage and Poundage is not now granted to the King, and therefore the King is enforced to these extraordinary Courses.

Though it be not granted, yet I think it is taken; and I doubt not but to the same Intent, and for the same Purposes employ'd for which it was first granted; which was, For the Defence of the Kingdom, and Guard of the Sea. Therefore in Case of Danger and Necessity, every Subject for the Defence of the Kingdom, is bound *Legianciæ debito*, as some Records say, and *Legianciæ suæ vinculo astricti*, as others speak; *Se & sua totis viribus & potestate exponere*, &c. And in such a Case, the King may command the Persons of his Subjects, and arrest their Ships to wait on his to defend the Seas; yet with this also, When they go out of their Counties, to be at the King's Charges: But to command the Subject by Writ, to build new Ships, or to prepare Ships at their Charges, or to lay a common Charge on the Subjects in general, for matter of Defence, or avoidance of Danger; is not warrantable by the Common Law.

Another Inconvenience is, That it is left in the Power of the Sheriff to charge any Man's Estate at his Pleasure, taxing some, and sparing others, as his Affections leadeth him; and sometimes by colour thereof levying more than he need, and enriching himself; which Power the Law never alloweth him, although it were in lesser Matters; as to make an Assessment for Breach of Sea Walls; but to do it by a Jury, and not by himself alone. So for these Reasons I conclude, This Writ is against the Common Law, and so illegal.

The Statutes shall note the Writ illegal.

Secondly, I conceive if the Common Law were doubtful in this, whether such a Charge might be imposed by Writ; yet now it is made clear by divers express Statutes, That the King is not to lay any Charge upon his Subjects, but by their Consent in Parliament; and that is, By many Acts of Parliament in Force, and not repealed; and there is, no doubt, but that the King by Parliament may bind them and their Successors, every King by Oath being bound to perform the Statute of his Realm.

The Statute of 25 *Ed. cap.* 5. which is in these Words, Forasmuch as divers People of our Realms are in Fear, That the Aids and Taxes which they have given us before Time, towards our Wars, and other Businesses, of their own Grant and Good Will, however they were made, might turn to a Bondage of them and their Heirs; because they might be at other Time found on the Roll. And likewise for the Prizes taken throughout our Realm by our Ministers, we have granted for us and our Heirs, That we shall not draw any such Aids, Taxes or Prizes into a Custom, for any thing that hath been done heretofore by any Roll, or any other Precedent that may be found.

Ibidem cap. 6. Moreover, we have granted for us and our Heirs, as well to Archbishops, Bishops,

Bishops, Friors, and other Folk of the holy Church: As also to Earls, Barons, and all the Commonalty of the Land, that from no Business from henceforth we shall take any Aids, Taxes, nor Prizes, but by the common Assent of the Realm, and for the common Profit thereof, (saving the ancient Aids and Prizes due and accustomed) which are the express Words of that Statute. Now, what those ancient Aids were; is well known that they were *ad redimendum corpus ad filium primogenitum militem faciend' & ad filiam primogenitam maritand'*; which Aid concerns not the Subject in general, but particularly Men were liable thereunto by their Tenures; so this Saving need not to have been; for the Body of the Act extended not to them, but to the general Aid of the Kingdom.

However, If this *Salvo*, as it hath been objected, would preserve this Aid now in Question, yet the Statute made afterwards, *de tallagio non concedendo*, being without any *Salvo*, takes it away: Which Statute, *Rastal* in his Abridgement, *fol.* 441, in his Title of *Taxes*, abridgeth it in this Manner: *Anno* 25. *Edw.* 1. it is ordained, That the Taxes taken, shall not be taken in Custom, nor, but by the Assent of this Realm, except the ancient Aids and Taxes: And there the Tax of 40 *s.* upon the Sack of Wool is released.

Ibidem, That no Talliage, by us or our Heirs in our Realm, be put or levyed, without the Assent of the Archbishops, Bishops, Earls, Barons, Knights, Burgesses, and other free Commons of our Realm, that nothing be taken from henceforth, in the Name, or by Reason of *Maletout'* of a Sack of Wool, Statute *de tallagio non concedendo.*

Object. Mr. Sollicitor laboured much to prove, that there was no such Statute, *de tallagio non concedendo. First*, For that it was not to be found on the Rolls of Parliament. *Secondly*, For that it was not set down when it was made. *Thirdly*, That it was but an Abstract out of *Confirmatio chartarum libertatum.* Mr. Attorney said he would not deny it to be a Statute, neither wou'd he affirm it; but that yet it did not extend to take away the Aid demanded, by Prerogative or Power Royal for the Defence of the Kingdom.

Respons. To this I answer, This was never doubted to be a Statute until this Argument; and that it is a Statute, appeareth, *First*, For that it is printed in the Book of *Statutes*, for a Statute: *Secondly*, It is recited in the Petition of Rights, to be a Statute. To that it is not found on the Rolls, I answer, That many Statutes that are known Statutes, are not found on the Rolls, as *Mag' Char'* is not.

And as touching the Time, I conceive it to be made, 24. *Edw.* 1. *cap.* 1. for so it is set down in the great Book of *Statutes*, printed 1618, to be the first Statute therein made, *viz.* in these Words: *No Calling nor Aid shall be taken or levyed by us or our Heirs, in our Realm, without the good Will and Assent of the Archbishops, Bishops, Earls, Barons, Knights, Burgesses, and other Freemen of the Land:* And that it is a Statute, all my Brothers have agreed.

The only Doubt then is, Whether this Statute extendeth to Aid for the Defence of the Kingdom, which I think it doth; for it is the precise Words of it, That no Talliage or Aid shall be imposed but by Grant in Parliament, which extends to no Manner of Aid: And by this Law the Subjects of *England* have defended themselves ever since, as with a Buckler, as saith *Bodwinus, fol.* 97. whereby it appeareth, that Notice was taken of this Law in foreign Parts, and so held still to be a Statute in Force.

The next Stature is, the 14. *Edw.* 3. *cap.* 1. which recites the Grant of the great Subsidy of the ninth Fleece, the ninth Lamb, *&c.* formerly granted; whereupon these Words follow: We willing to provide for the Indempnity of the said Prelates, Earls, Barons, and others the Commonalty of the Realm: And also, of the Citizens, Burgesses, and Merchants aforesaid, will and grant for us and our Heirs, to the same Prelates, Earls, Barons, and Commons, Citizens, Burgesses, and Merchants, that the same Grant shall not be had forth in Example, nor fall to their Prejudice in time to come, nor that they be from henceforth charged or granted to make any Aid, or sustain any Charge, if it be not by the common Assent of the said Prelates, Earls, Barons, and other great Men and Commons of the said Realm of *England*; and that in the Parliament: And that all the Profit arising of the said Aid, and of Wards, Marriages, Customs, and Escheats, and other Profits arising of our said Realm of *England*, shall be set and dispended of upon the Maintenance of the Safeguard of this Realm of *England*, and of our War in *Scotland*, *France*, and *Gascoign*, and in no Place elsewhere during our War.

By this Statute it appeareth that it is expressly provided, that the Subjects should not be from thenceforth charged nor grieved to make any Aid, nor sustain any Charge but by Common Assent, and that in Parliament, which is as express as may be, and exclusive to any Charge otherwise, which I conceive was made against the appointment of making, or preparing and sending out of Ships at the Charge of the Towns wherein they were, or sending Men out of their one Countries at the Charge of the County.

Object. Now where it is alledged by my Brother *Weston*, and my Brother *Berkley*, That this was but a Temporary Statute, and ended when the War ended, which appeareth by the last Clause for Employment of those Profits towards those Wars; I conceive it appeareth to be an absolute and perpetual Statute, for it is granted for him and his Heirs in perpetuity. And also it appeareth by *Plowden* in his *Comment. fol.* 457. in Sir *Tho. Worth's* Case, where a Grant is by the Name of the King, which is in his *Politique Capacity*, this extendeth against him, his Heirs, and Successors, although they be not named. Also the intendment of this Law appeareth to be for the Security of the Subjects, from thenceforth for all future Ages. And then the Office of Judges, as appears by Sir *Edward Coke*, his Report, *Lib.* 5. *fol.* 7. and *Plowden's Comment.* in *Aston* and *Stud's* Case, is to construe Statutes according to the true Intent of the Makers thereof, which was in this Statute, that it should be a perpetual Security for the Subjects. And to little purpose it had been to make a Statute to continue but during the Time of the War, or during the King's Life.

Object.

Object. Also where it is alledged that the Statute of the 14 *Ed.* 3. is not mentioned in the Petition of Right, which is some Argument that it was not conceived to be a continuing Statute.

Respons. To that I Answer, That in the Petition of Right it is said, That by the Statute there recited, and other the good Statutes of this Realm, the Subjects shall not be compelled to pay any Taxes, Talliage, Aid, nor other like Charge not set by Parliament, in which this Statute is as well intended as other Statutes, and as far as if it had been expressly recited. Also it appeareth by all the Books of Statutes, that this Statute is granted as a Statute continuing, whereas others expired, are set down as expired.

21. *Ed.* 3. *part.* 2. *m.* 11. A Subsidy being granted by Parliament, *viz.* 40 *s.* of every Sack of Wool transported before *Michaelmas* following, and 6 *d.* of every 20 *s.* of Merchandize, for the Safe-guarding of the Merchants and Defence of the Coast, *&c.* After *Michaelmas, viz.* 31 *Octob.* 21. *Ed.* 3. by Writ the Collectors were commanded to continue the Collection of those Subsidies until *Easter.* But, 26 *Novemb.* 21. *Ed.* 3. the King by Writ commanded the stay of the 6 *d.* in the 20 *s.* and to continue the Collection of the Subsidies upon the Sacks of Wool until *Easter.*

22. *Ed.* 3. *Rot. Parl. m.* 16. The Parliament being holden in *Lent*, the Commons complain of this Continuance of this Collection of the Subsidies upon the Sacks of Wooll longer than the Parliament had granted it, and provided that it should not be continued longer than *Easter* at the Procurement of any Person. By this it appeareth, that the Parliament being careful that the time for levying of a Subsidy granted, should not be enlarged by any Power, much less would they admit of a Writ to lay a Charge without Grant by Parliament.

25 *Ed.* 3. *m.* 8. It was enacted that no Man should be compell'd to find Men at Arms, other than such as hold by such Service, except it be by common Assent in Parliament. By this it appeareth that if Men be not compellable to find a Man at Arms, unless it be by common Assent in Parliament; much less is any bound to be contributary to the preparing of a Ship with 180 Men at Arms, and Victuals, and Wages of Soldiery for 26 Weeks, unless it be by common Assent in Parliament.

Rot. Parl. 21. *Hen.* 4. *Num.* 22. An Act of Parliament, as I count it, in the very Point, is in these Words. For that of late, divers Commissions were made to divers Cities and Burroughs within the Realm, to make Barges and Barringers, without Assent of Parliament, and otherwise than hath been done before these; however the Commons do pray the King that these Commissions may be repealed, and that they may not be of any Force or Effect. To which it is answered, That the King Willeth that the said Commissions be repealed; which is an absolute and perfect Statute.

But then there is added these Words: But for the great Necessity he hath of such Vessels for the Defence of the Realm in case that the War shall happen, he will Treat with his Lords of this Matter, and afterwards will shew it to the Commons to have their Council and Advice in this Point. So by the Record it appeareth that the Commons did conceive that no Cities, Burroughs, nor Towns without consent in Parliament, were to be charged with the making of such Vessels to which the King agreeth. And from that Day to this, until the making of these Writs, in no Age, although the Kingdom hath been many Times in Danger of Invasion, and hath been invaded, there do not appear any Records that ever I have seen of any Writs directed to any Towns or Cities at their Charges, to make or prepare any Ships or Vessels whatsoever.

Object. And whereas it hath been objected, and especially insisted upon by my Brother *Berkley* that this latter Part, that the King will treat with his Lords concerning them, and after confer with the Commons, is a gentle Denial of that Act, as the Experience is at this Day. *Le Roy se avisera* is a Denial of an Act.

Respons. Hereupon I Answer, It is an absolute Act, for it is an absolute Assent unto the Petition. And that which came after was but a plausible Excuse, for that such Commissions had gone out; and this farther Consultation never appeared to be made, nor ever any such Writ or Commission for such Vessels to be made went out since until this Writ.

13. *Hen.* 4. *m.* 10. A grant is of a Subsidy of Woolls, Woollfelts, Hides, and other Things there mentioned, and of Tonage and Poundage for one Year for the Defence of the Marches of *Calais, &c.* and for the Defence of the Realm, and the Safeguard of the Sea. And therein is this express *Proviso*, Provided that this Grant of a Subsidy of Wools, *&c.* and Tonage and Poundage in time to come, shall not be taken in Example to Charge the Lords and Commons of this Realm with any manner of Subsidy for the Safeguard of *Calais, &c.* nor for the Defence of the Realm, nor the Safeguard of the Seas; unless it be by the Will of the Lords and Commons of the Realm, and that by a new Grant to be made, and that in full Parliament to come. By this appeareth that it was then provided, that no Charge should be laid on the Lords or Commons, no not for the Defence of the Realm, but by Grant in full Parliament.

13. *Hen.* 4. *m.* 43. A Petition was in Parliament reciting, That there was an Office granted of Alneger within *London* and the Suburbs of the same, with Fees to that appertaining, where any such Office never was, nor any such Fees appertaining thereunto, and that by colour thereof, they levy one Half-penny of the Buyer and a Half-penny of the Seller, and upon Sale of every Hundred Ells of *Canvis* a Penny of the Seller and a Penny of the Buyer, wrongfully against the Statutes in the Times of your Highness's Progenitors made to the contrary, by which it is ordained that no Talliage nor Aid shall be granted nor levyed without Assent and Consent of the Lords and Commons of your Realm, as by the said Statutes is fully declared; wherefore they prayed that such Letters Patents made thereof shall be void and holden for none. And this was granted, whereby it appeareth that it is declared then in Parliament, that those Statutes were

were and did continue; that no Talliage or Aid shall be levyed without Grant in Parliament.

1. *Ric.* 2. *cap.* 1. It is enacted in these Words: Our Soveraign Lord the King remembring how the Commons of this Realm by new and unlawful Inventions and inordinate Covetize have against the Laws of this Realm been put to great Servitude and importune Charges and Exactions, and especially by a new Impost called a Benevolence, whereby divers Subjects of this Land against their Wills and Liberties have payed great Sums of Money, *&c.* It is enacted and ordained, that the Subjects and Commons of this Realm from henceforth shall in no wise be charged by such Charges or Impositions called a Benevolence or such like Charge. And that such Exactions called a Benevolence before that time taken shall be taken for no Example to make any such, or any like Charge, from any of his Subjects of this Realm hereafter, but shall be damned and nulled for ever. By this it appeareth that it is expresly provided that the Subjects shall not be charged by way of Benevolence, which is in nature of a Free Gift, nor such like Charge; that is, no Charge of Money shall be laid upon the Subjects upon any pretence whatsoever, be it for Defence in time of Danger, or Guarding of the Sea.

The last and concluding Statute is the Petition of Right, made in the third Year of his Majesty's Reign, reciting that it was enacted by a Statute made in the Time of *Edward* 1. commonly called *Statutum de Tallagio non concedendo*, that no Talliage or Aid shall be laid or levyed by the King or his Heirs in this Realm, without the Good-will and Assent of the Archbishops, Bishops, Earls, Barons, Knights, and others the Free Men of the Commonalty of this Realm. And by a Statute of 25 *Edw.* 3. That none shall be compelled to make any Loans to the King, because such Loans were against Reason and Franchise of the Land. And by another Statute, That none shall be charged by any Impositions called a Benevolence, by which Statute, and other the good Statutes of this Realm, your Subjects have inherited the Freedom that they shall not be compelled to contribute to any Taxes, Talliage, Aid, or other like Charge not set by Parliament.

And then they pray that none hereafter be compelled to make or yield any Gift, Loan, Benevolence, Tax, or such like Charge without common Consent by Act of Parliament. And after, five other things there mentioned, the conclusion is. All which they pray as their Rights and Liberties; unto which the King Answers, Let Right be done as is desired, which is a full and perfect Statute, shewing in this Point the Liberty of the Kingdom prayed, and allowed, which was not done without the Advice of the Judges, whereof I was one, whose Opinions were then demanded, and resolved that the same did not give any new Liberty, but declared what the Liberty of the Subject was in this amongst others, That they should not be compelled to be Contributary to any Tax, Talliage or Aid, nor any like Charge not set by Parliament. Of all which Statutes of those of the 25. *Edw.* 1. 34. *Edw.* 1. and the 14 of *Edw.* 3. being in the Negative and in force, I conclude that these Writs to lay such a Charge is against the Law, and so the Assessment by colour thereof unlawful.

Object. Now whereas the Precedent Arguments have been that the Kingdom being in Danger, therefore these Writs went forth for the making of Ships, because there could not be so suddenly any Parliament called, and the Parliament is a slow Body and the Kingdom may be lost whilst there is a Consultation, and the Danger is conceived to be very great, because that the Writ, 4 *Aug.* so mentions, that the Pirates provided a great Navy to infest the Kingdom, and it is fit with speed to provide a Remedy. And that the Writ of *Mittimus* mentioneth, That *Salus Reipublicæ periclitabatur.* And we must believe these Suggestions to be true, for the King's Certificate by this Writ is *Recordum Sueprlativum*, as Mr. Solicitor and my Brother *Berkely* termed it, and must leave it upon the King's Conscience if it be not true, to lay such a Charge upon an untrue Suggestion. And the Defendant also by his Demurrer hath confessed all the Suggestions in the Writ to be true; therefore it must be concluded the Kingdom was in great Danger, and present Remedy must be had by making of these Ships, and must be commanded by these Writs, and not to stay for a Parliament; and my Brother *Craweley* said, It may be if a Parliament were called, they will not yeild to the going forth of such Writs, although the Kingdom was never so much in Danger. And this Charge in respect of the making of the Defence is not within the Intention of these Statutes, that such a Charge should not be imposed, it had been a void Statute, and contrary to the Laws that the Kingdom should not be defended.

Respons. 1. To all these I Answer, That the Matter now in Question is upon the Writ, 4. *Aug.* Whether that be Legal or not; And the Suggestions therein be sufficient or not for the Writ of *Mittimus*, mentioning that *Salus Reipublicæ periclitabatur* at the Day of the issuing of the Writ 4. *Aug.* which is a Year and an Half after the first Writ doth not help it; and this is not notified to the Sheriff and Inhabitants of the County to make them the more careful, and in a greater Contempt if a Ship were not provided, but it is only a Notification to the Barons of the *Exchequer*, that the same was the Reason that the same issued forth.

Respons. 2. Secondly, The Suggestions are not absolute, that any such Danger was, or such Navy was prepared by Pirates; but only mentioneth, *Quia datum est nobis intelligi* that the Pirate had done such Mischief.

Respons. 3. Thirdly, If such Suggestions had been absolutely set down, yet we are not always bound absolutely to believe them; because many times untrue Suggestions are put into Writs and Patents, and yet it doth not lye upon the King's Conscience, neither doth the Law impute any Fact to the King, that any such be: For the Law doth always conceive honourably of the King, That he cannot, nor will not, signify any Untruth under the Great Seal; but he is abused therein, and the Law imputeth it to them that so misinformed the King, and thrust in such Suggestions into the Writ or Patent. And there-

fore all Patents grounded upon untrue Suggestions, are accounted void.

Respons. 4. Fourthly, That the Demurrer confesseth nothing but that which is legally and well set down; but that it be illegal, the Demurrer confesseth it not, but is well offer'd for that Cause.

Respons. 5. Fifthly, If the Kingdom were in Danger, yet a Charge must not be laid in general upon the Subjects, without their Consent in Parliament; for either the Danger is near, and then the present Provision must be made by Mens Persons, and the present Ships of the Kingdom, which the King may command from all Parts of the Kingdom, as need shall require; but cannot command Money out of Mens Purses, by distraining of their Goods, or imprisoning of their Persons. But if the Danger be further off, by Reason of any Foreign Combinations (as it is conceived it may be here) That Provision must be made of Ships by all the Kingdom for Defence. Then as *Philip Comines*, fol. 179. saith, That Cloud is seen afar off, before that the Tempest falls; especially by a Foreign War, and such Invasions cannot happen so soon, but that the King may call his Sages together, and by Consent make Provision for such Defence.

So I say here, If there be Time to make Ships, or prepare Ships at the Charges of the Counties; then is there Time enough for His Majesty, that he pleases to call his Parliament, to charge His Commons, by Consent in Parliament, and to have a Subsidary Aid, as always hath been done in such Cases. And they are not so long coming or meeting, but they will make Provision for Defence, it being for all their Safeties: For it appeareth by *Coke, lib. 9. fol.* 1. in his Epistle, that King *Alfred* made a Law, That a Parliament should be held twice every Year, and oftner, if need requir'd, in Times of Peace: So that it was then conceived, That it was necessary to have Parliaments to redress Inconveniences.

Also by a Statute made 4 *Ed.* 3. *cap.* 14. It is enacted, A Parliament shall be held once every Year, and oftner, if need be. And also by a Statute made 36 *Ed.* 3. *cap.* 10. It is enacted for the Redress of Mischiefs and Grievances, that daily happen, a Parliament shall be holden every Year, as another time was ordained by a Statute, which I think referreth to 4 *Ed.* 3. Also it appeareth by the Speed that was in the Parliament held in the third Year of His Majesty's Reign, when Five Subsidies were granted, two of them to be paid within few Days after the Sessions of Parliament ended; and therefore might, as this Case is, been order'd and provided for by Parliament, within seven Mouths, as the Time was between the Teste of the Writ, and the Time prefix'd for Ships to be prepar'd and sent.

Object. And whereas it is objected, That perhaps the Parliament would not have consented, and so the Kingdom might have been lost.

Respons. It is answer'd, That it is not to be presum'd, that the Parliament would deny to do that which is fit for the Safety and Defence of the Kingdom, their own Estates and Lives being in Danger, if the Kingdom were not sufficiently defended: For it is a Rule, *Nihil iniqum est presumend' in lege.* So of the High Court of Parliament, That they would not deny that which is fitting. But I confess, I think, That if it had been moved in a Parliament, they would never have consented unto these Writs, such never having been awarded before, since the Conquest. And if they had consented, they would have taken a Course how the same should have been made with the most Convenieney, and not to leave it to the Sheriff to take them how he would.

Object. To that which hath been said, That this Charge is not within the Statute, and that a Statute to inhibit such a Charge for Defence were void.

Respons. I answer, that it is true, That if a Statute were, that the King should not defend the Kingdom, it were void, being against Law and Reason. But a Statute that Money shall not be charg'd or levy'd, nor that Men shall be charg'd to make or prepare Ships at their own Charges, without common Consent of Parliament, I conceive were a good Law, and agreeable to Law and Reason. And the King may by Parliament, restrain himself from laying such a Charge, but by Consent in Parliament. And then the King being a Just and Pious King, as ever govern'd the Kingdom, which we that serve in his Courts of Justice have daily Experience of, would not assent unto, or suffer any such Charge, if he were truly informed the imposing of this Charge were against any one Law of his Kingdom, as this is against so many: But would say, as it is said of the Statute, made 35 *Ed.* 1. That the Pope should not be permitted to present to Benefices. That he was bound by his Oath to see that, and other Laws in Force, and not repealed, to be performed. That he would not suffer such Charges to be laid, contrary to the Laws and Statutes of His Realm. And would do as the late famous Queen *Elizabeth* did, when having requir'd a Charge upon divers of Her Subjects, by particular Letters from the Lords of Her Council, of several Sums of Money for present Help towards Her Wars in *Ireland:* Hearing that one of Her Judges being convented before Her Lords, for the Payment of it, thereby discouraging others to pay it; answer'd, It was against the Laws, that the same should be impos'd, there being an express Statute against it, which he being a Judge, was bound by his Oath to signify; he being, as much as in him was, to be a Conservator of the Queen's Oath in that behalf. The Queen, I say, was very angry that such an Imposition had been laid against Law, and commanded it should be stop'd from further gathering; and to some that had paid their Monies, the same was restor'd. And therefore the Principal and only Fault in the charging of His Subjects by these Writs, if they be unlawful, as I conceive they are, is in those that devised them, and informed him that they were lawful, and such as His Progenitors had from Time to Time used to send forth; and in his Judges who have affirmed it to be lawful: Therefore upon this Point I conclude, That this Charge, by this Writ, is illegal; and is no sufficient Cause to charge the *Defendents.*

Object. Where it hath been much urg'd and argu'd by Mr. Solicitor, and Mr. Attorney, That this Writ is warranted by the King's Prerogative and

and Power Royal, to send forth such Writs for Defence and Safety of the Kingdom in Time of Danger.

That this Writ is not to be maintain'd by the Prerogative, or Power Royal.

To this I answer, That I do not conceive there is any such Prerogative; for if it were a Prerogative, I should not offer to speak against it; for it is Part of our Oaths, that are Judges, to maintain the King's Prerogative, to the best of our Skill, and not to suffer the same to be diminish'd. But if it be as I have argu'd, That it is against the Common Law, and against so many Statutes, that the Subjects should be inforced to sustain, or to contribute to any Charge, without the special Consent, or common Assent in Parliament, then there is no such Prerogative; for whatsoever is done to the Hurt, or Wrong, of the Subjects, and against the Laws of the Land, the Law imputeth that Honour and Justice to the King (whose Throne is establish'd by Justice) That it is accounted not done by the King, but by some untrue and unjust Informations. This appeareth by the Authorities of our Books; for *Bracton, lib.* 3. *fol.* 107. who is an Ancient Writer in our Law, said, *Nihil aliud potest Rex in terris, cum sit Dei Minister & vicarius quam de jure potest*; and there a little after, *Itaq; potestas Juris sua est, & non injuriæ, cum sit author Juris non debet inde injuriæ nasci occasio unde jura nascuntur.* Sir *Ed. Coke*, in the Eleventh Book of his Reports, in the Case of *Magdalen Colledge*, where the Question was, Whether Queen *Elizabeth* having taken a long Lease of a Colledge, being conceiv'd to be against the Statute of 13 *Eliz.* it was sought to be maintain'd by Her Prerogative, but resolv'd it could not, it being against a Statute, by which she was bound, though not nam'd; and there *fol.* 72. it is said, *Hoc solum Rex non potest facere, quod non potest injuste agere. Plowden's Comment.* fol. 246, 247. in the Lord *Berkley*'s Case it is said, That the Prerogative of the King cannot do Wrong, and His Prerogative cannot be any warrant to do any Wrong to any. *Plowden's Comment.* fol. 487. in *Michell's* Case, it is said by Justice *Harper*, Although the Common Law doth allow many Prerogatives unto the King, yet it doth not allow any that he shall Hurt or Wrong any by his Prerogative. 21 *Ed.* 3. *fol.* 47. the Earl of *Kent*'s Case, it is said, That if the King, under His Great Seal, do make any Grant to the Hurt of any other, he shall repeal and avoid it, *Jure Regis*; for the King is accounted to be abus'd, by untrue Suggestions, when he is drawn to do any Wrong to the Hurt of any other; much more I say, when he is drawn to do any thing to the Hurt of His Subjects in general. Sir *Ed. Coke, lib.* 11. *fol.* 86. in *Darcie*'s Case, it is said, That every Grant of the King hath this Condition annexed unto it, *Tacite aut expresse, ita quod Patria per Donationem illam, magis solito non oneretur, seu gravetur.* The Book call'd *Doctor* and *Student*, fol. 8. setting down, That the Law doth vest the absolute Property of every Man's Goods in him, and that they cannot be taken from him, but by his Consent; saith, That is the Reason that if they be taken from him, the Party shall answer the full Value thereof in Damages. And sure I conceive, That the Party that doth this Wrong to another, shall, besides the Damages to the Party, be imprison'd, and pay a Fine to the King; which in the *King's-Bench*, is the tenth Part of as much as he payeth to the Party: So then, if the King will punish the Wrong of taking of Goods, without Consent, between Party and Party; much more will he not by any Prerogative take away any Man's Goods, without his Consent, particular or general.

So I conclude, that I conceive, That there is not any such Prerogative to award such Writs to command Men to sustain such Charge, as to be contributary to it; and to be distrain'd and imprison'd for not Payment thereof.

Also I conceive, That this is not an Act of Royal Power; for if it be illegal to impose such a Charge, then it is not accounted as a Matter of Royal Power; but as a Matter done upon an untrue Suggestion, and a Matter of Wrong done; and Wrong is not imputed to the King, for he can do no Wrong; but it is imputed to them that advised him to this Course.

Royal Power, I account, is to be used in Cases of Necessity, and imminent Danger, when ordinary Courses will not avail; for it is a Rule, *Non occurundum est ad extraordinaria quando fieri potest per ordinaria:* As in Cases of Rebellion, sudden Invasion, and some other Cases, where Marshal Law may be used, and may not stay for Legal Proceedings: But in a Time of Peace, and no extream Necessity, Legal Courses must be us'd, and not Royal Power.

Therefore, whereby the Statute of 31 *Hen.* 8. *cap.* 8. which was made upon the Suppression of *Abbies*, when Rebellions were begun to be stir'd, it is recited, That sudden Occasions happening, which do require speedy Remedies and for lack of a Statute, the King was enforced to use Royal Power: It was enacted for the Reasons therein mention'd, That the King, by the Advice of His Council therein nam'd: Two Bishops, two Chief Justices, and divers others, or the major Part of them, by His Proclamation may make Ordinance for Punishment of Offences and Lay Penalties, which should have the Force of a Law (with a Promise that thereby no Man's Life, Lands or Goods, should be touch'd or impeach'd) so that therein Royal Power was fortify'd by a Statute; yet that Statute took Care that no Man's Life, Lands or Goods, should be taken or prejudic'd; and yet that Statute was thought inconvenient, and therefore the same by a Statute of 1 *Ed.* 6. was repealed.

Bracton, lib. 2. *cap.* 24. *fol.* 55. And the same is cited in *Coke, lib.* 7. *fol.* 11. in *Calvin's* Case, *Regis Corona est facere Justitiam & Judicium, & tenere Pacem, sine quibus Corona consistere non potest nec tenere.*

Coke, lib. 7. *fol.* 5. in *Calvin's* Case, cited out of *Fortescue, Rex ad tutelam Corporum, & bonorum erectus est*; which being so, he cannot take away Mens Goods, or charge them without their Consent, by any Prerogative or Royal Power.

Also there can be no such Necessity, or Danger conceiv'd, that may cause these Writs to be awarded to all Counties of *England*, to prepare Ships at such a Charge, and with such Men and Ammunition, without Consent in Parliament; for the Laws have provided Means for Defence in Times of Danger without taking this Course;

for

for that the King hath Power to command all, or any Persons of His Kingdom, to attend with Arms at the Sea Coasts, to defend the Coasts, or any other Parts of the Kingdom. And also by his Officers, to make stay or arrest, all or any the Ships of Merchants, and others having Ships; or as many as he pleaseth to go with His Navy, to any Parts of His Kingdom, for Defence thereof; and to attend those to whom he appointed the Guard of the Seas, or the Sea Coasts, at such Times and Places as they should appoint: And this hath been always taken and conceiv'd to be sufficient for Defence, against any Prince whatsoever; and yet the same was in Times, when the Navy of *England* was not so strong, as now by the Blessing of God and the good Providence of His Majesty it is.

That this Course was then so taken, it appeareth by divers Records, *viz.* 23. *Ed.* 1. *m.* 4. the Record reciteth, That the *French* King had prepared a great Navy upon the Sea, and purposed to invade the Kingdom, *& linguam* Anglicanam *de terra delere*; and thereupon the King commanded all the Ships, and Men with Arms, to be in Readiness to defend the Kingdom.

Rot. Scoc. 10. *Edw.* 3. *m.* 16. reciteth, That certain Gallies in Parts beyond the Seas, were prepared with Provisions of Men, and Arms, and other Necessaries of War, and ready to invade the Land, Command was, that divers Ships should be in Readiness to defend; and the Ships of the Parts of *Ireland* to be sent into *England* to help to defend the Kingdom.

Scoc. 10. *Edw.* 3. *m.* 22. A Writ was to the Bailiff of *South Wales*, reciting, That the *Scots* and divers others confederating together, prepare themselves to Arms, and Ships in a great Number, and intend to invade the Kingdom, to command them to have one Ship ready upon the Sea to defend their Coasts; the like Writ was then to *North Wales*.

Alm' 12. *Edw.*3. *m.* 10. A Writ to the Mayor of *London*: *Quia hostes nostri in Galleis cum multitudine non modica congregati in diversis partibus regni hostiliter ingressi sunt & civitatem prædict' celeriter si possunt invadere proponunt.* The King commandeth them to shut up the City towards the Water, and to put all their Men in Arms ready to defend; *&c.*

Alm' 13. *Edw.* 3. *m.* 13. A Writ to the Bailiff of *Great Yarmouth*: *Quia pro certo dedisci-mus quod hostes nostri Franc' & adherentes eisd' Galleas & naves guerrinas in copiosa multitudine in partibus exteras congregarunt & iis homines ad arma parari faciunt & proponunt se movere versus regnum nostrum & navig' regni nostri & Portus prope mare scituat' pro viribus destruere & id' regnum invadere &c.* Commands the same Town, to prepare four Ships with 140 Men, *&c.*

At the same Time, Writs went forth to 20 other Towns upon the Sea Coasts, *Franc.* 26. *Edw.* 3. *m.* 5. Writ to the Earl of *Huntingdon* and others: *Quia adversarii nostri Franciæ nos & regnum nostrum invadere machinantes magnum navigium præparari fecer' & armari ne dum ad regnum nostrum* Angliæ *subito attrahend' sed ad nos & dominium nostrum & totam nationem* Anglicanam *pro viribus subvertend' &c.* commanding them to guard all the Sea Coasts of *Kent*, and to array all Men to be ready with Arms to defend the Sea Coasts.

5. *Hen'* 4. *m.* 28. A Commission is to *Thomas Morley* and others: *Quod cum inimici nostri* Franciæ Britan' Scot' *& al' sibi adhærentes inter se obligati magna potentia armat' super mare in æstat prox' futur' ordinaverunt regnum nostri* Angliæ *invadere &c.* Commanding them to array Men with Arms to defend, *&c.*

4. *Hen.* 8. *Par.* 2. The King by Proclamation unto the County of *Kent*, sheweth, That it is come to his Knowledge of certain, that his ancient Enemy, the *French* King, hath prepared and put in Readiness a great and strong Navy, furnish'd with Men of War, to invade the Kingdom of *England*, the King appoints the Lord of *Abergaveny* and others, to put Men in Array, and to be ready to defend that County.

Anno 1588, when the great Invasion was by the Navy termed, *the Invincible Navy*, which was foreseen long before, this Course of preparing Ships by every County of the Kingdom was not appointed; yet in all these Times, when there appeared so great Danger of Invasion, there never went any such Writ into any of the Counties of *England*, to provide Ships,: But the Navy of *England*, and Army of *England* was always accounted sufficient for the Defence of the Kingdom.

So I conclude this Point, that I conceive this Course cannot be taken by any Prerogative or Royal Power, nor any Allegation of Necessity or Danger.

For the fourth Point, I conceive, that if it were legal to lay such Charge upon maritime Parts; yet to charge any inland County with making of Ships, and furnishing them with more Mariners and Soldiers at their Charges, which are far remote from the Sea, is not legal nor warranted by any former Precedent; for it commandeth an unreasonable and impossible thing by them to be done: And then a Writ, commanding such a thing as is unreasonable and impossible for the Parties of themselves to perform, without Help of other Counties, is always illegal: For it is a Rule, That *lex non cogit ad impossibilia*: If one by Covenant bind himself to do a Thing impossible, the Covenant is void.

This appeareth by the Book, Case 40. *Edw.* 3. *fol.* 6. where the Case is expresly, that if a Man do covenant to do a thing impossible, the Covenant is void, and the Deed is void in that Respect: Also the Book, *m.* 2. *Edw.* 4. *fol.* 2. If a Feoffement be made upon Condition to be void, if the Feoffee did not a thing which is impossible, the Feoffement is good, and the Condition void; for it was the Fault of the Feoffer to annex such a Condition: And this appeareth by the Case of an Arbitrament. If the Arbitator award, that one shall enter into Bond with such an one as his Surety to pay a Sum of Money, or to do any other Act, it is void, as to the finding of a Surety at the least: for it is not in his Power to compel him to be his Surety; therefore the Law accounteth it unreasonable, and so void: And this appeareth by the Book, Case 17. *Edw.* 4. *fol.* 5. where it is so resolved.

So this Writ commanding the Sheriff and Inhabitants of an inland County to

to find a Ship with Masters and Mariners; whereas there is not any Ship-Wrights that have Skill to make Ships, nor any Masters or Mariners ever there to guide a Ship, for they are still conversant about Matters of the Plough, and feeding Cattel, and Husbandry, and are train'd up by Masters to Skill of Arms, to defend the Country, but not with Sea Affairs, for most of the County never saw a Ship, nor knows what belongs to Masters or Mariners; and the County is not bound to seek out of the County for such Men; and perhaps if they should, they cannot tell where to have them: Therefore, when such Writs to Inland Towns have been awarded to find Ships with Masters and Mariners, it being conceived by Information, that they were maritime Towns, and had Ships, and Mariners dwelling with them; the Truth thereof being made appear to the contrary, they have been discharged, as appears by a Record, 13 *Ed.* 3 *part.* 2. *m.* 14. where a Writ went to the Admiral of the Fleet: These Towns upon Complaint to the King by the Men of *Bodmyn* in the County of *Cornwall*, that they were unjustly charged to find a Ship with Masters and Mariners, whereas that Town was no Port-Town, nor adjoining to the Sea, but far within the Land, nor ever had Ships lying there, nor Mariners, nor Seamen, nor ever used to find any such for Sea-Service, and that their Major and Officers were imprison'd for not finding a Ship; thereupon the King appointed to have it inquired whether their Allegations were true, and if it were true, signified that he would not have them be unjustly charged, but that they should be discharged thereof; which sheweth, that it was then accounted unjust to lay such a Charge upon a Town that was an Inland Town, and had no Mariner inhabiting in it; much more when such a Charge is laid upon an Inland County, which is much farther remote from the Sea, and cannot perform by themselves that which the Writ commanded.

Object. But this Record being objected by the Defendent's Council, Mr. *Sollicitor* gave Answer, that the same was, because the Admiral of his own Authority had charged them, which was not according to his Commission; for he was only to charge the Port-Towns and Sea-Towns, but that the same may not be done by the King's Writ, the Record doth not prove.

Respons. But to this I Answer, that I conceive it is all one when such a Charge is laid upon a Town by Writ which is an Inland Town, for so it appeareth by another Record of the same Year, *viz.* 13 *Ed.* 3. *part.* 1. *m.* 14. where a Writ was directed to the Admiral of the Fleet, *Ab ore Thamesis versus partes occidentales*; reciting, that where the King by his Writ to the Town of *Chichester*, commanded the Mayor and Commonalty there, that they should make *unam Navem & duos Escurlanios de Guerra parari*, with Mariners and Men at Arms, to be at *Portsmouth* such a Day, to go with the King's Ships. And that they had complained that they had not, nor ever had any Ships arriving in that Town, nor had any Seamen or Mariners dwelling there; and that it appeared, unto the King by Inquisition of a Jury returned into his *Chancery*, this their Allegation to be true; therefore, because the King would not have them *indebite gravari* (for so be the Words of the Record) the King commandeth the Admiral that they should not be troubled nor distrained for not Performance of such Service; whereby it appeareth, that if they being within a few Miles of the Sea, should not be charged to find such a Ship, much less more Inland Counties that are farther remote from the Seas, are justly to be charged with finding Ships and Mariners. Therefore I conclude this Point, that I conceive, this Writ in that respect is not legal, nor warranted by any former Precedent.

The Answer to the Precedents.

The fifth and great Point hath been, and indeed the chief Argument hath been, a multitude of Records and Precedents, which have been cited, that should warrant these Writs; and that the King hath done nothing but what his former Progenitors have done, and have lawfully done, and that he doth now but *More Majorum*, and that which always in ancient times hath been done and allowed, and therefore ought to be done.

I confess this Allegation much troubled me, when I heard these Records cited and so learnedly and earnestly pressed by Mr. *Sollicitor*, and after by Mr. *Attorney*, to be so clear, that they might not be gainsaid; but that they proved a clear Prerogative, or at least a Royal Power, that the King might do so, especially when my Brother *Weston*, and my Brother *Berkley* (who have seen the Records, pressed some of them, and relied upon them for the Reasons of their Judgments) I say, I was much doubtful thereupon, until I had perused all these Records sent me by the King's Council, and satisfied my Judgment therein.

But now I answer, That if there were any such Precedent (as I shall shew there was not one shewed to me) to prove this Writ to be usual, yet it were not material, for now we are not to argue what hath been done *de facto*, for many things have been done, which were never allowed; but our Question is, what hath been done, and may be done *de jure*. And then as it is said in *Coke*, *lib.* 4. *fol.* 13. in *Witton's* Case, it is said *Multitudo errantium non parit errori patrocinium*, and *lib.* 4. *fol.* 94. in *Slade's* Case. Multitude of Precedents, unless they be confirmed by judicial Proceedings in Courts of Record are not to be regarded; and none of these were ever confirmed by judicial Record, but complained of.

But to give a more clear Answer unto them, I say, that in my Opinion upon, and serious reading of all the Records that have been sent me on the King's Part; I have read them all over *verbatim*, and I presume they sent all they conceived to be material. And I having taken Note of every one of them, and diligently considered of them, I conceive that there is not any Precedent or Record of any such Writ sent to any Shetiff of any Inland County, to command the making of Ships at the Charge of the County, but this is the first Precedent that ever was since the Conquest that is produced in this kind.

But it is true, that before 25 *Ed.* 1. there have been some Writs to maritime Towns and Ports, and other Towns at *London*, &c. where they have had Ships and Mariners, to provide and prepare Ships, and to send them to such Places

as the King pleased to appoint, upon any just Cause of Fear of any Danger, for the Defence of the Sea and Kingdom; and great Reason, that they having Ships and Masters of Ships and Mariners, should be at the King's Command, to bring all or as many as he pleaseth for the Defence of the Sea and Kingdom, being those that had the most Benefit of the Seas, and likely to have the greatest Loss if the Sea and Coast were not daily guarded, and those were appointed most commonly to be at the King's Charges; but sometimes upon Necessity they were appointed to be at the Charges of the Towns and Ports adjoyning, which I think was the true Cause of the Complaint in Parliament in the 25 *Ed.* 1. and the making of that Statute for the staying of that Course, for there is no Record of any such Writs afterwards in *Ed.* I's time after that Statute to Maritime Towns, to prepare or send Ships at the Charge of the Towns.

But in the time of *Ed.* 3. then the War being between him and the *French* King in *Annis* 10. 11. 12. & 13. of that King, were the most Writs awarded to Maritime Towns, to send Ships at their Charges sufficiently furnished; and those I think were the principal Cause of the making of the Statute of 14 *Ed.* 3. *cap.* 1. And after that Statute no such Writs, nor any Commissions for that purpose were awarded to any Maritime Towns, or Inland Towns, for the making of Ships, but one, which Record was much pressed by Mr. *Attorney*, and afterwards by my Brother *Weston*, and my Brother *Berkeley*, to prove, that this Course was, and might be practised after the Statute of 14 *Ed.* 3. for sending forth such Writs, and allowed; but that Record is fully satisfied, for it was grounded upon an Ordinance of Parliament in 1 *Rich.* 2. *m.* 52. that all ancient Cities, Burroughs, and Towns, that would then, should have their Charters confirmed without any Charge of Fine, save only, to make a Ship of War for Defence of the Realm, so this was not compulsory to any, but voluntary to those that would have their Liberties confirm'd. And afterwards, in 1 *Hen.* 4. Commissions were awarded for making such Vessels of War; but those issuing forth without any Ordinance of Parliament, were complained of in Parliament, 2 *Hen.* 4. no such Writs issued forth in any Age, to any Maritime Towns, to make Ships, or prepare Ships at their own Charge for the King's Service, until these late Writs.

This general Answer I give unto all the Records; and now I shall take a short View of all the Records that have been cited and sent to me, and leave them to the Judgment of my Lords and others, if any of them prove these Writs usual and legal.

The Records of King John's *Time.*

6 *Joh. m.* 1. 3. *Joh m.* 3. 14 *Joh. m.* 2. 17 *Joh. m.* 7.

Three of these are to arrest and make Stay of Ships, that they should not go out of the Kingdom, but to be ready for the King's Service; and the other was to bring Ships of particular Towns to the Mouth of the *Thames*, for the King's Service.

19 *Joh. m.* 4.

A Commission, to guard the Seas, to *Joh. de Marshal*, and to the Sheriff of the County of *Lincoln*, and to all others to attend his Commands.

15 *Joh.*

Writ to the Barons of the Cinque-Ports, and divers other Towns, to have their Ships ready for the King's Service.

In the Time of Henry III.

14 *Hen.* 3. *m.* 14. 14. *Hen.* 3. *m.* 5.

A Writ to the Bailiff of *Portsmouth*, to prepare one Galley.

A Commission to the Sheriff of *Rochester*, and another to the Sheriff of *Kent*, to cause all Men to be in Arms in that County, and to assess them what Arms they should find.

48 *Hen.* 3. *m.* 4.

A Writ to the Sheriff of *Norfolk*, commanding him to cause them appointed to attend all the Coasts in that County; and having served 40 Days intended to depart, that they should stay 8 Days longer by Reason of the Danger, and longer, if Need required.

The like were sent to the Sheriffs of *Suffolk* and *Essex*.

48 *Hen.* 3. *m.* 2.

A Writ to the Mayor of *Bedford*, commanding him to provide for the Expences of them that were sent from thence for the guarding of the Seas; yet it is but for 8 Days more after the Date of the Writ.

48 *Hen.* 3. *m.* 3.

A Writ to the Men of *Essex*, *Norfolk*, and *Suffolk*, appointed to attend for the guarding of the Sea Coasts, reciting, that the King had appointed *T. de M. Custodi maris & partiu' maritim'* within their Counties, commanding them to assist him, and to perform therein what he required.

48 *Hen.* 3. *m.* 7.

A Writ to the Sheriff of *Cambridge* and *Huntingdon*, to command all Men of those Counties, able to bear Arms, to come to the King to *London*.

In

In the Time of Edward I.

25 *Edw.* 1. *m.* 5.

A Writ to those of *Essex*, *Norfolk*, and *Suffolk*, reciting, That such Persons were appointed *ad custod'. maritim'* in those Parts, commanding them to attend them; another to the Sheriffs of *Norfolk* and *Suffolk*, reciting, That certain Constables were appointed to assess Men at Arms, sufficient for the guarding of the Sea Coasts, commanding them to distrain and compel them assessed to go.

24 *Edw.* 1. *m.* 17.

Writs to the Sheriffs of *Lincoln*, *York*, and *Northumberland*, reciting, That he had commanded *A. de B. ad congregand' & capiend' centum naves*, between *Leigh* and *Berwick*, *& ad homines potentes in eisd' ponend'*, commanding them to assist him therein.

24 *Edw.* 1. *Rot.* 62.

A Writ out of the *Exchequer* to *Adam de Guerdo & aliis Gardianis* of the Sea Coasts in the County of *Southton*, to distrain the Abbot of *Reading*, to find Horses, which he was assessed at for that Service.

24 *Edw.* 1. *m.* 16.

Writs to all Archbishops, Bishops, Earls, *&c.* in the Counties of *Somerset*, *Devon*, and *Cornwall*, to attend with their Horsemen and Footmen, for Defence of the Sea Coasts in those Parts, when they shall be required by the Guardian of those Coasts.

24 *Edw.* 1. *m.* 71.

A Writ out of the *Exchequer* directed to all Archbishops, Bishops, Earls, *&c.* in the County of *Norfolk*, reciting, That *Peter de Rutlin* was appointed *ad custodiend' partium maritinar' illam*, commanding them to assist him.

24 *Edw.* 1. *Rot.* 78.

A Writ out of the *Exchequer* to the Sheriff of *Berks*, reciting, That the King was informed by *Adam de Griden* Guardian of the Sea Coasts in the County of *Southampton*, that those Men in the County of *Berks*, which were assigned to come to the defending of the Sea Coasts in those Parts, came not as they were warned, commanding to distrain them, and compel them to come and to do the Service.

The like Writs were then awarded to the Sheriffs of *Wilts* and *Southampton*, *&c.*

24 *Edw.* 1. *Rot.* 81.

A Writ to the Bailiffs of *Great Yarmouth*, reciting, That the King was informed, that certain in *Flanders* and *France*, in a great Multitude, apparell'd like Fishermen intended to invade their Town, warning them to gather their Ships together, and all their Arms, to defend themselves against such an Attempt.

24 *Edw.* 1. *inter Com'*

A Writ to all Sheriffs and Bailiffs, *&c.* reciting, That he had appointed some therein-named, *ad congregand' numerum navium & galliarum majorum*, *&c.* commanding the Sheriffs in their several Counties to be assisting unto them therein.

24 *Edw.* 1. *m.* 9.

A Writ of *Supersedas* to the Guardian of the Seas in the County of *Southampton*, to discharge *Hugh de Plessis* to find Arms for his Lands in that County, for guarding of the Seas, because he was in Service with the King,

Nota, *All these Records are for arrays, and congregating Ships, but none to make or prepare Ships at the Charges of the Counties.*

24 *Edw.* 1. *m.* 26.

A Writ to the Sheriff of *Essex* to discharge for the Winter time those that stay at the Sea Coast, with their Arms to defend the Coast; but commanding them to be in a readiness when they should be again commanded.

The like Writs were then awarded to divers Sheriffs of Maritime Counties to the same purpose.

25 *Edw.* 1. *m.* 12.

A Writ to the Sheriff of *Lancaster*, reciting, That whereas the King had formerly commanded him, to go to all the Ports and Towns where Ships were, commanding the Bailiffs of the Ports to have all the Ships of Burthen of 40 Tons at *Winchelsea*, by such a Day; now commandeth the Sheriff to see them made ready and sent thither accordingly.

Ibidem m. 13.

The like Writs directed to the Sheriffs of *Lincoln*, *York*, *Northumberland*, and *Cumberland*.

Ibidem m. 14.

The like Writs directed to Nineteen other Ports and Towns in other Counties.

21 *Ed.* 1. *m.* 20.

A Commission to send away Men at Arms in the County of *Westmorland*.

21 *Ed.*

21 *Ed.* 1. *Rot.* 77.

In the *Exchequer* shewed by the *Defendent*'s Council, Writs were to several Maritine Towns upon the Sea Coasts, and other Towns where Ships were usually made, to make Ships and Sallies; and that the King will allow and pay for them, when he knoweth the Charge thereof.

In the Time of King Edward II.

Pat. 9. *Ed.* 2. *Part.* 2.

A Writ to all Men in the Towns upon the Sea Coasts, and Ports of the Sea, between *Southampton* and *Falmouth*, reciting, That the King had appointed *John de Norton* to make Provision for a Navy in those Towns and Ports, at their Charges, commandeth them to perform what he in that behalf shall require.

Claus. 20. *Ed.* 2. *m.* 8.

A Writ to the Bailiff of *Yarmouth*, reciting, That whereas the King had commanded all the Ships of the Burthen of Fifty Tons, from the *Thames*-Mouth towards the *West*-Parts, to be at *Portsmouth* such a Day, *&c.* And they had sent two Ships; that the Masters and Mariners complain'd, That they could not serve without Wages, and therefore appointeth them to send them Wages.

20 *Ed.* 2. *m.* 10.

A Writ to the Bailiffs of *Yarmouth*, commanding them to send all their Ships of the Burthen of Thirty Tons, and above, to *Orewell* in *Suffolk*, with double Tackling, Victuals, and other Things necessary for one Month.

The like Writs at the same Time to other Towns, to the Number of Four and Thirty.

20 *Ed.* 2. *m.* 10.

A Writ to the Mayor of *London*, to provide Three Ships with Men and Ammunition, to go with Nine Ships of *Kent* to guard the Sea Coasts.

15 *Ed.* 2. *m.* 15.

A Writ to the Sheriff of *Norfolk*, commanding him to warn all Barons, Bannerets, Knights, and others of that County, to attend the King at *Coventry*, at such a Day, to go with the King.

15 *Ed.* 2. *m.* 15.

Writs to the Sheriffs of *Norfolk* and *Suffolk*, commanding them to arrest all Barons, Bannerets, Knights and Esquires, which were commanded to attend the King at *Coventry*, such a Day therein nam'd, and came not, to be before the King and His Council to answer it.

The Record saith, like Writs were then awarded to divers Sheriffs of other Counties.

16 *Ed.* 2. *m.* 13.

A Commission to array all Persons between the Ages of Sixteen and Sixty, with Arms convenient to come to the King, when they shall be requir'd.

19. *Ed.* 2. *m.* 6.

A Writ to the Archbishop of *Canterbury*, commanding him to array all his Servants and Families, to be ready to defend the Kingdom, if any Invasion should be.

The like Writs at that Time to all the Bishops.

In the Time of King Edward III.

2 *Ed* 3. *m.* 92.

A Writ to the Mayor and Bailiff of *Southampton*, commanding them to cause all their Ships of the Burthen of Forty Tons, and above, to be furnish'd with Men of Arms, and Victuals, ready to defend the Land, if any Invasion shall happen.

Scot. 7 *Ed* 3. *m.* 19.

A Commission to *Hugh Courtney*, to guard the Seas in the Counties of *Devon* and *Cornwall*, and commanding all others to assist him.

10 *Ed.* 3. *m.* 25.

The like Commission to *Hugh Courtney*, for guarding the Seas in the same Counties.

Ibidem.

A Writ to *Bartholomew de Insula*, for Custody of the Sea Coast in the County of *Southampton*; and therein is a Command to *John Tichborne*, and others for the County of *Southampton*, and to *Will. de Parshire*, and others for the County of *Berks*; and to *Joh. Mareditt*, and others for the County of *Wilts*, to array Men with Arms, and to have them in readiness to defend the Coasts of *Southampton*.

Scoc. 10 *Edw.* 3. *m.* 2.

A Writ to *Will. Clynton*, Guardian of the Cinque-Ports and others, to Survey all the Ships of the Cinque-Ports, and other Ports from the Mouth of the *Thames* to *Portsmouth*, and to cause them to be furnished with Arms and Victuals for 13 Weeks, from the time they shall go from *Portsmouth*.

Scoc. 10 *Edw.* 3. *m.* 2.

A Writ to the Mayor of *Winchelsea*, to cause the Ships appointed for that Town to be furnished with

with Men and Arms, and Victuals, and other Necessaries for thirteen Weeks.

Scoc. 10 *Edw.* 3. *m.* 16.

A Writ to the Admiral of the Fleet from the Mouth of the *Thames* unto the West Parts, to keep upon the Seas the Ships of the Cinque-Ports, and other Ships arrested to defend the Kingdom against attempt of any Invasion.

The like Writ was then to the Admiral of the Fleet, from the Mouth of the *Thames* unto the North Parts, with the like Command, to hold the Ships together upon the Sea.

Scoc. 10 *Edw.* 3. 16.

A Writ commanding the Ships of the Ports of *Ireland* to be sent hither, to guard the Seas here.

10 *Edw.* 3. *m.* 12.

A Writ to the Bailiff of *Yarmouth*, to cause the Men of that Town to contribute to the Charges of the Ships and Men, and Victuals, sent from thence for the Defence of the Kingdom.

Scoc. 10 *Edw.* 3. *m.* 22.

A Writ to all the Bailiffs of Liberties, and Men of *South-Wales*, to have one Ship riding upon the Seas for Defence of those Parts.

The like unto the Men of *North-Wales*.

Scoc. 10 *Edw.* 3. *m.* 21.

A Writ to the Arrayers of Men for the County of *Berks*, to compel them of that County, assigned and assessed for the keeping of the Sea Coast in the County of *Southampton*, to go to *Portsmouth* by a Day therein appointed.

Alm' 12 *Edw.* 3. *m.* 12.

A Commission that the King had appointed all the Ships from the Mouth of the *Thames* Northwards, to be arrested, and to cause them to be furnished with Ammunition, Men and Victuals, and to be brought to *Yarmouth*; and that the Men of *Lynn* refused to contribute to the Expence of the Charge of the Men sent in the Ship from that Town, and the furnishing of that Ship; and therefore commands the Commissioners therein named, to assess them that refuse to contribute, and distrain them.

Alm' 12. *Edw.* 3. *m.* 13.

The like to compel the Men of *Bardesey* to contribute for the Expences of the Men of that Town.

Claus. 12. *Edw.* 3. *m.* 17.

The like to compel the Men of the Counties of *Surrey* and *Sussex*, to contribute to the Expences of the Men of those Counties, that did attend for the guarding of the Sea Coasts in those Parts.

Vasc. 12. *Edw.* 3. *m.* 8.

A Writ to all Archbishops, Bishops, *&c.* and to the Sheriff of *Kent*, and the Barons of the Cinque-Ports, and all others in that County, commanding them to be assisting to *J. de Cobham*, to whom the Custody of the Sea in those Parts is committed; and to defend those Coasts against any foreign Invasion that shall happen.

Alm' 12. *Edw.* 3. *m.* 10.

A Writ to the Mayor of *London*, reciting the Danger of Invasion, and commanding to shut up the Gates, at the Water-side, if the Enemies approach.

Alm' 13. *Edw.* 3. *m.* 12.

A Writ to the Bailiff of *Yarmouth*, reciting, that he had by his Writ commanded four Ships of War of that Town to be made ready with Men, Ammunition, and Victuals for three Months, at the Charges of the Town, to be brought to *Orewell*, and that they failed to come at the Day, to the great Peril of the Land; therefore commandeth the Bailiff to compel them at another Day therein prefix'd, to be at the same Place.

There it is set down, that the like Writs were awarded to the Bailiffs of seventeen other Towns, for sending their Ships, being charged some of them for one Ship, and some for two Ships.

Claus. 13. *Edw.* 3. *m.* 38.

A *Supersedas* for the Abbot of *Ramsey*, for being charged with Arms for guarding the Coasts in *Norfolk*, for his Lands in *Norfolk*, because he was by Command attending with all his Forces in the County of *Huntingdon*, for the Safety of these Parts.

Claus. 13. *Edw.* 3. *m.* 14.

A Writ of *Supersedas* to the Arrayers of Arms in the County of *Oxon*, to discharge *John Mauditt* to serve there, because he served in *Wilts*.

Claus. 13. *Edw.* 3. *m.* 14.

A Writ unto the Arrayers of Arms in the County of *Wilts*, which is only concerning the Payment of Soldiers Wages, which then attended to guard the Sea Coasts.

These being all the Records shewed me, it appeareth that there were no Writs issuing out in those Times to any Sheriffs of Inland Counties, or Maritime Counties, to make or prepare Ships upon any Occasion wharsoever, but only to Maritime Towns, to send their Ships, or prepare their Ships, at their own Charges.

The Records shewed me since the 14th of *Edward* III. do not shew any Writs to be awarded to any Maritime Town, to prepare Ships at the Charge of the Towns: But these Records of 1 *Richard* II. and 1 *Henry* IV. which I have before answered; and they since that Time shewed unto me, except such as I have mention'd in my Argument, are these:

Scoc. 10. *Ed.* 3. *m.* 14.

A Commission to *Nicholas de Cartlope*, to array Men to resist the *Scots*.

Ibidem.

A Writ to the Mayor of *York*, to array all their Man to be ready when they shall be required.

20 *Ed.* 3. *m.* 15.

A Commission concerning the Arrays of Men in the Counties of *Derby* and *Nottingham*, and to punish them that come not when they are warned.

Rot' Franc' 21 *Ed.* 3. *m.* 31.

A Writ to the Arrayers of Men in the County of *Southampton*, to discharge the Abbot of *Battaile*, for finding Arms for Defence of the Sea Coasts there.

Franc' 25. *Ed.* 3. *m.* 20.

A Commission to *John Bodingham*, for the Custody of the Port and Maritime Parts in *Cornwall*, and to array all Men to be in Readiness.

There is set down, that the like Commissions is to others in several other Counties.

Franc' 26. *Ed.* 3. *m.* 5.

A Commission to the Earl of *Huntington* and others, to have the Custody of the Ports in *Kent*, and to array Men, and to set up Beacons, which is the first I observe of this Kind.

Franc' 46. *Edw.* 3. *m.* 34.

The like Commission then to several other Persons, to array Men in several Counties, as *Warwick*, *Oxon*, *Berks*, and *Bucks*.

A Writ to the Archbishop of *Canterbury*, reciting the Danger of Invasion by the *French*, to hurt the Church and Kingdom, commanding him to array all his Clergy in his Diocess, and to be ready to go with the King's Forces, *&c.*

The like Writs to all other Bishops in the Kingdom.

Franc' 50. *Edw.* 3. *m.* 47.

A Writ to the Arrayers of Men in the County of *Norfolk*, and to the Sheriff of *Norfolk*, commanding them to command all great Men and others that have Mansions upon or near the Sea Coast, to resort to them with all their Families, for the Defence of the Coasts.

The like to the Arrayers and Sheriffs of ten other Maritime Counties.

Scoc. 29. *Edw.* 3. *m.* 13.

A Commission to the Bishop of *Durham* and others, to array Men in *Durham*, *Cumberland*, and *Northumberberland*, to resist the *Scots*.

Franc' 40. *Edw.* 3. *m.* 31.

A Writ to *William Zouch* and others, to remove with all their Families to their Houses upon the Sea Coasts.

Nota, *That all these Records are for arraying Men, and none for preparing Ships.*

In the Time of King Richard II.

1 *Rich.* 2. *m.* 7.

A Writ to the Bailiffs of *Scarborough*, because their Town was upon the Coasts of the Sea, and in Danger of Invasion, carefully to look to the Custody thereof.

Eod' Rot' m. 12.

A Writ to the Mayor and Bailiffs of *Oxford*, to repair the Walls of the Town, and to compel those that had Lands there, to contribute to the Expences thereof.

This Record hath been much urged by Mr. *Solicitor* and Mr. *Attorney*, that if the King have such a Power to command the Walls of a Town to be repaired, much more to command Ships to be made, which are the Walls of the Sea, and consequently the Walls of the Kingdom.

But this is clearly answered; for that it is but a private Town, and that which hath been formerly so walled, and for Defence and Safety of the Town; and none were to be charged but those that had Benefit thereby; and so proveth nothing to the Case in Question.

Idem

Ed. Rot. m. 42.

One Writ to the Sheriff of *Kent*, and another to the Sheriff of *Essex*, commanding them to perform an Ordinance made by the King and His Council, for setting up of Beacons, and keeping Watch about them.

Scoc. 7. *Ric.* 2. *m.* 8.

A Writ to the Archbishop of *Canterbury*, to command all his Clergy between Sixteen to Sixty, to be array'd and put in Arms, both Horse and Foot, according to their Qualities, to defend the Kingdom.

Franc. 11. *Ric.* 2. *m.* 13.

A Writ to Serjeants at Arms, to arrest all Ships of War in the Ports of *Plimouth*, or *Dartmouth*, and other Ports, in the County of *Cornwall*; and to bring them to *Hunkshooke*, to go with the King's Majesty's Ships.

In the same Roll, divers other Writs to divers other Sheriffs at Arms, to arrest the Ships in divers other Ports.

Scoc. 21. *Ric.* 2. *m.* 3.

A Commission to the Duke of *Abnall'*, to array Men in the *West-Marches*, towards *Scotland*, to resist the *Scots*.

In the Time of King Henry IV.

Rot. viagii. 1 *Hen.* 4. *m.* 11.

A Writ to the Sheriffs of *Derby* and *Nottingham*, reciting, That the King certainly understood that the *Scots* intended with a great Power to invade the Kingdom, commanding them to proclaim in all Parts in their Counties, That all Men between Sixteen to Sixty, should put themselves into Arms, competent according to there Degrees and Qualities, to be ready upon two Days warning, at any Time to defend the Kingdom.

The like Writs were then directed to the Sheriffs of *Lincoln*, *York* and *Lancaster*.

Claus. 1 *Hen.* 4. *m.* 12.

A Writ to the Archbishop of *Canterbury*, *Satis informati estis qualiter inimici mei Franciæ & alii sibi adherentes cum magna classe Navium cum magna multitudine armator' super Mare congregator' diversas villas per Costerum Regn' mei invadere, & nos & Regnum meum destruere & Ecclesiam Anglicanam subvertere intendunt & proponunt*; thereupon commands, That the Clergy in that Diocess be array'd and arm'd, and to be ready to go against the Enemy.

The like Writs to all other Bishops in *England*.

Nota, *Although this great Danger be mention'd, yet no Command to prepare Ships.*

Pat. 5 *Hen.* 4. *Part.* 2. *m.* 28.

A Commission to *Thomas de Morley*, and others, and to the Sheriffs of *Norfolk* and *Suffolk*, and to the Bailiffs of great *Yarmouth*, reciting, *Quod cum inimici Franciæ, Scotiæ, & alii sibi adherentes se obligat' magna Potentia armat' super Marem in estat' proxim' futur' ordinaver' & intendunt Reg' invadere*, &c. Command to survey the Town of *Yarmouth*, and fortify it.

Nota, *Here also, though such great Danger and Distance of Time, yet no Writs issu'd to any Counties to prepare Ships.*

In the Time of King Henry V.

Pat. 3 *Hen.* 5. *Part.* 2. *m.* 37.

A Commission to array all Men at Arms in the West Riding, in *Yorkshire*, to be ready to defend those Parts.

The like Commissions to others, in Nineteen other several Counties.

In the Time of King Henry VI.

Pat. 13 *Hen.* 6. *m.* 10. *Pat.* 39 *Hen.* 6. *m.* 11. *Pat.* 39 *Hen.* 6. *m.* 12. *Pat.* 39 *Hen.* 6. *m.* 1.

Commissions for arraying of Men for the Defence of the Kingdom, if Invasion shall be; and for repressing of Rebels.

In the Time of King Edward IV.

Pat. 10 *Ed.* 4. *m.* 12.

Commissions unto *George* Duke of *Clarence*, & *al'* to array Men for Defence.

Pat. 10 *Ed.* 4. *m.* 13.

A Commission to *John* Lord *Howard*, to be Captain of all the Forces.

Pat. 49. *Hen.* 6. *m.* 22.

A Commission to Marquess *Mountague*, to array and put in Arms all Men beyond *Trent*.

In the Time of King Henry VII.

Pat. 1 *Hen.* 7. *Part.* 1.

A Commission to *Richard Fitz Hugh*, and others; and to the Sheriff of *Yorkshire*, to array and

and cause to be arm'd, all able Persons, Abbots and others, to be ready to defend the Kingdom.

1 *Hen.* 7. *Part.* 1.

A Writ to the Sheriffs of *Norfolk* and *Suffolk*, to proclaim in all Parts, in those Counties, for that there was likely to be open War between *Charles* King of *France*, and the King of the *Romans*, and great Navies are prepar'd on either Side; commands, That watch and ward be kept, and Beacons kept to give warning; and that every Man be ready, if need be, to come and defend the Kingdom.

In the Time of King Henry VIII.

4 *Hen.* 8. *Part.* 2.

A Writ to the Sheriff of *Kent*, commanding him to proclaim in that County, That the King being certainly inform'd, that the *French* King had prepar'd a great and strong Navy, furnish'd with Men of War, to invade the Kingdom; therefore commandeth all Men between the Age of Sixteen and Sixty, to put themselves in Arms, to be ready to defend the Kingdom at an Hour's warning.

In the Time of Queen Elizabeth.

11 *Eliz.*

Commissioners went to take a View of all the Horses in *England* fit for Service, and to survey all the Arms, to have them all put in Readiness as Necessity should require.

Now it appeareth upon View and Examination of all these Records, most of them being cited by Mr. Solicitor, and Mr. Attorney, in their several Arguments, there are none of them to prove the sending of any such Writs to Inland or Maritime Counties to prepare Ships; although there have been many Times great Danger; nor yet any Writs to Maritime Towns after the Statute of 14 *Ed.* 3. to charge them to find any Ships at their Charges.

So then I conclude this Point, That I conceive this Writ is not warranted by any former Precedent.

Now I come to examine the Point of this Writ, Whether the same be legal and warranted by any former Precedent: And I conceive it is not.

First, The Motives mention'd in the Writ, are, *Quia datum est nobis intelligi*, which is no certain Information: *Quod quidam Prædones & Maris Grassatores*, did take the King's Subjects, Merchants and others, and carry'd them into miserable Captivity.

Cumque ipsos conspicimus Navig' in dies preparantes ad Mercatores nostros molestand' & Reg' nost' gravandum. All these, and those following, I conceive are not sufficient Motives, and were never in any Precedent before to have a Royal Navy prepared. For the former Precedents, are, that Great Princes in open *Time* of Hostility had provided great Navies with Ammunition and Soldiery, with intent to invade the Kingdom, as appeareth by the former Precedents, and against such Provisions it was necessary to provide the Royal Navy, the King's Ships, and all the Ships of the Kingdom to be gathered together to withstand them. But to make such Preparations against Pirates it was never put in any Writ before; for when Pirates invested the Seas, they came as it were by Stealth, to rob and to do Mischief; and they never dared appear but when they may do Mischief, and escape away by their swiftness: But against them, the usual Course hath been, that the Admiral or his Deputy with some few Ships have secured the Coast, and not to employ the whole Navy. And this appeareth by a Record, 25. *Ed.* 1. *m.* 9. *William Leighbourne* the Admiral was appointed upon such an Occasion with ten Ships to lie upon the Seas, for the Safeguard of the Merchants, and the usual Practice hath been when they hover upon the Sea, by sending a few Ships of War to scatter them, and make them fly away. And there is no fear of the Loss of the Dominion of the Sea, by any Act Pirates can do; neither is it convenient that every County of the Kingdom should provide Ships against them.

The Command of this Writ is to provide a Ship of 450 Tons at the Charges of the County, furnished with Masters and Mariners, which is impossible for them to do for the Reasons before alledged, and therefore is illegal and not warrantable by any former Precedent.

The Command of this Writ to find ways for Soldiery for 26 Weeks after they came to *Portsmouth*, when they are out of their County, and in the King's Service, is illegal; being against the Course of Precedents in divers Times, and against divers express Statutes, and this appeareth by divers Records.

15. *John.* In the Writs of Summons of the Tenents by Knights Service, it is expresly mentioned, that after 40 Days Service (for so many Days they were to do Service by their Tenure) they should be satisfied *ad denarios Regis.*

Pasch. 26. *Ed.* 1. Amongst the Writs of the *Exchequer*, it is there set down, that the Footmen of of *Cheshire* being 1000, which were appointed to go for the Defence of the Borders of *Scotland*, would not stir out of their Counties without Wages, and there is set down, that one therein-named, was sent down with Money to pay the said Footmen.

Michas. 26. *Ed.* 1. *Inter bria' irrot'* in the *Exchequer*, by reason of the Invasion of the *Scots*, many Thousands of Soldiers were taken from divers Parts of the Kingdom *ad vadia Regis.* And there mentioned, that the Clarks sent down with Money to pay the Soldiers of several Counties their Wages.

30. *Ed.* 1. In the *Exchequer*, in Accounts the Wages for Land Soldiers for several Counties and the Wages for Mariners are set down, what the Wages that was paid came to by the Day, and by the Week, both by Sea and by Land.

Tam' 31 *Ed.* 1. *inter bria'* in the *Exchequer*, the Wardens of the Marches of *Scotland* signify'd to

to the Barons, that the Men of *Cumberland* and *Westmoreland*, appointed for the Defence of the Marches, would not stir out of their Counties without Wages; whereupon Order was given for Wages for them.

19 *Edw.* 2. Commissions went out to pay Soldiers which served out of the several Counties for Defence against *Scotland*

Hill' 2. *Edw.* 3. *Rot.* 16. In the *Exchequer*, it was ordered in Parliament, That whereas some Soldiers had received of some of the King's Officers, Money for their Wages, were fain to give Bonds for Re-payment, that those Bonds should be all re-delivered.

1 *Edw.* 3. *Cap.* 5. That no Man shall be compelled to go out of his County, but where Necessity requireth by sudden coming of strange Injuries into the County, and then shall be done, as hath been done in Times past, which I conceive is to be at the King's Wages, when any are out of their Counties.

But to clear all Doubts, the express Statute of 18 *Edw.* 3. *Cap.* 7. is, That no Men of Arms, Hobellers and Archers, chosen to go in the King's Service out of *England*, shall be in the King's Wages from the time they go out of the Counties where they were chosen, until they come again.

19 *Hen.* 7. *Cap.* 1. Those that had any Grants of Lands from the King: And 11 *Hen.* 7. *Cap.* 1. Those that had any Offices of the Grant of the King, are to serve the King in his Wars: But in both it is appointed, they shall have Wages from the Time they shall come from their Houses, until they return.

2 & 3 *Edw.* 6. *Cap.* 2. It is narrated, That no Captain receiving Soldiers, serving by Sea or Land, shall receive any Wages for more Soldiers, or more Time than they shall serve, and shall enter the Days of their entering into Wages, upon Pain, *&c.*

All which Records and Statutes do prove, that the Soldiers should be at the King's Wages; therefore the Command for Soldiers Wages for 26 Weeks, when they go from *Portsmouth*, is illegal, and expresly against these Statutes; and so the Assessment being entire, as well for the Wages, as the other Charges, I hold it to be clearly illegal, and not to be demanded.

4. That the Command of this Writ to the Sheriff, to assess Men at his own Discretion, is not legal, nor warranted by the Precedents: For Precedents are commonly, that Assessments for Contribution, for making or setting out of Ships, have been by Commissioners, which by Presumption had Knowledge of such Matters, as commonly Sheriffs have not: Also, this leaveth to the Sheriff too great a Power to value Mens Estates, as to inhance whom he will, and to favour whom he will.

5. That the Power to the Sheriff and Mayors of Towns, *&c.* to imprison, especially as it is used, is illegal, and expresly against divers Statutes: For it is provided by *Mag' Char' Cap.* 29. *Quod nullus capiatur vel imprisonetur nec super eum mittimus nisi per judicium pariuum suorum vel per legem terræ.*

Also, 5 *Edw* 3. *Cap.* 9. That no Man shall be attached, or his Goods seiz'd, contrary to the Form of *Mag' Char'*

Also, by the Statute made 37 *Edw.* 3. *Cap.* 18. it is recited, That by that great Charter, none should be taken or imprisoned, but by due Process of Law; yet by Colour of this Writ, the Sheriff may imprison any Person, yea, any Peer of the Realm: For altho' Peers are not to be arrested upon ordinary Process between Party and Party, as it is resolved in the Countess of *Rutland's* Case, in *Coke. lib.* 6. *fol.* 32. yet upon Contempt, and upon Process of Contempt, which is always for the King, any Peer may be imprisoned, as it is resolved by all the Lords, and all the Judges in the *Star-Chamber* in the Earl of *Lincoln's* Case: and so the Sheriff, by Colour of this Writ, may arrest any Peer, as for a Contempt in not paying, but by the Book, *Case* 2 *Edw.* 3. *fol.* 2. it is resolved, That a Writ to imprison one upon Suggestion, before he be indicted, or without due Process of Law, was illegal: So for this Clause, I hold this Writ to be illegal.

6. The last Clause of this Writ is, That if by Colour of this Writ, more should not be gathered than will be sufficient for the necessary Expence of the Premisses, and that none that shall levy any Money towards these Contributions, shall detain the same with them, or employ the same to other Uses; And if more than did suffice were collected, it shou'd be paid amongst these that paid after a rateable Proportion: But as the Course is taken, it is not to be performed: For no Ship, nor Tackling, nor Ammunition, nor Men, nor Wages, nor Victuals being provided, it is not to be known, whether more be gathered, or less than would suffice: And there being Money gathered, it is of Necessity, either detained with the Collector, or the Sheriff, or employed to other Uses than are appointed by the Writ; so the Writ is not performed: And the Money collected and assessed, is not duly paid, nor collected; and the Money assessed and unpaid, cannot be duly demanded.

7. Admitting the Writs were legal, and the Commands therein legal, yet the Assessment, as is certified, is not sufficient to charge the Defendent; For it is not certified, that any Ships with Ammunition, and Men, and Wages, for Men and Wages was prepared; and this is a Year after the Time it should have been prepared, and sent to *Portsmouth.* And if it were not prepared, there is no Cause to charge the Defendent; and that not appearing to be done, it shall be conceived not to be done.

For if one be charged, in Consideration of a thing to be done, before a certain time to pay a Sum of Money, if the thing be not performed according to the time, none can be charged for not Payment of the Money after the time is past; for it is in Nature of a Condition precedent, to have a Duty or Sum of Money to be paid after the Condition performed; and there, he that will have the Duty, must shew that the Condition is performed.

This appeareth in the Case of 15 *Hen.* 7. and *Coke, lib.* 7. *fol.* 9. *Ughtred's* Case. And therefore, if the Ships be not prepared according

ding to the Writ, nor Money employ'd for preparing a Ship for and in the Name of the County; then every one that paid any Money, either voluntarily as in Obedience to the Writ, or compulsorily upon distress, may demand their Money again of the Sheriff, or of them that receiv'd it: For as they paid their Money, so it must be disposed of, and cannot be disposed of otherwise by any Command whatsoever, although it be under the Great-Seal: For the Command being under the Great-Seal, to prepare and furnish a Ship to such a Purpose as in the Writ is mentioned, and they paying it to that Purpose, it cannot be otherwise disposed, although it be more for their Advantage; for private Men having Interest therein, that cannot be taken from them, nor dispensed withal: Therefore, in *Coke, lib. 7. fol.* 37. in the Case of *Penal Laws*, it is resolved, That if the Penalty, appointed to be forfeited upon a penal Statute, be given to the Poor of the Parish where the Offence is committed, the King cannot dispense with the Penalty for that Offence, because the Poor have an Interest therein: But if the Penalty be given Part to the King, and Part to the Poor, the King may dispense with his own Part, but not with the Part of the Poor.

Object. And where it hath been said, That it is by Way of Accommodation, because the Country cannot well know how to provide to content, and perhaps with more Charge.

Respons. To this 'tis answered, They must do it at their Peril, if the Writ be legal; and then if it be done, they shall have the Benefit thereof: For as my Brothers, *Weston* and *Berkley*, have both agreed, if the Ship were made when the Service was done, the County for which it was made shall have the Benefit of the Ship, Ammunition, and Victuals, and of the Service of the Men, being made more expert against another Time, and the Ship may with some easy Charge serve again, and nothing lost, but the Expence of the Victuals; and the Kingdom shall be so much the more strengthned by having so many Ships made or prepared; and they may have Account of their Money how it was bestowed; and if any Surplusage be gathered, to have it restored; and that the Law is so, that if the Money be received of the County, and not imployed accordingly, the Party so receiving it, and detaining it; or mis-employing it, is to pay a Fine to the King for the same, and is accountable for the Money, appears by two Records.

The one in *Hill.* 16 *Edw*, 3. *Rot.* 23. *Banc. Re.* where two Soldiers were indicted, for that they taking 3 *l.* a-piece towards their Arms, and the bringing of them to the Place where they were appointed to serve the King in *England* in his Wars, they went not, but tarry'd still in their Houses, and retained the Armour and the Money which they had received for that Purpose; they thereupon being convented, pleaded not guilty, and the one was found to go in the Service according to the Appointment, so he was discharged; and the other was found, that he received the Money, and went not to do the Service, nor restored the Arms nor Money; thereupon he was committed to the Prison, and paid to the King a Fine, and found Sureties to pay the Money to the Hundred from whom he had received it.

The other was *Hill.* 20. *Edw.* 3. *Rot.* 37. *Banc. Regis* there two high Constables were indicted, for that they, 5 *Edw.* 3. had received six Marks of the Towns in their Hundreds, to set forth Soldiers, and had not set them forth, but detained the Money; which they denying, it was found that they had received the Money for that Purpose, and had disbursed 10 *s.* and 6 *d.* thereof towards the setting forth of Soldiers, but had retained 38 *s.* and 6 *d.* and not disbursed it; thereupon they were fined and imprisoned, and afterwards enlarged upon Sureties to pay the Money they had retained undisbursed, at the next time the King commanded Soldiers from those Parts: By both which Records being for Offences done so long before, it appeareth, that those that have received Money of the Country to prepare Ships, and not employ'd it accordingly, they are answerable to the King and his Successors, to pay a Fine for Mis-employment of it, and are chargeable to those of the County of whom they received it for Payment thereof.

8. For the *last* Point, I conceive, that this *Certiorari* directed to the two that were late Sheriffs at the Time of the Assessment, and not to the Sheriff that was at the Time of the *Certiorari* awarded, who is the only immediate Officer to return the Writs, is not legal; for it is the first that hath been seen of that kind; for all Writs are directed to some immediate Sheriff, requiring him to demand of the former Sheriffs, what they did upon the former Writ; and they are to return to him what hath been done, and he to return the same unto the Court whereunto he is an immediate Officer, and the former are not any Officers; so the *Sci' Fa'* thereupon grounded, I conceive, is not good: Also the *Sci' Fa'* to warn Mr. *Hambden ad ostendendum si quid pro se habeat & quare de prædict' vigent' solid' onerar' non debet*, not shewing to whom is uncertain, and is insufficient: Thereupon I conclude upon the whole Matter, that no Judgment can be given to charge the Defendent.

The

The Argument of Sir. William Jones, *Knight, one of the Justices of his Majesty's Court of* Kings Bench *at* Westminster, *in the* Exchequer Chamber, *in the great Case of* Ship-Money.

IN *Easter Term* there Issued forth a *Sci' Fa'* and this doth rehearse divers Sums of Money assessed upon divers Persons in the County of *Bucks*, for providing a Ship of 450 Tons, with Men Ammunition *&c.* to attend the King's Navy for defence of the Kingdom.

And afterwards upon a *Certiorari* out of *Chancery*, directed to the Sheriff, to rectifie those Assessments, and the Names of those that made default of payment. Mr. *Hambden* was returned to be assessed at 20*s.* and hath made default.

Upon this Return the King by *Mittimus* out of the *Chancery* sent the Writ, the *Certiorari* and the return to the Barons of the *Exchequer*, to do as the Court shall think fit.

Thereupon a *Sci' Fa'* went forth to the Sheriff to Summons Mr. *Hambden* to shew Cause why he should not pay the 20*s.* assessed upon him: He was returned warned and appears and demands, by Oyer of the Several Writs and their returns, and of the *Sci' Fa'* and upon all this he demurreth in Law, and Mr. *Attorney* hath joyned in demurrer with him. And my Lord Chief Barons and the rest of the Barons have adjourned this hither, to desire the Advice of all their Brothers of the Law, and indeed it requires Advice, for it is as great a Case as ever came to be advised on before Judges.

I say it is a great Case, it concerns the King in his Royal Prerogative, and the Subject in his Interest, in his Land and Goods, and Liberty of his Person. They that have spoken already, and they that shall speak after me, shall hardly escape the Censure of the People, of some that have some Understanding, of some Peradventure that have less, and of some that have none at all, but speak according to their Opinions, Affections or Wills *Falices essent Artifices si per solos Artifices Judicarentur*; we should be happy to be Judged by them that are Learned, but when it is by them that understand not, then it is turned into Calumny and Reproach.

Some have taxed them that have gone or will go with the King, as though they were fearful, and went about to Captivate the Liberty of the People and take away their Goods: Some are taxed on the other side, if on the contrary that they are given to Popularity, so as I may say as the Psalmist. *Domine me prsuisti in lubrico loco*, for it is impossible to escape their Tongues between those two Decks of Censure I am like to fall. And however I may fall with my Sentence, with God's Grace I shall make no Shipwreck of my Conscience.

I am trusted by the King to display his Justice equally to all, and sworn to dispense his just Prerogative, as well as the Subject's Liberty; and if we do otherwise than as Judges, we do as false Men. If any Man offend contrary to his Oath, he doth forfeit his Lands, Goods and Tenements, I shall not therefore for any respect do against my own Conscience; but descend to give Judgment, not regarding the Watery Mouths of others.

The King's Council, and the Council at the Bar have spoken so largely to this business, and it is spoken to by my Brothers so fully, that I can hardly say any thing but what hath been said before, so I will select some few things, to satisfie my own Conscience, though I cannot satisfie any Man's else, which I will do as plainly as I can and as I ought to do. And if there had not been a variety of Contestation I should have spoken very little, but now necessity requireth that I must enlarge my self a little more.

I will State the question, and in it put many things objected out of Doors. The question is, whether the King of *England*, when he perceiveth danger to be imminent to the Kingdom, and a necessity of Defence, may not by his Writ, send to all Counties aswell Inland as Maritime, to charge them at the charge of the County for a convenient time to provide Shiping with Men and Ammunition *&c.* but no Money to come to his Purse, but the Ships to go to defend the Kingdom.

The Question stands not whether the King may draw it to be a perpetual charge upon the Subject, which under favour he cannot, for this goeth upon a Fear of a Danger, which continueth but for a time, and therefore this cannot be perpetual, for when the occasion ceaseth the Taxes must likewise cease. There is a case to this purpose 39 *Hen. 6. Fol.* 39. *Protection Brooke.* A Protection granted to one for three Years, and the Question was whether a good Protection: The Rule is, the King may grant a Protection for one Year, and at the Years end, renew it for another Year if the occasion require it, and so for a third Year, yet he cannot at the beginning give a Protection for three Years together, so in this case though the King may upon an immergent occasion, command Ships, yet by reason of that occasion, he cannot make it perpetual for the occasion may cease.

Secondly, set out of the case this; that I will not exempt the King's Majesty himself, to bear a part of the burthen, the Head and Body must go together, he must joyn with his Subjects in the defence of the Kingdom.

Thirdly, the Question is not whether for a Foreign War he may command this charge, it must be only in defence of the Kingdom in case of imminent danger.

Fourthly,

Fourthly, It is not whether the King may lay this to draw a Sum of Money into his own Purse, for the King sends to have no Money, but to provide a Ship, and if the Sheriff accordingly provides a Ship there is an end of the business all this is out of the Case,

What Catlyn Chief Justice compared a fine to *Janus Bifrons* having two Faces, the one looking backwards, the other forwards, so may I of my Argument, I shall first look backwards, and tell you *Quid fecimus*, what we have done, and then forwards and tell you *Quid faciemus*, what we shall do.

The *Quid fecimus* rests in the advice we have given to his Majesty in the case, and the opinion of the Judges Subscribed with their hands delivered over to his Majesty (which being read at large by him) the advice we gave consists of four Assertions.

First, That when the Kingdom is in danger all the Kingdom is to joyn in the charge of defence.

Secondly, What shall be adjudged a danger, and what not, his Majesty is the sole Judge thereof, and of the means how to prevent and avoid it.

Thirdly, That in case of danger he hath Power to send to Inland Counties, as well as to Maritime, to Assist to Defend against Invasion.

Fourthly, That the King hath a Power of Compulsion, to punish those who refuse to contribute to this charge.

This opinion being joyntly and severally delivered by us, declared by my Lord Keeper in the *Star-Chamber*, in the Presence of us the Judges, before the Lords of the Council, with an intimation as if it were the full consent of all the Lords of the Council before hand, and there commanded to be inrolled in all the Courts at VVestminster, yet we so delivered our opinions, that if better reason was shown to alter them we might receed from them, for we had better *recu rere*, than *Male currere*.

Now to the 2*d* point, *quid faciemus*, whether to stand to this opinion or not, and then whether this Book or Record will warrant it, and how far it differeth from what we have done I shall speak my conscience.

I am an Old Man and ready for my Grave, my Tongue and my Heart shall go together. I am of the same opinion I was of then; and conceive what we then delivered was according to Law; with all modesty submitting to those that have been or shall be of a contrary opinion, for the grounds of Law and Nature supports it.

First, *Salus Populi est Suprema lex. Qui sentit commodum sentire debet & onus. Quod omnes tangit ab omnibus debet supportari*, what do these Rules intimate else, but that when a danger is imminent, that the Charge must lie upon the whole Kingdom, and the burthen must be born by all, and that is not denied by them that were of Council on the other side. It must not be every kind of Fear and Rumour that must draw this Kind of burthen upon the Subjects; but such a danger as the King in his understanding perceiveth doth require a speedy defence.

Secondly, that the King is sole Judge of this danger, and how to prevent and avoid it; not literally understood, for we are his Judges deputed, but our Judgment flows from him. Judgment is settled in the King, he is the Fountain of Justice, from whence all other proceeds. *Bracton* saith, *Rex vicarius est in terra sua*, we are Judges comulative not primative, so he is the supreme Judge. In the Parliament the King is the sole Judge, the rest are but Advisers. 22. *Edw.* 3. *Fol.* 3. here it is that the old fashion of penning of Statutes was *Rex Statuit* 7. *Hen.* 7, afterwards it came to be with the Advice of the Lords and Commons *Tem.* 6. *Hen* 6. *Rot.* 41. *Banc. Reg.* there was a Prior brought a Writ of Annuity against one in Ireland Judgment in the Common Pleas, then afterwards a Writ of Error in Parliament, and there both Judgments reversed, and in the entry of the Judgment the Record saieth, *nos cum assensu & ad Requisition' Comunitat'* do reverse the Judgment; where note the King is the Man that is the sole Judge thereof, but it left not here; by the way observe, out of this Record the Power of the *Kings-Bench* in *England*, for upon this Record it appears a Writ of Error brought in the *Kings-Bench* in *England* to reverse a Writ of Error in Parliament in *Ireland*; this sheweth the King in Parliament is the sole Judge, the rest but Advisers, so as I said before, he is the only supreme Judge of the danger himself alone, and of the way of prevention, whether by his Council or by his Parliament.

The 3*d*. assertion is, that the King without Parliament in case of imminent danger, hath Power to send to Inland and Maritime Counties to provide Ships. And I think he may so do by the Fundamental Laws, Common Laws and Statute Laws, and by the Precedents.

First of all for the Common Laws admitted in Parliament, here I leave the Divines to talk of the King's Power, who under Favour take more liberty than is fitting to say in a Pulpit, that he that will have the Statute *de tallagio non concedendo* to be a Statute, or if it be, that it binds the King, that such a Man is not *Cæsar's* Friend, speaks without his Book. *Bracton* saith, That by the general Law of Monarchy, the Subjects Goods are at the King's Pleasure: But a King ruling by politick Advice, is to rule according to his fundamental Laws, which yet in *England* takes not away, but preserves those *Judicia Supremæ Majestatis*. As to pardon all Offences, to stamp Money, and infinite others more declar'd in Parliament, 1. *Jac.* which Court is that *tres hault Court*, of which none ought to think dishonourably. I leave Divines to talk their Pleasure: We are to judge according to the fundamental Laws and Customs of the Realm. There is a Book which Mr. *Attorney* remembred well, that the King of *England* hath more Power than any other King. If the King must by the Law defend the Kingdom, he must lay a Charge to provide for the same. The Common Law owns the King as Sovereign and Head of the Kingdom, that should defend and protect it, 8. *Sam.* 19, 20, They would have a King to be adjudged by as other Nations had, and to go in and out before them, that was the Fashion of Kings before, to judge his People by Laws, and to defend

fend them with Arms. It is an incident Quality inherent in the King. It ſtandeth with Nature and Reaſon, that the King ſhould have the Charge of the Defence. If this inherent Quality ſhould be taken away, how can he defend his People? If he be no more than a common Perſon, he cannot be a King, unleſs he take the Defence and Protection of his People upon him. Mr. *Attorney* ſhewed learnedly, the King is a Monarch and Sovereign, the People his Subjects: He is the Head of the Body, and therefore may command it. *Fitz. Herb Na Br.* and *Stamford* Prerogative, that the King protects the Bodies and Lands of his Subjects: He is *Vicarius Dei* appointed to protect the Kingdom; ſo there is a Tie of Allegiance that binds every Man, *Stamford*, *Cap.* 2. of *Prerogative*, the King by Law is the Protector of the Body, Lands, and Goods of his Subjects; ſo he hath a Liberty and Prerogative for this End, (not for his own Profit) in the Bodies, Lands, and Goods of his Subjects, in Time of Danger, 11 *Hen.* 7. Every Man in his own Perſon is bound to ſerve the King for the Defence of the Realm, and gives a Reaſon, and that is the Reaſon of Protections, becauſe they are bound to it; therefore they ſhould have no Harm done unto them. The King himſelf cannot free any Man from his Allegiance, without Act of Parliament; neither can the Subject free himſelf, as in Dr. *Storie's* Caſe; ſo you ſee the King's Majeſty hath Intereſt *pro bono publico* in the Perſon.

Now alſo he hath an Intereſt in our Eſtates, if it be *pro bono publico*, as in the Caſe of *L.* adjudged to have Power to come over Mens Lands, what Prerogative hath the King concerning that; and yet by *Popham*, two chief Juſtices, and chief Baron, agreed, that where a Man hath an Inheritance in Lands and Woods, the King cannot cut his Woods for his private Uſe, unleſs it be *pro bono publico*; nor dig Gravel in another Mans Lands; but yet in Caſe where it is *pro bono publico*, he may do it, and make Bullworks on their Grounds for Defence of the Kingdom.

So for Pontage and Murage, the King cannot compel the Subjects to make the Walls of his own Houſe, or a Bridge for his own private Uſe, but where it is commanded to be done, where the Subject hath a Benefit, there it is good; ſo here is the Difference of the Caſe, where the King commands for his private Uſe, or *pro bono publico*.

My Brother *Crooke* ſaith, the King may preſs Ships for his Service, but in the Defence of the Kingdom, but not command Inland Counties to furniſh Ships; yet there is a Precedent in *Oxford* there to the contrary.

By the fundamental Laws of the Kingdom, he is the Defender of his Subjects, of their Bodies, Lands, and Goods; and where it is *pro bono publico*, they are to pay towards it; if there had not been Objections that dazzle'd me, I ſhould have done before this

The Caſe of the Abbot of *Robertsbridge* is an Allowance of this Charge, a double Charge of Lands there in two ſeveral Places. I remember in a Parliament where I learn'd a great deal of good, 1 *Jac.* the King without Conſent in Parliament, laid an Impoſition on Merchandize, but it was in Caſe of Neceſſity, *pro bono publico*.

Now to anſwer Objections, and thoſe were many, my Brother *Crooke* did double and redouble them. Brother we ſit one next another, ancient Judges, tho' different in Opinion. I ſpeak out of my Conſcience, as you have ſpoke out of yours; ſo, tho' there be Variety of Opinions, yet Conſcience is the ſame.

Firſt, ſaith he, the fundamental Laws of the Kingdom hath ſettled a Property in the Goods in the Subject, that without their Conſents, this cannot be taken from them.

This doth not trench upon the Property of the Subject, if you take the Caſe right: If this be a lawful Prerogative in the King to lay this Charge, then how can it be ſaid, that the Subjects Property is invaded? For if the Property *ab initio* be in the King, then the Law annexed this to the Lands and Goods of the Subject in the Beginning, and made them liable to it by a ſecret tacite Condition. If a Man do enter for a Condition broken, this is no deveſting of the Property out of the Subject. If Goods be given to one till ſuch a thing happen, or upon ſuch a Condition, there is a Property in the Donee, yet it is clogged with a Limitation and Condition; and when the one or the other happens, the Property may be reduc'd or transferr'd, as in all Aſſeſſments, and Rates, Goods are liable to the Payment thereof, ſo for the Payment of thoſe things neceſſary for the Defence of the Kingdom, without their Conſent; for if legal, what needs this Condition? I would wiſh no Man to clamour, that this is to deveſt the Subject of the Property in his Goods; for it is nothing but what is for the Defence of the Kingdom.

The next Authorities objected by my Brother *Crooke*, are the Laws of *William the Conqueror*, and *Chr.* of King *John*, then the Statutes, then *Forteſcue*, and thereof, ſaith very much, that the King of *England* cannot lay Taxes upon his Subjects, without their Conſent in Parliament.

And where he ſpeaks of Taxes and Charges cannot be impoſed without Conſent, ſome other Places of the Author do ſhew, that it is where the King impoſeth it for his own private Uſe, and not in Caſe of publick Defence.

The next is, 13 *Hen.* 4. the Charges of 1 *d.* upon a Cloath for meaſuring, adjudged void. I conceive it was not adjudged void upon that Point; true in Parliament it was complained of as a Grievance to the Subject; but every Petition in Parliament doth not argue a Right; it may be it was *ad damnum*, yet *abſque injuria*, that Caſe differs much from this, for there was a Charge to a private Benefit, and no Regard to the publick, which perhaps the Law will not allow, but where there is a *quod pro quo*; nor of the Caſe of Dice, Cards, Monopolies, thoſe Caſes nothing like this: ſo a Commiſſion of Sewers may lay a Charge for the Repair of a Bank, when the Lands are overflown, and the Owners be not able, the Neighbourhood muſt be taxed; ſo in Caſe of a Bridge.

Then the Statutes of 2. *Rich.* 2. was objected; nothing must come to the King's Purse nor to the King's Coffer, but it must be for the defence of the Kingdom.

This was no lawful Charge, because the intention was to fill the King's Coffers, which were empty, and that could not be done but by Parliament; so it is not in our Case, no Money is to come to the King's private use.

That of *Hen.* 4. for repealing of Commissions that were accorded to provide Barringers, the Record sayeth only that the Kings answer to the Complaint was *le Roy se avisera ouesq' ses Signores.*

Then he cometh to the Statute of Tonnage and Poundage only for ordinary defence of the Kingdom.

Why there should be any difference between an Inland County and a Maritime I know not, since to the common defence all are equally engaged as one intire Body, and the Inland Counties have the benefit by sending their Wools by Sea, and yet they must not help to the defence of the Sea. As in the natural Body one Member helps another, so when the Maritime Counties are not sufficient to make defence (as in case of extraordinary defence they cannot be) the Inland County must contribute: Besides, the King may unite an Inland County to a Maritime and make them but one County; is not he Lord of the Land as well as of the Sea? What was the Law before the division of Counties? Surely it was equal in charging the whole Kingdom, for I see no reason but an Inland County should be chargeable by Law, as well as a Maritime. In antient times, things done upon the Sea, were tryed upon the Land in the *Kings-Bench* as by many Records appeareth. One is of a *Norman* Robber upon the Sea.

Object. But if this be so, the Law suffereth a greater Inconveniency, *viz.* that the King may by his Writ charge what and when he pleaseth.

Respons. This the Law trusteth the King's goodness with, that he will not require it of his Subjects but when here is occasion, and he may do it so long as he continues it no longer than there is occasion.

Object. But were not Dr. *Cowel* and Dr. *Manwaring* sentenced in Parliament for such Tenents.

Respons. They were sentenced and deservedly, but different from our case, I was a Member in the Parliament, and was in the lower House when *Cowel* was sentenced. I will tell you what Dr, *Cowel* did: He wrote a Book, and under the words Prerogative Subsidies and Kings inferred as if the King might make Laws without consent in Parliament, and wrote against the Common Law which the King is sworn to maintain, thereupon he was Sentenced and his Sentence was just, and I gave my voice for it. The other was Dr. *Manwaring*, he Preached two Sermons that the King was not bound to observe his Laws, that the right and liberty of the Subjects are at the King's will and pleasure without Parliament, and that this doth bind the conscience of the Subjects, and that they are bound to pay Loan-Money upon pain of eternal Damnation, and that they that did refuse to pay the Loan-Money, did offend against the Laws of God, and were guilty of disloyalty and disobedience, and that the Authority of Parliaments was not necessary to the granting of any subsidy. For this he was Sentenced and made his submission, that was for raising of Money for his own use, but this is to require his Subjects to provide Ships for the defence of the Kingdom.

Object. The next Objection was *Cosinage*, that by that Tenure great profits arise to the King for defence.

Respons. Shall the defence of the Kingdom be laid upon those which have a Revenue for their own Maintainance? What will you have the King to have to maintain himself, his Queen, his Children, Intelligences abroad, will you strip him of all this? It is true, I hold that the King with the Subjects must joyn together in the defence of the Kingdom. If the King be Rich, you should have pleaded that the King had sufficient in his Purse.

Object. Then it is objected, that there is no apparent danger, and that this charge is not allowable neither by the Common Law, Statute Law or Custom.

I say it is due by the Common Law, but will you have danger so apparent as *Hanibal ad Portas.* Will you suffer an Enemy to come in before you prepare to resist, if once he gets in, you will hardly get him out, is not that as much to be commended, that doth prevent a danger before it cometh, as when it comes? Is not the care to prevent Fire from a House before the Fire takes hold of it as great as when it is on Fire to quench it? therefore the King like a good Physician, seeing a Disease growing before it gets too much Strength, prevents it.

Object. In six Weeks time, a Parliament may be called.

Respons. Though it may be, yet after they meet, a long time they spend in Consultation before they can do any thing which would be too mischievous in a sudden Invasion and therefore King *Edw.* 3, in his 10*th*, 11*th* and 12*th* Years, whilst the Parliament was sitting sent forth his Writ for Aid.

Object. It was alledged by Mr. *Holborne* that the Law of Nature teacheth every Man to defend himself.

Respons. What I pray you, will you then have done, when a sudden Invasion, when Forces must be raised in *Cornwall*, some in other Parts of the Kingdom as remote and all must meet together? If the King must expect such an actual Invasion, before such time as he sends forth his Writs to have them all in Readiness, how poorly would the Kingdom be defended at that time? our Forces would be scattered and cannot be brought together, which thus divided cannot withstand a Foreign Power.

Object. The last Objection was that the King at his pleasure, may draw when he pleaseth this charge upon the Subjects if he say he is of opinion that there is danger.

Why may not the Law allow this and trust the Kings Judgment here as well as in the case of a *Ne exeat Regno*, in which if the King com-

commands his Subjects to stay at home, for such and such a cause, the cause is not traversable *Fitz' Her' Na' B.* 165. 85. 7. *Hen.* 7. saveth if the King doth rectifie an Act of Parliament, you cannot speak against it to the King's Certificate under the great Seal, *Null tiel* Record is no Plea.

Again, God Almighty bless the King, it is against presumption of Law, that the King whose Heart is in the hand of the Lord should tell a lye. God gives Wisdom to govern aright. lying Lips do not become a Prince, truth to God Almighty he owes. The Law says, the King may *nescire verum*, but not *dicere falsum*. The King may not know a truth, but cannot speak falsely. Next *Juramento strictus*, he is bound to administer Justice, and not to grieve his Subjects. Is he so unwise to charge them and himself without cause, with providing of Ships? What benefit comes to him by it? surely to tell a lye will be no advantage to him; he were a King of wickedness to lay a charge on the Subject to no purpose; thus he shall charge himself and his Subjects about nothing, do any Man think he will put a burthen upon his Subjects without cause? we have a good King, and our imaginations ought to be good of him.

The *Fourth* Assertion is, that the King hath Power to compel them to the contributing to this Charge. This power of the King is a special Prerogative, and if good at Common Law, it taketh away the Statute, when it is *pro bono publico* to defend the Kingdom.

The general words of a Statute shall never be Construed to extend to it; the Character of King *John* shall never take away the King's Prerogative, neither the Statute *de tallagio non concedando*, which I agree to be a Statute, and so my Lord *Cooke* allows it to be. Now this power of the King, of which I argue, is a special Prerogative in point of Government; it is a *propria* to a Scepter *quarto modo*, therefore the general words of a Statute shall never be construed to extend unto it as if the King hath a special interest in Land by his Prerogative, it doth not pass away without percise words as the Books are infinite in it. If the King grants away Land by his Letters Patents parcel of a *Forrest* without special words, this shall remain subject to the *Forrest* Laws still, so many cases may be put when general Words of a Statute extend not to a particular Prerogative, if general words of the Statute should take away these Aids, why do they not take away the Aids of *pur faire Fitz' chivaler*, *& pur file marier*, since that general words may include them as well as this; but you all grant that these Aids are not taken away and by the same reason I conceive this remains.

My Brother *Crawly* held that special words in an Act of Parliament could not take away his Prerogative, because it would have been an Act against reason. I will tell you what I have heard adjudged in this case in the Parliament held 1. *Jac.* there were two things expresly moved: One that there might be no Wardships or Tenure of the King; The other that the King might not allow Surveyors. To these questions after long disputes, it was answered by the whole Parliament, that such an Act of Parliament to top the Prerogative of Tenures would be void, because it is inherent in the Crown, every Man holds immediately or mediately of the King, as 2. *Hen.* 7. an Act of Parliament to restrain the King's *non obstante* to dispence with penal Laws as not to pardon Murther is void, his Person and Royal Prerogative cannot be restrained by Parliament; thus I have done with the former and larger part of my Argument.

Now I come to see if the Record will maintain that which we have here, and I think it will bear it both for Matter and Form. First let us see whether there be Substance enough, to shew that there is danger sufficient for this Prerogative to require Aid and Assistance; and I think there is sufficient, the *French* King, the *Spaniard*, the low Countries all up in Arms, who knows what danger this Kingdom may be in, and if the King say it is in danger it is not traverseable, if the King had said no more but this *pro defensione Regni* without any more, saying, it had been sufficient. It also recites that there were *Prædones*, *Pirati*, that took away both Men and Ships, and that Foreign Provision was making to take away the dominion of the Sea, and that all this was *ad Gravandum regnum nostrum* and therefore commands a Ship to be provided *ad defensionem regni*, here the danger is general and therefore the defence must be general.

An indifferent and equal Assessment is first to be made, and then the Overplus of the Provision to be restored according to to the Writ; for until the Money be had? how can the Provision be made; though it has been said, let the Ships be first built and then make the Assessment; that cannot be, for with what shall the Provision be made? The Money must do it.

For matter of Precedents, as Danger *&c.* I do not much stand upon, because I had nor time to peruse them, but conclude on my former Reasons. (*My Lord Chief Justice asked him what his Advice was, he answered*)

My Advice is upon the whole Matter, that the Barons finding the other Process of Court and *Sci' Fa'* to be according to the *Exchequer*, (for that I leave to them) Judgment shall be given that Mr. *Hambden* shall be charged with the 20 *s.* with this limitation and condition, that none of it comes to the King's purse, for if it do my opinion is against it.

THE

The Argument of Sir. Richard Hutton *Knight, one of the Justices of his Majesty's Court of* Common Pleas *at* VVestminster *in the* Exchequer Chamber, *in the great Cause of* Ship-Money.

THE King by his Writ, 4. *Aug.* informs that there were gathered *Pirati ac Maris Grassatores*, and that they were gathered together in hostile manner to hinder our Merchants from bringing their Goods into our Ports, and reciteth that there are Wars abroad, and that considering these perils and dangers, and that the defence of the Kingdom consists in the defence of the Sea, which at all times belonged unto this Kingdom, and that the charge of defence is to be borne by all. And the King is loath that in his time, such an Honour as the Dominion of the Sea should fall away or be diminished and not be defended, hath therefore sent a Writ to the Sheriff of *Bucks* (as to other Counties) to provide a Ship of such a burthen against the 1*st* of *March*, and to come to *Portsmouth*, and there to remain for 26 Weeks, and to do as shall be directed them for the defence of this Kingdom. And the Writ directed that all that are Inhabitants shall be Assessed for the providing of this Ship with Men and Ammunition.

By Force of this Writ, Mr. *Hambden* being Assessed at 20*s*. there went forth a *Certiorari* a Year and a half after directed to the Sheriff of the County of *Bucks* to certifie what Sums they had Assessed by virtue of the said Writ. 4 *August*, and there are two several Certificates returned into *Chancery*: One that Mr. *Hambden* was Assessed at 20*s*. The other that he hath not paid it. 5 *Maii*. 13. *Car*. the King, by *Mittimus* out of *Chancery* recites that when he awarded the Writ. 4, *August*, *Salus regni periclitabatur* and that it was for the defence of the Kingdom and security of his Subjects, and doth send this Writ 4. *August*, the *Certiorari* and *Mittimus* to the Barons of the *Exchequer*, and commands the Barons to do that which appertains to Justice to be done. Whereupon a *Sci' Fa'* is awarded whereunto Mr. *Hambden* hath appeared and demanded *Oyer* of the *Sci' Fa' Mittimus Certiorari* and the Writ 4. *August*, and hath demurred generally, and Mr. *Attorney* hath joyned in demurrer, and how this *Sci' Fa'* lieth is the question.

And I am of Opinion that this *Sci' Fa'* doth not lye and that Judgment in this case ought to be given against the King. For the better understanding of the Court, I shall observe in the Method of my proceedings,

First, Whether a Charge of this Nature may by the King be imposed by original Writ only under the great Seal without a Parliament.

Wherein I hold it cannot be proved by any Authority or reason, unless in time of actual War and Invasion.

Secondly, I will answer those objections made only before by them that have argued, that these Statutes do not extend to this kind of Prerogative, and that this Prerogative is not taken away by any of these Statutes.

Thirdly, I will answer the Precedents, both by Precedents of equal Nature, and by some reasons whereupon I will conclude that this Prerogative and Power which is Monarchical is included and taken from the King, and that this must be done by Parliament.

Fourthly, I will answer some objections that now have been raised, and before made by Mr. *Solicitor*.

Fifthly, I will just open the Writ, that it neither containeth Matter sufficient in the Writ it self, nor is there Matter to warrant any such levy as is pretended, neither is the same lawful, nor can it be mended by the *Mittimus*, nor can be commanded by those Sheriffs that are no Sheriffs in this case upon the matter.

Now, as my Brother *Jones* hath taken a great deal of pains and time, I will not be drawn from my own order by what he hath said; but answer him in his Argument. *First* I say, that this Power of Assessing of Money being a great charge, cannot be by the Law at this day, unless in time of actual War, imposed upon the People but by Act of Parliament.

The Acts of Parliament that have been mentioned the first was *Mag' Char'* which is an antient and great Statute; it cometh into us with an *Inspeximus* from *Ed*. 1. confirmed thirty times, the Words are, *Dedimus & concedimus has libertates subscriptas in perpetuum. Nullus liber homo capiatur vel imprisonetur aut dissessietur de libero Tenemento suo vel libertatibus &c. aut aliquo modo distringatur aut in Carcerem mittatur nisi per legale Judicium parium suorum, vel per legem terræ.* King *William* the Conqueror made these Laws, and swore Men unto those Laws. And then King *Edward* in the last Chapter commands them to be kept, and he will keep them so long as concerned him and all his People for ever. And for this they granted him a fifteenth part of all their Goods, and it is a Statute here to this day, *Stamford Fol.* 172. to be tryed *per Pares* as the Barons at this Day have for their Tryal the priveledge of this Statute.

The next Statute is 25 *Edw* 3. *Chap*. 5. reciting, and for as much as divers Persons *&c.*

we

we have granted for us and our Heirs that we shall not draw such Aid and Prize into custom for any thing done heretofore by any other Rule or Precedent that may be found, so there is now not only for Taxes for War, but for any other business whatsoever, *forsque' de comune consent de touts la Realme*, saving the antient Aid and Prizes due and accustomed, and this saving is nothing, for this Statute extends to no particular, for if any extend to Aid by Tenure, all *England* is not bound unto this but some few. The Statutes extend to such Aids as the whole Kingdom is subject unto, none will say that all the Kingdom holds of the King *pur fils marier*, &c.

The Statute of 34. *Edw.* 1. concerning certain Liberties granted by the King to his Commons this is Printed *Anno* 1542. 25. *Hen.* 8 no talliage to be taken or levied to us our Heirs or Successors, without the good Will and Assent of the Arch-Bishops, Bishops, Barons, and other Burgesses and Freemen of the Realm. This Statute hath been quarell'd withal, but the Words are very effectual.

The Statute of 14. *Edw.* 2. agreed to be perpetual by my Brother *Jones*, for my part I can see no Reason why it should be so. The Statute reciteth, that whereas the Barons and Commons of the Realm, have granted of their good free will the King an Aid towards his Wars as well on this side the Sea as beyond, of the ninth Sheep, the ninth Sheafe, &c. and the ninth part of all their Goods, we will and grant for us and our Heirs, that the same so charged shall not be brought into Example to make any Aids, he doth not say such Aids, but by Consent in Parliament. No Man can say against these words, they are so full and absolute.

The Statute of 25. *Edw.* 3. enacts that none shall be compelled to find Hobbellers. *Si il ne soit per comune consent in Parliament*, the reason given in the Parliament Roll is very observeable. *Car ceo est incounter le droyt del Royalme.* These words are in the Roll, yet lett out in the printed Statutes, but the Reason I know not. This Statute of the 25. *Edw.* 3. is confirmed by the Statute. 4. *Hen.* 4.

The Statute 1. *Rich.* 2. A very good Statute though in a young King's time, enacted and done by the Lords and Commons; there have been many Inventions to charge the Subject. Now *Hen.* 4. invented many Benevolences and that is recited, that whereas divers Inventions &c. (all the World I think is full of Inventions) it is enacted from henceforth, that the Subject shall no ways be charged with any such like Charge, they gave it the name of Benevolence, but indeed they were Impositions, and great Charges were collected with that name.

I conclude with that Statute of this King, the Petition of Right, which reciteth the Statute *de tallagio*, very many particular things are mentioned there, Men are not to be compelled to send Money without common Assent in Parliament which is a Confirmation of these Statutes. I have done with the Statutes.

For the Authority of the Year Books, I will confirm those two Authorities cited by my Brother *Crooke*, though my Brother *Jones* slighted the Authority. 13. *Hen.* 4. the principal Case being then a grant of an Office of measuring of Cloath and put in Practice, and being granted out of Parliament condemned to be void; for the King cannot grant any common Charge on his People but in Parliament, and though my Brother *Jones* said that perhaps such a Charge was *Damnum*, yet not *Injuria*, surely had not there been more in it, it had not been damned as illegal.

The other Authority is that of *Fortescue*, though my Brother *Jones* in that Book doth omit that which is Material, for that Man he was sworn Chief Justice of *England*, and afterwards made Chancellor who saith expresly in his ninth Chapter that the King of *England* cannot alter any Law. That he governeth his People not only by Royal but by Politick Power, and can lay no Charge upon them but by Parliament.

The King can change no Law nor make Land Gavel-kind which is not, nor make Land devisible which is not, which he might do if it were to be done by Power Royal, and *Fortescue* concludeth with this excellent saying, *Fol.* 26. 6. Rejoyce therefore Sovereign Prince, and be glad, for the Law of your Realm administreth to you and to your People no small Comfort and Security &c. Prerogative strengtheneth the Subjects Liberty, and their Liberty strengtheneth the Kings Prerogative. *Cap.* 38. is full and strong against the King, which my Brother *Jones* was pleased to omit. The King may by his Officers take Necessaries for his House, nevertheless he is bound to pay for them, for by the Law he ought not to take away any of the Subjects Goods without making Satisfaction for the same; neither can he lay any Talliage, Subsidy or other Burthen, or make new Laws, or alter old, without express Agreement of his People in Parliament.

I have done with the positive Part of my Argument. I will not trouble you long, I will Answer some Objections now made, and heretofore made against these Statutes.

First, For the Statute *de tallagio non concedendo.* True, it is very probable that it was no Statute, but an Extract out of the Statutes of 25. *Ed.* 1. which is upon Record, the other not being to be found upon the Roll. It was averred *una voce*, it was a Statute, though not without Probability it was no Statute, as it was learnedly observed by Mr. *Solicitor*, in respect of the King's Absence beyond the Seas, only I collect this out of his Argument, that he thought that that Statute did reach very far against the King, which he could answer no way, but to take it away, therefore he thought it a Statute of some Force.

Next, my Brother *Berkeley* would have the Statute of 14. *Ed.* 3. to be but a temporary Statute, and but during the Continuance of the Wars. The 1*st* Part of the Statute is absolute, but the latter part is but a Temporary Statute and but during the Continuance of those Wars. But it must (the former part thereof) needs be perpetual, for it is granted for the King and his Heirs.

The next Objection is by my Brother *Jones* and my Brother *Crawley*, that this Power Royal is part of the Prerogative appertaining to his Person and inherent to the Crown *A proprium quarto modo* so inseparable that an Act of Parliament cannot take it away.

I confess there are some inseparable Prerogatives belonging to the Crown, such as the Parliament cannot sever from it. And I will prove unto you out of Books, Cases and Statutes, that the King cannot release his Tenure in *Capite*. It was endeavoured that a Law should be made that the Court of Wards should be shut up, it was resolved it had been a void Law, such is the Care for the Defence of the Kingdom, which belongeth inseparably to the Crown, as Head and Supreme Protector of the Kingdom: So that if an Act of Parliament should Enact that he should not defend the Kingdom; or that the King should have no Aid from his Subjects to defend the Kingdom, these Acts would not bind, because they would be against natural Reason. But in our Case here, there is no such thing, for there is no Act that restrains the King to lay any Charge at all, but only ties him to one Means, by which he would come by it, to witt, by Parliament. If before the Statute a Man alien Land held of the King without Licence, the King shall seize the Land, and have it forfeited to him and his Heirs for ever. Now by that Statute the Prerogative is restored to a reasonable Fine only, this was as inherent in his Person as any thing could be, and yet it is restrained by Parliament.

Before *Mag. Char.* the King might take any Man's Goods for his Provision, and cut any Man's Woods down, to Build or Repair his Castles, yet since that Statute it is Enacted *Nullus Vicecomes nec Ballivus noster capiet equos &c. nisi reddat liberationem. Nec capiemus boscum alien ad castra vel ad alia agenda nostra nisi per voluntatem illius cujus boscus ille fuerit*, and to this day this Statute is of Force, that the King cannot take these things nor use his Prerogative.

The Prerogative of *Nullum Tempus occurrit Regi*, is a great one, yet in some Case of Lapse of Churches, this Prerogative is taken away by the Statute of 25. *Ed.* 3. *Cap.* 1. where the King granteth for him and his Heirs not to present but in his own time, and this being pleaded 11. *Hen.* 4. *fol.* 7. is adjudged against the King, notwithstanding the Rule of *Nullum tempus occurrit Regi*.

The Statute of 7. *Hen.* 8. *Cap.* 3. concerning Restraint of Informations and that of 21. *Jac.* whereby the King excludeth himself to make a Title to any Land, whereof he had not been in possession within 60 Years before this time, he was tied to no time but unlimited, yet this great Prerogative is thus bound, 30 *Ed.* 3. *Cap.* 10. Parliaments to be holden every Year one, or oftener if need be, because of divers mischances that may happen. It is to be acknowledged as a gracious Favour from his Majesty to his Subjects that he would admit of this case to be argued in any ordinary Court of Justice, and not refer it to the Parliament to which Place, all such Weighty Causes are most fit to be referred. I am satisfied in my Conscience he would do nothing in this Case, if he were justly informed, or may be informed he ought not to do it by Law.

The Laws of *England*, *Mutari non poterunt*, without consent of Council gathered together, *Si inusitatum emerserit*, saith *Fortescue* (as the Case of ours is) it is referred to the next Parliament. *Si aliquid inconsuetm*, then it is to be put to the Parliament.

2. *Ed.* 3. *fol.* 7. There ariseth a new question concerning the Staute of *Winchester* about recovery by Actions against the County where Robberies were committed; there the Case in respect of the difficulty was referred to the Parliament, and there the Sheriff was warned to have his Money.

You shall see a notable Case in the Register *fol.* 224. among the Writs of two that were at *York*, and found by a Clerk in the *Chancery* there to appear at *Rome*, and because of this contempt they were committed to Prison, and a Writ came to Bail them returnable *corum nobis in parliamento*, so Matters of difficulty were adjourned into Parliament.

Westminster 2. *Cap.* 28. *in nova causa fiat novum remedium in Parliamento.* To resolve Cases of difficulty Statutes have enacted that there should be two Parliaments every Year. 4. *Ed.* 3. *Cap.* 4. which was a great Confirmation of this Realm. *Littleton.* 110. 180. Parliaments frequent, I know not what to say, that this Kingdom that hath thus long flourished by Parliaments, should now forget her frequent kind of Government by Parliament, whetherby reason of things past, or some disaster is fallen, that this that is the Antient way, (I do not say that Parliaments is the Government, but Kings have governed by them) is so much out of Use now a days.

I do not prescribe Power to the Parliament to govern the Realm, but the Publick have been govern'd by the Parliament: There was seen too much of the ambitious Humour of some in the last Parliament, that stirred up nothing but Confusion and Discontentment, as we now feel it to our great Prejudice.

Now come to the Precedents, *First*, that of *Danegelt* hath been objected; of which there were two Kinds, as Sir *Henry Spelman* in his *Glossary* observes; the one *ad precandum*, the other *ad coercendum Danos*, great Sums of Money they had to go Home again, from 12000 *l.* to 48000 *l. per Annum*; and it was raised in three Years; it was continued until King *Stephen's* time; at which time 'tis said it was released: For my part, I see not but that it might now be put in Use as formerly, had it not been for those Statutes of *Edw.* I. and *Edw.* III. before-mentioned: For it was not laid down when the Danger ceased, but was continued and taken up by Princes when they had a Mind to it, as by *William the Conqueror*, and *William Rufus*; but since these Statutes it was never taken (*and here he read the Words of the Statutes*) so if these Statutes took that away, why do they not bind in our Case? Which is a full Answer, in my Opinion, to that and all other Precedents. Before these Statutes there have been shewed 200 on each side; but I say it had been better they had never made Use of them.

So

So to all the Precedents made before the Statute *de tallagio non concedendo*, I give this general Answer to be of no Force.

For the Precedents in *Henry* III. time, which were many, yet in those Commissions for preparing of Gallies, after they were made they were at the King's Cost: This may be done at this Time.

And with the Statute of 14 *Edw.* 3. I answer those Precedents of the 10, 11, 12, *Edw.* 3. and by the way observe the times that were then, that Statutes were forced to be made to remedy those Evils; and surely those were the Burthens and unreasonable Taxes which the King, in the 13th Year of his Reign, confessed he had oppressed his Subjects with, and desired they might be forgotten, because he was urged unto it by his Necessities, and not for any ill End of his own, (*and so he caused the Record it self to be read openly before all the Judges.*)

2 *Hen.* 4. 2 *Ric.* 2. A general Assembly called and resolved, That Money could not be raised but by Parliament; since this time all the Precedents that have been vouched were for arraying Men, and putting them in Readiness.

28 *Hen.* 8. There were some forced upon their own Charges to go to suppress some Rebels in *Lincolnshire*, but afterwards were recompenced for their Charges, saith the Record. Our Pleasure is to send a Messenger, and on a Bill of Charges he shall satisfy them. I do agree, and there are many Statutes that Men should be arrayed, as the Statute of *Winchester*, which are only Preparations to make Men ready.

Now for that which hath been urged by Mr. *Attorney* excellently well, That the King, by the Law of the Land, hath a Prerogative in the Lands and Goods of his Subjects; so that in some Cases the Sheriff may for him break open a Man's House and the like, because otherwise he cannot execute Justice.

True the King hath such a Prerogative, and fit it should be used; for otherwise Justice could not be administred as it is in *Ma*' Case. The Sheriff though a Verdict by Default hath Power by Prerogative of the King to break into the House, and give Possession; for otherwise Justice could not be administred, if all Laws were contemned; for which Contempt the King may use his Power.

Again, the King of his own Charge maintains his Courts of Justice, and is bound so to do, 39 *Hen.* 6 34 *Hen.* 6. And in lieu of these Charges, the Law gives him those Fines and other Duties; so there is upon the Matter a *quid pro quo*: But where there is an Interest in a Subject, he cannot take it away without his Consent, as he may do it in Murage and Pontage, and the like; for there is a particular Benefit to the Subject. So I think I am almost at an End of answering the first and second Part of the Precedents; the ancient time was one Way, and the modern time another Way.

In *Edw.* 4. *Ric* 3. *Hen.* 7 times, they are all for Wages of the Mariners, certain Allowances they had, what a Week, what a Day is set down.

But you say here in this Case appears no Money to be paid by the Subject, but only for a Ship to be provided by the Sheriff, and not any Money to come into the King's Purse.

I must conclude this Part with an Agreement agreed by all, That if this Writ had been to levy Money, all have agreed it had been void.

As I do take it, the Writ is to prepare a Ship of such a Burthen; so the Ship is the Matter: Then give me Leave to say this, and I say, as it appears plainly by the Record, there was no Ship prepared at all; then if no Ship, no Writ can be had against him for Disobedience. 'Tis known to all the World, 'tis not Ships, but Ship-Money. Ship-Money in every Man's Mouth. It hath a Name of preparing Ships, but the End of it is to prepare Money, as in *Yorkshire* twelve thousand Pounds.

If the Provision of a Ship had been expresly alledged, it might have been traversed, and therefore Mr. *Hambden*'s Counsel could do nothing but demurr; and by demurring, they confest nothing but which is materially and sufficiently alledged, that it might have been deny'd by a Traverse.

But you will object, That I did subscribe to a contrary Opinion, and set my Hand unto it.

To this, for my own Part, I must say, and I can say it truly, my private Opinion was ever against it. I did subscribe, but it was but for Conformity; for it is known to all, when a great Number meet together, the Judgment is that which the greater Number saith: Besides, these Words to which we subscribed are nowise pursued.

Secondly, Our Opinions were very suddenly required; for the King's Letter bears Date the second of *February*; and our Opinions upon it bears Date *Feb.* the 7th following, and it was in a Case wherein we never heard any Argument, so that we usually do, and God forbid but we may dissent from our private Opinions upon a better Reason heard; but I am of the same Opinion now that I was then.

But it will be said we might have done it more advisedly: No Man of us but sometimes delivers his Opinion, and yet after we have heard an Argument, have changed our Opinions, and gone contrary to our former Judgment.

Thirdly, If after any Arguments heard I had been of the same Opinion that was deliver'd, yet this Writ doth not pursue the Direction thereof; for though we directed, that the King might charge in case of a general Danger, yet this was and is intended not in Danger of Pirates, but upon an imminent Necessity, and apparent Danger, that could not be avoided. For I do agree in the Time of War, when there is an Enemy in the Field, the King may take Goods from the Subject; such a Danger, and such a Necessity, ought to be in this Case, as in case of a Fire like to consume all without speedy Help, such a Danger as tends to the Overthrow of the Kingdom. Give me Leave to say, that Kings of *England* have had great Power to this to themselves. 17 *Hen.* VIII. in the Cardinal's Time, it was lawful to send forth Commissions throughout *England*, to take

take a sixth Part of the Subjects Goods; whereupon many upon Refusal were sent to Prison; the Lord *Cobham* among the rest sent to prison from *Huntington* to *London*, that at length *Norfolk* and *Suffolk* grew to such a Heat for taking away their Goods in that undue Manner, that the King was forced to call a great Council, who suppressed those Kind of Writs; and the King laid the Fault upon the Cardinal; and the Cardinal said it was the Advice of the King's Council, and they deny'd it; so he bore the Shame.

So in the time of gracious Queen *Elizabeth* who was a gracious and a glorious Queen, yet in the End of her Reign, whether through Covetousness, or by Reason of the Wars that came upon her, I know not by what Counsel she desired Benevolence; the Statute of 2 *Ric.* 2. was pressed, yet it went so far, that by Commission and Direction Money was gathered in every Inn of Court; and I my self, for my Part, paid 20*s*. But when the Queen was informed by her Judges, that this Kind of proceeding was against Law, she gave Directions to pay all such Sums, as were collected, back; and so I (as all the rest of our House, and as I think of other Houses too) had my 20*s*. re-paid me again: And Privy-Counsellors were sent down to all Parts, that it was for the Defence of the Realm, and it should be re-paid them again.

Now for the Exceptions to the Writ itself, I must answer my Brother *Berkeley*, That no Allegation afterwards (if the first Writ be not good) will help it. The Writ is said to contain Matter sufficient, *Quia datum est nobis intelligi quod quidam pirati naves & bona subditor' nostror' &c.* and lead our Men into miserable Captivity, and provide Ships, Mariners, *&c. ad gravandum regnum nostrum.* Now, here's nothing for the Defence of the Realm, no *cognoscimus hostium adventus* as the Writs did antiently run.

Again, Pirates are to be withstood with ordinary Defence, which appertaineth to the King himself, but for extraordinary Defence against Invasion, when the Kingdom is like to be overthrown, there indeed the whole Kingdom is to contribute to the Defence. And our Resolution was, when such a Danger was apparent, the whole Kingdom in Danger, then the Defence to be extraordinary.

But you object, That tho' there be no Danger set forth in the Writ, yet in the *Mittimus* it is certify'd, *Quod salus regni periclitabatur.*

The Writ issued 4 *Aug.* 11 *Car.* the *Mittimus* came not out till near two Years after: Now the Council perceiving the first Writ was not sufficient, they politickly add to the *Mittimus* this Clause of *Salus regni periclitabatur*; so this coming so long after, cannot make that which was not legal *ab initio*, to become good by Matter *ex post factum*; this could not be helped by any subsequent Matter, as in case of a Fine, *&c.*

This was much stood upon by my Brother *Berkley*; but I shall answer him with two Cases not to be deny'd: The First, *Vernon*'s Case in the 4th Report. A Man conveys Land to the Use of himself for Life, the Remainder to *I. S.* for Life, the Remainder to his Wife for her Jointure; though in this Case *I. S.* die before her Husband, so that now it falls out to be as advantagious to the Wife, as if it had been limited to her immediately after the Death of the Husband; yet it is resolved, because it is not so limited in the Beginning, no good Jointure to barr her of her Claim to her Dower.

Also in *Chenie*'s Case, 5. Report. A Will uncertain, (and so not good) shall not be holpen by an after-Averment subsequent to alter the Estate: So it is in our Case, if the Writ were not legal, when it first issued, no subsequent Matter shall make it good.

The Writ commands the Sheriff *& quos rebelles invenerit* to imprison, and to distrain all such as refuse to pay. This is directly against the Statute of *Mag' Char'* none ought to be distrained or imprisoned, but by the lawful Judgment of his Peers, and according to the Laws of the Land, never contained in any Writ before, nor any such Writ can be maintained.

Besides, the Words of the Writ are to rate every Man *secundum statum & facultates*; shall the Sheriff be a Judge and Party? If the Assessment be done according to the Writ, he must be Judge and Party: Never such a Writ before. All Sheriffs must pay nothing themselves, or every Sheriff must assess himself, 8 *Hen.* 6. *Dyer* 320. So for the Writ for the Reasons aforesaid, I hold it to be against the Law.

Again, no Ship was prepared: If it had been prepared, it had been their own Goods: therefore, the making of the Ship might have been pleaded, that there was never a Ship; and then the Sheriffs might have been punished for not obeying the King's Commands.

It hath been said he hath confessed all Matters contained in the Writ; whereas in a Demurrer he confesseth no Matter of Fact, but what is sufficiently set down, 30 *Eliz. Coke* 23. resolves the same.

But to the Writ of *Sci' Fa'*, I conceive it not legal; no such Writ can go forth to two Sheriffs of one County, they being neither of them Sheriff at this Time; for it went out after they were out of their Sheriffwicke; therefore some Return should have been made by Inquisition. I never did see or heard of any Writ that went to two Sheriffs of one County, as it was to *Bucks*; and so two Sheriffs made two several Returns.

Again, This Money cannot be levyed by *Sci' Fa'*, because the Writ directs other Means, either to distrain, or to imprison; therefore not by *Sci' Fa'*, for it is contrary to the Words of the Writ. And seeing the Sheriff hath not followed that Direction, he must answer the Contempt.

But here to answer my Brother *Trevor*, I do agree in some Cases of a Certificate, or Presentment, that a Bridge was out of Repair, or a High-way stopt, there shall go a *Sci' Fa'* upon that; but that tells to whom the Money shall be paid. The Writ doth not demand the Money to be paid to the King for not preparing a Ship; it must be by Office or Inquisition of Record, if a legal Certificate, as it is. 2 *Edw.* 3. *fol.* 2. The King commands the Sheriff of *Leicester*,

Leicester, to summons *I. S. &c.* to come and meet him with Aid, to go into *Scotland*, he spent the Money to a great Value: There went out a Writ out of the *Exchequer* to attach this Man; yet after long Debates it was held fit, the King must be first informed by Matter of Record.

I agree, that the King, as he is Lord of the Sea, may lay Impositions, but then he ought to defend the Merchants Goods from Pirates; that famous Case of *Mich'* 4 *Jac.* in which Case I was of Council of an Imposition of 5 *s.* upon a Tun upon Currants, one *Bates* stood out, and would not pay it; adjudged, that that Imposition was lawful; for the King may lay an Imposition; for he hath the Rule of the Sea, and hath Power to hinder Merchants to traffick; and if they traffick, he secures their Goods.

To conclude with that which my Brother *Berkeley* said, that the Subjects of *England* are free Men not Slaves, free Men not Villains Here is no apparent Necessity of any Invasion; therefore, by Law, they cannot be thus compelled to part with their Interest in their Goods. If there were any apparent Necessity, they were without Limit or Stint.

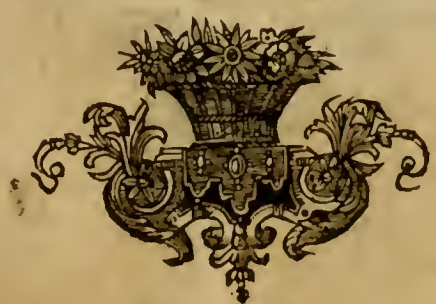
Thus have I, with as much Perspicuity as those Imperfections which attends my Age, would give me Leave, set you forth my Reasons, and without any further Protestation I conclude both for Matter and Form, that you are not to give Judgment for the King.

The Opinion of Sir John Denham *Knight, one of the Barons of his Majesty's Court of* Exchequer, *in the great Case of* Ship-Money, *presented in Writing: And his further Declaration of that Opinion (upon some Misconstruction thereof) with his Reasons presented to the Court also in Writing.*

May it please your Lordships,

I Had provided my self to have made a short Argument, and to have deliver'd my Opinion, with my Reasons: But by Reason of Want of Rest the last Night, (my old Disease being upon me) my Sickness and Weakness are greatly encreased, in so much, that I cannot attend the Business, as I desired: And if my Opinion be required, it is for the Plaintiff.

Serjeants Inn, Fleet-Street,
26 *May*, 1638.



Sir John Denham *his second Certificate directed to the* Lord Chief Justice Brampston. 28. Maii. 1638.

My Lords.

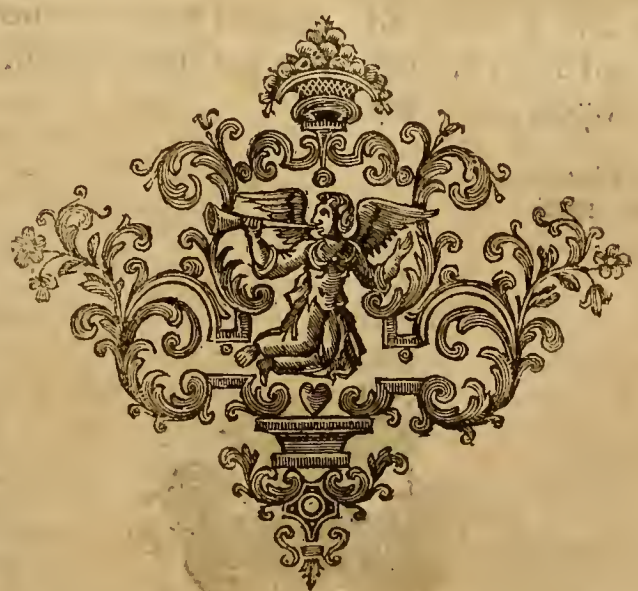
UNderstanding that some Misconstructions was taken by some in the Declaration of my Opinion, which I desired your Lordship upon the last *Saturday* to deliver in my Name; for further Satisfaction therein I have sent again, although I was most desirous to have passed my Vote in silence in this Work of weight, by Reason I heard not the four last Arguments; yet I delivered my Opinion for the Plaintif, which I took to be Mr. *Hambden*, by Reason it appeareth by the Record that he coming in upon process *Queritur de colore præmissorum graviter vexatum & hoc minus juste*, which satisfied me that he was Plaintif, and therefore I now declare my Opinion for Mr. *Hambden* who did demur.

I shall only deliver these two Reasons for the maintaining of my Opinion. The *1st* is, that the King's Majesty is *sola & suprema Justitia regni*, and the Rule of the Law is and hath always been, that his Majesty can do no Wrong and thereupon ariseth another Rule of our Law which I gave far my second Reason.

The King's Majesty being of a Corporate Capacity, can neither take any Lands or Goods from any of his Subjects, but by and upon a Judgment upon Record, which (according to our daily Experience in the *Exchequer*) there must proceed some Judgment in that or some other Court of Record, whereby his Majesty may be intitled either to the Lands or Goods of a Subject, as namely where seizure of Goods is made for his Majesty either upon Out-Lawries, Attainders, or Matters of the like Nature, as in Case of seizures in the Court of *Exchequer* where seizures are given by Statutes, yet without a Judgment in that Court upon a Tryal for the King, the Goods are not to be recovered to the Use of the King as forfeited.

Upon Consideration whereof, and comparing the same with his Majesty's Royal Writ, I find no Judgment thereupon had nor given, which were the chiefest Reasons of my Opinion for Mr. *Hambden*.

28 *Maii*. 1638.



The

The Argument of Sir Humphrey Davenport *Knight, Lord Chief Baron of the* Exchequer *in the great Case of* Ship-Money, *in the* Exchequer Chamber.

My Lords,

THere hath appeared unto us upon this Record many several Arguments, and excellently made, it comes now to my Course, to express my own Opinion.

It appeareth upon this Record, that *Pasch.* 13 *Car. A Sci' Fa'*, issued out of the *Exchequer* to the Sheriff of *Bucks*, reciting, Whereas, several Sums of Money mentioned in a Schedule to that Writ annexed, by Virtue of the Writ 4 *Aug.* assessed upon several Persons for providing of a Ship, and were not paid, whereby he was cammanded, *quod scire faceret*, to those several Persons in the Schedule annexed nam'd, to appear in the *Exchequer*, *Octab' Trin'* 13 *Car.* to shew Cause why they should not pay those Sums of Money assessed upon them.

Thereupon a *Certiorari*, 9 *Martii*, 13 *Car.* was directed to the Sheriff of *Bucks*, to certify the Sums, and the several Persons upon whom they were assessed, and of the Warning given unto them to pay the same.

The *Certiorari* being returned, and in Court in *April*, 13 *Car.* 5 *Maii*, then came there a Writ of *Mittimus* out of the *Chancery*, by which the said former Writs were sent to the Barons of the *Exchequer*; which *Mittimus* recites the Writ, 4 *Aug.* and not the Record itself: And the Barons are commanded, that they should thereupon proceed, as by the *Mittimus* is required.

Upon these Records, thus certify'd, there issued out of the Court of *Exchequer*, a *Sci' Fa'* that is now in Debate, which was awarded against the Parties mentioned in the Schedule; and Mr *Hambden* being returned, hath appeared, and demandeth Oyer of the Writ, 4 *Aug.* 11 *Car.* of the *Certiorari*, 9 *Marti*, 13 *Car.* and of the *Mittimus*, 5 *Maii*, 13 *Car.* upon Oyer of these, and reading them unto him, as was demanded, Mr. *Hambden* hath demurred in Law, alledging, That the Writs, and every of them, and the Returns of them, and the Matters therein-contained are not sufficient to charge him with the Sum of 20 *s.* on him charged: And thereupon demandeth Judgment, if the King will be pleased any further to proceed upon this Writ.

To this Demurrer thus tendred by Mr. *Hambden*, Mr. *Attorney* hath joined in Demurrer, alledging, That the Writs mentioned, and all of them, and the Matters therein contained, are good and sufficient in Law to charge the Defendent with the Sum of 20 *s.* and demandeth Judgment thereupon for the King: And that thereupon Judgment would proceed for the King, that the Defendent *Hambden* should be charged with the Sum of 20 *s.* and thereupon make Satisfaction, but to whom is not expressed upon the Record.

This Demurrer thus warily joined on both Sides, there hath been thereupon several Arguments at the Bar and Bench, excellently (no doubt) argued, and very fully. There hath been introduc'd and press'd to the Court (and whereof there have been several Notes delivered) a Number of Records appertaining to the Question; so far forth, that in one of the Arguments at the Bar, there was excellently well remembred, at the least, upon the particular of Records, and great Authorities, above 300.

Upon this Record, the Demurrer being thus joined, my Purpose is after my Means, not being able to give an Attempt of every Particular, to make a summary Collection of what I am to say, and with that Shortness and Brevity that appertains to me (the Weight of the Cause not deserted) upon the Duty of my Place, and upon my Oath, which I have learned and hold to be *ligamentum fidei inter Deum & animam*, to declare unto this Court what I do conceive to be just upon the Question arising upon the Records, wherein my Meaning is to retain my self unto the Parts of the Record.

Judgment is not here to be given, but a judicial Advice, and according to Number of Voices here, Judgment must be given in the *Exchequer*, without Respect to any of our particular Opinions which sits in this Court. I shall do my best Endeavour to open unto you such Questions, as do appear to me upon the Record to be aptly and fitly debated before

The State of the Question out of the Record will appear to be this, That 4 *Aug.* 11 *Car.* there issued out of *Chancery* a Writ, not returnable, unto the Sheriff of *Bucks*: This Writ was *inter Brevia irretornabilia*, according to these Stiles in that Court, and in the Court of *Exchequer*. By this Writ 4 *Aug.* which I do conceive to be the original main Ground of this Record, it appears what was the Occasion and Ground that Writ was awarded. It was touching, and in Respect of certain grievous Incursions by the Pirates upon the Seas, who commit Depredations. and take the Goods and Merchandize, both of the King's Subjects and others that traffick here, and carry them into Captivity; and this is said to be to the great Damage of the Kingdom.

That

That the Times were dangerous, and hostile Times, *tempora hostilia*; and therefore, it was fit there should be a convenient Remedy provided by the Kingdom for Defence thereof: And thereupon, in that Writ, two several Mandates or Commands are imposed.

The *First* was a Command and Direction to the Sheriff of the County of *Bucks*, and to the Mayor of *Buckingham*, and to the Bailiffs and Burgesses of *Chipping Wiccombe*, and Parishes of the County of *Bucks*, *& pro omnib' hominib'* of those Towns, and all others dwelling in that County; these are the Persons who are charged. And by that Writ 4 *Aug.* they were charged with this Particular, That they should before the first of *March* then following, at their own Costs, prepare and provide a Ship of War of 450 Tons, furnished and fitted with Men, Ammunition, and Victuals, to be brought to *Portsmouth* at their Charge, at or before the said first Day of *March*, and from thence to be maintained at their own proper Costs and Charges, for the Space of 26 Weeks then next following, to attend such noble Persons, to whom the King would be pleased to commit the Custody of the Sea, and to pursue their Directions

The *Second* of those two Mandates descends from the Persons to whom the Writ was directed into some few, and that upon the Matter to the Sheriff of *Bucks*, and to the Mayor of *Buckingham*, and the Bailiffs and Burgesses of *Chipping Wiccombe*: To these is given and limited a Power by the Writ, distributively, as therein is appointed, respectively to tax and assess the whole County, *secundum statum & facultates*: And those that they should find to be Rebels, they should distrain them, or by any due Means commit them to Prison, there to remain until his Majesty sends forth an Order for their Deliverance. This I do conceive to be the End of those two Mandates mentioned and conprized in the Writ. 4 *Aug.* 11 *Car.*

After this Writ 4 *Aug.* 11 *Car.* almost a Year and an half, then cometh the *Certiorari* out of the *Chancery*, dated 9 *Martii*, 12 *Car.* directed to the Sheriff of *Bucks*, who, with the other Referees, should certify unto the King the Names of such Persons as were assessed, and what they were assessed, and who have performed the Assessment, and who not. That Writ was returnable 26 *April* then next following. And therein Mr. *Hambden* appears as a Defendent to the *Sci' Fa'* therein was he certify'd to have been taxed to the Sum of 20*s.* for his Lands in the Town of *Stoke Mandivile*, and that he did refuse to pay it, and did not pay it unto him, nor any of the Collectors that were appointed.

This being returned into *Chancery*, and no Order there made, or any Rule, that the Sum imposed on Mr. *Hambden* should be paid. 5 *Maii* then next following the same Term cometh a *Mittimus*, reciting the Effect of those Writs, and is directed to the Lord Treasurer and Barons of the *Exchequer*; herein the Tenor of the Writ (and not the Writ it self) is certify'd into the *Exchequer*; and withal certifieth the rest of the Record, together with the Schedules annexed to those Writs, and by that is commended into the Court that they should proceed to do for the further Receipt and Collection of the Sums behind, as by the Law and Custom of the Kingdom of *England*, shou'd be required.

And upon this Certificate here cometh a Writ of *Sci' Fa'* directed to the Sheriff of *Bucks*, to give Notice to the Persons that were Defaulters, that they should appear and shew Cause, if they could say any thing, why they should not be charged therewith according to the Laws and Customs of the Realm; and the Writ is so returned: And upon that Return Mr. *Hambden* appears upon the Day in Person, and after Oyer of the Proceeding, hath demurred.

Upon this Record, this being the Case, and the Demurrer thereupon joined, we are to see what is the Law and Custom of *England* upon the Matter extant in the Record; for I intend not to expatiate beyond the Record, but to stick close to it, as it is in the Case now depending in Court, upon this Record: And therein I shall confine my self to some few general Heads, I shall not be long in any thing.

The first thing is, Whether these two Powers and Mandates mentioned in the Writ, 4 *Aug.* 11 *Car.* (the original Ground of this Suit) the one for Prepartion of a Ship and Furniture, and of the Residue therein-mentioned; and the other, for Taxation at the Pleasure of the Sheriffs, and other Persons to whom it is referred. And that expressed upon the Motives of the Writ, 4 *Aug.* whether I say, that these same Mandates were and are good in Law, according to the Law and Custom of the Kingdom of *England* upon the Matter upon this Record; that is the first Question: If that do fail, then the *Sci' Fa'* is at an End. If there be no legal Charge imposed upon the Country, then he ought to be discharged.

The second Question is upon the principal Head, admitting these were legal in themselves, according to the Tenor of the Writ, to see then how it is reduced by the Record. Therein I shall offer unto Consideration, whether that upon this Certificate upon the Writ, 9 *Martii*, out of the *Chancery*, after the Time so past for Execution of the first Writ, which is irreturnable, that upon that it be so legal, and according to the Course of Law, convey'd out by the Records to be a sufficient Ground and Warrant of the *Sci' Fa'* here brought, is the second Question.

The Third Question is, this Writ of *Sci' Fa'* issued out, the Defendent appeared, and demurred in Law, whether hereupon there be such Matter therein, that they may charge the Defendent with the Sum imposed upon him, so that the King may have a Judgment and Execution upon it: That I conceive to be the last Question.

This Case is a Case of very great Weight, and doth nearly concern every one of us to have an especial Eye unto it. It is an usual Question in our Books, whereof we have much View.

However it be in the Record, to which we are now tied, it concerns the Prerogative of the

the King, and the Estates of the Subject. In my Conscience, I think, for the Act that was done, it was a gracious, honourable, and royal Act, and proceeding upon just Cause, that there should be a present Remedy for avoiding the Inconvenience that did appear, no doubt, for our Good herein, though it be known to every one that knoweth me, but especially to my self, if I partake of the Rule that every Man is bound unto, *Nosce te ipsum*, knows withal, that no Man is more bound, nor oweth a more tender Care to preserve the King's Prerogative, and to do that which may advance the same, as we are all bound unto by the great Oath that we have taken upon our Promotion: And in that Particular, I profess, none more bound than my self.

Upon this I have been bold, and I have truly looked into the Records, so far forth as my Means will give Leave, and according to what I understand of the Law, and the Custom of the Kingdom of *England*, to be upon this Record, I must needs say, though I do confess in my own Particular unwilllingly, that upon this Record Judgment ought to be given for the Defendent. *Quod Iohannes Hambden sit quietus, &c.* however with Submission to the greater Vote of my Brothers.

For first, I do conceive, that this Charge, thus commanded, and thus taxed, is not warranted by the Laws and Customs of the Kingdom of *England*: I shall therefore offer unto the Consideration of the Court, the several Discussions upon the Writ.

First, For the Writ 4 *Aug.* 11 *Car.* directed to the Sheriff of *Bucks*, to the Mayor and Burgesses of *Buckingham*, and Bailiffs and Burgesses of *Chipping Wiccombe*, *& probis hominibus Com' Bucks*, hereby are they charged upon their Allegiance, that they should, before the first of *March* following, prepare at their own Costs and Charges, *per probos homines*, throughout all the County, a Ship of War well furnished, and that the same Ship of War they shall maintain at their own Costs and Charges, for the Space of 26 Weeks, to attend the King's Navy, for the Custody of the Sea, as the King shall appoint and direct.

This first Point I take it not unwarrantable by the Law and Custom of *England*; in Respect, being a Matter of so great a Charge, and by them, being an Inland County, imposed to be performed to prepare a Ship before that Time, being no Maritime County, but an Inland County: This I do take in itself, that this is not a Charge to be imposed upon a County, by the Name of *probos homines*, or of the particular Men there named, except it were by their own Consent and Approbation. And with their Consent, I agree, a Charge upon *probos homines*, so they receive nothing to their own Uses; is good enough; whereof I find one excellent Record, 24 *Edw.* 1. A Writ that issued out of the *Exchequer*, and whereof there is the Record remaining to this Day inrolled and certify'd to be a true Copy: There it is directed in Case of Necessity, when the King is absent beyond the Sea, upon Information of the Discovery of a present and instant Invasion of the Enemies in *Flanders* and *France*, under Colour of coming as Fishermen to surprize the Town of *Yarmouth*, and all the Parts of the Coasts thereabouts. The Lord Treasurer that then was (the King being beyond the Sea) the Under Treasurer who had the Custody of the Sea, and the Barons of the *Exchequer*, caused a Writ to be directed to the Bailiffs *probis hominibus* of that Town; and no doubt of it in the Judgment of our Predecessor himself was good Law, and the Writ legally executed upon the instant Necessity appearing: But *Fortescue* speaks not so much of the Necessity, as hath been observed: Therefore it is not good to conclude upon some general Words in him, That in no Case of Necessity the Charge can be laid; for the Scope of the whole Book, consider'd well, will not warrant it: The Intent of it is not against Cases of Extremity. You see not in the Case, but that therein the Regal Course must be observed, according to the Law and Custom of the Kingdom of *England*.

But when I do consider of the first Charge of preparing a Ship at their own Charges, and of the Consideration of the next Charge in the same Writ for Taxation, I do not see, nor I cannot perceive, how the same do agree; but that the one is repugnant unto the other; for that the former Part commands the Charge to be generally by all; and by this last Power it is limited to be done by a particular Person, and that to be done at his Will, and as he shall think fit; whereby the Sheriff, Mayor, and Bailiff, thus employed, are excluded from the Charge; for they can do no Act upon themselves. It should have been done *per sacramentum proborum hominum*, considering these two different Powers. I hold the Law so to be clear in this Point. It appears not upon this Record that they were assenting unto it, or agreed upon any Ordinance herein.

Now the Power of the Preparation, it is upon the whole upon the Sheriff himself, Mayor Bayliffs, *probos homines* and all, but when you come to the latter *ipso facto*, by the Laws and Customs of the Realm, a great Part of the former Charge is removed directly from these that were chargeable, Power of Taxation is appointed to whom, to the Sheriff, and how can he tax himself? He and all his Estate, within the County of *Bucks* under the first Charge, and all discharged by the Power of Taxation limited in the second Clause, and therein I take it that this same is not legal according to the Customs and Laws of *England*, the one doth not agree with the other. If you ask me the Reason of it, my Brother *Hutton* hath given it. The Charge is upon the Sheriff, and not possible for the Sheriff to Tax himself, he cannot find himself *inter Rebelles*, he cannot commit himself to Prison, there to remain till such time as the King's Majesty shall deliver him; that he cannot do, so for the other Referees of *Buckingham* and *Chipping-Wiccombe*, exempted likewise if they can do this, then clearly the former Charge, imposed by the first and said to be done by them all, is out of doors.

Now it cannot be done, according to the Law of *England*, upon the Sheriff or upon his Land. The Point I think is very evident in

our Books. 18. *Hen.* 8. If a Defendent that is Sheriff be to be Summon'd, and he return that he cannot do it, Justice *H.*— said that Return was not good, for that he might summons himself. 8. *Ed.* 3. but if it come to a further question, that if there be any Execution to be done where another may be prejudiced, he cannot do, as to impannel a Jury upon a Writ where he is a Party, which may prove a Prejudice to another, for if he do it, it is not lawfully done, as it is in *Dyer, fol.* 8, 9. of the Sheriff in a Common Recovery, so upon these Authorities for the first question, I hold it manifest, that this Act which the Sheriff is charged to do, is afterwards by this second Power discharged, these two Powers do not co-here and and therefore not warranted by the Laws and Customs of the Realm of *England.*

Concerning the first Question my Opinion is clear that there is a material and legal exception appearing upon the self same Writ. My Reason is, the Sheriff is the the great Officer of the County, but when he must do it, I take it legally he ought to do it according to the Duty of his Place by the Law of *England*, that I do not take to be at his Will and Pleasure to lay one thing upon one, and another thing upon another, for my Part I conceive this must be done *per sacramentum*, he is not to be Judge in Case of Uncertainties, when a division of Charge and Taxes is to be made where things are put in Certainty by any of the King's Court, there he may execute, or take a Man's Good's, Imprison *&c.* but in Case of Uncertainty, the Law hath annexed to his Office, a Way and Means how to reduce the thing to a Certainty, and that is, *per sacrament' proborum hominum est*, in the Case of Partners, if they have a mind to make Partition of their Inheritance, they may do it by Agreement between them if they will, or by making of Lots by a third Person, the Elder shall choose, but if she her self make the Partition, she shall not both divide and choose; that alters the Case for Execution when it is in *propria persona*, but admit they cannot agree, the Judgment of the Law is that the Sheriff shall go in his proper Person into the Ground; shall he at his discretion make the Partition as he pleaseth? No. The Judgment is, the Sheriff shall go in Person into the Land, and that there *per Sacramentum per Inquisitorum* to be taken by chosen Jurors, they must consider it, upon such a thing so done upon *Sacramentum*, then indeed it is in the Sheriff's Power, he may now choose whether he will prefer the Elder or the Younger, but for our Case, that this should be done by a Sheriff, by his Discretion, whilst the Interest of several Persons is concerned, is as it were to make a Rape. I do not find that in any Book of Law.

I must confess in that Act, which is done by the Law there can be no Error or Partiality, so in *Fitz' Her' Na' br'* in his Writ *de onerando pro ratu portionis* so that what there is to be done, it goeth to the Sheriff, he is intrusted with the doing of this, but he is trusted by legal means, what shall he there do, where 20 Acres of Land held of the King in chief, they are sold to several Hands, there must be a Writ *do onerando pro ratu* for discharging of the Rent; but this must be done *per Sacramentum*, not by the sole Power of the Sheriff; hereof I find a notable Precedent. It is true it is not in our Books of Law, but in an Historian; yet he doth set it down in that manner, that a Man may trust him so far, *Math' Par'*, he saith and sheweth us that the 17. *Hen.* 3. Eight Years after the making of *Mag' Char'* authorized by Parliament. That the King himself was pleased (that according to the Institutions of Parliament) to require *Concilium Auxilium*, for the King's Wars, where, by the way, let me observe, that *Auxilia* from the Subject granted to the King in Parliament are not merely voluntary, but Duties to give Monies for Necessaries of State and in that I agree with my Predecessor.

Chief Baron 19. *Hen.* 6. The King is bound to defend the Kingdom. The same Laws that bound him to the defence of the whole Realm gives the King a Right of Inheritance to claim Subsidies for the defence thereof; but to return to *Math' Paris*. It appeareth there that the King in Parliament did demand Aid of his Subjects. *Concilium & Auxilium*, their Council as they were bound, their Helps as they were able. It is said that they made Choice of the Earl of *Chester* to give their Answer, who at first held it not fit to do it, alledging their Estates were but weak, that by the Laws of the Kingdom they that had been there in Person, they for their Cosinage might not be troubled. The Prelates, they were more courtious in their Answer, they desired more time to assemble themselves together, many being far distant, thereupon was a time assigned, till *Mens' Pasch'* in the mean time they all considered, the Lords on the one side, and the Lords Spiritual on the other side. And being demanded a fifteenth Part of their Goods, they answered, so as they might have their antient Laws established to them, for which they had been so much troubled, they would willingly assent unto it. The King consented unto it, and thereupon *Magna Char'* was there confirmed upon grant of a fifteenth to his Majesty. But when they came afterwards they did all agree, that for Necessity and for the King's Charge in his Wars, which did require a speedy Supply, they were contented directly to yield unto him a fourth Part of their Goods, to be levied in this manner, that is, (for so it is mentioned expresly in *Math' Paris*, and the former is set down *de verba in verbum.*) It is in this manner, I have it here to read it. That every Sheriff within his County should return a Juror in every Town. That so four Gentlemen of good Quality, and accounted principal Men in every Town, Power is given, that they shall do (as a Jury, to set forth upon their Oaths) Assessments reasonable according to their Estate and Power, and because it appeared then there, the very exception now taken, that the Assessors could not Tax themselves, they had Power to Tax the Residue, therefore a Power was given to two others of every Town, and they shall be sworn, and upon their Oaths Tax the four former Assessors. This tells unto me, what the antient and usual Way and Manner was of Taxes and Assesses by the Custom of *England*, the Manor was not at the voluntary Pleasure

of

of the great Officer of the County; but that they that did Tax others, should be Taxed by others. And this Opinion is directly in *Math' Paris*, that the Laws of *England* were so. And therefore for my own Part, for the Sheriff to Tax at his Discretion, I know no Law for it.

Statute 1. *Ed.* 3. By the true Record, according to the Manuscript of the *Exchequer* Book here in *French* it is *Chap.* 7. and so it appeareth in the *Tower* there inrolled. It is expresly there upon a Complaint made, that they held themselves agrieved with an Assessment, their Grief was, that whereas Aid was granted to the Crown, more than formerly was used, *&c.* and Taxes not rightly laid upon them by the Sheriff and Commissioners, this Grievance thus complained of in Parliament, and the Manner of their Taxing disliked, the King saith that from henceforth, the Taxation and Assessments should be made as in antient Manner, and not otherwise. Here is an express Negative, no Taxes to be done but by Jury; which excludes in my Opinion this Tax thus done; that is, by his own Power and Discretion is not warrantable by the Law of the Land. And herein give me leave, as I think in my Conscience, and as I think the Truth is, if this Inconveniency had not tended to a Grievance in very many Particulars, we should never have heard of this Question; but by this means it cometh in Question, both the one and the other, for the Act it self is a Gracious and Royal Act. It is requisite and necessary as the State and Condition (if it so appears upon this Record) of the Kingdom may be in, that there be a Supply according to the Necessity; for the King is Lord of the Sea; and as it was argued at the Bar, in a Cause brought before us the Barons of the *Exchequer*, where we did unanimously agree, and adjudge that the King was, and is in my Conscience, rightly true Lord of the very Propriety and Ownership of the Seas. The Occasion upon which this grew a Question was, as I conceive, upon the Writing of two Books: The one called *Mare Liberum*, that no Ownership of the Sea should belong to the King, whereas it is the Sea of our Sovereign, and Defence by Sea, under Almighty God that is our Protection, and if we should suffer any else to have an Interest in it, it would hazard the whole Kingdom. But in Answer to this Book, Mr. *Selden* hath wrote very learnedly, a Book called *Mare, Clausum*, approved of by his Majesty, and inrolled in the *Exchequer* by Command from his Majesty, there to remain, but since there is another Book written (which I had at my Argument) by one *Pontanus*, directed to the great Chancellor of the King of *Denmark*, and he undertaketh therein to make an Answer to every particular Chapter in Mr. *Selden's* Book, and truely as I think in my Opinion though weak, Mr. *Selden* hath a Judgment in Law against him upon a *Nihil dicit*.

Of how great Consequence the Dominion of the Sea is to this Kingdom, who knows not? So that without Question, the Tax was very fit to be done, if the Power given to the Sheriff had been as warantable, but the same second Power to free himself and lay it upon the Residue, is not good, nor warrantable by the Law. Thus much for the first Question concerning the Power contained in the Writ. 4. *August*, which doth not resort unto the Rule of the Law and Customs of the Kingdom of *England*.

In the next place let us see whether the Writ mentions Causes sufficient for it. For the Incursion of Pirates I conceive it no just Cause: But the Expressions in the Writ, *Quia datum est nobis intelligi, ut informamur vulgaris est opinio rumor est* &c. If the King undertake it upon this, he is not to shew how he discovereth it. I am satisfied in my Opinion upon view of the Precedents; it is sufficient if the King do alledge *Quia datum est nobis intelligi*, or *Quia intelleximus* &c it is enough, for it is so in these Precedents. *Quod vulgaris Opinio* &c. All these or any of these containing such Matter that the Kingdom is in danger, I agree the same doth conclude the Party. and that the King is the sole Judge of it. The Case is not traversable, the Writ must be obeyed agreeing with the Laws and Customs of *England*.

That this may be done by the King's Writ, excellent and strong Arguments have been made; that this Imperial Power belongeth to the Crown I heartily acknowledge it, his Power declareth it so; Reason it should be so: Not voluntarily at his Pleasure but it is according to his *Politique Capacity*, not excluding his natural Impartiality. *Quia Rex*, he doth it not but *Quia Rex Angliæ* he doth it: So I find it in *Fortescue*.

The grounds premised in this Writ, that the Kingdom was then in danger, Truth in my Conscience it was so, and if that had not been done, *England* had heard of it before this Day. Therefore there must be an Expression of the Kingdom to be then instantly in danger, or such a Preparation in such a convenient time, or else it will be in great danger; but that must be experienced, for I hold the law to be so. Doctor and Studient saith it is the old Custom of the Land, the King shall defend the Sea, 'tis true, against whom? Against Pirates and Petty Robbers but not against a sudden Invasion at his own Charge. These *Prædones* which were spoken of in the Laws of King *Edward*, when *Danegelt* was given, they were of that Condition, that they endangered the whole Kingdom. They did occasion the Tax of *Danegelt*, to raise from Twelve to Forty Eight Thousand Pounds, and *William Rufus* raised it to 46 a Hide, imposed upon just Grounds to repeal the *Danes*, being Common Enemies, and was continued until *Hen.* II's. time but since taken away by several Statutes as 25. *Ed.* 1. *&c.* That same *Danegelt* which was heretofore imposed on the Kingdom by the Terror of the *Danes*, continued still; though the Name be altered it is mentioned in the Red Book in the *Exchequer* to be used in *Hen.* I's time; but after the time of *Hen.* 2. I hold that it is taken away by the Statutes before mentioned of *Ed.* 1. *&c.* and therefore if for private danger the Assessment be imposed, it is not according to the Laws and Customs of this Realm.

I am over troublesome, and I fear shall hardly hold out, give me leave to proceed to the second Consideration. And admitting those Charges in the first Writ to be legal, the next

next Consideration to be had is, whether the *Certiorari* and the *Mittimus* do legally revive the first Writ, it being a Writ irreturnable, and not executed according to the Tenure of it within the time limited and prefixed to be done.

This *Certiorari* long after the first Writ, dated a Year and an half after. And in my Opinion this cannot be; for the Nature of a Writ not returnable, is to command a positive thing to be done within such a time; if it be not done accordingly, there is an End of the Force of that Writ: So that here in our Case, the Power given to the Sheriff being not executed in due time by him, but done out of time, cannot be renewed now? for otherwise you will make a Man an Offender by a Relation, which being a Fiction in Law, cannot so operate, nor be made penal unto him for Non-performance, though afterwards by the *Mittimus*, these Words, *Salus regni periclitabatur*, come in, yet will they not revive or make good the Commands of the first Writ. If the first Writ had been returnable, and a Return made, and a Default according to the Return, the Writ had been still continued, and must have been referred by another Court, presented by a Jury upon Default; and upon Presentation and Indictment, shall have his Remedy to the King: But not being so, it is but a Suggestion, upon which a *Sci' Fa'* cannot issue, as in *Butler* and *Baker's* Case, Report 3. and being not returnable, is but dead in Law; and being certify'd upon the second Writ, it is not good, it cannot be to relate to make him a wrong Doer; to that Purpose is the Case cited, 26 *Edw.* 3. *Leicestershire* Case, reciting; Whereas one Sir *John de Lamston*, that he had deliver'd certain Monies to *Robert de &c.* and that he had wasted such a Manor, and taken away Goods to the Value of 2000 *l.* and thereupon it was commanded he should be attached by his Body, he appeared at his Day, and because, *&c.* he was discharged of it, and according to that I find it, 7 *Edw.* 3. there it was suggested to be made in one King's time; and whereas it was not, and there abated, then the Question, Whether the King may do it or no? He giveth the Answer, That where it concerneth the King in his own Right, there he may do it; but when the Title came to the King from another Party, there it was otherwise.

Upon this I do conceive this *brev' irretorn'* falleth short of making him punishable, as if it had been a Writ returnable; let the Writ 4 *Aug.* be never so good, the Writ thereupon is not legally issued.

The next thing is upon the *Sci' Fa'*, the Question upon this Record is, Whether this doth appertain unto the King; and I perceive, it doth not appertain unto the King: My Reason is this, because by the very Writ 4 *Aug.* it is expresly provided, for by that it will be employ'd to no other Use, but for the Preparation of the Ship therein-mentioned, by no Means to no other Purpose. It doth not now appear, who were Collectors therein appointed to receive the Money, whereby to become chargeable over to the King. It doth not appear upon this Record, that any Ship was provided, or that any Fault was in them that were employ'd, or of Surplusage in the Collectors Hands, though it was a worthy and gracious Act in his Majesty; yet this is not so legally executed, as the King may have a Writ of *Sci' Fa'*.

If Judgment be for the King, it must be with this Limitation, that it must not go to the proper Coffer of the King, as my Brother *Jones* observed. And in my Conscience, if it were paid unto him, he is a Looser by it: You see what the Writ is, you should be charged upon *onerare & satisfacere* one Ship, *non constat* there was any Ship, or any Collector, or any Act, concerning it: This Money was pre-ordained only to prepare a Ship, and to be employ'd meerly upon that, and for no other Purpose; and this appeareth not at all, whether any Ship made, yea or no; for how shall we give Judgment? The *Sci' Fa'* is, That Mr. *Hambden* should shew cause why he should not satisfy the Sum imposed upon him, but whom he should satisfy, or to whom the Money should be paid, *non constat*, well opened upon the Demurrer, *Si Dominus Rex valet aut debeat onerare le defend'* but *oneretur & inde satisfac'*: Nothing of that put into the Record to bring this unto the King; therefore, *quod oneretur* cannot be executed at all, according to the Books of 39 *Edw.* 3. and 49 *Edw.* 3. where if Judgment be to be given, and it cannot be executed, there it shall not be given at all: So the Judgment required to this Demurrer, is upon the Matter, *oneretur*, and shall by no Colour come unto him. GOD knows it belongs to him, and that deservedly; but in a legal Course *non constat*; therefore to give Judgment, *quod oneretur*, and not know to whom; to the King it cannot, for this Reason I cannot see how Judgment can be given, *quod oneretur*.

But hereupon another thing troubleth me very much, and which, in my Opinion, makes it clear, that Execution cannot be made upon this *Sci' Fa'* and that is the *Mittimus* to us in the *Exchequer*, which by *recordum ipsum* is not certified, but only the Tenor of the Record. I do conceive the Law to be so upon this Difference, as it is taken in a Case excellently well argued, 33 *Hen.* 6. where it is said, if the Record be in any other Court, whence Execution may be awarded, and the Tenor of that Record is by *Mittimus* sent into another Court, where Execution may be likewise awarded; in such a Case a *Sci' Fa'* cannot issue upon such a Record; for this is but an Extract of a Record: So if a Man should sue out Execution upon a Judgment given before the Justices of Assize, what will you do with this? And if he have no Goods within the Precinct, you must remove this. How do you remove it? Not by certifying the Tenor of the Record, but *ipsum recordum*: But if the Record itself be certify'd into the *Chancery*, and sent by *Mittimus* into the *Common Pleas*, that is good, and we are Judges of the Record: No other Court can give Judgment upon the Record, but we.

Here is sent unto us the Tenor of the Writ, and not the Record itself that I can find, and so two Executions may be upon one Judgment,

ment, 37 *Hen.* 6. a Transcript or Tenor of a Recognizance came out of the *Chancery* into the *Common Pleas*, to have Execution *& non allocatur*; and so is *Dyer*, 4. *&* 5. *&* 22. of the Queen, there was a Transcript there of a Recognizance, to the Intent that they might have a *Sci' Fa'* upon it, and held clearly by the Court, that upon the Tenor of a Record, no *Sci' Fa'* could lie: So all this appearing upon the very first Branch of the Record, that this was meerly a Tenor of the Record, and not *recordum ipsum.* I do not know how upon this Record there can be Execution.

Thus have I done with the several Discussions of the Writ and Record, which upon my Reasons before alledged, I conceive it not sufficient in Law to charge Mr. *Hambden.*

I come now to the great Question concerning the Danger of the Kingdom, and our Certificate to his Majesty. Give me Leave, according to our former Resolution made in Answer to his Majesty's Question proposed, to speak of what we did certify, and in my Conscience truly, and I hold it real, that when any Part of the Kingdom is in Danger, actually in Danger, or in Expectancy of Danger, and the same expressed by his Writ: I agree, the King may charge the Subjects without Parliament, towards the Defence thereof; for *necessitas non est lex temporis*, in vain to call for Help, when the Enemy is landed. Clearly I hold the King to be the sole Judge of the Danger: And the Danger being certify'd by his Majesty, I hold it not traversable; and in such a Case he may charge the Subject without Parliament; so that the very Cause be effectually expressed upon the Records, that the Kingdom was in Danger: But if a Parliament-Advice may be called, and the Danger not so imminent, then regularly no such Charge can be laid out of Parliament legally and rightly. I hold things done by the Advice of Parliament were the best Way: But if it be so, the Necessity will not admit the Delay of a Parliament, when the Enemy is in View, and expectant, that is such a Danger as we did certify to the King in our Opinion to be the time when he might so charge the Subject. In *Edw.* III. times Writs issued, sitting the Parliament To say, That there cannot be Incursions, but that they may be known within seven Months time, wherein a Parliament might be had, is a great Hazard to the Kingdom. It is possible the Danger may be discovered before they come; but it is possible it may come unexpected. In 88, when that great Invasion was, at which time if the Queen should not have used her Royal Power, without calling a Parliament, perhaps the Kingdom might have been lost by Delays; and yet then great Expectation was of a Parliament. So if *William* I. not *William the Conqueror*; for he did not conquer the Kingdom, he conquer'd the King of the Kingdom: His coming was sudden, he landed at *Hastings*; and was not the King advised of this at *York*? Did he not then make all Haste by Post, raised a sudden Army, and bad him Battle? And *William the Conqueror* had the Victory, not of the Kingdom, but against the King. *Lambert* saith, That he came not in *per conquestum*, but *per acquisitionem.* After he was crowned, and received by the *Londoners*, he sent forth Commissions to all the Counties of *England*, to enquire, *per sacramentum*, what the ancient Laws of *England* were, and of the State of the Kingdom; and Certificates being made thereof, and that of *Danegelt* certify'd to be a Tribute intorced. I say, in times of Necessity, the King may command this Aid by his Writ under the Great Seal, when the Danger is instant; nay, the Expectation of it is not traverlable.

Then upon every Certificate that the King makes, that he is of Opinion, that the Danger is instant or expectant, he may do it; then thus this Charge may come to be annual.

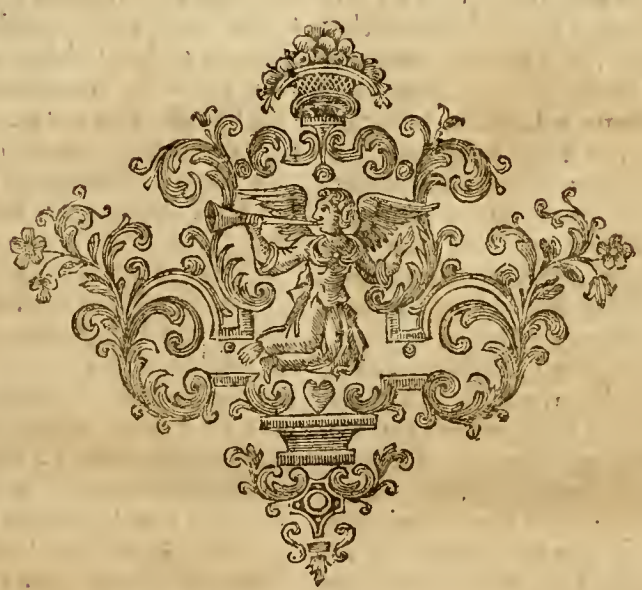
Now we need not fear, that the King will require it, but upon just Occasion, the Law presumes it; and legally it cannot be laid upon the Subject, but in such Cases of Necessity, as aforesaid. By the Charters of *William* I. King *John*, *Hen.* III. no Charge without Parliament: by the Statute of 10 *Edw.* 3. none is to go out of his County, except it be in Case of Necessity, 14 *Edw.* 3. I hold to be a perpetual Statute, and doth bind, but doth not bind in Case of Necessity; for they are not to be understood to be binding in all Cases. The Charter of King *John*, as it is inrolled, not as it is printed, according to *Mag' Char'* saving two Clauses that are not now in *Mag' Char'* hath this Exemption in it to the Subject of *Thiefe*, and these Immunities, no Tax nor Talliage, but by Parliament; but he excepts three Cases: 1. *Nisi ad redimendum corpus nostrum.* 2. *Pur faire Fitz Chevalier.* 3. *Pur Fille marrier.* These Prerogatives of the King are not bound up by the Parliaments; the very Commons themselves did agree to these three Cases. As for the Statute *de tallagio non concedendo*, I hold it to be a good Statute, and much for the Liberty of the Subject: But if you come to a Case of Necessity, they will not stand in Force. There is one Omission in the printed Statute, 25 *Edw.* 3. which is in the Records at the *Tower* (as it was observed by my Brother *Hutton*) *Car ceo est encounter le droit del Royalme*: How this comes to pass, I know not. I caused it to be searched, and I find these Words only in the Articles upon the Roll, where they do complain for the finding of Hobbellers, and are agrieved for it, and gives this as a Reason, *Car ceo est encounter le droit del Royalme*: And the Answer which the King gave unto it, was a Royal Answer to the thing proposed; but those Words are left out of it: But if it were the Right of the Subject (*le droit del Royalme*) as *Littleton* saith, that cannot die.

And certainly, in Case of Necessity, there is a Right belonging to the King to prevent Danger; for legally when the Safety of the Kingdom is in Danger, in Danger apparent, in that Case the King hath a Power of Prerogative to compel Aid. And if an Act of Parliament should be made to restrain such a Charge on the Subjects in case of Necessity, it would be *Felo de se*, and so void; for it would destroy that *Regale jus.* So this great Question of imposing this Charge, I am of Opinion it may be done without Parliament, as it was

in 88, so long as the present and apparent Danger continueth. And I am of Opinion, (as I was when we gave in our Certificates to his Majesty) that the King is the sole Judge of the Danger, and how to provide against it.

But however, I do conceive upon this Record, upon which I am to give Judgment, that the Mandates in the Writ 4 *Aug.* are not good in Law, nor according to the Laws and Customs of the Kingdom of *England*, nor well grounded upon the Certificate; and that the Information afterwards in the *Mittimus* cannot make a former Writ good, which was first defective: And the Sheriffs which were, their Return is not effectual, upon which Judgment may be given.

I cannot see how Judgment can be given *quod oneretur*, and not tell to whom, and nothing visible to whom we may find it: And therefore, in my Opinion, Judgment is to be given for Mr. *Hambden*.



The

The Argument of Sir John Finch *Knight Lord Chief Justice of the Court of* Common-Pleas *in the* Exchequer Chamber, *in the great Cause of* Ship-Money.

A Writ under the Great Seal of *England*, dated 4. *August* 11. *Car.* went to the Sheriff of *Bucks* (Sir *Peter Temple*) commanding that a Ship of 450 Tons and 180 Men to be ready furnished with all Ammunition and Tackling at *Portsmouth* for 26 Weeks, to go with other of his Majesty's Ships, and of the Subjects to defend the Dominion of the Sea, the Realm being in danger: And to Charge and Assess all his Majesty's Subjects, and all the Inhabitants within the said County, and all Occupiers, Tenents, and Terr-Tenents there that have not Part in the Ship, nor serve in the same, to contribute for, and towards the preparation and setting forth of the Ship according to their Abilities.

The Record of *Certiorari* saith, That *Stoke Mandevile* is wi hin the said County, and was assessed at a reasonable Rate, and that the Sum of 20 *s.* was assessed upon the Lands of *John Hambden*, Esq; as by a Schedule of the 9th of *March*, 12 *Car.* annexed to the *Certiorari*, may appear.

Whereupon a *Mittimus*, 5 *Maii*, 13 *Car.* with this *Certiorari* and Schedule, was directed to the Barons of the *Exchequer*, to do there for the Sum unpaid *prout de jure & per legem & consuetudinem regni nostri* Angliæ *fuer' faciend'*.

A *Sci' Fa'* upon this went forth of the *Exchequer*, to warn Mr. *Hambden* to shew Cause why he should not pay the 20 *s.* upon the Return of which Mr. *Hambden* appeared, and demanded Oyer of the Writ, *Certiorari*, Schedule, *Mittimus*, and *Sci' Fa'*; and upon hearing of them read, he demurred, and Mr. *Atterney* joined in the Demurrer; then my Lord Chief Baron, and the Court of *Exchequer*, adjourned it to the Court of *Exchequer-Chamber*, desiring the Advice of all his Majesty's Judges, and look what Advice we or the greatest Number of us give, that Court ought and must give Judgment accordingly.

In the debating of this Case, there hath been great Variety of Opinions among the Judges, a thing usual and frequent in all great Cases and Consultations, which shews commonly the Difficulty of the thing, and argueth a Candor and Clearness in the Judges, between whom Combination and Conspiracy would be made odious. All that have gone before me, have in one thing agreed, that it is the greatest Case that ever came in any of our Memories, or the Memory of any Man.

As the Sun arising in the Horizon shews not the Figure so clear, as when it is beholden in the Meridian; so by mixing many Impertinence with the Case in Judgment, it hath been apprended to be of a far tenderer Consequence than indeed it is; yet tender and weighty it is. If equally weighed in the one Ballance, we may put the Regal Power, or rather the Regality it self: In the other the Privileges and Liberties of the Subject, in his Person and Estate.

To look upon either of these, or both, thro' the multiplying Glass of Affection, is to behold neither of them truly; neither can they be so truly discerned, much less to multiply by the Glass of Fancy; and therefore Justice needs to hold the Beam streight.

I cannot fear my self when vulger Censure hath exercised it self upon every one that hath deliver'd himself upon this Matter, yet I will not say, *Domine posuisti me in lubrico loco*; for we that do sit here, do move in a Sphere, and should be like the *primum mobile*, according to whom all others are to steer their Course, and Judges themselves must move steadily upon their right Poles, as I hope this Court will. What Judge soever he be that is elevated by popular Applause, or animated by the contrary, to accumulate Honour, is fitter to live *in festo Romano quam in Politia* Angliæ.

Nor will I loose Time in remembring the first Oath of a Judge, who should expel all by Respects, and speak his Conscience. I hope none of us forget the Duty we owe to GOD, to the King, and to the common Wealth, and to our selves. I shall endeavour to satisfy my Conscience in all that I can say: And they forget their Duty to the First, and Humanity towards us that say or think the contrary of any one of us; some of us have Fortunes and Posterities, and therein have given Hostages to the Common Wealth, and have as much Interest in this Case as Mr. *Hambden*. Those that want those Blessings, want those Temptations that make them dream of, or hunt for Humour or Riches, to perpetuate their Names and Families; to them nothing can be more precious than the Balm of Integrity, which will preserve their Names and Memories. It cannot be presumed, but we will speak our Conciences, since we well know shortly as the Psalmist says, *Corruption shall say, I am thy Father, and the Worm, I am thy Mother.*

In handling this Case, no Man can think I shall do other than right; and herein I am rather troubled for a Method than for Matter, rather how to dispose of what I find, than to find

find what to dispose. I shall endeavour shortly and clearly (considering the Time I have to spend, and the Weightiness of the Matters I am to speak of) to deliver my Opinion with the Reasons of it, and my Endeavour shall be rather to contract than omit.

I have, with the best Care I could, taken my Notes of all that have been said for or against Mr. *Hambden*; and have according to the Measure of my Understanding, weighed and ponder'd all that have been spoken, both at the Bar, and by my Brothers, and bestow'd many Hours in Meditation about them, which the time of Rest and Repose might have challenged.

Before I enter into the Case, I shall speak of the Steps and Degrees by which this Cause has come to Judgment; whereby it will clearly appear, with what Clemency, Wisdom, Justice, and Goodness, his Majesty hath proceeded in this Business.

The first Writ went out to the Port-Towns and Maritime Parts of the Land the 20th of *October*, 10 *Regis*, upon Advice taken between his Majesty and his Council, before then, of these Writs, I can say nothing; for I was commanded at that time to attend another Service, about another Employment, the Forrest of *Deane*: But it it well known, the Resolution taken by his Majesty therein, was grounded, and rely'd upon the Judgment and Learning of Mr. *Noye*, Attorney-General, a Man of great Learning, and one that had great Insight into Records, by whom the Matter was first prepared, collected, and digested, and afterwards imparted to some of his Majesty's learned Council, and afterwards to some other eminent Persons of the Common-wealth, of no less Judgment and Knowledge of the Laws of this Realm. And upon Consultation with my Lord Chief Baron, and his Majesty's Barons of the *Exchequer*, his Majesty commanded those Writs to be sent forth: Against the Legality of which, nothing hath been truly alledged. 'Tis true, they are not in Judgment properly before us; and if Method did not press it, I should not have mention'd them.

Primo Octob. Anno 10. of his Majesty's Reign, his Majesty was pleased to command me to serve in the Place that now I do; and those Records, Writs, Commissions, and other Precedents, were brought to me, as they had been formerly to my Lord Chief Justice, and my Lord Chief Baron; and we three did confer together, and did deliver our Opinions in Writing, under our Hands upon View, and diligent Perusal of a Multitude of ancient Records, Writs, and other Precedents of *Edw.* 1. *Edw.* 2. *Edw.* 3. times, and other Records of other Kings Reigns, delivered our Opinions in these Words. That the Dominion of the Sea belongeth to the King; and that he is sole Lord and Proprietor of the same. In which Respect, his excellent Majesty, these Regalities and royal Powers, is to defend against all hostile Actions, Intrusions, and Invasions, as well for the Good of his Subjects, as Strangers, importing and exporting their Commodities, and for the Defence of the Kingdom: And for the better performing whereof, the Cinque-Ports have been required to prepare such a Number of Ships of divers Burthens, and Men of Arms, and at such times, at their own Charges, from time to time, as the same Writs and the present Occasion required. And for the Time, and Place, and Residence of their Attendence, his Majesty was the sole Appointer and only Judge; and this was the constant Use in the Reigns of those Kings; and this was agreeable to the common Law of the Kingdom.

And, 15 *November* 1634. before the next Summer his Majesty finding the Danger to grow general, and conceiving, that there was little Reason these Maritime Parts should bear the whole Charge, for that the whole Realm was interested therein; afterwards he required our Opinions, *viz.* my Lord Chief Baron, and of my self, *June* 1635: After Conference together, we deliver'd our Opinions. And we upon Consultation concerning the Reason of the Precedents before, and the Rule of the Law, and Reason requiring, that when the whole Kingdom was in Danger, the Defence that concern'd the whole Kingdom should be born by all the Subjects of the Kingdom. This was first verbally deliver'd unto his Majesty, and afterwards we put it in Writing under our Hands, in these Words:

Whereas, the Charge of defending the Sea had been imposed upon the Cinque-Ports; so where the whole Kingdom is in Danger, the whole Charge ought to be maintained by all the Subjects of the Realm. And amongst other Writs, those to the Sheriff of *Bucks* went forth at the Time aforesaid.

After which, his Majesty finding some Question made of the Legality of it, he called all his Judges, not singly, nor any one in a Corner, but because he would have very one of them truly informed, required them to advise together, and every one of them by themselves to give his Opinion; according to which, we severally, and every Man by himself, and all of us together, deliver,d our Opinions under our Hands, in this Manner, *viz.*

That when the Good and Safety of the Kingdom in general is concerned, and the whole Kingdom in Danger, of which your Majesty is the sole Judge, your Majesty may, by Writ under the Great Seal of *England*, command all the Subjects of this your Kingdom, at their own Charge, to provide such a Number of Ships, with Men, Ammunition, and Victuals, and for such a Time as your Majesty shall think fit, for the Defence and Safeguard of the Kingdom, from such Danger and Peril. And that, by the Law, your Majesty may compel the doing thereof in case of Refusal; in which this Clause (*his Majesty is the sole Judge*) was only put in by ten of us; my Brother *Hutton* having not seen, nor weighed the Precedents, took time to advise, and gave no Opinion, till Conference between us: And my Brother *Crooke* had the same Reason, being not acquainted with those Writs, but yet subscribed his Opinion singly by himself, *December* 1635, *viz.* That where the Good and Safety of the Kingdom is in Danger, of which his Majesty is the sole Judge, his Majesty

Majesty may command all his Subjects at their Charge, to provide and furnish such Ships to Sea, with Men and Ammunition, as shall be necessary for the Defence thereof; and this I hold to be agreeable to Law and Reason, tho' I perceived nothing of this his Opinion in his Argument, yet he still holdeth it: Wherein I observe, *First*, That the King is sole Judge of the Danger, and whether it be imminent.

Secondly, Not only that the King may in such Danger command his Subjects to defend the Kingdom in case of Necessity, but that the Charge of the Defence ought to be born by all the Realm in general; which Opinion was more independent than the rest; for that our Opinon before it had Relation to the Precedent of Maritime Part: But this was, that the Subject might be charged absolutely, and this was deliver'd by him readily, cheartfully, and without Hesitation; he will not deny it.

I speak not of this as of a thing whereby he ought to have been concluded, but that all the World should know, that his Majesty's regal and legal Power, goes Hand in Hand together, and that his princely Love and Affection to his Subjects are such, that he is willing to prevent all Mistakes: And I speak it also to this end, that when Judges singly deliver their Opinions to the King, not examining the Reasons that moved them unto it; we ought to see very good and pregnant Reasons to vary from that Opinion, though it be not binding.

This his Majesty required for his own private Satisfaction; and this I dare boldly say was so delivered by us, that no one Judge knew the Opinion of the rest.

When his Majesty found Slackness in some of his Subjects, in contributing to this Charge, and thinking that it proceeded rather from Mis-understanding of the Law, than for want of Duty, as desirous out of his princely Love to avoid all Mistakes, did upon the 2 *Feb.* 1636. send a Letter to all his Majesty's Judges and Barons of the *Exchequer*, thereby requiring our several Opinions, about which we all conferred, and the Particulars, wherein our Opinions were required, had been consider'd of before, or else we were much to blame; for we had time enough to think upon it; And though our Answers were returned the 7th of the same Month of *February*, yet we had it in our Consideration, from *June* 1635, which was fifteen Months before the Answer returned; there was no Surprize. I will spare to name our Opinion then delivered; for it hath been repeated before. When we came to the Debate and Voting of this, we brake the Writ into several Parts.

First, When the Good and Safety of the Kingdom in general is concerned, and the whole Kingdom is in Danger, Whether it ought not to be defended at the Charge of the whole Kingdom? And agreed it was *una voce, nullo contradicente*, that it ought.

Secondly, Whether the Charge of the Defence might not be commanded by the King? Which was also agreed, that it might.

Thirdly, Whether the King was not the sole Judge. both of the Danger, and when and how it was to be prevented? Wherein my Brothers *Hutton* and *Crooke* did agree it likewise, that he was sole Judge of the Danger. What their Opinions are now, and wherein they differ, with their good Leave I shall examine, and with their Reasons and Differences; though indeed of the King's being the sole Judge in their Arguments, my Brother *Crooke* spake nothing of his Opinion therein, nor my Brother *Hutton* nothing against it: But we deliver'd our Opinion upon the By; nor was it so required of his Majesty.

It was then also declared by all of us, that we did not deliver our Opinions, as binding Opinions, nor were they so required of his Majesty, which I dare boldly say, his Majesty was truly informed of: And this was also soon after published by his Command, and seconded by my Lord Keeper and Lord Privy Seal; the first of them using many Arguments and sound Collections, deliver'd it in Charge to his Majesty, to deliver it in their Circuits, which might have satisfy'd any one that did not respect their own private Benefit: And Mr. *Hambden*, I think, of all hath the least Cause to complain, being assessed but 20 *s.* a contemptible Sum, in respect of his annual Revenues, to bring this Case to Judgment; yet his Majesty's Clemency appears to be great herein, in that he would not debar any to question the Lawfulness of it, though he hath permitted *Arcana Imperii*, nay *Imperium ipsum*: I would to God I could not say even too heinously to be debated at this Bar; yet I speak it not by Way of Reprehension, but Admonition to the Council, who are to be commended, in that they have done their Duty faithfully for their Client; yet I may say, such a ravelling and diving into the King's Revenues, and secret Estate of Princes, and what succeeding Kings may be, or may do, it doth not well become these times? it would not have been endured in the best of times.

It was not well done to doubt succeeding Posterity, that promise as much as any of their Predecessors have done for the Good of the Common Wealth.

It is not well to clogg the Case with so many Precedents, impossible to be thorowly observed, but our Example, I hope, shall be a Bar hereafter, and our Care shall be to prevent it, being a great Hinderance of Justice, and Cause of great Expence to the Subjects long Attendance about their Causes here, which may prove a greater Charge than in providing Ships for the Realm.

I come to the Case now as it stands in Judgment before us, wherein my Method shall be.

First, To examine what the Case is.

Secondly, I will give my Opinion of the Case, with the Reasons thereof.

Thirdly, I will answer the Objections made against it.

Fourthly, I will speak to the Form and Quality of the Writ, 4 *Aug.* the *Certiorari*, the *Mittimus*, and *Sci' Fa'* out of the *Exchequer*. And to all these, with what Brevity I can, I will speak according to the Weight of the Case,

(for where variety of Opinions gives just Cause to ballance them, the Case must arise out of the Record, and must stand or fall upon that.

First, for the Case it self; and therein, *First*, I will shew what Danger there is, that is the Ground of the Charge.

Secondly, What things there are to maintain it: As for other things, they tend to the Destruction of the Case.

First, I am of opinion, that the Danger of the whole Kingdom ought to be expressed clearly; for else the Ground-work faileth; for if no Danger, no Reason of the Charge. And I am of opinion, that in the Writ 4. *Aug.* it ought to be expressed, and not in the *Mittimus*, tho', as my Brother *Jones* observed, the *Mittimus* comes time enough to Mr. *Hambden* to give him Notice; yet he was not liable to the Charge, but by the Writ 4. *Aug.*

First, It is objected, the Danger is not clearly expressed; for it is not upon Word of Certainty, but by way of Uncertainty, *Quia datum est nobis intelligi.*

Secondly, For the Causes of the Writ, that it hath not relation to the Danger of the Kingdom, but to defend the Sea-Coasts against Pirates, *&c.* And they are not worthy of a Royal Navy, as Brother *Crooke* also observed.

But I hold first, that the Danger is sufficiently expressed, *Certum est sicut res habet. Datum nobis est intelligi*, a thing very ordinary with us; and in all former Writs, *Ex relatione, &c. Quod vulgaris opinio est, &c.*

Although my Lord Chief Baron paralell'd this to the Case of Parents, *ex certa scientia, &c.* which is nothing a-like; for there before the King pass away Land, he may be informed if he may do it; but I hold, as this Case is, the Danger will not permit it to be examined, whether there be just Cause of Fears; for then it might receive Delay, which is dangerous, and the Kingdom be lost whilst we are disputing.

And then for the Phrase it self, *Datum est nobis intelligi.* It is sufficient that the King knows there is a Danger; and therefore, if it had been only *Intelleximus*, none can deny but it had been sufficient. And what difference is there between *Intelleximus* and *Datum est nobis intelligi.* That sets forth the Knowlege of the Danger, and this shews the Means whereby he doth know it, *Ut datum est nobis intelligi.* This goes farther, the *Ex auditu. Rumor est, &c.* Therefore, unless the King should go out of the Kingdom to see the Danger, can it be otherwise expressed?

Secondly, I hold, that the Danger it self with the Motives in the Writ are sufficient.

The Motives are, great Depredations of the Subjects Goods, and Lives; but it is not upon this I rest, for this hath relation unto Pirates leading many Christians into Captivity. These are good Motives, (and as one of my Brothers said well) tho' these have relation to Pirates, yet *Bellum Piraticum* points at as much Terror as *Hanibal ad Portas.*

I shall not rely much upon that, that the Injuries of Christendom and of this Nation did prepare *ad Mercatores nostros ulterius molestand'* nor on *Ad Regnum gravand' nisi citius remedium opponatur, &c.* But this *Consideratis periculis quæ undique his guerrinis temporibus imminentibus ita quod nobis & subditis nostris defensionem maris & Regni nostri omni festinatione quæ poterimus convenit, &c.* shew otherwise than for the Pirate this Defence was requisite. Therefore the next Clause is *Nos volentes defensione Regni tuitione maris securitate subditorum nostrorum, &c.* And therefore, that *Salva conductione Navium & Macchandizarum quæ ad Regnum nostrum Angliæ veniant & de eodem regno ad partes exteras transeant, &c.* take not away the former Words, nor limit them.

As for the Clause in the *Mittimus*, I stand not upon it, nor that *Salus Regni & populi nostri Angliæ periclitabatur, &c.*

Thirdly, Admit there had been no Preamble nor Expressment of Danger, I hold the Command it self is sufficient setting forth the Danger, which is that, that the Ship be with other his Majesty's Subjects Ships at *Portsmouth* the first Day of *March* next following, the Words of the Record be *ex inde cum navibus nostris & navibus aliorum fidelium subditorum nostrorum pro tuitione maris & defensione nostrorum & vestrorum, &c.* And particularly to express the Danger, is not necessary; for the King, the sole Arbiter of Peace and War, knows it, and it was the Practice of former best Times; and so no Wisdom for the King to express the Danger in particular, when Arms usually go before Heralds; nor is it the use of Princes to complement, to tell the Enemy they will, or intend to invade their Lands. And therefore I hold, tho' it might be more clear, yet *Satis est quod sufficit.* I in my own Conscience am satisfied that the Danger is certain enough expressed in the Writ. And so I have done with the first Particular, the Danger, which was the Ground of this Writ. As to the second Particular,

What is alledged to be for the preventing of that Danger, my Brother *Hutton*, and my Brother *Crooke*, would have it to be raising of Money, by reason of that Clause in the Writ, by reason of the Distribution of the Surplusage. But the Record is *Ad assidendum homines ad contribuendum navem vel partem navis non habentes; &c.* which shews it cannot be for Money, neither is there any colour of Money; for it is to find a Ship: And if they have not of their own, they must build, or buy one with their Money. But there is a great deal of difference between Payment of Money and finding of a Ship. As if my Brother *Crooke* be required to find a light Horse and Arms, he must buy one, or hire one with his Money, if he hath none; but yet the Charge is not for Money, but that he must find a light Horse.

But my Brother *Crooke's* Objection is, if any Surplusage, it shall be divided; and so the Sheriff is to detain no part of it, but employ it for the Publick Good, and not convert it to his own proper Benefit.

To this I answer, that this shews the Equality of the Charge, which is fittest to be by Payment of Money.

My Brother *Crooke* hath farther objected, that an Inland County cannot build a Ship. A great Trouble for the County of *Bucks*, who are so far from the Sea, to build a Ship.

To this I answer that those of *Buckinghamshire* may hire a Ship, if they cannot biuld one, and the Words are but *parare*, not for the biulding but

but preparing a Ship, and it is not meant that they should build it there, but that they should contribute to the building of a Ship in a most fit and convenient Place.

Now in my Opinion the King knowing and declaring the whole Kingdom to be in danger, and necessarily requiring his Subjects to defend and provide for this danger at Sea, the King may thereupon command all his Subjects to prepare Ships to joyn with his Navy Royal against the Enemies of the whole Realm, to defend the whole Realm, and it is clear in the Case, and it was the meaning of us all, that the King must joyn in the Charge, it being far from us to excuse the King from his ratable Part.

My Reasons that the King may thus Charge his Subjects to joyn with him in the defence of the Kingdom are these.

First. The Defence of the Kingdom must be at the Charge of the whole Kingdom in general.

Secondly. The Power of laying this Charge is by the Policy and Fundamental Laws of this Kingdom, solely invested in the King.

Thirdly. The Law that has given this Power to the King to do these things, hath given him means to put these things in Execution.

In all these I shall ground my self upon Authorities in Law and Precedents in all Ages.

First. That the Defence of the Kingdom must be at the Charge of the Kingdom, I shall prove from the Law of Nature, which is, that every thing in Nature ought to defend it self,

Secondly. From the Rule of Reason, for *Quod omnes tangit ab omnibus supportari debet.*

Thirdly. from the true Use of all that we enjoy, which must be abused if not imployed to and for the good also of those that come after us and necessary it is for our Posterity to have all sure and safe. A good Patient will spare some of his Blood to preserve his own Health; and a good Husband will spare some of his best Ground for Ditches and Fences to preserve the rest, and he is no ill Husband that finds out safety in that he doth.

Fourthly. From the Law of Property as every one hath a particular Property in his own Goods, so every one hath a Property in general in another Man's Goods, for the common good. For the Common-wealth hath a property in every Man's Goods not only in time of War, but also in time of Necessity, in time of Peace. Therefore if any Man take away my Goods without my Consent, I have my Action, and recover Damages. *Doctor* and *Student* saith, both a Trespass of Lands and Goods is punishable by Indictment, and Trespass at the King's Suit as well as at the Subjects: Annd this is by reason of the publick interest the King hath in every Subjects Goods for the common good.

Now the Rule and Maxim before so clearly and fully put and agreed by all, is, that in case of necessity that is apparent the Subject ought to defend the Kingdom. And my Brother *Crooke* agrees in case of danger, so it be imminent all Men are bound in their Persons and Estates to defend the Kingdom, and he says then they must *exponere se & sua*; I think he means a Man that takes a Journey may carry his Money with him *se & sua*, or else means the King cannot command their Money without their consent; of which I will speak in its proper Place.

I come now to the fourth Part of my general Head, which is the Power of laying this Charge. By the fundamental Laws and Policy of this Kingdom, the sole Interest and Property of the Sea, *&c.* is in the King. I will not speak of this Monarchy, this is rather fit for Civilians, Historians, or the Pen of a Divine, than a Judge at *Westminster-Hall.* Nor will I speak of the Division of Monarchies. The Poets say that *Saturn* was the first Founder of Kingdoms; only this I will say, that for the Excellency of the Government of this Kingdom, through God's Blessings, none are more happy than we. Look and see in other Nations, and tell me if you can find out any Place where they can and do enjoy those Mercies of Peace and Plenty which we do; so as we may justly say, *O fortunatos nimium bona si sua norunt Britannos:* Nor will I perplex my self with the Original of the Nation and Monarchy, some Stories are fabulous, others doubtful, not any so clear as to set it forth certainly, though they speak truly what is sufficient for us to know, nor is he the poorest, *Qui non potest numerare Pecus*, nor he one of the worst Gentlemen that cannot shew the Original of his Pedigree; the Excellency of this Monarchy is, that it is sufficient that it is a Monarchy; and that it is most true which *Fortescue* saith of our Laws. I agree that *Fortescue* was a Lord Chief Justice in *Hen.* VI's time, but not Chancellor of *England.* Sea and Land make but one Kingdom, and the King is *Sponsus Regni*, *Magdalen College* Case Sir *Job. Davis*'s Reports, Stat. 24 *Hen.* 8. 1 *Eliz.* and 1 *Jac.* The Soil of the Sea belongs to the King, who is Lord and sole Proprietor of them; and good reason why he should, as is well maintained by Mr. *Selden*, that worthy and learned Author of *Mare Clausum*, and I hope shall be by his Majesty maintained with the Soveraignty of the Sea, and without a Navy this Authority can do but little good.

The King holds this Diadem of God only, all others hold their Lands of him, and he of none but of God: But this is but to light a Candle for others: From hence only I will observe, that none other can share with him in his absolute Power.

A Parliament is an Honourable Court, and I confess it is an excellent Means of charging the Subject, and defending the Kingdom, but yet it is not the only Means. An Honour the last Parliament was pleased to bestow on me, which never any shall with more respect remember than my self, whom they were pleased to choose for their Speaker. And as my Brother *Hutton* said, I conceive it a fit way to charge the Subject, and I wish that some for their private Humour had not sowed the Tares of Discontent in that Field of the Common-wealth, then might we have expected and found good Fruit. But now the best way to redeem this lost Privilege (for

(for which we may give those Thanks only) is to give all opportune Appearance of Obedience and Dutifulness unto his Majesty's Command.

The two Houses of Parliament without the King cannot make a Law, nor without his Royal Assent declare it; he is not bound to call it but when he pleaseth, nor to continue it but at his Pleasure; certainly there was a King before a Parliament, for how else could there be an Assembly of King, Lords and Commons? And then what Soveraignty was there in the Kingdom but this? His Power then was limited by the positive Law, then it cannot be denied but originally the King had the Soveraignty of the whole Kingdom both by Sea and Land, who hath a Power of charging the whole Kingdom.

Thirdly, The Law that hath given that Power, hath given Means to the King by this Authority to put it in Execution. It is a very true Rule. The Law commands nothing to be done, but it permits the Ways and Means how it may be done, else the Law should be imperfect, lame and unjust; therefore the Law that hath given the Interest and Soveraignty of defending and governing the Kingdom to the King, doth also give the King Power to charge his Subjects for the necessary defence and good thereof. And as the King is bound to defend, so the Subjects are bound to obey, and to come out of their own Countrey, if Occasion be, and to provide Horse and Arms in Foreign War; and such are compellable now to find Guns instead of Bows and Arrows, so Ammunition, as Powder, Shot, *&c.* Then if Sea and Land be but one entire Kingdom, and the King Lord of both, the Subject is bound as well to the Defence of the Sea as of the Land, and then all are bound to provide Ships, Men, Ammunition, Victuals, and Necessaries for that defence. And for us Islanders it is most necessary for us to defend our selves at Sea, therefore it was the great Argument in 88, whether it was best to fight with the Royal and Invincible Navy or *Armada* of *Spain* at Sea, or suffer them to land, and it was resolved clearly, that it was better to fight with them at Sea, though we lost the Battle and our Ships, than to suffer them to land.

But then there was *Hannibal ad Portas.*

To this I shall answer afterwards; that here the Maritime Towns shall not help the Inland, but each of them bear their own Charge, and each defend themselves, but of this I shall likewise speak hereafter; yet undoubtedly it is reasonable that both should join to defend the Kingdom in Case of Necessity.

Now I shall endeavour to prove this clearly by Authority in Law, and Precedents in all Ages. And *First*, it is a great Authority in Law, that there is no express Authority against it, though there have been some Books cited by my Brother *Hutton* and my Brother *Crooke* (which I shall answer in their due Place amongst other Observations) yet there is not one Authority or Opinion much less Resolution or Judgment, that in necessary Time of Danger says, the King may not charge the Subjects for Defence of the Kingdom.

Secondly, All these Authorities that prove the King is trusted with the Defence of the Kingdom, and in divers Cases gives him Aid, Taxes, Subsidies, *&c.* proves that the Subject is bound in case of Danger and Necessity, to pay them to the King for Defence of the Kingdom.

Thirdly, all the Authorities of Murage, Pontage, Salt Peter, *&c.* shew that for the good of the Publick the King is interested in the Estates of the Subject, and may charge them much more, if for the well-being, than where the being it self of the Common-wealth is at Stake and in Danger.

Fourthly, The Authorities of commanding the Persons of the Subjects to come out of their own Countries proves it; the Power of commanding the Person of the Subject into Foreign Parts is in the King, much more the State of Men should be at his Command, in case of necessary defence of the Kingdom.

Fifthly, All the Commissions of arraying Men in *Ed.* 1. *Ed.* 2. *Ed.* 3. *Ed.* 4. *Hen.* 7. and *Hen.* 8. times, *&c.* they are all grounded upon the same Reason, and went out for the necessary Defence of the Kingdom. These Writs are not to command the Person, but a Ship only, *juxta facultates suas*, which are answerable in reason to the ancient Precedents.

From Authorities I come to Precedents; tho' they be not Judgments, yet they shew the Practice of the Law; and what better Book have we in the Law than the Book of Precedents, or what is there of more Authority than that? for we have not the twelve Tables for our common Laws.

The common Laws is but the common Usage of the Land; and therefore the Precedents alledged by the King's Council are of good Authority to prove the Laws in this Case, wherein I shall not name the Particulars, they have been well remember'd by Mr. *Attorney* and Mr. *Solicitor*; but I will mention the Substance of them.

The first sort of Precedents were before the Conquest in the Times of *Edgar*, *Alfred*, *Etheldred*, *&c.* the one was to defend the Kingdom at the Charge of the whole Kingdom. A strong Inference hereof from the Precedents of the Grant to the Clergy and Church of divers Privileges, with Exceptions of *Pontium*, &c. in the Times of *Edgar*, *Alfred*, and *Etheldred.*

The Council of *Enoch* in *Edgar*'s Time about 606, mentioned by the learned Antiquary Sir *Henry Spelman*, *fo.* 510. And after those follows *hæc sunt constitutiones*, *&c. fo.* 523. in which are excellent Things, good for Church and Common-wealth, *Cap.* 23. *Navales Expeditiones*, if it be no Act of Parliament, yet nothing is more like an Act of Parliament; take the Phrase of those Times, and certainly it was either an Act of Parliament, or a Proof of the King's Power, that without Parliament he might charge the Subject for the Defence of the Kingdom in case of Danger. And the Word Expedition is used for War, and sometimes for an Army, as *Cassidorus* giving the Reason of the Name says. In the third place it shews the Practice of the Kings of *England* to charge their Subjects for the Defence of the Kingdom in case of Danger.

Now

Now if this Charge of *Danegelt* be not taken away by any of the Acts of Parliament, it remains still, saith my Brother *Hutton*. And so I think it doth, or something in lieu of it; for it is not taken away by any Act of Parliament.

In these Precedents, observe, first, that they are all upon the same common Reason that this is.

Secondly, These Writs are not limited for their Number or Time, so they prove the Power was in the King to charge his Subjects.

Thirdly, In these Precedents, some were to Inland Counties, as *Bucks*, *Huntingdon*, *Bedford*, *Leicester*, *Oxford*, *Berks*, &c. And though they went not gradually to all Counties at one time, yet they went to them as occasion was. And if the Danger had required it, the King might, if he pleased, have sent to all as well as to some.

But because there was never any time, when all the Ammunition in the Kingdom was drawn at one time to one Place, may it not therefore be done? The commanding sometimes of one, sometimes of another, is an Argument they may be all commanded as occasion requires. I do not build my Opinion upon confused Notions, but on Matters digested, on Precedents of Weight, the chiefest in respect of Time. And after the making of *Magna Charta*, 9 *Hen.* 3. 13 *Hen.* 3. *M.* 48. 18 *Hen.* 3. *M.* 7. & 13. *Ed.* 3. *M.* 77. 23 *Ed.* 3. *M.* 4. 28 *Ed.* 1. *M.* 23, and many other in *Ed.* 1. Time there is proving Contribution towards the Maintenance of the Sea Coasts from Inland Towns, as 25 *Ed.* 1. *M.* 13. the Abbot of *Robertsbridge* Case is a full Precedent, notwithstanding all that hath been said against it. So 9 *Ed.* 2. pars 1. 20 *Ed.* 2. *M.* 7. 2 *Ed.* 3. *Scoc. Roll.* 7. *Ed.* 3. *M.* 9. 10 *Ed.* 3. *M.* 16, 17. 11 *Ed.* 3. 12 *Ed.* 3. 14, 15, 16. 18 *Ed.* 3. 46. *Ed.* 3. *M.* 34. 25 *Ed.* 3. *Rot. Franc. M.* 9. 29 *Ed.* 3. 1 *Ric.* 2. 1 *Hen.* 4. Yet *Hen.* 4. had as much reason to please the People as any King of *England*. So in *Hen.* V.'s Time, tho' busied in the glorious Conquests of *France*, or rather Recovery of *France*. God forbid we should see such Times. So in the Times of *Ed.* 4. *Hen.* 6. *Hen.* 7. and *Hen.* 8. by way of offensive War, Writs and Commissions to their Subjects to contribute toward it. So in Queen *Eliz.* Time, Commissions towards the Maintenance of the Defence of the Kingdom. 11 *Eliz.* 41 *Eliz.* a Commission to the Earl of *Nottingham*. In 88 Letters from the Lords of the Council, which Letters had the Queen's Writs in them.

But my Brother *Crooke* answer'd all these with this Rule of Law, *Judicandum est legibus non exemplis.* To this I answer, that Examples and Precedents are good Law, they are Authorities out of the Law, and what of more Certainty? Digest of Writs, these are *inter Oracula Legis*, Precedents drawn up by Clerks, though they pass sometimes *sub Silentio*, yet are they good Authorities in the Law. The Abbot of *Robertsbridge*'s Case is a Precedent of great Authority.

But it is alledged no Precedent goes to Inland Counties.

I answer, in Truth the Precedents are quite otherwise; for ordinary Defence they go to Maritime Counties only, but when the Danger is general, to Inland Counties also, and after another manner. For this I refer you to my Brother *Weston*'s Argument, these could not be so frequent: For first, such Danger was but seldom; Secondly, we had then double Hostility, one from *France* by Sea, another from *Scotland* by Land; examine the Precedents therefore.

Another Observation that my Brother *Crooke* made, is this, that we are compellable by our Persons and Arms, but not with any Sum of Money.

I answer with my Brother *Jones*, that *bona Corporis* are above *bona Fortunæ*; but this Power of Liberty to command the Persons of his Subjects, he agrees in the King; then I say more reason that their Estates should be in his Power in this Case of Defence.

Secondly, The Precedents warrant the quite contrary, and Wages have been paid the Soldiers by the Subject in this Case.

The third thing that I will observe in this Case, is the answering of all the Objections which have been made against it, which were three.

First, That this Writ was against the Common Law.

Secondly, That it was against the Statute Law.

Thirdly, That many Inconveniences will grow thereby.

First, It is against the Common Law, because it is without Precedent; this is the first of this kind since the Conquest; and where there is no Precedent, the Law will not bear it, *Littleton*, fol. 32. Lord *Coke's* Comment upon it, and they put divers Cases to the same Purpose.

I answer, that there are Precedents for it, and the Law is so, that the King may charge his Subjects towards the Defence of the Kingdom in this Case.

The second Objection is, that it is against the Freedom of the Subject that hath a true Property in his Goods, which cannot be taken away without his actual Consent. *Lambert*, fol. 294. *Fortescue*, *Mag. Char.* 17 King *John*, *Math. Paris.* fol. 242. *Fortescue*, fol. 9. *Cap.* 13, *&c.* 13 *Hen.* 4. the Chamberlain of *London*'s Case, *Reg'* fol. 127. *Fitz. Herb. Na. Br. &c.*

I answer, That the Authority of *Lambert* rehearsing the Laws of the Conqueror, is, *Volumus & concedimus ut omnes liberi homines totius Monarchiæ Regni nostri habeant & teneant terras suas & possessiones suas bene & in pace liberi ab omni examinatione injusta & ab omni tallagio ita quod nihil exigatur nec capiatur nisi per commune concilium*, &c. It cannot be construed that they should not be charged, but that they should be free from all unjust Taxes. The King is not concluded by the subsequent Words *omne Tallagium*, this cannot be so granted, but that the King may impose just Charges towards the necessary Defence of the whole Kingdom. For this is meant plainly, as by the Word Talliage appeareth. *Tallagium* is derived from a *French* Word, and is indeed a cutting Word, and therefore *Injusta Exactio*, which shews that for the most part it is taken in the worst Sense, and as my Brother *Crooke* said it, and the manner of expounding it must be from the Law.

Secondly, My Brother *Crooke* quite left out these Words following, that declare and expound the former, *viz. Statuimus & firmiter præcipimus ut omnes liberi homines totius regni præd' sint fratres conjurati ad monarchiam nostram pro viribus suis & facultatibus contra inimicos pro posse suo defendend' & viriliter servand' &c.* Whereby it is apparent:

First, That the Kingdom is to be defended by the whole Kingdom *pro facultatibus* with their Goods, as well as *viribus* with their Persons.

Secondly, It comes after the Chapter of Tenure and Services, by which they are bound to defend. *Terras & honores suos, &c.* which shews that he meant not to discharge any from the general Charge of defending the Kingdom in case of Necessity.

The *Third* Objection is the Charter of King *John*, *Nullum tallagium imponatur nisi per commune concilium.*

I answer, The Words are concerning the Defence of his own Person, and not the Kingdom; and therefore it is excepted, *nisi ad redimendum corpus nostrum*; and in the original Act these Words are left out. Scutage, Murage, and other Aids there mentioned, shews that only those were meant, that were of private Benefit. They were not to be imposed by the King upon any Subject, without Parliament, but not to bar himself from laying such as were for the Pubick Good,

The *Fourth* Authority that was objected, was *Fortescue*, which was most press'd and insisted on by my Brother *Crooke*.

Before I come to the Words themselves, note first the time when he wrote that Book, it was after all the Acts of Parliament that took away the Royal Power, yet it did not mention them, so as must needs relate to the Common Law. It was writ when the Civil Wars were between the two Houses of *York* and *Lancaster*, and he himself was in Exile; no time then to displease the People.

Secondly, It shews the Difference between Kingdoms, when a Monarch rules, that challengeth all Power over his Subjects, and a Monarch that governs according to the positive Laws. The Words that seemed to be against this Charge are, *fol.* 9. *Cap.* 26. *Rex* Angliæ *politice imperans genti suæ nec legem ipse sine subditorum assensu mutare poterit nec subjectum populum renitentem onerare impositionibus peregrinis*, *Cap.* 13. *fol.* 32. *Rex caput corporis politici mutare non potest leges corporis illius nec ejusd' populi substantias proprias subtrahere reclamantibus eis aut invitis.* And *Cap.* 36. *fol.* 84. which my Brother *Crooke* says is the express Authority *in hoc individuo*: The Words are, *Rex regni* Angliæ *ibidem per se aut ministros tallagia subsidia aut quovis onera alia imponit legibus suis aut leges eorum mutat vel novas condidit sine concessione vel assensu totius regni sui in parliamento suo expresso, &c.*

From them all, I take the true Meaning of them to be: And I hold *First*, That the Kingdom ought to be govern'd by the positive Laws of the Land; and that the King cannot change or make new Laws without a Parliament.

Secondly, That the Subject hath an absolute Property in his Goods and Estate, and that the King, to his own Use cannot take them.

Thirdly, That for his own Use he cannot lay any Burthen upon his Subjects, without the Subjects Consent in Parliament.

Fourthly, That for the Benefit of Trade, the King may lay fitting Impositions, and may command that which is for the necessary Defence of the Kingdom, which is no Command of Charge, but Command of employing.

Fifthly, I answer therefore to the great Objection, That the Liberty of the Subject is lost, and the Property is drown'd which they have in their Estates.

First, I say all private Property must give Way to the Publick; and therefore a Trespass to private Men may be punished by Indictment, because it is an Offence of the Publick Weal; and though every Man hath a Property in his Goods, yet he must not use them in Detriment of the Common Wealth. A Man may give his Grass or Corn away in the Filed, or when it is in his Barn: But if he will cut it unusually, or burn, or destroy his Corn, or if he throw his Goods into the Sea, that they may perish, these are Crimes punishable by the Common Law; so is transporting of Goods, Commodities, against the publick Good: Therefore the Directions of Statutes, for the Restraint hereof, are from the Common Law. And the Reason of this is, because the publick Property must take Place: And if in petty Business it may be, then much more in time of publick, and great Necessity and Danger. And it is rather an Averment of the Subjects Property, that in case of Necessity only they may be taken away, than contrary to it.

My Brother *Hutton* and my Brother *Crooke* agree, that all are bound in case of Necessity, *exponere se & sua* to defend the Kingdom, and may not the King command a Part with more Reason than all?

In the next place, I shall remove a Scandal that hath been put upon the King, how that his Majesty hath meant to make a private personal Profit of it.

What he hath done is well known; and I dare confidently say, all hath been spent, without any Accompt, to himself, and that his Majesty hath been at great Charge besides towards the same: And I heard it from his own Royal Mouth, he spake it to me, and my Lord *Brampston* can testify as much, that he said it never entered into his Thoughts to make such Use of it; and therefore said, he was bound in Conscience to convert it to the Use it was received for, and none other; and that he would sooner eat the Money, than convert it to his own Use: Therefore, he that thinks the King made a Revenue of it, doth highly slander his Majesty: But let Kings be as *David* was, Men after God's own Heart, yet they will not want a *Shimei* to rail on them.

But though (blessed be God) his Majesty is so gracious and loving to his Subjects, and so just, that we need not fear that he will charge them but upon urgent Necessity; yet we know not what succeeding Ages will do.

It

It is not well to blast succeeding Ages, and if they should hereafter charge unreasonably without Cause, yet this Judgment warrants no such thing. Again, It is no Argument to condemn the true Use of a thing, because it may be abused. And again, The Law reposes as great Trust in the King as this. The King may pardon all Offences; but if he should, then none should be safe. The King may make Peace and War at his Pleasure; but yet should he make Peace, when Peace would ruine us; or War, when War would undo us; it would be worse than this: Therefore it cannot be suspected, that the King will do any thing against Law and the publick Good of the Kingdom: Therefore the Law says, the King can do no Wrong; for he is *Sponsus Regni*, as in *Magdalen* College Case.

Then they object *Clark*'s and the Chamberlain of *London*'s Case.

These Cases are nothing against this, but rather for it.

The Record of 14 *Ric.* 2 *Rot.* 60 *Banc. Rs. Lever's* Case, in an Action of Trespass, for taking away his Goods without his Consent, had Judgment to recover in *Durham.*

But the Case was this, one *Lever* of *Durham* brought his Action against another for entring into his House, and taking away his Goods and 60 *l.* in Money, the Defendent pleaded not Guilty, and the Jury upon a special Verdict, found that the Defendent took away his Money; but upon this Occasion. The *Scots* had invaded the Realm, and were in *Durham*, and could not be gone without a certain Sum of Money: Whereupon the Inhabitants assembled, and amongst the rest, the Plaintiff was one, and they made an Order to abide the Ordinance of the greater Part which was to give the *Scots* the Money desired, and because the Money was to be paid presently, ready down, therefore they made another Order to search in all Men's Houses, and take away what Money they found, according to which the Defendent searched the Plantiff's House, and took away 60 *l.* and because it was without Consent, the Plaintiff had Judgment in *Durham*, but upon the special Verdict it was reversed in the *King's-Bench*, because it was with his consent. Indeed the Reasons were, 1*st*, because he had Sufficient Remedy against the Commonalty of *Durham*, and 2*dly*, because he did it as a Servant.

But I answer 1*st*, though the ordinance was good by consent, yet it followed not that it was void without Consent, the Question is there only whether good by Consent. 2*dly*, It follows not but that all Men without Consent are bound to contribute towards a general Charge for necessary Defence.

Another Objection made by my Brother *Crooke* was 2. *Rich.* 2 *pars* 1. where all the Lords and Sages met together after Parliament, and it was agreed by them, that they could not charge the Commons without Parliament, that this was a Declaration of the Law in Parliament, and almost equivalent to an Act of Parliament.

I Answer, that this was no Act, but a Declaration in Parliament of the Law, and indeed no Declaration, but a Relation by the Chancellor.

Secondly, If it had been a Declaration, yet it had not been binding without the King.

Thirdly, It is no Precedent of a good Look; it was when the King was young, and the Parliament had the Regency, Counsellors, Treasurers, and all his Officers about his Person were chosen by the Parliament, and therefore, no wonder if they endeavour'd to please the Parliament.

Fourthly, It is a Precedent that they (*id est*) the Lords could not charge the Commons by themselves.

Again, the Case was not for the Defence of the Realm; but for Wars in *France*, *Scotland*, and *Ireland*; these were the Wars. Though the Subjects may be charged for the necessary Defence of the Kingdom, yet if Foreign Wars be mixt together with it, it is otherwise. And therefore in the Parliament before, they said such things belong not unto them; and therefore they held, they ought not to bear it, and so that Rule of *Gascoigne*, 24. *Hen.* 4. *fol.* 4. That no Man shall be charged without Parliament where Bulworks were built, *&c.* it proves not, though it implies, that if it had concern'd the Kingdom, it had been otherwise.

The next Objection was, the great Inconveniency that would hereupon ensue, if such a Charge might be, then none knows what his Charge will be, for the King may command it as often as he pleases; an Example hereof they put in *Danegelt*, that in Eleven Years grew, from Twelve to Forty-eight Thousand Pound, therefore the Law hath provided against that Uncertainty, an limited it to a Parliament.

I Answer to this, that if Danger increase again, the King may command all Persons, when there is necessity, and as often as he pleases he may do it. Is not this as great an inconveniency as in this Case, and yet this abates not the Writ? my Brother *Crooke* shewed how Subsidies increased, and yet no Inconveniency in that he conceived; and indeed this shews the Provision of Charge must be according to the Danger.

Secondly, No Abuse of any thing, must take away the true and lawful Use thereof.

Thirdly, We cannot suspect that there will be such Abuse. *Ubi confidit Deus & lex & nos etiam confidemus.* God and the Law hath trusted his Majesty, and we should not distrust him.

In time of imminent Danger *tempore belli*, any thing, and by any Man may be done, Murther cannot be punished; yet, says my Brother *Crooke*, the King cannot Charge his Subjects in no Case without Parliament; no, not when the Kingdom is actually invaded by the Enemy. But truly I think, as he was the first, so he will be the last of that Opinion, especialy having delivered his Opinion, that the King is sole Judge of the Danger before us, as indeed he is; and and that the King is sole Judge of the Danger, not any have denied it, else it should be no Danger, but when every one shall say, you shall Judge when the Kingdom is in Danger.

Secondly.

Secondly, There hath been and may be, as great Danger when the Enemy is not discerned and when in Arms and on the Land.

In the time of War, when the course of Law is stopped, when Judges have no Power of Place, when the Court of Justice can send out no Express, in this Case the King may Charge his Subjects, you grant; mark what you grant, when there is such a Confusion as no Law; then the King may do it. *Dato uno absurdo infinita sequuntur.*

Then there may be a time of War in one Part of the Kingdom, and the Courts of Justice may sit as in 14 *Hen.* 3. *Rich.* 2. and *Hen.* 7. time, Wars were in some part of the Land, yet the Judges sat in *Westminster-Hall.*

Now, whether a Danger be to all the Kingdom, or to Part, they are all perilous and ought to be charged.

And *Secondly.* The King may Charge his Subjects for the Defence of the Land. Now the Land and the Sea make but one intire Kingdom, and there is but one Lord of both, and the King is bound to defend both.

Thirdly, Expectancy of Danger, I hold, is sufficient Ground for the King to Charge his Subjects, for if we stay till the Danger comes, it will be then too late, it may be, to provide.

And *Fourthly*, His Averment of the Danger is not traversable, it must be binding when he perceives and says there is a Danger, as in 88. the Enemy had been upon us, if it had not been foreseen, and provided for, before it came.

But I will not determine the Danger now. Do not we see our Potent Neighbours,and our great Enemies heretofore; were they not provided for War? and was there not another Navy floated upon the Sea? and was not the Dominion of the Sea threatned to be taken away? As long as the Danger remains, I shall bless God for such a King as will provide for the Defence of the Kingdom timely, and rejoyce to see such a Navy as other Nations must vail to, and we are not in Case of Safety without it, and should loose our Glory besides.

The next Objection of my Brother *Crooke* was, that there is a Means provided by Parliament, which will not withhold Aid from the Defence of the Kingdom, and it were a Sin to deny it in Case of Necessity. And in *Edw.* 1's. time, *Ed.* 2's time, and 4. *Ed.* 3. a Parliament was to be held every Year for the defence of the Kingdom *& propter ardua Regni.*

I Answer, that might well be, but then, in the time of *Edw.* 1. *Edw.* 2. *Edw.* 3. there were Pleas in Parliament, but now these are laid aside, and that the Subjects ought to give the King Subsidies; I will not say that inferring they will not do it, nor am I apt to believe it; but I hold, that Parliaments are the excellent Means to raise Aid for the Defence of the Kingdom, and yet they are not the only Means, for then the Parliament and not the King, should be the only Judge, and have the defence of the Realm; or else it should give the King a Charge of Defence, without Power or Means to perform it.

The Objection of the King's Revenues, Tenures and Prerogative, they have been unfitly remembted, and they have been fully answered.

The Statute of Tonnage and Poundage given to the King, for and towards the Defence of the Sea, and the other Acts of Parliament, that restrains the King's Power, so that he cannot now charge the Subject, without his consent in Parliament, I shall Answer in the next place; and before I come to the particular Acts, I will shew you, in my Opinion, what they may do.

Acts of Parliamentmay t ake away Flowers and Ornaments of the Crown, but not the Crown it self, they cannot barr a Succession, nor can they be attained by them, and Acts that barr them of Successions are void.

Secondly, No Act of Parliament can barr a King of his Regality, as that no Lands shall hold of him, or barr him of the Allegiance of his Subjects, or the Relative on his Part, as Trust and Power to defend his People; therefore Acts of Parliament, to take away his Royal Power in the Defence of his Kingdom, are void (as my Lord Chief Baron said) they are void. Acts of Parliament to bind the King not to command his Subjects, their Persons and Goods, and I say, their Money too, are void; for no Acts of Parliament make any Difference. Now to the particular Statute objected, 25 *Edw.* 1. *Cap.* 5. *Confirmatio chartarum*, the Words are these, Aids or Taxes, granted to the King, shall not be taken for a Custom or Precedent; and *Cap.* 6. moreover, we have granted for us and our Heirs, that from no Business from henceforth, we shall take such Manner of Aids, Taxes, nor Prizes: And *Cap.* 7. a Release of Toll upon every Sack of Wool, and a Grant, that we will not take such things without their common Assent and good liking, saving to us and our Heirs, the Customs granted to the Commons aforesaid.

As to the other Statute *de tallagio non concedendo. Cap.* 1. *Nullum tallagium imponetur nisi per commune concilium regni. Cap.* 2, 3, 4, 5, *&c.*

First, These Words must have Relation to the Aids before, and there be divers Aids; as some by Talliage, some by way of Prize upon Goods, and Ransome of his Person, *&c.* the King thereupon makes this Grant, which hath Relation to such Aids as were granted voluntarily. *Secondly*, Ancient Aids are there reserved, as redeeming the King's Body *pur faire fitz Chevalier & pur marier son file eigne*, and to all other ancient Aids, which are to be understood with an *ad redimendum corpus, &c.*

And to the Statute *de tallagio non concedendo*, in some Books, it is not in Print, but mentioned in *Mag' Char' Rastal*, and the Petition of Right, 3 *Car.* 1628, to be in the 24 or 25 *Edw* I. And therefore I answer *First*, It is not in the Parliament Roll, aud there is Variance about it; and therefore it is but an Abstract, and no substantial Statute.

But since it hath passed for a Statute, and possibly may be one, I agree with all the rest of my Brothers, that it is a Statute: And then I answer, *First*, That *nullum tallagium imponetur, &c.* that is, no unlawful Talliage shall be

be imposed upon the Subject without his Consent, or else the Aids *pur faire Fitz Chevalier & pur file marier* had not been exempted.

Secondly, No Aids shall be imposed, but Contribution of the King and People may be imposed; and here the King is taxed as well as they.

Thirdly, An Act of Parliament can by no Means take it away, much less by those general Words.

In 14 *Edw.* 3. *Cap.* 1. No Man from henceforth shall be chargeable with any Tax, but by common Consent in Parliament.

To this I answer, That though it be but temporary in some Parts, yet it is binding, but *secundum subjectam materiam*: And the Words are general as in the other Statute *de tallagio, &c.* besides the Practice in that King's Time, and after, best interprets it.

Then 25. *Edw.* 3. *Cap.* 8. No finding of Men of Arms, unless by Consent, much less finding of Ships.

This takes not away any former Law; and therefore, the Precedents following, 4 *Hen.* IV. shew that it does not reach to this Case.

Then 2 *Hen.* 4. *m.* 2. which is absolute in the Point, saith my Brother *Crooke*, where a Commission went forth for the Defence of the Sea, whereof Complaint was made in Parliament, with Desire, that it might be repeal'd, and it was done.

I am of the contrary Opinion; for the Petition was, that it might be released; and the Answer was by this, that it should, but the King would treat with his Council about it; and it was but a Repeal of his Council then only.

Then 1 *Ric.* 3. *Cap.* 2. where the King grants, that he would not hereafter charge them by Benevolence, or any such Charge, but that they should be damned by the Law.

By no such Charge or Imposition, *id est*, by no such Charge of Money, that Statute was only against Benevolence, and made by a King that had Reason, as we all know, to please the People for his own Ends.

The Statute of *Tonnage* and *Poundage*, granted for the Defence of the Sea; the Words are, That no Talliage or Aid shall be without Act of Parliament. *Secondly*, That the King hath Means to defend the Kingdom with a Protestation, not to draw it into Example, 4 *Hen.* 14. 13 *Hen* 4. Parliament Roll, *m.* 10.

I will not argue whether *Tonnage* and *Poundage* was not before this Act of Parliament, nor that time out of Mind they were granted to the King: But my Answer is, They are only for the ordinary Defence of the Sea. And the Protestation of 4 *Hen.* 4, is a Protestation of the Commons only, and this Charge is not taken away thereby, and *Tonnage* and *Poundage* is for the Defence of the Sea; so all the Acts are, and so I agree, but for Extraordinaries, and but solely in case of Danger of the whole Kingdom. That they should not be granted, cannot be collected out of these Grants.

The *Last* Objection is the Petition of Right, 3 *Car.* That no Charge shall be imposed upon the Subject, but by Parliament.

I was then Speaker of the Lower House, and I have Reason to remember what then was made. And I say, *First*, There is no Mention of this Case. *Secondly*, There was no new thing granted, but only the ancient Liberties confirmed, taking Notice of the Commons Protestation, not to bind the King from his ancient Rights.

Thirdly, Look upon the Prayer what is desired, and the main Scope was, *First*, Generally against Loans, and this could not be concluded in those Words. *Secondly*, Imprisonment without shewing Cause. *Thirdly*, Billetting of Soldiers. And *Fourthly*, Mariners lying within the Land.

I have now done with my third general Head, I come now to the last, touching the Form and Legality of the Writ. *First*, for the Legality of the Writ, and the Objections touching the Necessity, I have answered before; the main Objection is to the Body of the Writ.

First, The Command to charge the Sheriff to levy and assess Money according to his Discretion, which is not legal; for that the Sheriff should make it *per sacramentum* by the Oaths of a Jury, as in the Writs of Partition, Distribution, *pro ratu, &c.*

This Assessment is not warranted by the Precedents (says my Lord Chief Baron and my Brother *Crooke*) they do it not upon their Knowledge, but Presumption of Mens Estates, and from thence they speak against the vast Power given to the Sheriff, to inhance Men as he pleases. *Secondly*, The Inconvenience is great hereby; for by this Means there is a great Inequality in the Assessment.

I answer first to the Assessment *per sacramentum*, No Reason why it should be here; for it is not done in the Commissions to levy Subsidies, much less should it be done here in a Matter of great Haste: And besides, the Sheriff is trusted with more; for he hath the Trust of the whole County, and takes an Oath to execute his Office justly, whereof this is one Part.

As to that, they say, there is no Precedent for it. *First*, I say, That there is no Precedent that it hath been done by Jury, but always by the Sheriff, or some that the King was pleased to trust; and since one must be trusted, none more fit than he.

Secondly, By Example, we see, he speeds all, and is most ready for it.

Thirdly, I say the Writ leads not the Assessment, it commands the Ships to be provided; so if that be done, there is no Necessity of Assessment: And if the Towns and Counties say they will provide a Ship, and do it, then no Assessment is requisite; but if they do it not, then the Sheriff is to levy it, that the Defence may be seasonable, so as the Clause of the Assessment shews the Manner of it, when a Multitude is to join, none more fit than he to do it; and no way better, than to write to him to do it according to Mens Abilities.

Fourthly, The Clause of the Assessment is not only to the Sheriff, but to the Head Officer of the Town and Borough; and though the Discretion of the Clause be to the Sheriff,

yet it appears not, that it is limited to him only.

And whereas it was said, That the Sheriff cannot assess himself, and the Precedents warrant not this Assessment by the Sheriff.

I answer, All the Precedents are not against it, but commonly it is not so; and yet there have been a Multitude of Precedents thus. As to the Inequality of it, Mr. *Hambden* had the least Cause of any Man of *England* to complain, considering how he was rated.

Again, all that the Writ commands, is but an Assessment, *juxta facultates suas ita quod omnes &c.* and if the Sheriff do otherwise, and wrong the Subjects, he is answerable for it. By divers ancient Precedents it appears where the Sheriffs have been faulty this Way, they have been punished; and Sir *Walter Norton*'s Case, now depending in the *Star-Chamber*, concerns this, for this Abuse in levying this Charge, being High Sheriff of *Lincolnshire*.

Truly, I think, as my Lord Chief Baron said, if there had not been an Inequality by the Abuse of the Assesses, the Charge had not been complained of; yet the like Inequality is in Subsidies: And this is no just Cause of Exception against it, but of Accusation against the Sheriff who is to answer it. And I can say truly, his Majesty hath been very careful to prevent and remedy the Abuses herein, and hath often sat daily in the *Council-Chamber* to give his Advice herein himself; and upon his Command Reformation hath been in divers Parts; and it hath been given in Command to all his Judges in their Circuits, to endeavour the same in all Parts: And I my self, by his Command, have rectify'd Rates in this Kind, that have been unequal. And I doubt not, if the Necessity of Danger shall still require it, or again, hereafter it may be done with all Equity.

The *Second* Objection is, That the Sheriff cannot tax himself; for then he should be Judge and Party in one Case; nor can he commit himself; and if he be omitted out of the Assessment, then it cannot be equal, nor cannot be according to the Writ that commands all should be assessed according to their Abilities rateably.

I answer, This *prima facie* carries some Shew with it; but examine Causes of less Consequences, it is easily answered The Justices of Peace, in levying Subsidies, make Rates for themselves. The Commissioners of Sewers tax their own Lands; and so if by Jurors it were done, it would be the like. There must be either new Assessors appointed, or they themselves must do it: That would bring Delay, and this requires Haste and Expedition; and therefore he is fittest for the Business. Authorities in Law, there are divers herein, as the Writs for the levying the Expences for the Knights of the Shire, Directions are to the Sheriff to do it, who assesses himself, and yet he is to execute it: So in a Writ of Recovery *de bonis inhabitantium*, the Sheriff is chargeable with his Part; yet he is to execute it. If a Fine be laid upon the whole County, he levies it, yet is chargeable for his Part towards it.

Then objected, the Writ is directed *probis hominibus*, and these cannot be charged in an Inland County.

What difference there is *inter probos homines*, between Inland Counties and Maritime Counties, I know not. 24. *Edw.* 3. a Writ whereby they were charged in Case of necessity; as to *Yarmouth* it was *probus hominibus* &c. true, a grant by the King, *probis hominibus* is void. 1. *Hen.* 7. *Dyer Phill' & Mar'* 7. *Edw.* 4. 14. but a Commission or Writ to assess them good enough. *Probos homines*, that they know not, nor see not, it is not material, for that would make them sole Judges of the Danger, when as the King only is, and this not traversable neither.

Then 'tis Objected, the Writ commands an Inland County, to find a Ship and Mariners, which is impossible, and *lex non cogit ad impossibilia*, and for this my Brother *Crooke* puts the common Cases, that a general return, 49. *Ed.* 3. 6. and impossibilities are void, and a Covenant for impossible things is void; but a Deed may be good.

I Answer now to the point of impossibility. And possible the Ship may be built in an inland County, though to carry it to *Portsmouth* is impossible, but it's possible to provide a Ship and Mariners, as the Writ commands, which may very well be done with Money.

But we have none but trained Souldiers, no Mariners; our Country consists in Tillage, and our Men are trained up in Tillage and Husbandry.

I Answer, we have the like occasion of Husbandry in *Kent*, and we have in many places, no Maritime Towns, sometimes 20 Miles from the Sea, and yet we are justly charged to find a Ship. Precedents we have as well as you in *Oxon* and *Bucks*, or else none should be charged but Port Towns, and in particular no Law or Statute to exempt them. Until *Alfred's* time, there were no distinction of Maritime or Inland Counties, for then all *England* was but one Maritime County.

Then they objected the Payment of Souldiers Wages for 26 Weeks, to be in the King's Service, is against many Precedents, as 16. *Edw.* 2. 10. *Edw.* 3. and entirely for Wages to be paid by the County is against all the Precedents and Tenents by Knights Service after 40 Days, are to be paid by the King, and other Precedents my Brother *Crooke* cited, when divers refused to go out of their County till paid, and Order taken for their Pay by the King. And whereas the County had given Bonds for the repaiment of the Souldiers Wages, they were cancelled, and Order made in Parliament, that Souldiers should be at the King's Pay, 2. *Ed.* 3. 16 18 *Ed.* 3. *Cap.* 7.

These are easily answered, for these Precedents prove no more than Payment of Wages *de facto*, and so the King may pay it where it is not due, and for their refusal, I have nothing to do with that now, but 10. *Ed.* 3. *M.* 2. There is mention made of *Berkshire* Men, commanded to carry their Souldiers out of their County at their own Charge, and when the Souldiers refused to go thence, no Charge or Payment for Souldiers used to be

be paid by the Country, as in that Case, and they were forced to go, and did go, and stay there three Years, so 13. *Edw.* 3. *M.* 8.

1. *Ed.* 3. *M.* 14. None compell'd to go out of their County without Wages paid. 18. *Ed.* 3. *M.* 6, 7. that none should go out of their County: And not only those that had Offices and Patents to serve the King, but all with this Provisoe, that the King should pay them their Wages.

For 1. *Ed.* 3. It is clear, and hath in it the exception in Case of necessity, and then to be done as in times past.

18. *Ed.* 3. It is expressed in the Act, when they go to the King's Wars out of the Kingdom, so 19. *Hen.* 7. &c. These are all but declarative to the Common Law, *Corbet's* Case, the Reason is, because the Allegiance of the Subject is not natural, but lawful.

But that the King shall give Wages within his Kingdom, there is no Act of Parliament for it. Now it was resolved in the *Exchequer*, that the Sea and the Land made but one entire Kingdom, and so no going out of the Kingdom here, and consequently the Payment of the Souldiers Wages within the Kingdom is not against the Law.

The last Objection is, that the Writ is illegal, because contrary to *Magna Char' nullus liber homo imprisonetur.*

As touching the Objection of Nobility, that they are priveledged from Imprisonment, it might well have been spared, and I know not wherefore it was spoken of, unless it were to make them think they were more interested than the rest of his Majesty's Subjects in this Case.

But yet, I say, Noblemen may be imprisoned, as my Brother *Croke* knows well, as it was resolved in the Earl of *Lincoln's* Case, in the *Star-Chamber*; it is true that upon ordinary Process, they are not to be brought to Tryal or imprisoned.

Now I Answer, there is no Imprisonment in question, but the Assessment only, why he should not pay the Money assessed, or shew Cause to the contrary.

Secondly, Were the Writ illegal for Form and Circumstance, yet this makes not the command it self illegal for Substance.

The Exceptions to the *Certiorari* are these.

First, The Direction of it to two Sheriffs, the one out of his Office, when as the Sheriff being, ought only to return it.

Of this there is little doubt, nothing more frequent for a *Certiorari* to issue out of the *Chancery* to two Parties, as to the *Exchequer*, or the Judge that took the Fine, and is removed. And so upon Commission to take a Fine by *dedimus potestatem*, in this Case the Writ is *inter brevia irretornabil'* and this must remain with the old Sheriff, and are never delivered over by the Jury to the new Sheriff. In *Stobart's* Case, in the *King's-Bench*, being convicted of *Heresy*, before Sir *Julius Cæsar*, Judge of the *Admiralty* certificate to him, after Master of the *Rolls*, and directed to him so, in my Lord *Pagett's* Case.

The Writ is without return, saith my Lord Chief Baron, and the *Certiorari*, which is a Year and a half after, cannot revive it.

I Answer, that shall not be the determining of it; only for the time limited expiring, shall not deprive one of his just debt.

It is not sufficient, because it appears not, that Mr. *Hambden* was Tenent or Ter-Tenent, or that *Stoke Mandevile* is within the County of *Bucks*. *Secondly*, it appears not that there was any Ammunition or Ship prepared.

I Answer, it doth sufficiently appear, that Mr. *Hambden* was Ter-Tenent, for the *Certiorari* was to the Sheriff, who certifies that he was Tenent, for it was in pursuance of the Writ, the Words are *virtute br vis Domini Regis huic schedul' annexat certifico quod virtute & secundum exigentiam ipsius* &c. *Assessori Angliæ.* have assessed *super seperales homines & terre tenentes Com' Bucks præd' quorum nomina subscribuntur* &c. It relates to the Place there, Tenent in the County of *Bucks*, and makes Mr. *Hambden* one. And thus the business of Knihgthood was done, and in no other manner.

Then it appears not that the Ship was prepared.

To this I Answer, *1st*, That the Ship was done according to the Command of the Writ. *2dly*, It was prepared. *3dly*, If none had been prepared, the Fault was in them, for that they paid not in their Money.

For the exceptions to this *Mittimus* I say nothing, because I told you the Case rests not upon these Words *Salus Regni periclitabatur*, which is only to bring it to issue.

Then they except against the *Sci' Fa' 1st*, That the King is intitled to bring the *Sci' Fa'* So there is a *cui oneretur* to whom he should pay the Money, for whose Good or Benefit Mr. *Hambden* should satisfie the Money assessed.

I Answer, the King is interessed in all Actions for publick good, and shall recover accordingly, as in Case of *High-ways*, *Pontage*, *Murage*, &c. much more when it is for the general Defence of the Realm, in a *quare impedit* between two common Persons, though the King be neither Plaintiff nor Defendent, the King shall recover therein. Many times in Case of a common Informer, the King recovers the one Moiety though no Party, so it was in the Case of Knighthood, though Suit was depending.

Again, all Writs in the Kingdom are the King's Writs, though no Fine, much more here for the Defence of the Realm. And it is usual for the King's Attorney to compel Men to perform Charitable Uses, and the King may question any one for them, in the Case of *Aurum Reginæ*, by Process of the *Exchequer.*

Again, where it is said, *Quare ipse de præd' summa specificat' onerari & inde satisfac' debeat prò ut ulterius tibi præcept'* &c. for though the Writ be in the King's Name, yet it is but for the Performance of the Work and Charge, and though it appears not, who were Collectors or Assessors, yet it appears it was done. Upon publick Service, Process goes forth in the King's Name, but then it is not so fit it should be expressed in particular for the King, when it is for the general good only.

Was

Was not this Objection made by my Brother *Denham*? Though none more chearfully did subscribe to his Majesty's Letter, neither was the *Sci' Fa'* without his Advice, being the aptest Course, and better than Trespass; but the Objection that he made was, That the King cannot do any Wrong, nor take without Record, as in Seizure upon Outlawry, Attainder, or the like. And in this Case there is no Record upon the Writ. 4. *August*, no Judgment, *&c.*

I Answer this *Sci' Fa'* is not annexed to the Writ, and as a new Action that Mr *Hambden oneretur & inde satisfaciet*, and after that Judgment upon the Writ, and upon his saying nothing, why *revocetur* there shall be a good Record, whereupon he shall be charged 3. *Eliz. Dyer*, 156. *Ignoramus* is sufficient Title for the King, and good Ground for a *Melius inquirender.*

No *Sci' Fa'* lies upon the Tenor of a Writ (say they) 39. *Hen.* 6. *fol.* 34. 21. *Eliz. Dyer*, *fol.* 205.

I Answer, a *Sci' Fa'* upon a Recognizance will not lie in *Chancery* but upon the Record there, yet in debate, an Action of Debt lies upon the Tenor of the Record, 39. *Hen.* 6. the doubt was, because the Party might be subject to a double Execution, one upon the Record there, and the other upon the Tenor of the Record in another Court. 33 *Ed.* 3. Title Tenure by *transcript'* 8. *Hen.* 5. *Fitz' Her' Error Sci' Fa' Reg' fol.* 51. The Record was before the Justices of the *King's-Bench*, the Tenure was of the Treasury to the Barons of the *Exchequer*, and it is the usual Order, if a Recognizance be forfeited, to certifie the Tenor of a Recognizance, so of a Fine of Amerciament *&c.* to certifie the Transcript thereof. So the Transcript was sent from *Ireland*, of an Act of Parliament a *Sci' Fa'* thereupon went against a Baron in *England*, so in Debt upon the Transcript of a Record from *Ireland* a *Sci' Fa'* here went forth.

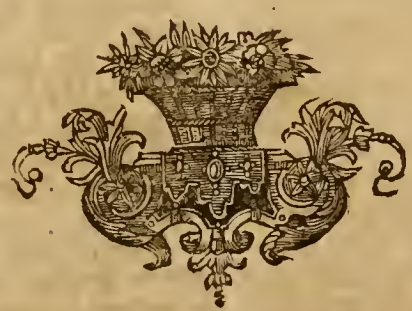
Objected it was in the last place by my Lord Chief Baron, that Judgment in this Case would be fruitless, and none should take Benefit thereby; upon this Record he put several Cases, wherein Judgment in such a Case ought to pass.

I Answer my Lord Chief Baron with a Judgment of his own, in Case of Knighthood, resolved here in this Court, the Case was this, The King by Writ *January* 1. of his Reign, commanded the Sheriff of *Berkshire*, that all that had 40 *l.* should be in the *Chancery* 31. *January* following, to take upon them the Order of Knighthood. Sir *John Dayxel*, Sheriff of *Berkshire*, made his return, (as the Sheriff of *Bucks* here) all that are not Knights under the Name of *Illorum*, and sets down their Names. A *Mittimus* thereupon went out of the *Chancery*, reciting the Substance of the former Writ *vobis Mittimus præsentibus* &c. with a Clause to enquire after such as were not returned and to fine them. And upon this a Writ of *distringas* to the Sheriff. My Lord Chief Baron and my Brother *Denham* know what Judgment was given, when I observed, 1*st*, Not the Record, but the Tenor of the Record, was sent into the *Exchequer*, yet returnable in the *Chancery*: 2*dly*. for the returning of the Names of the defaulters as here: 3*dly*, Upon the *distringas* thereupon was had Execution, much more than here, upon the *Sci' Fa'*. 4*thly*, There was no more Judgment of Record to warrant than here in this.

Now I come to conclude, I have been somewhat too bold, in taking more time than is usual, but I did it to satisfie my own Heart, according to which, I must give my Judgment. What I have omitted I refer to the rest of my Brothers that went before me, and to my Lord Chief Justice that comes after me. The reasons I shewed whereupon I conceive by the Common Law, and the Fundamental Policy of the Kingdom, that the King may Charge his Subjects for the Defence of the Kingdom, and that the King may Charge his Subjects towards the Defence thereof when it is in danger, and I hold that the King is sole Judge of the danger, and ought to direct the means of Defence.

And therefore this Writ of *Sci' Fa'* and all the Proceedings in this Case are well grounded according to Law.

My Opinion therefore is, That Mr. *Hambden* shall be charged with 20 *s.* assessed, and that my Lord Chief Baron ought to give Judgment accordingly.



The

The Argument of Sir John Brampston, *Knight, Lord Chief Justice of his Majesty's Court of* King's-Bench *at* VVestminster, *in the great Case of* Ship-Money.

QUarto *Aug.* 11 *Car.* a Writ issued out of the *Chancery*, being directed to all the Counties of the Realm of *England*, both Inland and Maritime; and among the rest it was directed to the Sheriff of *Bucks*, for the making and the building of a Ship of 450 Tons, and to provide a certain Number of Men with Ammunition and Victuals, to be brought to *Portsmouth*, and from thence to be employ'd in his Majesty's Service, for the Defence of the Realm, and of the Sea.

Mr. *Hambden*, in the County of *Bucks*, was assessed at 20 *s.* for his Manor of *Stoake Mandevile*, who refused to pay the same; whereupon a *Certiorari* issued to the Sheriff of *Bucks*, to return the Names of the Defaulters; amongst whom Mr. *Hambden* was returned to make Default of the Payment of the 20 *s.* assessed upon him.

Whereupon it was by *Mittimus* sent into the *Exchequer*, and a *Sci' Fa'* thereupon issued out of the *Exchequer* against Mr. *Hambden*, to shew Cause why he made Default of Payment of the said 20 *s.* whereupon Mr. *Hambden* appeared in Person, and demanded Oyer of the Writs, and Returns thereof, and demurred in Law, with whom Mr. *Attorney* joined in Demurrer.

Now three Points have been debated already at large in this Matter, *viz. First*, Whether the King may command this general Charge of his Subjects by Law, or no, without their Consent in Parliament? *Secondly*, Whether this Kind of Assessment be warranted by Law, or no? and *Thirdly*, Whether the *Sci' Fa'* did well issue or not?

In all these Matters, so much hath been already spoken, that if I should not say what hath been already spoken, I should say little to Purpose. I will not be long; for if I had intended it, my Lord *Finch* hath prevented me in it; for he hath taken from me very much of that I should have said, and insisted upon.

That which this Case resteth upon, in my Opinion, the Vote of the Court hath passed already by the greater Number of Voices, that mine will do nothing which way soever I go; yet being to deliver my Opinion, I shall shew my Reasons thereof; and that I shall do it without any other Defence.

Concerning the first Point, Whether his Majesty may impose that general Charge upon his Subjects by Law or no?

I am of Opinion, that whensoever the whole Kingdom is in Danger, his Majesty may command all his Subjects to join with him in this Case for the Defence of the Kingdom.

My Brother *Finch* hath insisted so fully upon this Matter, that I shall need to say but little: But yet something I must say, as well as my Brothers that have spoken before me, to discharge my Conscience: And for that, I shall say, my Intent is to insist upon some few of the principal Statutes, which have been already recited.

For, this Point, in my Opinion, will rest upon the several Statutes and Acts of Parliament that concern this Case, and I take it these Statutes to be merely Declarations in Affirmance of the Common Law. And I shall begin with the Statute, 1 *Edw.* 3, *Cap* 5. and I shall not go far from the Intent of the Statute; I shall scarce make Use of any Precedents, though many have been used, but only so far as they may seem to expound and declare the true Meaning of those Statutes.

And whereas it is objected from the Statute 1 *Edw.* 3. That no Man shall be compelled to go out of his County wherein he liveth, except in Case of Invasion, and Necessity requireth, and then it shall be done as in times past.

I answer, That this is meerly declarative, and spoken in Affirmance of the Common Law, and this Use is declared by this Statute to be the ancient Law of the Realm. Now what that Use was will be a very great Question in this Case. Indeed it hath been much insisted upon, both by Mr. *Hambden's* Council and my Brother *Crooke*, that the Subjects going forth of the Shire shall be at the King's Charge, which they have affirmed by divers Statutes: But that which will go far in this Case, as my Brother *Berkely* observed, is out of the Precedents of *Edw.* 1. *Edw.* 2. and *Hen.* 3. times, and in them you shall find it to be for Foreign War, or elsefor ordinary Defence, as for pillaging of Boroughs or private Towns by Pirates, when the Subjects have not given their Aids in such Cases. And there is no doubt but the King hath paid the Charge in such a Case, for the Defence of the Realm, but the Subjects gave the King Subsidies to do it withal.

But the Question in this Case is, What the Subject in this Case, *secundum legem Angliæ*, may

be compelled unto in case of Necessity, for Defence of the Kingdom.

I answer, They may be compelled to this Charge, *sumptibus propriis*, for the Soldiers Wages; but to go out of the Realm, or their Shire, must be at the King's Pay, according to the Common Law of *England*: But in times of sudden Defence, it is no time to stand upon Wages. It appears both in *Fitz Na. br. fol.* 28. and also in my Lord *Coke* in *Calvin*'s Case, the King may command his Subjects upon their Allegiance, to go with him, as well to Wars without the Realm, as to the Wars within the Realm, and with him, and without him, in the King's Service.

By the Statute of the 18 *Edw.* 3. and 11 *Edw.* 3. Men of Arms, as Hobellers, Archers, *&c.* are to go in the King's Service, as in *England*, so out of *England* was the Matter of these Laws.

And my Lord *Finch* said, This was the very Common Law of *England*; so that it is clear, that these two Statutes are declaratory Laws of the Common Law of *England*; and in Affirmance thereof, in the 7 *Hen.* 4. Title, *Tenure*, 44 there it is said a Man is not to go with the King in his Wars, without Wages, out of the Realm. And so 7 *Hen.* 4. Title *Tenure* 73. the Subjects of *England* are not to go with the King beyond the Sea, without their Wages: But in the Realm they are at his Command, and there is no Wages to be given. So it is going out of *England*, then they are at the King's Charges; but within, at their own. And if the going out of the County be at their own Charges, I know not but that I should put an End to the Case, that the Defence of the Realm should be at the Subjects Charge.

It is of dangerous Consequence for Judges, in their Judgments, to rely too much upon Precedents, that perhaps went forth for the Necessity of the present times: But that is not our Case here; we are here directed to know what was used in times past, in this Case, before the making of the Statute: So that in this Case we take the Usage not to declare or prove a Law, but that Use is declared by this Statute to be a Law: Now therefore, we must know what the Use was, that the Subjects of this Realm ought to be charged in time of common Danger, appears by a Multitude of Precedents applied rightly to the Statutes of *Ed.* III. which do declare the Law upon the Statute.

And to shew what the Usage was, I shall rely upon those Precedents that are most judicial, *First*, that of 25 *Edw.* 1. *Term' Mich'*, *Rot'* 72. *Banc' Regi'*. In the Abbot of *Robertsbridg*'s Case; compare that and this together; and I know not what more can be answered, than that this Use for the Subject to maintain their Peace, was an Usage, Law, and Custom of the Realm. 10 *Edw.* 3. *m.* 2. *fo.* 18. the King, by his Writ, sent a Command to send to *Portsmouth* one hundred Foot and twenty Horse, to guard the Sea Coasts. They refused to do that Service, and would not go without Wages. The King sent Answer in these very Words, *That no Wages were due; for it was a publick Danger.* And so 25 *Edw.* 3. *Cap.* 8. it is generally assented to by Parliament.

But there we have a general Law in the first Statute. 1. *Ed.* 3. which was granted meerly in the Common Law, and so was the Statute 25. *Ed.* 3. and the rest to the same purpose, because it was against the Right of the Realm. And this Statute of the 25. *Ed.* 3. was meerly grounded upon the Petition of the Commons, then certainly this finding of Arms, was intended by that Statute, to be against the Right of the Realm.

Besides all this, to keep our selves to that which is legal and authentical, so the Parliament Roll 13 *Ed.* 3. *M.* 9 & 11. It is there apparent, that it is not against the Right of the Land to charge the Subject, then how comes it to be against the Right of the Realm? 25. *Ed.* 3. for then there was no Statute.

Now to bring it down to our times, in the 26. *Ed.* 3 *M.* 44. every Maritime Town, was to keep a petty Watch; there being some imminent Danger, therefore they pray, not to be discharged, but that it might be reduced to a lesser Charge, being it was but a petty Watch to Guard the Sea Coast, much less then is there Cause, for the Subject to seek to be discharged when the Enemy is approaching. 5. *Ed.* 3. there was a Commission issued out, to distrain every one *secundum potestatem suam* in Matters of array; here is now the Judgment of the whole House of Parliament, that Men according to their Abilities are to be charged, to joyn in Charge with the King, to defend the Realm *sumptibus propriis.* Thus much for the Defence upon the Land; now for the Defence upon the Sea.

In the Statute 18 *Ed.* 3. *Cap.* 7. that they that serve the King out of the Kingdom, serve for Wages, but in Case of necessity, without the Realm: In times past, by no Precedents saith my Brother *Crooke*, can it be proved it was done before.

I Answer, that the Sea is within the Kingdom, so 2 *Ed.* 3. *Cap.* 10. *protect'* 46. *Bract' lib.* 2. *fol.* 365. there the Sea is made part of the Kingdom. *Doctor* and *Student*, *Cap.* 51. It is the Antient Custom of *England*, that the King is Lord of the narrow Sea. But that which I most rely upon, is from the Statute of 1. and 18 *Ed.* 3, for they both meet in one, which is according to the Common Law, for all the difference is thereof, the Subject to go out of his own County to Defend the Land or the Sea.

In the Statute of 1 *Ed.* 3. it is objected, that there is no Precedent for Inland Counties.

But I Answer, if not from Inland Counties, yet there is for Maritime, as in 14 *Ed.* 3. *Term' Mich'*, but I rely not upon Precedents for either, but only upon these Precedents that went out to the Port and Maritime Towns, for it was well observed by the King's Council, that they were not grounded upon any Precedents or Charters, but only upon antient Customs; but if the Precedents to the Maritime Towns were directed in Case of necessity, then I see no Reason but that it may be done now, which was indeed intended by the

the Statute of 1. *Ed.* 3. as the Precedents do plainly declare, and they were then more common than Writs of this nature issuing forth in this Case, and the Commons were then bound to land Service, and the Mariners to Sea Service, and they were compelled unto it at their own Charge. merely upon their Allegiance both in *Bedford*, *Bucks*, *Lincoln*, with many other Counties. If then they may be compelled to go out of their own proper Counties, to defend that Part of the Realm, that they live near unto, why may they not also be compelled to go to defend the Sea Coast. The Sea-Men were willing to bear some Part of the Charge for the Defence of the Sea, because the Inland Counties did bear the Charge of the Land Service? And if they may be compelled in the Inland Counties, to defend their Inland Counties, and the Seamen to defend the Sea Coast; then I know no Reason but that they may be compelled all in general to bear a publick Charge in Case of Necessity.

I am still upon the Statute 1 *Ed.* 3. wherein I find Mr. *Selden* in his *Mare clausum*, say it was an ancient Use to charge the Inland Maritime Counties in Case of Necessity, and therefore in my Understanding, I hold it to be *secundum legem Angliæ.*

But here my Brother *Crooke* Objects, that there is no Statute or Precedent to shew that any Inland Counties were ever charged.

I Answer, That Statutes and Precedents do not extend to our Case, for this was in Use many Years before the making of any Statute. See the Statute of 1 *Ed.* 3. and 1 *Ed.* 1. they cannot cross one another, for then could not the Statute of 1 *Ed.* 1. be confirmed by the Statute of *Ed.* 3.

Again, concerning the Statute of finding of Men and Arms, it is true, it is merely the Common Law of *England*, and that merely without common Consent in Parliament, as my Brother *Berkely* saith, that the Statute 9. *Hen.* 3. and 25 *Ed.* 3. *Cap.* 11. are the general Charters rather than Statutes, and in King *John's* time it was not taken for a Statute, but only for a Declaration. And so it was taken in the time of *Hen.* 4.

But now if concerning the Charge of the County, the said Statute were nothing but according to the Common Law of *England*, I cannot see how they should cross one another now; for there is no difference, but only in such things as are given as a Benevolence to the King, as in 1 *Ed.* 3. *Cap.* 5, 6.

As for the Statute *de Tallagio non concedendo*, we deny it not, but the difference is in the occasion of the Statute of 14 *Ed.* 3. There was a pretty Case put by Mr. *Holborne* about the Office of Alnage, where there was but a Fee to be paid out of it, and held a Tillage, but there is a great difference between Tillage and this Service, which every Subject is bound to do by his Allegiance to his Sovereign Lord. *Fitz' Her' Na' br'* 103. The King may impose this Charge upon the Subject in Case of Necessity, *pro bono publico*, and it is nothing but that, which every Subject owes to the Common-wealth in the time of common danger. And from King *Edward the Confessor*, it was ordered by several Statutes, Let every one have their own Goods and Lands free from Tillage, and let nothing be taken from them. But this Case of Necessity in common Danger is another thing, the King may compel his Subjects to this Charge, and I may add the Reasons strongly insisted upon by the King's Council. My Lord *Coke* said, it could never be the meaning of the great Charter to take away the Power of the King's Prerogative, and so to exempt themselves from this Charge, of Defence, for there is a difference between Talliage upon the People and the Service in this Case of Necessity, which they may be compelled unto. My Brother *Jones* cited a most excellent Case 4. *Jac.* upon the Opinion of *Coke* and *Popham*, that the Talliage Statute taketh not away: And shall it take away the Royal Power of the King so inherent in the Crown the Protection and Preservation of his Kingdom?

From this Statute 1 *Ed.* 3. Mr. *St. John* raiseth this Objection. Here is 7 Months from the date of the Writ, to the time the Ship was to be brought to *Portsmouth*, in which time there might have been a Parliament called, and therefore it ought to have been done in a Parliamentary Way.

But this will not admit the calling of a Parliament, but if the Danger be not sudden, you must have it in a Parliamentary Way.

My Lord *Finch* gave a full Answer to this: There must be a preparation before the Enemy comes, else the Defence is too late, there is necessity to prevent a necessity, and who shall give Warning in such a Case but the King. Saith *Littleton*, who gives Warning? not the Tenent by Castle Guard but the Lord, and so consequently in this Case our Sovereign Lord the King: And therefore in such a Case, the Subject is bound by his Allegiance to the King, to assist in Case of Publick Danger. My Lord *Coke* tells us the Reason of the Warning: He saith, there must in that Case be a Preparation before hand, lest your Defence comes too late; Enemies are more easily kept out than overcome when they are got in.

By the Statute of *Ed.* 4. the Bulwarks may be made in another Man's Ground; but this Preparation cannot be without Warning, and none can give Warning but the King, and the Subjects are to be at his Command, and of none other, for there must be a Preparation of the Subjects in the Realm, to meet the Enemy before he enter the Land. No Subjects can take them to build Bulwarks *&c.* It is an Assuming of Royal Power, for it must be done *juxta præceptum Domini Regis.*

Now I come to the second Part, whether this Assessment be warantable by Law or not. The Writ was dated 4. *August*, to prepare a Ship against the 1*st* of *March*: Therefore we see it was not against the great Laws concerning the Subject's Liberty, because it is no Talliage but a Service, for howsoever it must be granted, it must be a general Danger that causeth a general Defence. and there must be Matter in the Body of the Record to satisfie therein

therein; there must be I say a publick Danger, and then it is *secundum legem & consuetudinem Regni Angliæ* as appears 20 *Ed.* 3. *M.* 21. And also in *Doctor* and *Student*, cited before, that when Necessity doth require, the King may compel his Subjects to this Publick Service and Charge: Though the King be sole Judge, and his Certificate is not traversable and cannot be denied, yet there must be Matter apparant within the Record, to satisfie the Conscience of the Court, or else we cannot be Judges of the Case at all. If the Danger be general, then the Defence must be general, but if ordinary Danger, as robbing of Merchants by Pirates *&c.* it must be at the King's Charge. And we do see by the Petitions of the Commons in many Parliaments, that they now conceive themselves subject to the Charge of ordinary Defence.

Now upon all that which hath been observed by my Brothers, there is enough in the Record to satisfy them fully (as if the King were not sole Judge) that it was a publick Danger, being *pro defensione regni & tuitione maris, &c.* it did issue to all the King's Subjects, as a general Charge, and not to the County of *Bucks* alone: Therefore I may conclude, when the whole Kingdom is in Danger, the King may compel his Subjects to assist in time of such publick Danger.

Then for the Assessment, many Exceptions have been taken unto it, and to the Record and *Sci' Fa'*: I had provided my self to have given a full Answer thereunto, but my Lord *Finch* hath prevented me, and hath cited the very Authorities that I my self did rely upon.

But for the Assessment itself to the Sheriff, I do not say that I do find he hath like Power in another Case of Law, Commissions of Sewers may be directed to the Sheriff, but not to give Power to assess Mens Goods.

I answer, That this is in Case of Necessity; for the main Case is but a Case of Necessity, the ordinary and usual Way is *per sacramentum.* My Lord *Finch* gave an excellent Answer to that, and warranted it by Law, that the Sheriff hath no such limited Power granted him; he is not made Judge of the Estates of Men, but only to pursue the Direction of the Writ, to assess them as he is commanded, and not *secundum discretionem suam*, but as my Lord *Coke*, 5 *Report*, *fol.* 99. saith, he must do it *secundum legem & secundum arbitrium*; that is to say, according to Law and Reason: But it is impossible, in such a Case of Necessity, to put it into such an Equality, to make it without Exception; but in as much as in him lyeth he ought to order it proportionably, his Power is unlimited; for by his Discretion he is to discern between Right and Wrong, between Substance and Shadow; and he must go within the Bounds of Law and Right. In the Chamberlain of *London*'s Case, they might rate and assess *pro bono publico*, as in making a Highway to a Church, and the like, wherein the Subject is brought to no Distress or Inconvenience, so as the greater Part, in such a Case, ever binds the lesser, it being *pro bono publico*; yet this Assessment cannot make a Law a Debt, or a Duty, but is only a Means to bring this Duty to a Certainty, and so make it a Duty, so he be rated in an equal Proportion. Hath the Sheriff rated Mr. *Hambden* disproportionably, according to his Estate and Degree? If he hath, let him tell. If the Sheriff hath followed his own Will, and done corruptly, then he hath done contrary to the Intent of the Writ; it turneth upon the Sheriff himself; and a great Offence it is for a publick Minister of Justice to abuse himself in such a Place of Justice. The Sheriff returns, he hath assessed 20 *s.* which is no great Sum; and also confesseth upon the Record, that it is an equal Assessment. When Mr. *Hambden* appeared upon the *Sci' Fa'* he demanded Oyer of the Writs, and so demurred in Law, which upon the Matter, being a general Demurrer, is a Confession.

And as for the *Sci' Fa'*, my Lord *Finch* hath handled it fully, and hath cited the same Books and Authorities, that I intended to have cited; and so hath prevented me in that; and also in *Bodwyn*'s Case in *Cornwall*, and upon the Exceptions *super tenorem record' m.* 9. *Hen.* 6. *fol.* 23. And the Reason why he should not have Execution *super tenorem record'* is because otherwise the Subject might be charged double, and divers Cases were put upon suing forth Execution for the Tenor of the Record, and yet no Execution can go out of the *Chancery* at the first, because it is not returnable by the Sheriff, but it is sent out of the *Chancery*, by *Mittimus*, into the *Exchequer*, 24 *Hen.* 6. 4 *Hen.* 6.

But it is true it doth concern every one to be satisfy'd in the Truth of the Case; for if the Sheriff should not assess *per sacramentum*, it might be another Way.

And also for the *Certiorari*, my Lord *Finch* hath likewise cited the same Books and Authorities, which I also intended; therefore I forbear to insist upon that.

There is another Exception to the Record, *Quod oneretur*, and not know to whom it should be, nor Money demanded to the King by the first Writ, no, nor by the second Writ; therefore can give no Judgment *quod satisfaceret domino regi*; then if Judgment shall not be given for the King, then for whom *non constat*, it doth not appear to whom it is due for any thing I can see in this Record.

Truly for my own Part, of all the Exceptions that I have heard, none sticketh with me, but this Exception; for I do not know any Precedent, that any Judgment was given, and not say to whom. This Scruple, I confess, still remaineth with me. I must needs say, That in my Opinion, I do rather incline, as far as I am yet satisfy'd, that this is a good Exception, according and upon those Reasons which my Lord Chief Baron gave; and yet I am not so far satisfy'd, that it is Law.

I must rather incline, as my Opinion inclines, that against the Inclination of my own Opinion, as I have gone thorough all the rest with the Warrant of my own Conscience. I cannot go upon any Strain in the thing of the least Weight, but I must deliver my Opinion as it inclines; and therefore, upon these Reasons that I have heard, and upon Consideration taken with my self, I do rather incline to the Opinion of my Lord Chief Baron, and upon his Reason, which I think was with that of the lesser Number: But for my Opinion, in all other Points, I agree with the general Vote of the Court.

Memorandam,

Memorandum, That the 12*th* Junii 14*th* Caroli, *Mr.* Attorney *moved the Court of* Exchequer *for Judgment against Mr.* Hambden, *and after he had opened the Record he said.*

Your Lordship,

AND the Court, in respect of the greatness of the Cause, did adjourn it into the *Exchequer-Chamber*, that your Lordship and the Court might receive Advice of all the Judges, whose Advice and Opinions your Lordship hath already received, and the Plurality of their Voices is, that Judgment should be given against Mr. *Hambden*, and accordingly I do pray Judgment.

To which my Lord Chief Baron answered.

It is very true, it was referred hence to the *Exchequer-Chamber*, to receive the Advice of all the Judges of the Land. We do not take them to assist only by way of Advice, but for a judicial Direction: For admitting we four were of one Opinion, and the rest of the Judges of another (though the Case properly depend on this Court) yet we must apply our selves to their Resolutions, and our four Voices are involved in theirs, and therefore accordingly *secundum legem* &c. *oneretur Johannes Hambden.*

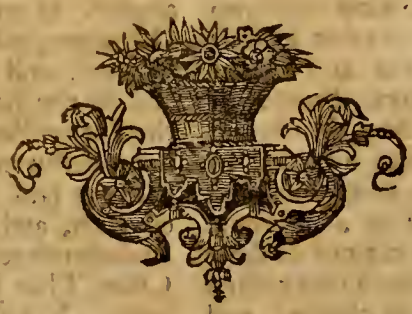
The Copy of the Order, as it was drawn up upon the Motion of Mr. Atorney-General, *and now remains entred in the* Exchequer.

Remem' Regis. *Terminor Stæ' Trin' Anno* 14 Caroli 12 *die* Junii.

Bucks. WHEREAS several Sums of Money by Virtue of the King's Majesty's Writ under the great Seal of *England*, bearing date the 4*th* Day of *August* in the 11*th* Year of his Majesty's Reign, were assessed and charged upon several Persons, for and towards the Provision of a Ship of War, together with the Furniture and other Things thereunto belonging, in the said Writ particularly mentioned, which said several Sums of Money, so assessed and charged, and not being satisfied and paid, the Names of the said several Persons, together with the several Sums charged upon them, were returned into the *Chancery*, whereby his Majesty's Writ of *Certiori*, bearing date the 9*th* Day of *March* in the 12*th* Year of his Majesty's Reign, certified into his Court of *Chancery*, and by his Majesty's Writ of *Mittimus*, under the same Seal, bearing date the 5*th* Day of *May* in the 13*th* Year of his Majesty's Reign, were sent into the Court of *Exchequer* for further Process to be had thereupon, as by the said several Writs may appear, and whereas Process of *Sci' Fa'* was the 20*th* Day of *May*, in the said 13*th* Year of his Majesty's Reign awarded to the Sheriff of the County of *Bucks*, directed to garnish the several Persons in a Schedule to the said *Sci' Fa'* annexed, contained to shew Cause the Octaves of the Holy Trinity then ensuing, why they should not be charged, and satisfie the said Sums of Money assessed upon them, in which Schedule it was contained amongst divers others, that *John Hambden* Esq; was assessed at 20*s.* as by the said *Sci' Fa'* and Schedules thereunto annexed, may also more fully appear: Whereupon the said *John Hambden* Esq; being garnished by Sir *Anthony Chester* Baronet, then Sheriff of the said County of *Bucks*, appeared, and demanded *Oyer* of all the aforesaid Writs, which being read unto him, he thereupon demurred in Law. And thereupon Sir *John Banks* Knight, his Majesty's Attorney General joyned in the said Demurrer. And the Record thereof being made up, it pleased the Barons of this Court (the same Matter, being a Matter of great Consequence and Weight) to adjourn the Arguing of the same Matter into the *Exchequer-Chamber*, and to desire the Assistance and Judgment of all the Judges of *England*, touching the same. Now upon the Motion of his Majesty's Attorney General this Day, informing this Court that seeing the said Matter hath been so solemnly debated and argued, as well by the Counsel of the said Defendent, and by some of his Majesty's learned Counsel, and also by all the Judges of *England*, and by the Barons of the *Exchequer*, and that the Major Part of the said Judges and Barons have delivered their Opinions and Judgments that the said *John Hambden* ought to be charged with, and to satisfie the said Sum of 20*s.* And therefore the said Mr. *Attorney* moved the Court, That Judgment might be entred accordingly. It is thereupon ordered by this Court, that Judgment shall be forthwith entred, that the aforesaid *John Hambden* ought to be charged with, and satisfie the aforesaid Sum of 20*s.*

A Copy of the Judgment as it is entred upon Record, in Pursuance of the said Motion, and according to the major Votes.

ET quia Barones hic se advisare volunt de & super præmissas priusq' judicium inde reddant dies dat' est præfat' Iohanni Hambden *eod' statu quo nunc hic in Octab' Sancti* Michaelis *ut dicti Barones se interim de iisd' præmissis advisare possint ac cum justiciar' de utroq' Banco inde deliberent eo quod iidem Barones hic inde nondum &c. Et super hoc concordat' est inter Barones hic tam ex assensu dict' Attornat' dict' Domini reg' general' quod dict' Atturnat' præd'* Iohannis Hambden *& Consiliarior' in lege peritor' ejusd'* Iohannis Hambden *quod aliqui legis periti tam de consilio & parte dict' Domini reg' qua' de consilio & parte dict'* Iohanis Hambden *de præd' materia in lege & cæteris præmissis in Camera hujus Scaccarii vulgaliter nuncupat'* the Exchequer-Chamber *coram iisd' Baronibus assidentibus eis justiciar' de utroque Banco argumentari interim publice audiantur. Ad quas quid' octabas Sancti* Michaelis *præd'* Iohannis Hambden *venit hic ut prius. Et quia Barones hic ulterius se advisare volunt de & super præmissas priusq' judicium inde reddant dies ulterius dat' est præfat'* Iohanni Hambden *eod' statu quo nunc hic usq' in octabis Sancti* Hilarii *ut aliqui legis periti tam de consilio & parte dict' Domini reg' quam de consilio & parte dict'* Iohannis Hambden *de præd' materia in lege & cæteris præmissis in præd' Camer' hujus Scaccarii coram Baronibus præd' assidentibus eis præd' justiciar' de utroque Banco argumentari interim publice audiantur ac iid' Barones cum eisd' justiciar' inde deliberent eo quod nullus in lege peritus vel de consilio ipsius Domini reg' vel de consilio dict'* Iohanis Hambden *adhuc auditur & Barones hic inde non advisantur &c. posteaq' medio tempore in præd' octob. Sancti* Michaelis *& præd' octab' Sancti* Hilarii *tum Attornat' & solicitator ipsius domini reg' quam duo legis periti de consilio præd'* Iohannis Hambden *in præmissis existen' ex parte ejusd'* Iohannis Hambden *duodecim separal' diebus in præd' Camer' Scaccarii coram Baronibus hujus Scaccarii assidentibus eis tunc ibid' præd' justiciar' de utroq' Banco de præd' mater' in lege & cæteris præmissis (recitato tunc ibid' record' præd') ad largum & summat' argumentari quidq' inde ex utraq' parte dicere potuissent aut voluer' palam & singulatim audit' fuer'. Et præd' Attornat' & Solicitator general' diversa & quamplurima record' brevia Commission' & Præsiden' tam hujus Scaccarii qua' Cur' Cancellar' Cur' de Banco Reg' ac de Commun' Banco mater' in lege & cætera præmissa in separal' brevibus return' & schedulis præd' content' ex parte dict' Domini Reg' proban' confirman' & manutenen' ad tunc & ibid' produxer' ostenser' & exposuer'. (& ad præd' octabas Sancti* Hilar' *præd'* Iohannis Hambden *venit hic ut prius & quia Barones hic ulterius se advisare volunt de & super præmissis priusquam judicium inde reddant dies ulterius dat' est præfat'* Ichanni Hambden *eod' statu quo nunc hic usq' a die Pasche in quindecim dies ut dicti Barones interim cum præfat' justiciar' de utroq' Banco ulterius deliberent eo quod iidem Barones hic inde nondum &c. Ad quem diem præd'* Iohannes Hambden *venit hic ut prius & quia Barones hic ulterius se advisare volunt de & super præmissis priusquam judicium inde reddant dies ulterius dat' est eid'* Iohanni *eod' statu quo nunc hic usq' in Cro' Sanctæ Trin' & dict' Barones interim cum præfat' justiciar' de utroq' banco ulterius inde deliberent eo quod iidem justiciar' hic inde nondum &c. Ad quem diem præd'* Iohannes Hambden *venit hic ut prius & super hoc visis præmissis & per Barones hic plene intellectis habitaque inde matura deliberatione cum præd' justiciar' de utroque banco ac post argumenta tam per eosd' justiciar' qua' per præd' Barones singulatim in præd' Camer' Scaccarii publice inde fact' videtur inde Baronibus ex advisamento justiciar' præd' quod separal' brevia præd' & return' eorund' ac schedulæ præd' eisd' annex' ac mater' in eisd' content' sufficien' in lege existunt ad præfat'* Iohannem Hambden *de præd' vigint' solid' super ipsum in forma & ex causa præd' assessat' onerand' pro concess' per eosd' Barones quod præd'* Iohannes Hambden *de eisd' vigint' solid' oneretur & exinde satisfaciet &c.*



Thus

Thus in ENGLISH.

"AND because the Barons here will advise "themselves, of and upon the Premisses "before they give Judgment thereupon, a Day is "given to the aforesaid *John Hambden*, in the "same State as now here, upon the Octave of St. "*Michael*, that the said Barons in the mean while "of the said Premisses may advise, and with the "Justices of both Benches may thereupon "deliberate: For the said Barons here, not yet "thereupon *&c.* And upon this it is agreed "between the Barons here, as well with Con-"sent of the said Attorney-General, of our "said Lord the King, as of the said Attorney "of the aforesaid *John Hambden*, and the "Counsel learned in the Law of the said "*John Hambden*, that some Persons learned in "the Law as well of Council, and on the "behalf of our said Lord the King, as of "Council and on the behalf of the said *John* "*Hambden* of the aforesaid Matter in Law "and the other Premisses in the *Chamber* of "this *Exchequer* commonly called the *Exchequer-*"*Chamber*, before the said Barons, together "sitting with the aforesaid Justices of both "Benches, should in the mean time be heard "publickly to argue: At which said Octave "of St. *Michael* came the aforesaid *John Hamb-*"*den* here as before. And because the Barons "here further will advise themselves of, and "upon the Premisses, before they give Judg-"ment thereupon, a Day is further given to "the aforesaid *John Hambden* in the same state "as now here, until the Octave of *St. Hilary*, "that some Persons learned in the Law, as "well of Council and on the Behalf of our "said Lord the King, as of Council and on "the Behalf of the said *John Hambden*, of the "aforesaid Matter in Law, and the other Pre-"misses in the Chamber of this *Exchequer*, com-"monly call'd the *Exchequer-Chamber*, before the "said Barons together sitting with the afore-"said Justices of both Benches, should in the "mean time be heard publickly to argue, and "the said Barons with the said Justices delibe-"rate thereupon; so that no Person learned "in the Law, either of the Council of our said "Lord the King, or of the Council of the said "*John Hambden*, is yet heard, and the Barons "here thereupon are not advised, *&c.*. And "afterwards in the time between the aforesaid "Octave of *St. Michael*, and the aforesaid Octave "of *St. Hilary*, as well the Attorney and So-"licitor of our said Lord the King, as two "learned in the Law of the Counsel of the a-"foresaid *John Hambden* in the Premisses, be-"ing on the Part of the said *John Hambden*, "twelve several Days in the aforesaid *Exche-*"*quer-Chamber*, before the Barons of this *Ex-*"*chequer*, sitting with them then there the "aforesaid Justices of both Benches were open-"ly and singly heard to argue at Charge, and "particularly of the said Matter in Law, and "other the Premisses (the aforesaid Record "being recited) and what thereupon they could "or would say. And the aforesaid Attorney, "and Solicitor General, divers and very ma-"ny Records, Writs, Commissions and Pre-"cedents, as well of this *Exchequer*, as of the "Court of *Chancery*, the Court of *King's-Bench* "and *Common-Pleas*, the Matter in Law, and "other Premisses in the several Writs, Re-"turns, and Schedules aforesaid contained, on "the Part of our said Lord the King, to prove, "confirm, and maintain, then and there "produced, shewed, and expounded. And "on the aforesaid Octave of *St. Hilary*, the "said *John Hambden* came here as before; and "because the Barons here further will advise "themselves of, and upon the Premisses be-"fore they give Judgment thereupon, a Day "is further given to the aforesaid *John Hamb-*"*den*, in the same State as now here, until "from the Day of *Easter*, on fifteen Days, "that the said Barons in the mean while, with "the aforesaid Justices of both Benches, may "further thereupon deliberate, for that the "said Barons have not yet thereupon, *&c.* At "which Day, the said *John Hambden* came "here as before; and because the Barons here "further will advise themselves of, and upon "the Premisses before they give Judgment there-"upon, a Day is further given to the aforesaid "*J. Hamb.* in the same State as now here, until "upon the Morrow of the Holy Trinity, that "the said Barons in the mean while, with the "aforesaid Justices of both Benches, may "further thereupon deliberate, for that the "said Barons here not yet thereupon, *&c.* "At which Day the aforesaid *John Hambden* "came here as before, and upon this, the "Premisses being seen, and by the Barons "here plainly understood, and mature De-"liberation thereupon being had with the "aforesaid Justices of both Benches, and after "the Arguments, as well by the said Justices, "as by the aforesaid Barons singly, in the "aforesaid *Exchequer-Chamber*, publickly there-"upon made it appeareth thereupon to the "Barons, by Advice of the Justices aforesaid, "that the several Writs aforesaid, and their "Returns, and the Schedules aforesaid to the "same annexed, and the Matter therein con-"tained, are sufficient in the Law to charge the "aforesaid *John Hambden* with the aforesaid "20*s.* assessed upon him in the Form and "for the Cause aforesaid. It is therefore "agreed by the said Barons, that the afore-"said *John Hambden* be charged with the "said 20*s.* and thereof make Satisfaction *&c.*

The End of Mr. HAMBDEN's Tryal.

The LORD-KEEPER's *Speech in the* Star-Chamber, *when he deliver'd the Judges their Charge by Command from His Majesty,* 14 Jan. 14 CAROLI.

My Lords the Judges,

HIS Gracious Majesty ever careful and studious of the Weal of his People, remembring the Term being now at an End, and that the Assizes draw near for you the Judges of the Realm to depart into your Circuits, and to divide your selves into all the Parts of the Kingdom; therefore hath required, that according to the usual Customs in former times, something should be said unto you in this Place, that your selves may know and acknowledge to others the singular Care and Zeal of his Majesty for the Maintenance of Religion, Justice, and Government, throughout his Kingdom.

The Service and Performance of your Circuits, in the Minds of some, obtains no further Place, but only a Matter of Course; but they would soon change their Minds, if they wanted it a while: And through the Wisdom and deep Judgment of his Majesty, Circuits in *England* have Place as one of the chiefest Ways of Peace and Government, and upon a just and sure Ground; for by the Circuits comes infinite Ease to the Subjects, both for Travel and Charge, to have publick Justice in all Parts of the Kingdom distributed to Men at Home, even at their own Doors, as it were.

The Circuits of the Justices of Assize did succeed in the Seat of the Justices in *Eyre*; and by Tryal and Experience thereof, so long it is found so much better to the Condition of the Government of this Kingdom, as that they have antiquated the former.

I have often spoken unto your Lordships in this Place, of many particular things examinable in your Assizes and Circuits; and therefore I may well, both for your Ease and my own, forbear now any long Discourse, and contain my self to some few Particulars.

Religion requires the first Place; for it is bruted, that Recusants in many Parts of the Kingdom do exceedingly encrease, which I am sorry to hear of, and unwilling to believe, if but for your Sakes; for I do not well see, if it be true, how the Judges of the Realm will be esteemed blameless: For sure I am, that from his Majesty in this Place, you have been constantly and continually called upon to look after it: And therefore, if they encrease so much in your Circuits, and so little in the King's Treasure, certainly there is a fault, that there are so few convicted: Besides your selves others owe a Duty to their Conviction, but they are subordinate, the Justices of the Peace, they bear a great sway in this Business, certainly from them the Service receives stronger or weaker Prosecution. This I hold more seriously to be considered in this time, because it is said (and I am afraid too truly) that many Men Popishly affected, endeavour to pervert others, or deceive them for worse ends. They do not stick to say that the Bishops and Prelates of our Church of *England*, some of them are inwardly affected that Way: Nay, they do not spare the sacred Person of the King himself, but give out, that the King in Heart is a Papist. By the Statute 2 *Ric.* 2. these are stiled to be horrible and false Lies, of which great Peril and quick Destruction may quickly ensue to the whole Kingdom. And therefore to the singular Honour of his Majesty, the blessed Comfort of his Subjects well affected, and terror of such as raise such Aspersions upon him, or the Prelates of the Kingdom, a remarkable and exemplary Piece of Justice hath been this Term done in this Court upon one *Pickering*, a *Shropshire* Man, for such a Scandal against the King. He was brought from thence by Mr. *Attorney*, to be there prosecuted against, tho' not in an ordinary way, but by the King's own and immediate Direction; and therefore I hold it my Duty to make mention of it here, that you may mention it in all Places of your Circuits, and beat down those fraudulous Rumours, that all Men may know the Sincerity of the King's Heart, and how he doth distaste all backsliding in Religion.

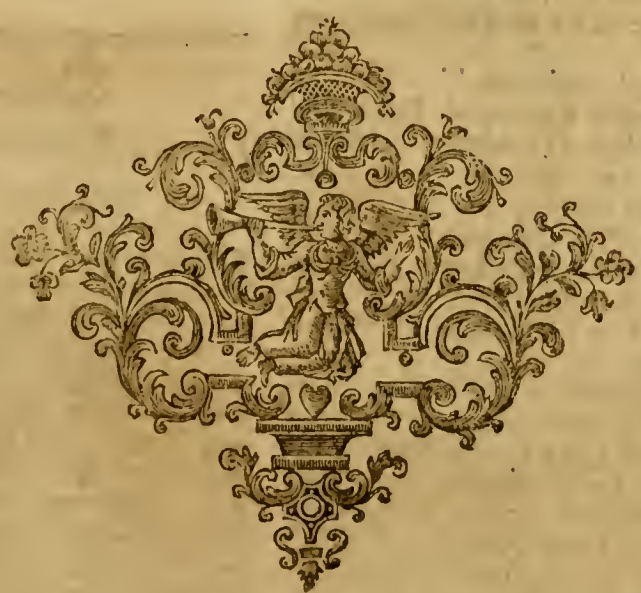
Next to the Case of Religion, I am to put you in mind of the discovering and apprehending of Felons, and other capital Offenders, and of doing Justice between Party and Party. In all Cases that shall come before you in your Circuits, his Majesty doth expect a due and careful Execution of Justice, according to the Duty you owe to God, his Majesty, and your Countrey; but I cannot forbear to mention a Particular that I have often given you in charge concerning the King's printed Orders above 8 Years ago, wherein excellent Rules are set down

down for the suppressing and punishing of Vagabonds, employing of Houses of Correction, abridging of the Number, and reforming of the Abuses of Alehouses and Tippling Houses, binding out of Apprentices, and setting of poor People on Work; of these the Sheriff and Justices of Peace were to give an Account to you the Judges of the Realm, and you to render your Account to the Council Board, wherein you have failed to do as was expected from you. Therefore I am to put you in mind, a more exact Account will be required from you therein, and therefore be more careful to call on the Sheriffs and Justices of Peace, that you may return an Answer thereof to the King and State.

There is a great and general Complaint at this time of Rates and Prizes to which all things are enhanced, in Corn, Hay, Cattle, Victuals, and other things appertaining to the Food and Use of Man. The time hath been, when the Court of *King's Bench*, and Justices of *Oyer*, who are next to the Justices of Assize, took these things to Heart. There was never more need of a Reformation than now, though in some things it may be attributed unto God's Punishment upon us, by unseasonable Weather in the last and some former Years, yet without all doubt the greatest part of it cometh from the Malice and Hardheartedness of Men, from Ingrossers and Forestallers, that do it to keep up the Markets for their own End and Advantage. There can none so well give Remedy to this, as you the Justices of Assize, and the Justices of Peace should take care of this for their own Commodity and Benefit; methinks that should prevail with them, if it were not for the publick Good. The Mayor, that hath the Clarkship of the Market, ought to seek this Reformation, he hath it by Charter. But a great many of the Deputies under them take more care for their Fees, than to look to the Duty of their Places. Therefore it behoves you the Justices of Assize, to take some Pains to reform these Abuses.

One thing more I have to insist upon, you have formerly received Admonition from the King and Council Board, that care be taken that equal Rates throughout all your Circuits be made on the King's Subjects; this is a thing worthy of his Majesty's Care, and your Labour and Endeavour; it is a heavy thing, that in Cases of publick Service, that those that are rich should put off all from themselves, and lay it upon the poor and friendless; that is the general case, whether for the levying of Men, providing of Ammunition, *&c.* generally I find the Landlord finds a way to ease his own Demesne, and lays the Burthen upon the Tenant, and the rich Man upon his poor Neighbour. I know well you have given this in Charge to the Justices of Peace in your Circuits; but for all that I see it is followed so slowly in the Countrey, as if it were a thing not fit the undertaking, and so it vanisheth; but his Majesty will not be so satisfy'd. For every Day at Council Board Petitions come, and complain of their great Grievance in being so unequally taxed; and therefore his Majesty doth require that I should declare in this Place, and command in his Majesty's Name, that you proceed heartily and quickly in this Business, that his Majesty may receive a speedy Account of it.

I might speak many things more, but I know to whom I speak, you know them before I speak them. Therefore for all other things that shall fall out to be examinable or requirable in your Circuits, as his Majesty leaveth them, so do I, to your Wisdoms and Judgments. And I do heartily pray, that both his Majesty may receive Honour, and his People Comfort, by the Performance of your Service.



Mr. St. John's SPEECH *to the Lords in the Upper House of Parliament*, January 7, 1640. *concerning* Ship-Money.

My Lords,

THE Knights, Citizens, and Burgesses of the Commons House, have entrusted me with a Message to your Lordships of a general and very high Concernment, so general, that the whole Body of the Kingdom, both Peers and People, are interested in it, of so high a Consequence, as that there is nothing that can concern us nearer.

It's one of the *Grandia Regni*, so great, as that I shall not need to present it to your Lordships in a multiplying Glass; it will appear too big in its own Dimensions.

It's not that Ship-Money hath been levied upon us, but it's that Right whereby Ship-Money is claimed, which, if it be true, is such as that makes the Payment of Ship-Money the Gift and earnest Penny of all we have.

It's not that our Persons have been imprisoned for Payment of Ship-money, but that our Persons, and (as it is conceived) our Lives too, are upon the same Grounds of Law, delivered up to bare Will and Pleasure.

It's that our Birth-right, our Ancestral-right, our Condition of continuing free Subjects, is lost, that of late there hath been an Endeavour to reduce us to the State of Villainage, nay to a lower.

It's true, the Lord might tax his Villain *De haute & de Basse*, might take all his Lands and Goods, the Villain had no Property against the Lord, the Villain he could not *Ire quo voluit*, he had no liberty of Person, the Lord might imprison him at his Pleasure; but the Villain's Life was his own, and not his Lords, the Law secured him that. But my Lords, as the Law stands now declared, it's disputable whether it doth so much for us.

My Lords, the Subject of this Message is, to present the Sense of the Commons to your Lordships; that the Laws of the Realm instituted at first, and freely assented unto, and chosen by their Ancestors for the Preservation of themselves and us their Descendents, in our Persons, Lives and Estates, have been of late entrusted unto such Hands, as have endeavoured to force upon them a contrary End to that for which they were ordained; from defensive to turn them to offensive, and instead of protecting us, to make the Laws the Instrument of taking from us all we have. Those Carriages which have produced this Sense of the Commons, I am commanded at this present to declare to your Lordships.

They are certain extrajudicial Opinions delivered by the Judges at several times; the one in *November* 1635, the other a Year after, in *February* 1636.

The Ship-writs that have issued to all the Counties of *England* for these many Years last past without Intermission. The principal thing in these Writs which I am to present to your Lordships, is not the Charge and Burthen which hath been thereby imposed upon the Subjects, though that be great, but the Declarations in them of the Law, and of the Right whereby this Butthen may be imposed.

The last is, that Judgment in Master *Hamden's* Case in the *Exchequer* upon these Ship-writs.

My Lords, the two last, that is, the Ship-writ and the Judgment, because they are very long, I am only to open them without reading, and to deliver them to your Lordships; the other two I am to read them, and then to deliver them to your Lordships.

Ship-Money.

The first Opinion in November 1635. *was read as followeth.*

I Am of Opinion, that as where the Benefit doth more particularly redound to the good of the Ports or Maritime Parts, as in case of Piracy or Depredations upon the Seas, there the Charge hath been, and may be lawfully imposed upon them according to Precedents of former Times; so where the Good and Safety of the Kingdom in general is concerned, and the whole Kingdom in danger, (of which his Majesty is the only Judge) there the Charge of the Defence ought to be borne by all the Realm. This I hold agreeable both to Law and Reason.

My Lords, these Opinions were delivered by the Judges severally and apart, they were procured by the Solicitation of my Lord *Finch*. The Judges, as he severally procured their Hands, were by him enjoined Secrecy accordingly

ingly, these Opinions walked in the dark for a Year and upwards. Afterwards the Procurer of them, my Lord *Finch*, liked them so well, as that he presumed to deliver them to his Majesty. By his Procurement, a Letter was directed from his Majesty to the Judges for the delivery of their Opinions in these and some other Additionals. The former that hath been read is more modest, it's only that his Majesty is the sole Judge of the Danger, and that the Inland, as well as the Maritime Towns, are chargeable to the Defence of the Kingdom.

It's not declared in these, that this Charge may be imposed by his Majesty alone; for the Expression is only, that the Charge may lawfully be imposed; say not by whom.

In the other Opinions they proceed a malo ad peus *and speaks plain* English, *which followeth* in hec Verba.

The Case.

Charles Rex.

WHen the Good, and the Case and Safety of the Kingdom in general is concerned, and the whole Kingdom in danger, whether may not the King, by Writ under the Great Seal of *England*, command all the Subjects in this Kingdom, at their Charge, to provide and furnish such number of Ships with Men, Victuals and Ammunition, and for such time as he shall think fit for the Defence and Safeguard of the Kingdom from such Danger and Peril, and by Law compel the doing thereof in case of Refusal or Refractoriness; and whether in such Case, is not the King the sole Judge, both of the Danger, and when, and how the same is to be prevented and avoided?

Judges Answer.

MAY it please your excellent Majesty, we have, according to your Majesty's Command, severally, and every Man by himself, and all of us together, taken into serious Consideration the Case and Questions signed by your Majesty, and enclosed in your Royal Letter; and we are of Opinion, that when the Good and Safety of the Kingdom in general is concerned, and the whole Kingdom is in Danger, your Majesty may by Writ under the great Seal of *England*, command all the Subjects of this your Kingdom at their charge to provide and furnish such Number of Ships, with Men, Victuals and Ammunition, and for such time as your Majesty shall think fit, for the Defence and Safeguard of the Kingdom, from such Danger and Peril: And that by Law your Majesty may compel the doing thereof, in case of Refusal or Refractoriness: And we are also of Opinion, that in such case your Majesty is the sole Judge, both of the Danger, and when, and how the same is to be prevented and avoided.

These Opinions were subscribed by all the Judges, in *Serjeants-Inn-Hall*, they were afterwards published in the *Star-Chamber*, that the Subjects might take notice of them, and that they might never be forgotten, they are enrolled in all the Courts of *Westminster-Hall*, in *perpetuam rei memoriam*: Your Lordships will be pleased to give me leave to repeat them in their plain and legal sense, which I conceive to be thus.

That his Majesty, as often as himself pleaseth, may declare that the Kingdom is in danger; that so often, for Prevention of such Danger, his Majesty by his Writ, under the great Seal of *England*, may alter the Property of the Subjects Goods, without their Consent in Parliament, and that in such Proportions, as his Majesty shall think fit, and besides the altering of the Property of their Goods, for the Prevention of such Danger, may deprive them of the Liberty of their Persons, and of their Lives, and that in such manner as himself shall please.

1. The first of these (*viz.*) That his Majesty may declare the Danger, as often as he pleaseth, is made good in these words, That the King is the sole Judge of the Danger, and when the same is to be prevented and avoided.

2. The second, that so often he may alter the Property of the Subjects Goods, without Consent in Parliament, in these words; that his Majesty may, by Writ under the Seal of *England*, command and compel all the Subjects of the Realm, at their charge, to provide and furnish Ships.

3. That this may be in what proportion his Majesty shall please, in these words; That his Majesty may command them to provide and furnish such number of Ships, with Men, Victuals, and Ammunition, and for such time as his Majesty shall think fit.

4. The last (*viz.*) that which concerns our Persons in these two clauses.

1. That his Majesty in Case of Refractoriness may compel the doing of it. This compulsion in Case of Refractoriness, includes the Person as well as the Estate: Nay, it sounds more in the Personality than otherwise. For the other, *viz.* whether this Personal compulsion may extend so far as to Life, I humbly leave it to your Lordships Considerations, upon the other Clause; that is, that his Majesty is the sole Judge of such Danger, and when, and how the same is to be prevented. Whether the Words, how it is to be prevented, in this Case of Personal compulsion, doth not leave the manner of it wholly in his Majesty's Breast.

My Lords, if these Opinions extend only to Ship-Money, it is enough his Majesty takes what he will, and when he will. If all be taken to Day, and afterwards by Descent or my own Labour I get a new Stock or livelyhood, that is no more mine than the former, so that there is no property left unto the Subject, though the Opinions go no further. But My Lords, Ship-Money is not the whole extent of them, Ship-Money, by these Opinions

ons is not due by any peculiarity, in Ship-Money: But Ship-Money is therefore due, because his Majesty is the sole Judge of the Danger of the Kingdom, and when, and how the same is to be prevented, because his Majesty for the Defence of the Kingdom, may at his Will and Pleasure charge the People. This is the Ground; and upon the same Reason the Compulsion may be as well for the making and maintaining Castles, Forts and Bulwarks, making of Bridges, for transporting his Armies, for Provision of Wages and Victuals, for Souldiers, for Horses and Carriages; it may be multiplied in *infinitum*.

It may be done when the good and Safety of the Kingdom is concerned, this extends to all things and at all times, *Qui jacet in terra, non habet unde cadat.*

If these Opinions be Law, I humbly leave it to your Lordships Considerations, whether the Government be not *Imperium legibus solutum*; The next thing I shall offer to your Lordships is the Ship Writs, a transcript of one of them directed to the Sheriff of *Dorsetshire*, I shall deliver: all the rest being of the same Form. cause the writ is long, I shall open it briefly, its to this Effect.

There is a Declaration in it that *Salus Regni periclitabatur*; That the Safety of the Kingdom was in Danger.

Therefore the Inhabitants of the several Counties, are commanded for the Defence of the Kingdom, for the Custody of the Seas, for the Safeguard of the Merchants from *Pyracy* inward and outward, that they should provide a Ship of War, furnished with Guns, Gun-Powder, double Tackle, and all other necessaries; and this Ship thus furnished at a day set, to be brought to *Portsmouth*, to be provided for 26 Weeks of Mariners Wages, Victuals and other Necessaries; and for the doing of this, Authority is given to the Sheriffs of the several Counties, to assess every one of the Inhabitants *Secundum statum & facultates suas*, according to their Estates and Means, and further Power given him by distraining and setling of the Distress to levy these Monies *si contrarios invenerit*, than to imprison their Persons: And further declares, that all this may be done, *Secundum Legem & consuetudinem Regni*; the Sence I conceive is briefly thus. That by the Laws of the Kingdom, when his Majesty shall declare that the Kingdom is in Danger, he may alter the Property of the Subjects Goods, and imprison their Persons; nay, that not only his Majesty, but the Sheriffs may imprison their Persons. By the Law the the Lord might imprison his Villain, but could not transfer that Power to the Bayliff or to any other, it was Personal. That the Execution of this Power over the Persons of the Subjects hath gone no farther than their Imprisonment, whether therein we be not beholden to his Majesty's Grace and Goodness, and nothing at all to the Opinions of the Judges; I leave it to your Lordships Considerations.

The last thing is, the Judgment in the *Exchequer*, in the 13th Year of his now Majesty's Reign, against Mr. *Hambden*. The Record is very long: I shall briefly open it to your Lordships, *Quarto Aug.* 11. *Caroli*, there issued Ship-writs to the several Counties; amongst the rest to the County of *Bucks*. The Sheriff assessed the Inhabitants; some of them made Default, and did not pay. Upon a *Certiorari* out of the *Chancery*, directed to the Sheriff, he certifies the Persons that made default, together with the Summons assessed upon them. From the *Chancery*, by *Mittimus*, these Certificates were sent into the *Exchequer*, to the Intent Processes might issue against the Defaulters. A *scire facias* issued to the Sheriff of *Bucks*, who thereupon, amongst other Returns, returns that Mr. *Hambden* hath been assessed 20 Shillings, for some Lands in *Stoke Mandevile* in that County, which he had not paid. Mr. *Hambden* appeared, and upon his Appearance, demands *Oyer* of the Ship-writs, and the other Proceedings. After his hearing thereof, and understanding the Contents, he demurs in Law, that is, demands the Judgment and Opinion of the Judges, whether this Writ was sufficient in Law, and to force him to pay the said 20 Shillings.

This being a great and general Case, the Barons of the *Exchequer* desired the Assistance of the rest of the Judges, who did join accordingly. The Case came to be argued, there were four Arguments, two on Mr. *Hambden*'s Side, and two on the other Side: The first was in *Michaelmas* Term, after *All Hallandtide*, and all the four Arguments were speeded before *Christmas* Day, two of them in the Term; and no longer Time would be procured for the rest, but the short Vacation between *Michaelmas* Term and *Christmas*. It was a Case of so little Concernment, that whereas in *Westminster-Hall* Term after Term is usually given to argue any Demurrer, this must be argued betwixt *All Hallantide* and *Christmas* throughout. After the Arguments the Council on both sides were commanded to bring before the Judges the Records and Authorities cited: They were brought; and for the Ease of the Judges, many of them on Mr. *Hambden*'s part were abbreviated on the back sides: Those Abbreviations were commanded to be expounded. Afterwards the Case came to Argument at the Bench; there the Case was judged, and by the greater part of the Judges, Judgment was given against Mr. *Hambden*. When the Judges had delivered their Opinions, it was the Barons part to give Judgment; the Judgment was, *Quod separalia brevia predict' & return' eorundem ac Schedulæ predict' eisdem annex' ac materia in eisdem content' sufficien' in lege existunt ad præfatum Joannem Hambden de prædict' viginti solidis super ipsum in forma & ex causa predict. assessis onerand' Ideo consideratum est per eosdem Baron' quod prædictus Joannes Hambden de eisdem viginti solidis oneratum exinde satisfaciat.*

My Lords, this Judgment is a full and plenary Execution of the former Opinions of the Judges, and of the Ship-writs, for so much as it concerns our Propriety: It was given in Mr. *Hambden*'s Case only, but binds all the Subjects for so binding; it is as that an honourable Person, now in my Eye, in a Case depending in the *King's-Bench*, was denied any Argument or Debate concerning the Right of Ship-money, for no other Reason, but that it had been your

by the former Judgment adjudged already in the *Chequer*.

My Lords, these extra-judicial Opinions of the Judges, these Ship-writs, and this Judgment, are those Carriages, which have introduced this Sense of the Commons, That the fundamental Laws of the Realm concerning our Property and our Persons are shaken.

My Lords, The Commons have taken the extra-judicial Opinions published and inrolled, and the rest, severally into Consideration; they have been read openly in the House, and after long Debate, and long rather in Consideration of the Greatness of the Matter than of the Difficulty of it, they came to vote; four several Votes passed upon them, the Votes passed without so much as one negative Voice to any of them.

The Votes were in Substance, That they were against the Laws of the Realm, the Right of the Property, the Liberties of the Subject, contrary to the former Resolutions of the Parliament, and to the Petition of Right.

The extra-judicial Opinions inrolled, they voted in the whole, and every Part of them to be contrary to all these; for they did conceive, that in these Opinions there was not any one Clause that was agreeable to the Law, but that throughout they were contrary to the Laws

My Lords, The things which the Commons took into their Consideration, before they proceeded to their Votes, were the Proceedings in the Parliament held 3 *Car.* when the Petition of Right was framed.

The Commons went no higher, the Reasons inducing them thereto, were, because in that Parliament all those three had been debated, Property of Goods, Liberty of Persons, and Security of our Lives.

Two of them, that is, Property of Goods and Liberties of Persons, by the Occasions of the Commissions for the Loan, and the Instruction wherewith these Commissions were accompanied, that concerning our Lives, by Occasion of the Commissions that had issued, for the executing of Martial Law.

They conceive, that if any thing concerning these had passed both Houses and his Majesty, or of the Judgment of both Houses without his Majesty, it would be in vain to look further, that it would be *actum agere*: Nay, my Lords, they had a farther Consideration, that if those were already settled in that Parliament, it would not only be derogatory to the Jurisdiction of Parliament, but dangerous to look higher, as that they would infer a Defect in those Proceedings, and cast an Aspersion upon that Parliament: I am commanded now to present to your Lordships Considerations, those things which satisfy the Commons, which are these three:

1. The Commissions for the *Loans*, with the Instructions.

2. A Commission call'd, *The Commission of Excise.*

3. An Addition of Saving, which was desired by your Lordships to have been added to the Petition of Right, at the time of the framing of it.

The Case upon the Commission for the *Loans*, standeth thus;

13 *Octobris*, 2. *Caroli*, divers Commissions were directed to sundry Commissioners, to the Number of sixty or seventy Lords and Gentlemen, in the several Counties issued, whereby a compulsory Aid, by way of Loan, was required of the Subject: The Causes and Grounds of this Command, are in the Commissions expressed to be these.

The King found the Crown engaged in a War, by the Advice of both Houses in Parliament; that not only the King and the Subject, but also his Allies beyond-Sea were in Danger.

The Parts beyond-Sea, where our Cloth is vented, and from whence we have most of our Provision for Shipping, were indangered; his Majesty's Treasures were exhausted, and his Coffers empty. A Parliament had been summoned, but no Supply.

Unavoidable Necessity both at Home and Abroad, multiplied the Enemies. Great and mighty Preparations, both at Sea and Land, threatned the Kingdom daily.

Not only the King's Honour, but the Safety and very Subsistence of the King and People, and of the true Religion Abroad, are in apparent Danger of suffering irreparably, unless not only a speedy, but also a present Stop be made; which cannot admit so long Delay as the calling of a Parliament: The People assured on the Royal Word of a King, that not one Penny should be bestowed, but upon those publick Services only, wherein every of them, and the whole Body of the Kingdom, their Wives, Children, and Posterity, have their personal and common Interests.

The Commissioners Diligence commanded, as they tendred the King's Honour, and Safety of the Realm: Here *Salus regni periclitabatur*, the whole Kingdom was in Danger, as in the Judges Opinions, and as in the Ship-writs and Judgments in the *Exchequer*: Nay, my Lords, further, the Safety and very Subsistance of the King, People, and true Religion, were in Danger of suffering irreparably; the dangerous Instance, not a speedy, but present Stop must be made; the Supply could not stay for a Parliament; at this time his Majesty's Coffers were exhausted, the King found the Crown engag'd in this War, before the Access of it to himself; and that by Advice in Parliament; all this expressed, only lending of Monies for Prevention required; but it was a compulsory thing, and became compulsory, by the Instructions to bind over to the Board, and Imprisonment for Refusal. The Commissions were in the Parliament 3. *Car.* First resolved in the Commons House to be against Law, afterwards by your Lordships, and consented unto by his Majesty, and are declared to be so in the Petition of *Right*, and the Imprisonment of the Subjects for Refusal, declared in the Petition of *Right* to be against Law.

My Lords,

The next is the Commission called, *The Commission of Excise.* This was dated *ultimo Februarii*, it was dated after the Summons to that Parliament:

liament: This Commission issued to 33 Lords, and others of his Majesty's Privy-Council; the Commissioners are thereby commanded to raise Monies by Imposition, or otherwise; as in their Judgments they shall find to be most convenient.

The Causes wherefore these Monies are to be raised, are expressed to be these.

The Defence and Safety of the King and People, which without extreamest Hazard of the King, Kingdom, and People; and of the the King's Friends and Allies beyond Seas, cannot admit any longer Delay; inevitable Necessity wherein Form and Circumstance must rather be dispensed withal, than the Substance lost.

The Commissioners not to fail therein, as they tendred his Majesty's Honour, and the Safety of the Kingdom and People.

Here *Salus regni periclitabatur*, the whole Kingdom declared to be in Danger, in greater and nearer, than in the Opinions of the Ship-writs or Judgments in the *Chequer*.

In the Parliament 3. *Caroli* this Commission was adjudged by the Commons to be against the Laws of this Realm, and contrary to the Judgment given in the Petition of *Right*, and after a Conference with your Lordships, desiring his Majesty, that it might be cancelled; the then Lord Keeper shortly after brought it cancelled to your Lordships in the House, and there said it was cancelled in his Majesty's Presence: You sent it cancelled to the Commons to be viewed, who afterwards sent it back to your Lordships.

My Lords, The last is the Addition of Saving, desired to be added to the Petition of *Right*, which was in these Words:

We humbly present this Petition unto your Majesty, not only with a Care of preserving our own Liberties, but with due Regard to leave entire the Sovereign Power, wherewith your Majesty is trusted, for the Protection, Safety, and Happiness of your People: Your Lordships Desire of this Addition to the Petition of *Right*, was taken into Consideration by the Commons; and after Debate, it was thought fit by them to be rejected. A Conference was had with your Lordships, and Mr. *Noy* appointed by the Commons to declare the Reasons of their Resolution; your Lordships not receiving Satisfaction at that Conference, whether this Addition should be rejected or not. It was again debated in the Commons House, they ventur'd upon the same Bottom again: It was thereupon resolved to be rejected; the Reasons of their Rejections were these in Summ.

First, They confess, that if these Words were taken as a bare Proposition only, without any further Reference to the Petition of *Right*, that it was a true Proposition.

That is, That the Law hath trusted the King with Sovereign Power for the Protection, Safety, and Happiness of the People.

But if it should be added to the Petition of *Right*, as was desired, then was it not true, but would make the Petition of *Right*, *felo de se*, and wholly destructive to itself in all the Parts of it; that it would proceed *a bene divisis ad mala conjuncta*: for then the Petition of *Right*, as they resolved, would have this Sense.

Whereas, in the Petition of *Right*, it is said, That no Aid, Tax, Talliage, or other Charge whatsoever, may be imposed upon the People, without their free Consent in Parliament; it would have this Construction. 'Tis true, it cannot be done by the King's ordinary Power, but it may be done by that Sovereign Power wherewith the Law hath entrusted his Majesty for the Protection, Safety, and Happiness of the People.

So likewise for Imprisonment, that they ought not to be imprisoned without due Process of Law. It is true ordinarily, that the King may imprison by his Sovereign Power, wherewith the Law hath entrusted him for the Protection, Safety, and Happiness of the People.

So that, for that Martial Law, that the Subjects Lives ought not to be taken away, unless by due Process of Law. 'Tis true ordinarily, but the King may do it by his Sovereign Power, wherewith the Law hath entrusted him for the Protection, Safety, and Happiness of the People; whereby they conceive, that it would not only make the Petition of *Right* to be wholly destructive of itself, but likewise this Petition of *Right* would leave the Subject in a far worse Condition than it found them; for it would necessarily infer, that which is against the Law: *viz.* That the King by his Sovereign Power, when he pleased to declare that it was for the Good of the People, might do all this.

Your Lordships, at a Conference of both Houses, engaged on the Part of the Commons by Serjeant *Glanvile*, and Sir *Henry Martin* received Satisfaction from these Reasons, and consented to the leaving out of this Addition; and accordingly the Petition of Right passed, and is printed without it.

My Lords, These were the things I was commanded to present unto your Lordships; other things there were, as the Sentence against Bishop *Manwaring*: But these weighed so much with the Commons, as that they conceived they needed no more.

My Lords, These Precedents of that Parliament, and these Opinions of the Judges, the Ship-Writs, and the Judgments in the *Exchequer*; they are like the two Buckets of a Well, if one go up, the other must go down: *Non bene conveniunt*.

My Lords, we have not cited these Precedents out of diffidence, that your Lordships had forgotten them, but because others have; or that we distrust your Lorships Justice, if you had forgot them: For before these were, your Lordships concurred in Opinion with your worthy Ancestors, that first gave them. Their noble Blood runs in your Veins. It's now to confirm your own Judgments as well as theirs: In your Lordships Breasts, there are the same Magazines and Fountains of Honour and Justice as were then, these Judgments and Proceedings were the Actions of both Houses, the Danger by the Violation is equal.

The Commons see nothing in the Judges Opinions or Judgments, why they should recede

cede from their former Judgments; they hope the same from your Lordships.

Besides, *my Lords*, that the Case is now much varied from what it was then; not only in the Matter, but as it concerns the Honour and Jurisdiction of this great Judicatory, the Parliament.

The Breach of Priviledges in the Members is tenderly resented, because that without this Freedom, they cannot advise and consult concerning the *Arduæ Regni*.

But when they have done all to their Judgments, and their Acts of Parliament overthrown by the Judges afterwards, this makes Parliaments to be nothing; this sets up the Judges above the Parliament, this puts us out of hope of redress; if they may overthrow the Proceedings of that Parliament of 3 *Caroli*, they may by the same Reason overthrow the Actions of this, and of all future Parliaments.

My Lords, This was not the Practice of their Predecessors, though but in private Causes; if difficulty of Law arose, they always consulted this Oracle, and thence received their Answer how to give Judgment. Judgments in the highest Court of *Westminster-Hall*, I mean in the *King's-Bench*, where the Proceedings are *coram Rege*, are here reversable by Writ of Error. In Causes of great and general Concernment, they ever adjourned them hither as things too high for them.

Qui consulta patrum, qui leges juraque servat, doth well, they have taken that in their hands they had not to do withal; and how they have handled the Matter, your Lordships have heard.

Role of 11°. Rich. 2d, *are the Executors of the Statutes, and of the Judgments and Ordinances of* Parliament, *they have here made.*

The Judges as is declared in the Parliament, they have here made themselves the Executors of them; they have endeavoured the Destruction of the Fundamentals of our Laws and Liberties. *Holland* in the Low-Countries lies under the Sea, the superficies of the Land is lower than the superficies of the Sea: It's Capital therefore for any Man to cut the Banks, because they defend the Country.

Besides our own, even Foreign Authors, as *Comines* observes, that the Statute *de Tallagio*, and other old Laws, are the Sea-Walls and Banks which keep the Commons from the Inundation of the Prerogative.

These Pioneers, they have not only undermined these Banks, but they have levelled them with the Ground.

If one that was known to be *hostis Patriæ*, had done this though the damage be the same, yet the Guilt is less.

But the *Conservatores Riparum*, the Overseers intrusted with the Defence of these Banks, for them to destroy them, the Breach of Trust aggravates, nay alters the Nature of the Offence.

Breach of Trust, though in a private Person, and in the least things, is odious amongst all Men; much more in a publik Person, and in things of great and publick Concernment, because great trust binds the Party trusted to greatest Care and Fidelity.

It's Treason in the Constable of *Dover* Castle to deliver the Keys to the known Enemies of the Kingdom: because that Castle is the Key of the Kingdom: Whereas if the House-keeper of a private Person, delivered Possession to his Adversary, it's a Crime scarce Punishable by Law.

The Judges under his Majesty, are Persons trusted with the Laws; and in them, with the Lives, Liberties, and Estates of the whole Kingdom: This Trust of all we have, is primarily in his Majesty, and from him delegated to his Judges.

His Majesty, at his Coronation, is bound by his Oath to execute Justice to his People according to his Laws; thereby to assure the People of the faithful Performance of this great Trust. His Majesty again, as he trusts the Judges with the Performance of this part of the Oath, so doth he likewise exact another Oath of them, for the due Execution of Justice to the People, according to the Laws: Hereby the Judges stand entrusted with this part of his Majesty's Oath.

If therefore the Judges shall do wittingly against Law, they do not only break their Oaths, and therein the common Faith and Trust of the whole Kingdom, but do as much as in them lyes, smear and blemish the sacred Person of his Majesty, with the odious and hateful Sin of Perjury.

My Lords,

The Heinoufness of this Offence is most legible in the severe Punishments which former Ages have inflicted upon those Judges, who have broken any part of their Oaths wittingly, though in things not so dangerous to the Subject, as in this Case in Question.

Sir *Thomas Wayland*, Chief Justice of the *Common-Pleas*, *Edw.* I. was attainted of Felony for taking Bribes, and his Lands and Goods forfeited, as appears in the *Pleas of Parliament*, 18 *Edw.* I. and he was banished the Kingdom as unworthy to live in that State, against which he had so much offended.

Sir *William Thorpe*, Chief Justice of the *King's-Bench*, in *Edw.* III's time, having of five Persons received five several Bribes, which in all amounted to 100 *l.* was for this alone adjudged to be hanged, and all his Lands and Goods forfeited: The Reason of this Judgment is entred in the Roll, in these Words:

Quia prædict' Willielmus Thorpe, *qui sacramentum Domini Regis erga populum suum habuit ad custodiendum fregit malitiose false & rebelliter quantum in ipso fuit*; because that he, as much as in him lay, had broken the King's Oath made unto the People, which the King had entrusted him withal.

There is this notable Declaration in that Judgment; that is, That this Judgment was not to be drawn into Example against any other Officers who should break their Oaths, but only against those *qui prædictum sacramentum fecerunt & fregerunt & habent leges* Angliæ *ad custodiendum*; that is, only to the Judges Oaths, who have the Laws entrusted to them.

This Judgment was given 24 *Edw.* III. the next Year in the Parliament, 25 *Edw.* III. it

was debated in Parliament, whether this Judgment was legal; *& nullo contradicente*, it was declared to be just, and according to the Law; and that the same Judgment may be given in time to come upon the like Occasion. This Case is in point, that it's Death for any Judge wittingly to break his Oath, or any part of it.

This Oath of *Thorpe* is entred in the Roll, and is the same *verbatim* with the Judges Oath, in 18 *Edw.* III. and the same which the Judges now take.

Your Lordships will give me Leave to observe the Differences between that and the Case in Question.

First, That of *Thorpe* was only a selling of the Law by Retail to those five Persons; for he had only five several Bribes of those five Persons; the Passage of the Law to the rest of the Subjects, for ought appears, was free and open.

But these Opinions are a Conveyance of the Law by Whole-sale, and that not to, but from the Subject.

In that of *Thorpe*, as those five Persons, it was not an absolute Denial of Justice, it was not a damming up, but a streightning only of the Channel.

For whereas the Judge ought *judicium reddere*, that is, the Law being the Birth-right and Inheritance of the Subject, the Judge when the Parties in Suit demand Judgment, should *redare*, freely restore this Right unto them; now he doth not *dare*, but *vendere* with the Hazard only of perverting Justice; for the Party that buys the Judgment may have a good and honest Cause.

But these Opinions, besides that they have cost the Subject very dear, dearer than any; nay, I think I may truly say, than all the unjust Judgments that ever yet have been given.

Witness the many hundred thousand pounds which under Colour of them have been levy'd upon the Subject, amounting to seven hundred thousand pounds and upwards in Money paid unto the Treasurer of the Navy, besides what the Subjects have been forced to pay to the Sheriffs, Bailiffs, and others, which altogether, as is conceived, amounts not to much less than a Million; besides the infinite Vexations of the Subjects by Suits in Law, binding them over to Attendance of the Council-Board, taking of them from their necessary Employments in making of Assesses, and Collections, and Imprisonments of their Persons.

I say, *my Lords*, besides what is past to make our Miseries complete, they have as much as in them lyes made them endless; for by these Opinions they have put upon themselves and their Successors an Impossibility of ever doing us right again, and an Incapacity upon us of demanding it so long as they continue.

My Lords,

In that sore Famine in the Land of *Egypt*, when the Inhabitants were reduced to the next Door to Death; for there they say, *Why should we die for Bread?* First they gave their Money, next, their Flocks and Cattel; and last of all, their Persons and their Lands, for Bread; and all became *Pharaoh's*. But by this *Rex Regia*, there is a Transaction made, not only of our Persons, but of our Bread likewise, wherewith our Persons should be sustained. That was for Bread, this is of our Bread. For, *my Lords*, since these Opinions (if we have any thing at all) we are not at all beholden to the Law for it, but are wholly cast upon the Mercy and Goodness of the King.

Again, There the *Egyptians* themselves sold themselves and all they had to the King; if ours had been so done, if it had been done by our own free Consent in Parliament, we had the less Cause to complain; but it was done against our Wills, and by those who were trusted, and that upon Oath, with the Preservation of those things for us.

My Lords,

The Laws are our Forts and Bulwarks of Defence. If the Captain of a Castle, only thro' Fear and Cowardice, and not from any Compliance with the Enemy, surrender it; this is Treason, as was adjudged in the Parliament, 1 *Ric.* 2. in the two Cases of *Grymes* and *Weston*, and in the Case of the Lord *Gray*, for the surrendring of *Berwick* Castle to the *Scots* in *Edw.* III's time, though good Defence had been made by him, and that he lost his eldest Son in Maintenance of the Siege; and yet the Loss of a Castle looseth not a Kingdom only, but the Place and adjacent Parts, without Trouble to the whole.

But by these Opinions, there is a Surrender made of all legal Defence of Propriety; that which hath been preached is now judged, that there is no *meum & tuum* between the King and the People, besides that which concerns our Persons.

My Lords,

The Law, it is the Temple, the Sanctuary whither the Subject is to run for Shelter and Refuge. Hereby it is become *Templum sine Numine*, as was in the Temple built by the *Roman Emperor*, who after he had built it, put no Gods into it.

We have the Letter of the Law still, but not the Sense.

We have the Fabrick of the Temple still; but the Goddess, the *Dii-Titulares* are gone.

But, *my Lords*, this is not all the Case (that is) that the Law now ceaseth to aid and defend us in our Rights, for then Possession alone were a good Title, if there were no Law to take it away, *occupanti concederetur & melior esset possidentis conditio*: But this (though too bad) is not the worst; for besides that which is privative in these Opinions, there is somewhat positive: For now the Law doth not only not defend us, but the Law itself is made the Instrument of taking all away.

For whensoever his Majesty or his Successors shall be pleased to say, That the Good and Safety of the Kingdom is concerned, and that the whole Kingdom is in Danger, then when and how the same is to be prevented, makes our Persons and all we have liable to bare Will and Pleasure.

By this Means, the Sanctuary is turned into a Shambles, the Forts are not slighted, that so they might neither do us Good or Hurt; but they are held against us by those who ought to have

have heal'd them for us, the Mouth of our own Cannon is turned upon our selves.

My Lords, in these Expressions, there is no Reflection upon his Majesty. It is only that those Judges would have forced upon the Law an unnatural and contrary Motion, his Majesty's Carriage in the Business clears his Justice.

The first Opinion of the Judges under their Hands, was procured by the Lord *Finch*'s Solicitation only, and by him brought to his Majesty. These Opinions procured the Letter from his Majesty for the Opinions inrolled, wherein, as likewise in the Case in the *Exchequer*, the Judges were left free, as was acknowledged by two of the Judges in the *Exchequer-Chamber*, who argued against those Opinions, with this protestation, That if there were any Miscarriages in that Business it must fall wholly upon themselves; that the King was blameless.

My Lords, we know his Majesty's Justice is the fairest, the richest Diamond in his Crown, the Dust which these Men would have blown up, and forc'd upon it, is fall'n short, and with your Lordship's helping Hands, it will, we hope, be cast upon their own Faces, a fitter place for it than the other.

My Lords, the Oaths of the Judges, as they bind them to the due Administration of Justice to the Subjects, according to the Laws, so as they be of the King's Council, by their Oaths, they are bound lawfully to Counsel him, that is, when their Opinions are demanded, they are to deliver them according to the Law.

I shall therefore put your Lordships in Mind of the memorable Proceedings against these Judges who have broken this Part of their Oath in the noble Parliament, held the eleventh of *Richard* the second.

In this Parliament, Judgment of High-Treason was given against Eighteen several Persons, and all (save one of them) of eminent Rank; three Privy Counsellors, the Arch-Bishop of *York*, the Duke of *Ireland*, and Earl of *Suffolk*, the Bishop of *Exeter* the King's Confessor, five Knights, some whereof had been Servants to *Edward* the third, and all save one, Servants to the then King, and some of them of Noble Descent; six Judges, *Lockton* the King's Serjant at Law, *Blake* of the King's Council at Law, and *Uske* the under Sheriff of *Middlesex*: Of these eighteen, eight were executed (that is) Sir *Robert Tresilian* the Chief Justice, five Knights, *Blake* of the King's Counsel at Law, and *Uske* the Under Sheriff. Three, that is, the Arch-Bishop of *York*, Duke of *Ireland*, and Earl of *Suffolk*, fled.

The rest had their Lives pardoned, but were banished; their Lands and their Goods forfeited, and little Pensions allowed them during their Lives. It was made Felony for any one to procure their Pardons, and they to be dealt with as Traytors, if they returned from their Banishment: And of these eighteen Persons all save three were impeached by the Commons.

The Offences which procured these exemplary Punishments, although their Proceedings be long, and comprehended all that was done in this Parliament, I'll briefly open them to your Lordships. During the Minority of that King by ill Counsel of some near his Person, there were Miscarriages in Government. In the tenth Year of his Reign, and the twentieth of his Age, a Parliament was holden, in that Parliament in aid of good Government, and of due Execution of the Laws, a Commission was awarded to 12 several Peers, and others of greatest Wisdom and Fidelity. The Commissioners had Power in all things concerning the Houshold, 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.

This Commission was to endure one Year; at the Years end the King would be of full Age.

My Lords, the endeavouring to overthrow this Commission issued by Authority of Parliament for the Welfare of the Realm, upon Pretence that it intrenched upon the Royal Power, tended to the Disherison 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.

My Lords, the conspiring to overthrow this Commission, and the Procurers of it, is the Case in brief, for although 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 18 Persons condemned, 5 of them were Plotters (*viz.*) the Arch-Bishop, Duke of *Ireland*, Earl of *Suffolk*, *Tresilian* the Chief Justice, and Sir *Nicolas Bramber*; these insinuated into the King, That this Commission was in diminution of his Kingly Power, That the Procurers of it had extorted his Royal Assent; and this was Treason. Thereupon *Blake* one of the King's Council 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 herein.

The Indictment was drawn by him, which is entred into 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 Disherison and Derogation of the Crown, that they compell'd the King's Consent, and that they confederated and bound themselves to maintain one another in so doing.

It was intended that they should be tried upon this Indictment in *Middlesex* or in *London*. *Uske* 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.

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 cover their Malice from the King, and the Kingdom, before the Tryal was to be had, they advise 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 *Lockton* the King's Serjeant. *Blake* of the King's Counsel at Law was commanded to draw up these Questions for the Judges Opinions, who did it accordingly.

For the drawing up of these Questions, and the Indictment, *Blake* was condemned and executed.

The Question being drawn into Writing, the Judges were sent for to *Nottingham* Castle, where, in the King's Presence they were commanded upon their Allegiance to deliver their Opinions

1 The first Question was, Whether the Commission was in the Derogation of the Crown, they answered it was.

2 The second Question was, Whether the perswading and urging the King's Consent in Parliament thereto was Treason, they answered, That it was, thought there were some other Questions asked, all concerning Parliamentary Proceedings, yet these were the main, and those for which they were condemned, as appears, by the Replication of the Commons to the Judges Answer, and by the Words of the Judgment (*viz.*) that they knew that this Commission was awarded in Parliament, that it was for the Publick Good, that they knew of the Trayterous Intents to destroy the Procurers of this Commission, that they knew the Law, and that it was not Treason, and had delivered their Opinions thereby under Colour of Law, to cover their Treasonable Intent, and therefore Judgment of Treason was given against them and against *Lockton* the King's Serjeant at Law, who had subscribed the Opinions with the Judges.

Sir *Simon Burley*, one of the five Knights that were executed, was condemned only for conspiring the Death of the Procurers of this Commission, and although there be other Articles against the rest, yet this alone is adjudged Treason in the several Judgments against every one of the eighteen.

1 My Lords, it is observable in these Judgments, that they are adjudged Traytors, as well against the Person of the King, as against the Common-wealth.

2 Secondly, it is there declared upon great Advice taken, that in Treasons which concern the Kingdom, they are not bound to proceed according to the Rules of the Common Law and inferior Courts, but according to the Course of Parliaments, so as may be for the common Good.

3 Thirdly, Judgment was given in Parliament, and Execution awarded, and afterwards a Bill of Confirmation passed, in respect of their Lands, to give them for a Day past, and for Declaration that this should be no Precedent to inferior Courts to adjudge the same Case Treason, save only in Parliament.

These Judgments were not huddled up in haste; but they were given upon long and mature Deliberation. These Judgments were the whole Work of that Parliament, and Proceedings against the five Plotters, were begun the fourteenth of *November*, and the Judgments were not given till the thirteenth of *February* following, which was a Quarter of a Year: And is declared in the Roll, that they spent a long time, and took great Pains to examine the Evidences, the better thereby to satisfie their own Consciences and the World.

I insist the more upon this to take away all Blemish from these Proceedings.

It is true, my Lords, these Judgments were afterwards in the Parliament of 2. *Rich.* 2. revoked and made void.

But, my Lords, that Parliament of 21. *Ric.* 2. of Revocation was held by Force, as it is declared in the Parliament Rolls of 1 *Hen.* 4. *November* 21 and 22. that this was held *vires armatis, & sagitariis immensis.*

The Knights of Parliament were not elected by the Commons, *prout Mos exigit, sed per regiam voluntatem:* And so the Lords, *summonari fecit Rex Dominus sibi adherentes.*

My Lords, by these Proceedings, it doth appear, that this Parliament of Revocation was no free Parliament, if at all it deserves the Name of a Parliament. But to put all out of doubt, the Parliament of 1 *Hen.* 4. *No.* 48. these Judgments of Revocation are declared to be πόνερα *iniqua, & omni juri repugnantia,* erroneous, wicked and contrary to all Right and Reason. In the Parliament of 1 *Hen.* 4. in Print, these Attainders are confirmed: So that these Judgments of Attainder have the Authority of two Acts of Parliament, both of them of Force to this Day.

Your Lordships will give me leave to observe the Differences and Arguments, between the Offences of those, and of the present Judges, and as well in the Way and Manner of Procurement, as in the Manner of them: For the Manner of Procurement, those Judges in *Rich.* II's time were in the King's Presence, and as it is in the Parliament Roll of 1 *Hen.* 4. *Nov.* 18. they were *violenter attracti,* violently drawn to deliver their Opinions, and that *metu mortis & cruciatus corporis,* for the fear of Death and Tortures of their Bodies; and at their Tryals severally they say, That in Part Violence had been offered to their Persons; because they had differed in the delivery of their Opinions. My Lords, this was such a Miscarriage in the Judges, these Circumstances considered, as might *cadere in virum fortem & constantem.* But, my Lords, Fear or Cowardize, is no Plea for delivering up of the Forts and Bulwarks of the Kingdom.

But in the present Business, there is none of all this, it came from within; there is no outward Force. In those of *Rich.* II. it was *Actus unicus,* once done at *Nottingham* Castle; if the Judges had been put to it the second time, perhaps

perhaps the rest, as well as some of them, had repented, and would not have done it over again; for *Belknape*, the Chief Justice of the *Common-Pleas*, the same Day declared his Sorrow, and said, That now there remained nothing but a Horse, a Hurdle, and a Halter; and *Fulthorpe*, another of them, the next Day declared his Grief for what he had done: But here, after the Opinion in *November* 1635, a Year after, *viz.* 1636, they proceed *a pessimo ad pejus pessimo*, for that was with Additions, most of them declared their Opinions in their Circuits, and a Year after confirmed it again by the Indictment in the *Exchequer*: Here it was done Year after Year in cold Blood: One murderous Blow, whereupon Death follows, is Felony: But to multiply Wounds upon the dead Body, and to come again in cool Blood to do it, it shews the Height of Malice. In these two things they agree:

1. That which the Judges did in *Rich.* II's time, they did it against their own Knowledge; they knew the Commission was done by Act of Parliament; so here they knew the Petition of *Right* damn'd the Commissions of *Loans*, a stronger Case than that, they subscribed many of them, knew that the Commissions of *Excise* was damn'd in Parliament, they knew the other Proceedings in Parliament, and if they had forgotten them, they were afterwards put in Mind of them; they needed not to have consulted with Books and Journals of Parliament, saving only with their own Memories.

2. They agree in this, That their Opinions tended to the Subversions of the Laws and Statutes of the Kingdom, for in that of *Ric.* II. the Defence was, the endeavouring to overthrow Parliaments, and Parliamentary Proceedings; the Conspiracy of the Death of the Procurers, was only an Aggravation. It was not Treason to conspire the Death of a Privy Counsellor, or to kill a Judge, unless he be upon the Bench; and in that Case it is Treason, because of the Malice, not of the Person, but to the Law; so that there the Treason lay in this, not that they conspired barely against their Persons, but with Reference to their Proceedings in Parliament, and thereby to overthrow the Acts of Parliament, wherein these Persons had been principal Actors: But in this again they disagree; for in that Case there was only a Conspiracy, no Death followed to the Procurers of the Commission, nor was the Commission overthrown; all that was done, was only this, That a Warrant was directed to the Lord Mayor of *London*, for apprehending their Persons to bring them to Trial, which yet was not done. But here (after the Opinions delivered) Judgment was afterwards given by them in the *Exchequer*, and Execution awarded thereupon; for so much as concerns our Property.

And likewise in the *King's-Bench*, where the Judges after the Judgments in the *Exchequer* refused to hear any more Debate of the Matter, and so for the Liberty of our Persons, by keeping divers of the Subjects in Prison, Term after Term, for not paying Ship-Money, and other things depending upon those Opinions, when they had been brought before 'em upon their *Habeas Corpus*.

4. In that of *Rich.* II. it was for overthrowing but one Act of Parliament, which was likewise introductive of a new Loan; for the Commission had no Rise from the Common Law; for in Truth it was derogatory to the Crown: It had only the Strength of the Parliament to support it, which was sufficient, it was for the Common Good.

But here the Endeavour was at once not to blow up one Act of Parliament, but all; and these not introductive, but declaratory of the Common Law, as was the Petition of *Right*, the Statutes there mentioned, and the Resolutions.

That of *Rich.* II. was but the blowing up of the upper Deck, this of the Common Law, and the Statutes too, and the old Foundations, and the Structures built upon them all together.

In that of *Rich.* II. it was only to overthrow a temporary Act of Parliament, that was to continue no longer than one Year; but this to make an eternal Devastation (for *toties quoties*) to the World's End, as his Majesty or his Successors shall say, That the Kingdom is in Danger, may these Opinions be put in Execution, and likewise they are enrolled in all the Courts of *Westminster-Hall*, in *perpetuam rei memoriam*.

The Sin against the Holy-Ghost is therefore unpardonable, because it takes from the Party Repentance, the Means of Pardon. To put us therefore into a Case of Desperation, some of them have publickly, and upon the Bench, declared, That this Prerogative is so inherent in the Crown, as that it cannot be taken away by Act of Parliament.

As they have put an Impossibility upon themselves, so would they put an Impossibility upon his Majesty, your Lordships, and the whole Parliament, for ever righting us again.

My Lords, *Contraria juxta se posita magis elucescunt*. I have presented your Lordships with the Obliquity of the ill Judges in *Ric.* II's time, give me Leave to present your Lordships with one Example of a contrary Nature; and that was in Queen *Elizabeth*'s time, in the 29th Year of her Majesty's Reign: She erects a new Office in the *Common-Pleas*, for the making of *Supersedeas* in *Exigents* that issued there, she grants it to *Richard Cavendish*, her Servant, sends to have him admitted, but the Judges delay the doing of it for this Reason, because the *Prothonotaries* and *Philizers* claimed the making of those Writs: The Queen sends a sharp Letter, and commands them forthwith to admit him, yet the Judges forbear: The Queen sends a sharper Letter, commanding them to shew the Reasons of their Contempt and Disobedience to the then Lord Keeper, and the Earl of *Leicester*, no mean Men in those Days; the Judges deliver their Reasons why they had Refused, and it was because others claimed the making of those Writs.

The Queen sends a fourth peremptory Message for their admitting him, with this Reason, That if the others were put out, they were rich and able Men, and that her Courts of Justice

ſtice were open, where they might demand their Rights.

This was not to take away the Right, but to put them to their Action.

The Judges humbly returned this Anſwer, That the Queen had taken her Oath for the Execution of Juſtice, according to the Law, that they did not doubt, but that when her Majeſty was inform'd, that it was againſt Law, ſhe would do what befitted her; for their Parts they had taken an Oath to God, to her, and the Common-wealth, and if they ſhould do it without Proceſs of Law, before them, and only upon her Command, put the other out of Poſſeſſion, though the Right remained to them, it were a Breach of their Oaths; and therefore if the Fear of God were not ſufficient, they told her the Puniſhment that was inflicted upon their Predeceſſors for Breach of their Oaths: (citing theſe of *Thorpe* of *Ric.* II's time) that they might be ſufficient Warning to them: The Queen, hearing of theſe Reaſons, was ſatisfy'd; and the Judges heard no more of the Buſineſs.

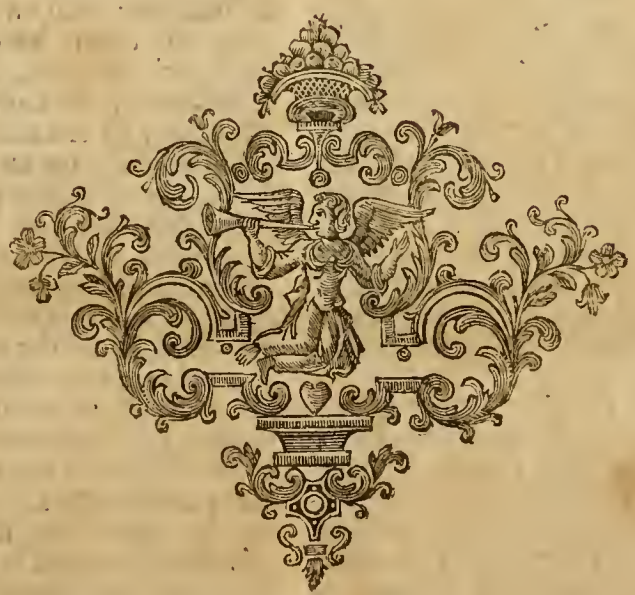
This remains under the Hands of Anderſon *the Lord Chief Juſtice in a Book of his Reports.*

Theſe Judges have had Examples of both Kinds before them, they might have choſen the Good, and refuſed the Bad.

My Lords,

Beſides theſe Judgments and Opinions, the Commons will in due time bring up theſe Judges with their other Judgments, *Corpora cum cauſis*; for your Lordſhips will eaſily conceive, that they who have done this, have done more; the Principal of them, I mean, my Lord Keeper, ſtands accuſed, before your Lordſhips, of High Treaſon: He is not here, Juſtice goes *pede lento, ſed certo*, it will overtake him at the laſt.

The next Step that is making after him, are the Articles of his Impeachment, which, with your Lordſhips Patience, are now ready to be opened and delivered to your Lordſhips.



Mr.

Mr. WALLER's SPEECH *to the House of Commons*, April 22. 1640.

Mr. *Speaker*,

I will use no Preface, as they do who prepare Men for something in which they have a particular Interest. I will only propose what I conceive fit for the House to consider; and shall be no more concerned in the Event than they that shall hear me.

Two things I observe in his Majesty's Demands.

First the Supply.

Secondly our speedy Dispatch thereof.

Touching the first: His Maiesty's Occasions for Money are but two evident. For to say nothing how we are neglected abroad, and distracted at home; the calling of the Parliament and our setting here (an Effect which no light Cause could have in those times produc'd) is enough to make any reasonable Man believe, that the *Exchequer* abounds not so much in Money, as the State does in Occasions to use it, and I hope we shall all appear willing to disprove those who have thought to dissuade his Majesty from this way of Parliaments, as uncertain; and to let him see it is as ready, and more safe for the Advancement of his Affairs than any new or pretended old Way whatever.

For the speedy Dispatch required, which was the second thing, not only his Majesty, but *Res ipsa loquitur*; the Occasion seems to importune no less; Necessity is come upon us like an armed Man.

Yet the Use of Parliament, heretofore (as appears by the Writs that call us hither) was to advise with his Majesty, of all things concerning the Church and Common-wealth. And it hath ever been the Custom of Parliaments, by good and wholesome Laws to refresh the Common-wealth in general, Yea and to descend into Remedies of Particular Grievances, before any Mention made of a Supply. Look back upon the best Parliaments and still you shall find, that the last Acts are for the free Gifts of Subsidies on the Peoples Part, and generl Pardons on the King's Part. Even the wisest Kings have first acquainted the Parliaments with their Designs, and the Reasons thereof; and then demanded the Assistance both of their Council and Purses. But Physicians tho' they be called of the latest, must not Stomach it, or talk what they might have been, but apply themselves roundly to the Cure. Let us not stand too nicely upon Circumstances, nor too rigidly postpone the Matter of Supply, to the healing of our lighter Wounds. Let us do what possibly may be done with Reason and Honesty on our Parts to comply with his Majesty's Desires, and to prevent the imminent Ills which threaten us.

But consider (Mr. *Speaker*) that they who think themselves already undone, can never apprehend themselves in Danger: And they that have nothing left, can never give freely. Nor shall we ever discharge the Trust of those that sent us hither, or make them believe that they contribute to their own Defence and Safety; unless his Majesty be pleased, first to restore them to the Property of their Goods and lawful Liberties, whereof they esteem themselves now out of Possession. One need not tell you that the Property of Goods is the Mother of Courage, and the Nurse of Industry, makes us Valiant in War, and good Husbands in Peace. The Experience I have of former Parliaments, and my present Observation of the Care the Countrey has had to chuse Persons of Worth and Courage, makes me think this House like the *Spartans*, whose forward Valour required some softer Musick to allay and quiet their Spirits, too much mov'd with the sound of Martial Instruments. 'Tis not the Fear of Imprisonment, or, if need be of Death itself, that keeps a true hearted *English* Man from the Care to leave this Part of his Inheritance as entirely to Posterity, as he received it from his Ancestors.

This therefore let us first do, and the more speedily, that we may come to the Matter of Supply; let us give new Force to the many Laws which have been hitherto made for the maintaining of our Rights and Privileges, and endeavour to restore this Nation to its Fundamental and Vital Liberties, the Property of our Goods, and the Freedom of our Persons: No way doubting, but we shall find his Majesty as gracious and ready, as any of his Royal Progenitors have been, to grant our Just desires therein. For not only the People do think, but the Wisest do know, That what we have suffered in this long Vacancy of Parliaments, we have suffered from his Ministers. That the Person of no King was ever better beloved of his People, and that no People were ever more unsatisfied with the Ways of the levying Monies, are two Truths which may serve, one to demonstrate the other; for such is their aversion to the present Courses, that

 neither

neither the Admiration they have of his Majesty's native Inclinations to Justice and Clemency, nor the pretended Consent of the Judges, could make them willingly submit themselves to the late Tax of Ship-Money: And such is the Natural Love and just Esteem of his Majesty's Goodness, that no late Pressure could provoke them, nor any Example invite them, to Disloyalty or Disobedience.

But what is it then, that hath bred this misunderstanding betwixt the King and his People? How is it, that having so good a King we have so much to complain of? Why, we are told of the Son of *Solomon*, that he was a Prince of a tender Heart; and yet we see; by the Advice of violent Counsellors, how rough an Answer he gave to his People. (*That his Finger should be as heavy as his Father's Loins.*) was not his own but the Voice of some Persons about him, that wanted the Gravity and Moderation requisite for the Counsellors of a Young King. I love not to press Allegories too far; but the resemblance of *Job's* Story with ours holds so well, that I cannot but observe it to you. It pleased God to give his Enemy leave to afflict him more than once or twice, and to take all he had from him; and yet he was not provok'd to rebell so much as with his Tongue; tho' he had no very good Example of one that lay very near him, and felt not half that which he suffered. I hope his Majesty will imitate God in the Benignet Parts too; and as he was severe to *Job* only while he discoursed with another concerning him; but when he vouchsafed to speak himself to him, began to rebuke those, who had mistaken and misjudged his Case, and to restore the patient Man to his former Prosperity: So now, that his Majesty hath admitted us to his presence, and spoken Face to Face with us, I doubt not but we shall see fairer Days, and be as rich in the Possession of our own as ever we were.

I wonder at those that seem to doubt the Success of this Parliament, or that the Misunderstanding between the King and his People should last any longer, now they are so happily met. His Majesty's Wants are not so great, but that we may find Means to Supply him, nor our Desires so unreasonable, or so incompatible with Government, but that his Majesty may well satisfie them. For our late Experience, I hope will teach us what Rocks to shun, and how necessary the Use of Moderation is, and for his Majesty; he has had Experience enough, how that prospers, which is gotten without the concurrent good Will of his People: Never more Money taken from the Subject; never more went into the *Exchequer*. If we look upon what has been paid; it is more than ever the People of *England* were wont to pay in such a time: If we look upon what has been effected therewith; it shews as if never King had been worse supplied. So that we seem to have endeavoured the filling a Sieve with Water. Whosoever gave Advice for these Courses, has made good the Saying of the Wise Man, *Qui conturbat Domum suam possidebit ventum.* By new Ways they think to accomplish Wonders; but in truth they Grasp the Wind, and are at the same time cruel to us, and to the King too. For if the Common-wealth flourish, then he that hath the Sovereignty can never want nor do amiss: So as he Govern not according to the Interest of others but go the shortest and the safest Ways to his own, and the Common-Good.

The Kings of this Nation have always govern'd by Parliament, and if we look upon the Success of things since Parliaments were laid by, it resembles that of the *Græcians*,

Ex illo fluera & retro sublapsa referri
Res Danaum ——— ——— ———

especially on the Subject's Part. For though the King had gotten little, they have lost all.

But his Majesty shall hear the Truth from us, and we shall make appear, the Errors of those Divines, who would perswade us, that a Monarch must be absolute, and that he may do all things *ad libitum*, receding not only from their Text (tho' that be a wandring to) but from the Way their own Profession might teach them, *state super vias antiquas*, and *remove not the antient Bounds and Land marks which our Fathers have set.* If to be absolute, were to be restrained by no Laws: Then can no King in *Christendom* be so; for they all stand obliged to the Laws *Christian*, and we ask no more; for to this Pillar are our Priveleges fixed, our Kings at their Coronation, taking a sacred Oath not to infringe them.

I am sorry these Men take no more Care to gain our belief of things, which they tell us for our Souls Health; while we know them so manifestly in the wrong, in that which concerns the Liberties and Priveleges of the Subjects of *England*: But they gain Preferment, and then 'tis no matter, tho' they neither believe themselves, nor are believed by others. But since they are so ready to let loose the Conscience of their Kings, we are the more careful to provide for our Protection against this Pulpit Law, by declaring and reinforcing the Municipal Laws of this Kingdom.

It is worth observing, how new this Opinion is, or rather this Way of Ruling, even among themselves. For Mr. *Hooker*, who sure was no refractory Man, (as they term it) thinks that the first Government was Arbritary, till it was found, that to live by one Man's Will, became the Cause of all Men's Misery: (these are his Words) concluding, that this was the Original of inventing Laws. And if we look farther back, our Histories will tell us, that the Prea tes of this Kingdom have often been the Mediators between the King and his Subjects, to present and to pray Redress of their Grievances; and had reciprocally then as much Love and Reverence from the People.

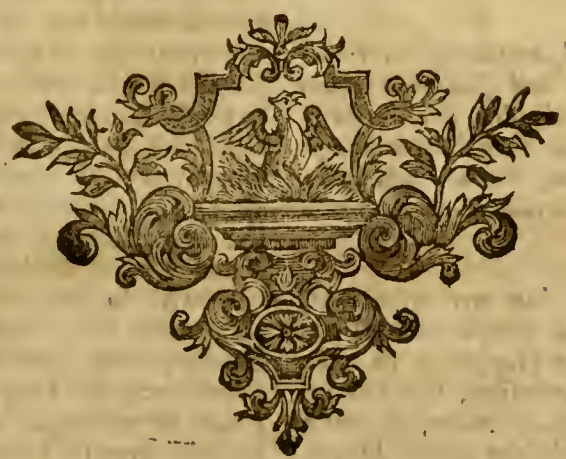
But these Preachers, more active than their Predecessors, and wiser than the Laws, have found out a better Form of Government. The King must be a more absolute Monarch than any of his Predecessors; and to them he must owe it, tho' in the mean time they hazard the Hearts of his People, and involve him in

in a thousand Difficulties: For suppose this Form of Government were inconvenient; and yet this is but a Supposition; for these five hundred Years, it hath not only maintain'd us in Safety, but made us victorious over other Nations: But, I say, Suppose they have another Idea of one more convenient. we all know how dangerous Innovations are, though to the better; and what Hazard those Princes must run, that enterprize the Change of a long establish'd Government. Now, of all our Kings that have gone before, and of all that are to succeed in this happy Race, Why should so pious and so good a King, be exposed to this Trouble and Hazard? Besides, that Kings so diverted can never do any great Matter Abroad.

But while these Men have thus bent their Wits against the Laws of their Country, whether they have neglected their own Province, and what Tares are grown up in the Field, which they should have tilled, I leave to a second Consideration; not but that Religion ought to be the first thing in our Purposes and Desires: but that which is first in Dignity, is not always to precede in Order of time, for well being purports a Being. And the first Impediment, which Men naturally endeavour to remove, is the Want of these things, without which they cannot subsist. God first assigned unto *Adam* Maintenance of Life, and gave him a Title to the rest of the Creatures, before he appointed a Law to observe. And let me tell you, if our Adversaries have any such Design, as there is is nothing more easy, than to impose Religion on a People depriv'd of their Liberties; so there is nothing more hard, than to do the same upon Freemen.

And therefore, (Mr. *Speaker*) I conclude with this Motion, That there may be an Order presently made, That the first thing this House will consider of, shall be the restoring this Nation in general to its Fundamental and Vital Liberties, the Property of our Goods, and Freedom of our Persons; and that then we will further consider of the Supply desired.

And thus we shall discharge the Trust reposed in us, by those that sent us hither. His Majesty will see, that we make more than ordinary Haste to satisfy his Demands; and we shall let all those know, that seek to hasten the Matter of Supply, that they will so far delay it, as they give Interruption to the former.



Mr.

Mr. WALLER's SPEECH *in Parliament, at a Conference of both Houses in the* Painted-Chamber, July 6. 1641, *on the Exhibiting of the Articles by the Commons against Mr. Justice* Crawley, *one of the Judges who gave Judgment for the King against Mr.* Hamden, *in the Case of* Ship-Money.

My Lords,

I Am commanded by the House of Commons, to present you with these Articles against Mr. Justice *Crawley*, which when your Lordships shall have been pleased to hear read, I shall take Leave (according to Custom) to say something of what I have collected from the Sense of that House, concerning the Crimes therein contained.

Then the Charge was read, containing his extra-judicial Opinions subscribed, and Judgment given for Ship-Money; *and afterwards a Declaration in his Charge at an Assize, That* Ship-Money *was so an inherent Right in the Crown, that it would not be in the Power of a Parliament to take it away.*

My Lords,

Not only my Wants, but my Affections, render me less fit for this Employment; for though it has not been my Happiness to have the Law a Part of my Breeding, there is no Man honours that Profession more, or has a greater Reverence towards the grave Judges, the Oracles thereof. Out of Parliament all our Courts of Justice are govern'd or directed by them; and when a Parliament is call'd, if your Lordships were not assisted by them, and the House of Commons by other Gentlemen of that Robe, Experience tells us, it might run a Hazard of being stil'd *Parliamentum indoctorum*: But as all Professions are obnoxious to the Malice of the Professors, and by them most easily betray'd; so (my Lords) these Articles have told you, how these Brothers of the *Coif* are become *fratres in malo*; how these Sons of the Law have torn out the Bowels of their Mother: But the Judge (whose Charge you last heard) in one Expression of his, excels no less his Fellows, than they have done the worst of their Predecessors, in this Conspiracy against the Common-wealth. Of the Judgment for *Ship-money*, and those extra-judicial Opinions preceeding the same, (wherein they are jointly concern'd) you have already heard: How unjust and pernicious a proceeding, that was in so publick a Cause, has been sufficiently expressed to your Lordships: But this Man adding Despair to our Misery, tells us from the Bench, That *Ship-Money* was a Right so inherent in the Crown, that it would not be in the Power of any Act of Parliament to take it away. Herein, (my Lords) he did not only give as deep a Wound to the Common-Wealth, as any of the rest, but dipp'd his Dart in such a Poison, that, so far as in him lay, it might never receive a Cure. As by those abortive Opinions, subscribing to the Subversion of our Property, before we heard what could be said for it, he prevented his own; so by this Declaration of his, he endeavours to prevent the Judgment of your Lordships too, and to confine the Power of a Parliament, the only Place where this Mischief might be redress'd. Sure he is more wise and learn'd, than to believe himself in this Opinion, or not to know how ridiculous it would appear to a Parliament, and how dangerous to himself: And therefore, no doubt, but by saying no Parliament could abolish this Judgment, his Meaning was, That this Judgment had abolish'd Parliaments.

This Imposition of *Ship-Money* springing from a pretended Necessity, was it not enough that it was now grown annual, but he must entail it upon the State for ever; at once making Necessity inherent to the Crown, and Slavery to the Subject? Necessity, which dissolving all Law, is so much more prejudicial to his Majesty, than to any of us, by how much the Law has invested his Royal State with a greater Power and ample Fortune: For so undoubted a Truth it has ever been, that Kings as well as Subjects are involved in the Confusion which Necess-

Necessity produces, that the Heathen thought their Gods so obliged by the same, *Parcamus necessitati quam nec homines nec Dii superant.* This Judge then having in his Charge at the Assize declared the Dissolution of the Law, by this supposed Necessity; with what Conscience could he at the same Assize proceed to condemn and punish Men, unless perhaps he meant the Law was still in Force for our Destruction, and not for our Preservation? that it should have Power to kill, and none to protect us? a thing no less horrid, than if the Sun should burn without lighting us, or, the Earth serve only to bury, and not to feed and nourish us. But (my Lords) to demonstrate that it was a supposititious, imposed Necessity and such as they could remove when they pleased: At the last Convention in Parliament, a Price was set upon it, *for twelve Subsidies you may reverse this Sentence.* It may be said, that so much Money would have removed the present Necessity; *for twelve Subsidies you shall never suffer Necessity again, you shall for ever abolish that Judgment.* Here this Mystery is revealed, this Vizor of Necessity is pull'd off; and now it appears, that this Parliament of Judges hath very frankly and bountifully presented his Majesty with twelve Subsidies, to be levy'd on your Lordships and the Commons. Certainly there is no Privilege, which more properly belongs to open the Purse of a Subject; and yet these Judges, who are neither capable of sitting among us in the House of Commons, nor with your Lordships, otherwise than your Assistants, have not only assumed to themselves the Privilege of Parliament, but presumed at once to make a Present to the Crown of all that either your Lordships, or the Commons of *England* do, or shall hereafter possess.

And because this Man has had the Boldness to put the Power of Parliament in Ballance with the Opinion of the Judges, I shall entreat your Lordships to observe by Way of Comparison, the solemn and safe Proceeding of the one, with the precipitate Dispatch of the other. In Parliament (as your Lordships know well) no new Law can pass, or old be abrogated, till it has been thrice read with your Lordships, thrice in the Commons House, then it receives the Royal Assent; so that 'tis like Gold seven times purify'd: Whereas these Judges, by this one Resolution of theirs, would persuade his Majesty, that by naming *Necessity*, he might at once dissolve (at least suspend) the great Charter thirty-two times confirmed by his Royal Progenitors, the Petition of *Right*, and all other Laws provided for the Maintenance of the Right and Property of the Subject; a strange Force (*my Lords*) in the Sound of this Word, *Necessity*, that like a Charm it should silence the Laws, while we are despoil'd of all we have, for that but a Part of our Goods that was taken, was owing to the Grace and Goodness of the King; for so much as concerns these Judges, we have no more left than they perhaps may deserve to have, when your Lordships shall have passed Judgment upon them. This for the Neglect of their Oaths, and betraying that publick Trust, which for the Conversation of our Laws was repos'd in them.

Now for the Cruelty and Unmercifulness of this Judgment, you may please to remember, that in the old Law they are forbid to seith a Kid in his Mother's Milk; of which the received Interpretation is, That we should not use that to the Destruction of any Creature, which was intended for its Preservation: Now (*my Lords*) God and Nature has given us the Sea, as our best Guard against our Enemies; and our Ships, as our greatest Glory above other Nations: And how barbarously would these Men have let in the Sea upon us at once, to wash away our Liberties; and to overwhelm, if not our Land, all the Property we have therein; making the Supply of our Navy a Pretence for the Ruine of our Nation: For observe, I beseech you, the Fruit and Consequence of this Judgment, how this Money has prosper'd, how contrary an Effect it has had to the End for which they pretended to take it. On every County a Ship is annually imposed; and who would not expect, but our Seas by this time should be cover'd by the Number of our Ships? Alas! (*my Lords*) the daily Complaints of the Decay of our Navy tell us how ill *Ship-Money* has maintain'd the Sovereignty of the Sea; and by the many Petitions which we receive from the Wives of those miserable Captives at *Algiers* (being between four and five thousand of our Country-men) it does too evidently appear, that to make us Slaves at Home, is not the Way to keep us from being made Slaves Abroad; so far has this Judgment been for relieving the present, or preventing the future Necessity, that as it changed our real Property into a Shaddow of a Property, so of a feigned it is made a real Necessity.

A little before the Approach of the *Gauls* to *Rome*, while the *Romans* had yet no Apprehension of that Danger, there was heard a Voice in the Air, louder than ordinary, *The Gauls are come*; which Cry, after they had sack'd the City, and besieged the Capitol, was held so ominous, that *Livy* relates it as a Prodigy. This Anticipation of Necessity seems to have been no less ominous to us: These Judges, like ill boding Birds, have call'd Necessity upon the State, in a time, which I dare say, they thought themselves in greatest Security: But if it seem superstitious to take this as an Omen, sure I am we may look on it as a Cause of the unfeigned Necessity we now suffer: For what Regret and Discontent had this Judgment bred among us? And as when the Noise and Tumult in a private House grows so loud, as to be heard in the Streets, it calls in the next Dwellers, either kindly to appease, or to make their own Use of domestick Strife; so in all Likelihood, our known Discontentments at Home have been a concurrent Cause to invite our Neighbours to visit us, so much to the Expence and Trouble of both these Kingdoms.

And here, my Lords, I cannot but take Notice of the most sad Effect of this Oppression, the ill Influence it has had upon the antient Reputation and Valour of the *English* Nation: And no wonder, for if it be true, that Oppression makes a wise Man mad, it may well suspend

the Courage of the Valiant. The same happened to the *Romans*, when for Renown in Arms, they most excelled the rest of the World; the same Story is but short. 'Twas in the time of the *Decemviri*, (and I think the chief Troublers of our State may make up that number.) The *Decemviri*, my Lords had subverted the Laws, suspended the Courts of Justice, and (which was the greatest Grievance both to the Nobility and People) had for some time omitted to assemble the Senate; which was their Parliament: This, says the Historian, did not only deject the *Romans*, and make them despair of their Liberty, but caused them to be less valued by their Neighbours: The *Sabines* take the Advantage, and invade them; and now the *Decemviri* are forced to call a long desired Senate, whereof the People were so glad, that *Hostibu belloque gratiam habuerunt*: This Assembly breaks up in Discontent, nevertheless the War proceeds; Forces are raised; led by some of the *Decemviri*, and with the *Sabines*, they meet in the Field: I know your Lordships expect the Event: My Author's Words of his Country-men are these, *Ne quid ductu aut auspicia Decemvirorum prospere gereretur vinci se patiebantur*, they chuse rather to suffer a present Diminution of their Honour, than by Victory to confirm the Tyranny of their new Masters. At their Return from their unfortunate Expedition, after some Distempers and Expostulations of the People, another Senate, that is, a second Parliament is call'd, and there the *Decemviri* are questioned, depriv'd of their Authority, imprisoned, banish'd, and some loose their Lives; and soon after this Vindication of their Liberties the *Romans* by their better Success, made it appear to the World, that Liberty and Courage dwell always in the same Breast, and are never to be divorced. No doubt, my Lords, but your Justice shall have the like Effect upon this dispirited People. 'Tis not the Restitution of our ancient Laws alone, but the Restauration of our ancient Courage, which is expected from your Lordships. I need not say any thing to move your just Indignation, that this Man should so cheaply give away that which your noble Ancestors, with so much Courage and Industry, had so long maintain'd. You have often been told how careful they were, though with the Hazard of their Lives and Fortunes, to derive those Rights and Liberties as entire to Posterity, as they received them from their Fathers; what they did with Labour you may do with Ease; what they did with Danger you may do securely. The Foundation of our Laws is not shaken with the Engine of War, they are only blasted with the Breath of these Men, and by your Breath they may be restored.

What Judgment your Predecessors have given, and what Punishments their Predecessors have suffered for Offences of this Nature, your Lordships have already been so well informed, I shall not trouble you with a Repetition of those Precedents: Only (My Lords) something I shall take Leave to observe of the Person with whose Charge I have presented you, that you may the less doubt of the wilfulness of this Offence.

His Education in the Inns of Court, his constant Practice as a Counsellor and his Experience as a Judge, considered with the Mischief he has done, makes it appear that this Progress of his thro' the Law has been like that of a diligent Spy thro' a Country, into which he meant to conduct an Enemy.

To let you see he did not offend for Company, there is one Crime so peculiar to himself, and of such Malignity that it makes him at once uncapable of your Lordships Favour, and his own Subsistance incompatible with the Right and Property of the Subject: For if you leave him in a Capacity of interpreting the Laws; has he not declared his Opinion, That your Votes and Resolutions against Ship-Money are void, and that it is not in the Power of Parliament to abolish that Judgment? To him, My Lords that has thus played with the Power of Parliament, we may well apply what was once said to a Goat browsing on a Vine.

Rode, Caper, vitem, tamen hinc cum flabis ad aras
In tua quod fundi Cornua possit erit.

He has cropt and infring'd the Privileges of a banish'd Parliament, but now it is returned, he may find it has Power enough to make a Sacrifice of him, to the better Establishment of our Laws; and in truth what other Satisfaction can he make his injured Country, than to confirm, by his Example, those Rights and Liberties which he had ruined by his Opinion?

For the Proofs, my Lords, they are so manifest that thy will give you little trouble in the disquisition; his Crimes are already upon Record, the Delinquent and the Witness is the same; having from several Seats of *Judicature* proclaimed himself an Enemy to our Laws and Nation, *ex ore suo Judicabitur*. To which purpose I am commanded by the Knights Citizens, and Burgesses of the House of Commons, to desire your Lordships, that a speedy Proceeding may be had against Mr. Justice *Crawley*, as the Course of Parliament will permit.

Indicta-

Indictamentum Thomæ Harrison *Clerici.*

Indict. Thomæ Harrison } Per Trin' 14to Caroli Regis. Inter plita Regis.

Middx' ss. AL's scilicet die jovis prox' post Octab' Sanctæ Trin' isto eod' termino coram Domino Rege apud Westm' per sacrament' xii Jur' extitit præsentat'. Quod cum Cur' Domini Regis de communi Banco est & a tempore cujus contrar' memoria hominum non existit fuit antiqua Cur' de Recordo dicti Domini Regis nunc & Progenitor' & Antecessor' suor' Reg' & Reginar' Angliæ pro administratione Justitiæ subdit' hujus regni Angliæ & aliis in communibus plitis' per tot' regnum Angliæ præd' motis & emergentibus. Cumque est contra coron' & dignitat' Regiæ Majestatis, nec non contra legem & consuetudinem hujus regni Angliæ pro aliqua persona vel aliquibus personis Cur' præd' seu aliquos justiciarios ejusd' Cur' ead' Cur' aperta existen' & justiciar' Cur' illius in Cur' ill' presentibus & judicialiter sedentes disturbare. Cumq' Ric' Hutton miles est & per diversos annos jam ult' elapsos fuit & adhuc est unus justiciar' dict' Domini Regis nunc præd' Cur' suæ. Quidam tamen Thomas Harrison de Creek in Com' Northampton Clericus Deum præ oculis suis non habens sed instigatione diabolica mot' & seduct' secum malitiose imaginans atque in animo compassans quibus modis possit præd' Ricardum Hutton milit' & adtunc & adhuc un' justic' Domini Regis nunc de communi banco præd' existen' multipliciter defamare & scandalizare machinansque & malitiose intendens quantum in ipso fuit ipsum Ricardum Hutton in scandalum ignominiam contempt' & vilipend' inducere ipsumq' Ricardum Hutton de vita sua ac de bonis & Catallis terris & tenementis suis praviter & malitiose deprivare nec non ad displacentiam & indignationem dict' Domini Regis nunc erga præfat' Ricardum Hutton incitand' & provocand' ac ipsum Ricardum Hutton pro Proditione tam apud dict' Dominum Regem & Magnates hujus regni Angliæ quam apud omnes ligeos subditos ejusd' Domini Regis haberi & estimari satagens ac ad præd' Cur' dict' Domini nunc de communi Banco & justiciar' dict' Domini Regis ejusd' Cur' in Cur' ill' present' existent' & judicialiter sedentibus disturband' & administrationem justitiæ in Cur' ill' impediend' quarto die Maii anno regni Domini nostri Caroli Dei gratia Angliæ Scotiæ Franc' & Hibern' Regis fidei defensoris &c decimo quarto apud Civitat' Westm' in Com' Midd' viz- in magna aula plitorum ibidem Cur' ipsius Domini Regis coram ipso Rege Cur' Cancellar' & præd' Cur' communi Banco in præd' magna Aula plitorum præd' apert' ac justic' ejusd' Domini Regis in Cur' præd' tunc ibidem præsentibus & judicialiter sedentibus materias & causas Domini Regis populi sui ac Regni sui Angliæ assidue attendendend' & audiend' legesque regni præd' subdit' ipsius Domini Regis ministrand' præd' Thomas Harrison ad Barram præd' Cur' dicti Domini Regis de communi Banco ad tunc & ibidem violenter & vi armis &c. accessit præd' Cur' de communi banco adhinc & ibidem in præd' magna aula ut præfertur aperta existen' ac Ricardo Hutton milit' & aliis justiciar' dicti Domini Regis Cur' de communi Banco præd' in Cur' illa tunc ibidem ut præfertur præsentibus & judicialit' sedentibus & præd' Thomas Harrison adtunc & ibidem ex sua mera malitia malo animo & malevola intentione in præsentia & audit' præfat' justiciar' præd' Cur' de communi Banco ac diversorum Servien' ad legem multor' viror' venerabilium & alior' dicti Domini Regis fidelium subditor' falso nequit' & malitiose præfat' Ricardum Hutton milit' de alta proditione accusavit & adtunc & ibidem falso nequit' & malitiose hæc scandalosa venenosa defamatoria Anglicana verba palam publice & alta voce dixit, I (ipsum præfat' Thomam Harrison innuendo) do accuse Mr. Justice Hutton (præfat' Ricardum Hutton Milit' un' justiciar' dicti Domini Regis de communi Banco præd' innuendo) of High Treason, in dicti Domini Regis nunc coronam' dignitatem & regiæ potestatis suæ læsionem & derogationem & Cur' suam præd' contempt' & scandalum manifestum jurisque & legum ipsius Domini Regis regni sui præd' ac Cur' de communi Banco præd' & justiciar' dicti Domini Regii Cur' illius & administrationem justitiæ in ead' Cur' in nequissimum exemplum omnium aliorum malefactorum tali casu delinquend' & ad gravissimum scandulum infamiam dedecus & final' destructionem præd' Ricardi Hutton Milit' & contra pacem dicti Domini Regis nunc coronam & dignitates suas &c. Cum per quod præcept' fuit Vic' quod non omittat &c. quin venire fac' eum ad respondend' &c. Cum & modo scilicet die Veneris prox' post Octabas Sanctæ Trin' isto eod' termino coram Domino Rege apud Westm' ven' præd' Thomas Harrison Clericus custod' Henrici Hopkins Arm' Guardian' Prisone dicti Regis de la Fleete virtute brevis dicti Regis de habend' corpus ad Subjic' &c. ei inde direct' ad Barr' hic duct' in propria persona sua qui committ' præfat' Marr' &c. Et statu' de præmissis eo aloquunt' qualiter se inde acquietari dicit quod ipse non est inde culpabil' & de hoc ponit se super patriam Et Iohannes Keeling Ar' Cleric' Coronæ & Atturnat' Domini Regis in Cur' ipsius Regis cora' ipso Rege qui pro eod' Domino Rege in hac parte sequitur Similiter &c. Jo' v.n' inde jur' coram Romino Rege apud Westm' die Lunæ prox' post quindenam Sanctæ Trin' & qui nec &c. ad recogn' &c. quia tam &c. Idem dies dat' est tam præfat' Iohanni Keeling qui sequitur &c. quam præd' Thomæ Harrison Clerico sub Custod' præd' Marr' interim commisso salvo custodiend' quousq' &c.

Indictment of Thomas Harrison *Clerk.*

At the Kings-Bench-Barr, Trin' 14 Caroli Regis

Middx' ss. "BEfore this time, that is to say, "upon *Thursday* next, after "the Octaves of the Holy Trinity in the said "Term, before our Sovereign Lord the King "at *Westminster*, upon the Oath of twelve "Jurors, it is presented, that whereas the "Court of our Lord the King of *Common* "*Pleas* is and from the time, to the contrary "of which, there is no Memory of Man, hath "been an antient Court of Record of our said "now Lord the King and his Progenitors and "Ancestors, Kings and Queens of *England*, for "the Administration of Justice to the Subjects "of this Kingdom of *England*, and others in "*Common Pleas*, moved and arising through "all the Kingdom of *England*. AND "WHEREAS it is against the Crown and "Dignity of the King's Majesty, and against the "Law and Custom of this Kingdom of *England* "for any Person or Persons, to disturb the "Court aforesaid, or any Justices of the "said Court, the said Court being open, and "the Judges of the said Court being present, "and Judicially sitting. AND WHEREAS "*Richard Hutton* Knight is, and for divers Years "now last past, hath been, and yet is one "of the Justices of our said now Lord the "King of this Court. Nevertheless one "*Thomas Harrison* of *Creeke* in the County "of *Northampton*, *Clerk* not having God "before his Eyes, but by the Instigation of "the Devil, moved and seduced, malici-"ously with himself imagining and in his "Mind compassing by what Means he might, "the aforesaid *Richard Hutton*, Knight there and "then, and yet being one of the Justices "of our said now Lord the King of the *Com-*"*mon Pleas* aforesaid, many ways to defame "and scandalize, and contriving and malicion-"sly intending, as much as was in his Power, "to bring the said *Richard Hutton* into Scan-"dal, Ignominy, Contempt, and vile Charac-"ter, and the said *Richard Hutton*, of his Life "and Goods and Chattels, Lands and Tene-"ments, wickedly and maliciously to deprive; "as also the Displeasure and Indignation "of our said now Lord the King, against "the said *Richard Hutton* to stir up and pro-"voke, and using his utmost Endeavour to "make the said *Richard Hutton* be held "and esteemed a Traytor as well by our "said Lord the King and the Peers of this "Kingdom of *England*, as by all the Loyal "Subjects of our said Lord the King: And the "aforesaid Court of our said now Lord the "King of *Common Pleas*, and the Justices of "our said Lord the King of the said Court in the "said Court being present, and Judicially sitting, "to disturb, and the Administration of Justice "in the said Court to hinder, the fourth Day "of *May*, in the fourteenth Year of the Reign "of our Lord *Charles* by the Grace of God, "of *England*, *Scotland*, *France* and *Ireland*, "King Defender of the Faith, *&c.* at the "City of *Westminster* in the County of *Middx.* "*viz.* in the great Hall of Pleas there, the "Court of our said Lord the King, that is "to say, the Court of our said Lord the "King before him the King, the Court of "*Chancery*, and the Court of our said Lord "the King of *Common Pleas*, in the aforesaid "great Hall of Pleas aforesaid open, and the "Justices of our said Lord the King in the "Court aforesaid then there present, and "Judicially sitting, in assiduously attending and "hearing the Matters and Causes of our "said Lord the King, his People and Kingdom "of *England* and in Ministring the Laws of "the Kingdom aforesaid to the Subjects of "our said Lord the King: the aforesaid *Thomas* "*Harrison* to the Bar of the aforesaid Court "of our said Lord the King of the *Common* "*Pleas*, then and there violently and by "Force and Arms *&c.* came, the said "Court of *Common Pleas*, then and there "in the aforesaid great Hall being open as "aforesaid, and the aforesaid *Richard Hutton* "Knight, and the other Justices of our said "Lord the King of the Court of *Common* "*Pleas* aforesaid in that Court, then there "as aforesaid being present and Judicially "sitting, and the aforesaid *Thomas Harrison*, "then and there out of his meer Malice' "evil Mind, and wicked Intention, in the "Presence and Hearing of the aforesaid Justices "of the aforesaid Court of *Common Pleas* "and divers Serjeants at Law, and many "Venerable Men and other faithful Subjects "of our said now Lord the King falsely, "wickedly and maliciously accused the afore-"said *Richard Hutton* Knight of High-Treason, "and then and there falsely, wickedly, and "maliciously, these scandalous, venomous, "defamatory *English* Words, openly, publickly "and with a loud Voice said, published and "spoke, *viz. I* (him the said *Thomas Harrison* "meaning) *do accuse Mr. Justice* Hutton (the "aforesaid *Richard Hutton* Knight, one of the "Justices of our said Lord the King of the "Common Pleas, meaning) of *High Treason.* "To the great hurt and derogation of the "Crown and Dignity of our said Lord the "King, and of his Royal Power, and the "Manifest Contempt and Scandal of his

Court

" Courts aforesaid, and of the Justice and " Laws of our said Lord the King, his King- " dom aforesaid and the Court of *Common* " *Pleas* aforesaid, and the Justices of our " said Lord the King, and Administration of " Justice in the said Court, to the most evil " Example of all other Offenders hereafter " in the like Case, and to the more grievous " Scandal, Infamy, Disgrace, and final De- " struction of the aforesaid *Richard Hutton* " Knight, and against the Peace of our said " now Lord the King, his Crown and Dig- " nity *&c.*

To this the said *Thomas Harrison* hath pleaded not Guilty, and hath put himself upon the County, and the King's Attorney of this Court likewise. You are now to enquire whether the said *Thomas Harrison* be guilty of this Crime, Yea or No.

Then Mr. Serjeant Heath *spoke as followeth.*

MAY it please your Lordship, and you Gentlemen of the Jury do hear, that by reading of the Record, that there is an Indictment preferred on the behalf of the King against *Thomas Harrison* who is now at the Bar, and that it is for a notable and insolent Contempt in this Hall against Justice *Hutton* and the Laws of this Kingdom. The Indictment sets it out thus. That the Court of *Common Pleas* is an antient Court, and that it is against the Crown and Dignity of the King, and the Courts of Justice, that when the said Courts were sitting, they, or any of the Ministers of the said Court shall be disturbed. It is further said, that Mr. Justice *Hutton*, is and for many Years last past hath been one of the Judges of the Court of *Common Pleas*, and that the Defendent who is now at the Bar (Mr. *Harrison* a Clerk) being moved with Malice against the Person of Mr. Justice *Hutton*, and intending to bring Mr. Justice *Hutton* into the King's high Displeasure, and to hazard the loosing of his Life and his Estate, and the Forfeiture of his Goods, and to disturb the Peace of the King, and the Court of Justice sitting, did falsely and maliciously the 4*th* of *May* last in *Westminster* Hall in the City of *Westminster*, the Court being sitting, this Court and the Court of *Chancery*, and the Court of *Common Pleas*, this Defendent, boldly, audaciously, and maliciously did rush to the Bar of the said Court of *Common Pleas*, Mr. Justice *Hutton* and Mr. Justice *Crawley* then and there sitting there attending to the Service of the said Court, there with a loud Voice spake to Mr. Justice *Hutton* sitting as a Judge. *I do accuse Mr. Justice* Hutton *of High Treason.* This Offence being committed in this Manner and in this Place, and with such a Boldness, is laid to be of a high Nature, and to the Contempt of the Crown, and Dignity of all the Courts of Justice, where the King is wholly interessed. Whether this Offence may be punished, that is, the Force and Intent of this Indictment. My Lords, to this the Defendent hath pleaded not guilty, we that be of the King's Councill shall make it appear, that this Defendent did do this, and in this Manner as it is set forth.

I desire that this Examination may be read, but let him see it, whether it be his Hand yea or no.

Harrison. It is my hand.

The Examination of *Thomas Harrison* of *Creeke* in the County of *Northampton*, Clerk being examined before, my Lord Chief Justice *Brampston* saith that it is true, that whereas Mr. Justice *Hutton*, and Mr Justice *Crawley* sitting in the Court of *Common Pleas* he came to the Bar, and there did publickly charge Mr. Justice *Hutton* with High Treason. He charged him first with denying the King's Supremacy, next with moving the People to *Sedition*, and these be to be the Points on which he charged him with High-Treason, as aforesaid: Further he was asked why he charged him with the first, and how he doth deny the King's Supremacy, he answers by that common Fame upon *Saturday* last in the *Exchequer-Chamber* he did deliver his Opinion, that the King had no lawful Power to levy the Ship-Money. Being asked whether he heard the Argument, he answered, he heard it not, but received it from the common Report of others. Being further asked why he charged him with stirring up the People to *Sedition*, he answered, that was because by the Report of divers near to the Place where this Examinant dwells, the People go on more and more in their Stubornness, refusing the paying of Ship-Money, the which is contrary to the Opinion of all the Orthodox Divines of this Kingdom, and in that Mr. Justice *Hutton* Riding that Circuit, hath given the People such an Encouragement to their Disobedience: Being further asked, whether any other Person did know of this his Intent, he answered, that there were two other Persons with him, but they did not know any thing of his Intentions, till they heard it spoken at the Bar. Being asked why he made choice of this publick Way, the Reason he saith was because he delivered his Opinion publickly, therefore he thought that to be the best Way, and if it had been done in a private Way, he thought it fit to acquaint him with it in a private Way.

THOMAS HARRISON.

May it please your Lordship, and you of the Jury, the Prisoner at the Bar, Mr. *Harrison*, he stands indicted of a very foul and horrible offence of a forged Accusation framed and contrived out of his own Brain. It should seem it was out of some rotten and inveterate Malice, a thing for which there is no Colour, nor Appearance of Truth, and he confesseth it was upon the ground of common Fame. Now you know what common Fame is, a *Mendax.* he charged this Reverend Judge as you have heard, that he did deny the King's Supremacy, and the Reason was

because he heard of a common Fame, that the Judge had delivered his Opinion, that the King had no Power to levy Ship-Money. Secondly because he stirreth up the Kings Subjects to Sedition, and he giveth that for a Reason, in that the People of *Northampton* do go on in the denial of the Payment of Ship-Money.

My Lord, this is a heavy thing to accuse any Man of Treason, whereby he shall forfeit his Lands and Goods, and loose his Life, and surely by the old Law, this false Accuser should undergo the same Punishment as he should that is accused, if found guilty.

My Lord, the Place of a Judge is a Place of great Honour and Trust, they be reckoned in the old Statutes among the Peers of the Kingdom, 2 *Ric.* 2. And these People that be the Authors and Publishers of these base Scandals, they are reckoned to be the Sowers of discord, and are Subverters of the Peace of the Common-wealth: And surely if Mr. *Harrison* had looked upon these Statutes he would have been better advised, for the Office of a Judge is trusted with Life and Member, and the Estates of Men; therefore being a Place of so great a Trust, the Scandal is the greater, and the Offences and Crimes against them have been punished not with ordinary Punishment. 25 *Ed.* 3. there it is declared, that it is Treason to kill a Judge in Execution of his Place. Our Books say, that by drawing a Sword and not striking a Judge, this deserves severe Punishment, it is Imprisonment during Life, and Forfeiture of Goods and Lands, and Loss of his right Hand.

Though the Offence be not done to the Judge, yet being in the Judges Presence, the Court sitting, if one strike a Juror, or any Person in *Westminster-Hall* in the Presence of the Court, it hath been punished with Loss of Hand, this appeareth 19 *Ed.* 3. Judgment 74, 22 *Ed.* 3. *Mich'* 6 *Ed.* 3. 53. And so there be Records and Authorities in this Court that back these Statutes.

But, my Lords, this Accusation is for to accuse a Judge sitting in the Seat of Judgment, of High Treason, where there is no Colour of it. This is Mr. *Harrison*'s Offence, to do it without any Ground, but upon common Fame, and taxing a Judge for denying the King's Supremacy; the which is manifestly false. This is the Offence, and to do it in so rude, barbarous, and uncivil Way. Your Lordship knows, that in case a Man be accused of killing a Man, it may be justify'd the killing of such a Man, Doctor *Sutton* in the Book of *Assize*. of that Mr. *Harrison* may hear of hereafter. *Jeoffe*'s Case in this Court, the Lord *Coke* was accused of traiterous Proceedings, *Mich'* 5 *Jac'*. This Gentleman should have done well to have kept himself in his own Profession, and should have expounded Scripture, and not Statutes of which he is very ignorant; the Lords, the Judges, are to expound them; but for Mr. *Harrison* to tell a Court what is Treason, and what not: I may boldly say, it is out of his Profession.

This Offence, as it is carried in the Indictment to be *contra Coronam & Dignitatem Regis*, it is against the King himself; for false Accusations which are against his Ministers, must be taken as against the King, *Mich'* 33. 34 *Ed.* 1. In this Court, *Rot.* 75. there was *Roger de Heigham* gave Judgment against one *De Bruce* in the *Exchequer-Chamber*. This *De Bruce* was of a noble Family: He asked this *Roger*, whether he would avow the Judgment, and he told him yes. Now, says *De bruce*, thou hast thy Will, which of long time thou hast sought: The Judge asked him what was that, he said, My Shame and Loss, and this I will think on. For this Offence in a Kind of implicite Way, taxing the Judge of Injustice, he was indicted, and confessed the Indictment, as Mr. *Harrison* doth: The Judgment was, That he should be committed, and there to remain during the King's Pleasure, besides a great Fine.

My Lords,

This Offence that was offered to the Person of a most Reverend, Learned, and Honest Judge, by the Rules of our Books, this is a Scandal done to the King himself, if there be no Colour nor Ground why he should take upon him to make this bold and impudent Assertion, the Honour of a Judge must be maintain'd, and you of the Jury need not stir from the Bar; for he hath pleaded guilty.

Now, my Lord, I desire Judgment.

Upon which the Court gave Sentence after this Manner * *viz.*

That he should pay a Fine to the King of 50000 l. *and be imprisoned during the King's Pleasure, and should have a Paper upon his Head, shewing his Offence, and go therewith to all the Courts of* Westminster, *and make his Submission in every Court in* Westminster-Hall, *and in the* Exchequer: *For it is an Offence to every Court.*

* Vide *Croke*'s Reports, pag. 362. *Thomas Harrison*'s Case.

F I N I S.