

Magna Charta 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 Charges in his Wars, which did require a speedy Supply, they were contented to yield to him a fourth Part of their Goods, to be levied in this manner, that is, (for so it is mentioned expressly in *Matth. Paris*, and the form is there set down *de verbo in verbum*.) I have it here to read it: That every Sheriff within his County should return a Juror in every Town: That to four Gentlemen of good Value, 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, tho' they had Power to tax the Residue, therefore a Power was given to two others of every Town, and they should be sworn, and upon their Oaths tax the four former Assessors. This tells unto me, what the antient and usual Manner was of Taxes and Assessors by the Custom of *England*: the Manner was not at the voluntary Pleasure of the great Officer of the County; but they that did tax others, should be taxed by others. And this Opinion is directly in *Matth. 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.

Stat. 1 Ed. III. 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 expressly there upon a Complaint made, that they held themselves aggrieved 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 thenceforth, the Taxations 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 same 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 itself, it is a gracious and a 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; as it was argued at 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 notable 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 truly, as I think in my Opinion tho' 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 warrantable. But this 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 Powers contained in the Writ 4 Aug. which doth not resort to the Rule and Custom of the Kingdom of *England*.

In the next place, let us see whether the Writ mentions Causes sufficient for the issuing of it. For the Incurfions of Pirates I conceive it no just Cause: But the Expressions in the Writ, as *Quia datum est nobis intelligi, ut informatur, vulgaris opinio est & 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 a 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 voluntary at his Pleasure, but it is according to his *Politick Capacity*, not excluding his natural Imperiality. *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 in present danger; Truth in my Conscience it was so, and if that had not been done so, *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 a great danger; but that must be expressed, for I hold the Law to be so. *Doctor and Student* 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* who 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 4 s. a Hide, imposed upon a just Ground to repel the *Danes*, being common Enemies: and this was continued until *Hen. II's* time, but since taken away

away by several Statutes, as 25 *Edw. I. &c.* That same *Danegelt* which was heretofore imposed on the Kingdom by the Terror of the *Danes*, continued still, tho' 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. II.* I hold that it is taken away by the Statutes before-mentioned of *Edw. I. &c.* and therefore if for private Danger this 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 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* issued long after the first Writ, dated a Year and 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 to him for non-performance: and tho' 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, and the Party presented by a Jury upon Default; and upon Presentation and Indictment, the King shall have his Remedy: 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 certified 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 *Ed. III. Leicestershire Case*, reciting; Whereas one Sir *John de Lamston*, that he had delivered certain Moneys 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. III.* 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' irreturn'* 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 to the King? and I conceive, it doth not

appertain to the King: My Reason is this, because in the very Writ 4 *Aug.* it is expressly provided, that it shall be employed to no other Use, but the Preparation of the Ship therein mentioned, and by no means to any 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 employed, or of Surplusage in the Collectors Hands: tho' 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 to him, he would be a Loser 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 employed merely upon that, and for no other Purpose; and this appeareth not at all, whether any Ship was made, yea or no: now how shall we give Judgment? The *Sci' Fa'* is, That Mr. *Hampden* 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*, as was well opened upon the Demurrer; for it is not *Si Dominus Rex valet aut debeat onerare* the Defendant, but that the Defendant *oneretur & inde satisfac'*: Nothing is put into the Record to bring this to the King: therefore *quod oneretur* cannot be executed at all; and according to the Books of 39 *Edw. III.* and 49 *Edw. III.* if Judgment be to be given, and it cannot be executed, there it shall not be given at all: So the Judgment required on this Demurrer, is upon the Matter *oneretur*, and shall by no colour come to the King. 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 (for to the King it cannot) would be wrong; 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. VI.* 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 certified 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. 37 Hen. VI. A Transcript or Tenor of a Recognizance came out of the *Chancery* into the *Common-Pleas*, to have executed, & *non allocatur*: and so it 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 merely 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. *Hampden*.

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 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 certified 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 Parliamentary 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 it 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.*'s Time Writs issued, sitting the Parliament. To say, that there cannot be Incurfions, 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 it comes; 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 *William I.* (not *William the Conqueror*, for he did not conquer the Kingdom, he conquered 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, that of *Danegelt* was certified to be a Tribute enforced. 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 traversable.

Object. Then upon every Certificate that the King makes, that he is of Opinion that the Danger is instant or expectant, this Charge may come to be annual.

Solut. No: 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*, *Henry III.* no Charge without Parliament: by the Statute of 10 *Edw. III.* none is forced to go out of his County, except it be in case of Necessity. 14 *Edw. III.* I hold to be a general Statute, and it 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 these, and these Immunities; no Tax nor Tailage, but by Parliament; but he excepts three Cases: 1. *Nisi ad redimendum corpus nostrum.* 2. *Pur faire Fitz Chevalier.* 3. *Pur Fille marier.* 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. III.* 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 aggrieved for it, and give 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

the Certificate; and that the Information afterwards in the *Mittimus* cannot make a former Writ good, which was first defective: And the Sheriffs who 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. *Hampden*.

The Argument of Sir John Finch, Kt. Lord Chief-Justice of the Court of Common-Pleas, in the Exchequer-Chamber, in the great Case of Ship-Money.

A Writ under the Great Seal of *England*, dated 4 Aug. 11 Car. when to the Sheriff of *Bucks* (Sir *Peter Temple*) commanding 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 affect all his Majesty's Subjects, and all the Inhabitants within the said County, and all Occupiers, Tenants, and Terr-Tenants 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-Mandeville* is within the said County, and was assessed at a reasonable Rate; and that the Sum of 20 s. was assessed upon the Lands of *John Hampden Esq;* as by a Schedule of 9 Mar. 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. *Hampden* to shew Cause why he should not pay the 20 s. Upon the Return of which Mr. *Hampden* appeared, and demanded Oyer of the Writ, *Certiorari*, Schedule, *Mittimus*, and *Sci' Fa'*; and upon hearing of them read, he demurred, and Mr. Attorney 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 most 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 Impertinences with the Case in Judgment, it hath been apprehended to be of a far tenderer Consequence

than indeed it is; yet tender and weighty it is. If equally weighed, in the one Balance we may put the Regal Power, or rather the Regality itself; 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 straight.

I cannot fear myself, when vulgar Censure hath exercised itself upon every one that hath delivered 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 steddily 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 facie Romuli quam in Politia Angliæ*.

Nor will I lose Time in remembering 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 Commonwealth, and to ourselves. 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 Commonwealth, and have as much Interest in this Case as Mr. *Hampden*. Those that want those Blessings, want those Temptations that make them dream of, or hunt for Honour 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 Consciences; 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 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 Notes of all that hath been said for or against Mr. *Hampden*; and have according to the Measure of my Understanding, weighed and pondered all that hath been spoken, both at the Bar, and by my Brothers, and bestowed 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, 20 Octob. 10

Regis,

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 Forest of *Deane*: But it is well known, the Resolution taken by his Majesty therein, was grounded, and relied 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 Counsel, and afterwards to some other eminent Persons of the Commonwealth, of no less Judgment and Knowledge in 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 mentioned 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 antient Records, Writs, and other Precedents of *Edw. I. Edw. II. Edw. III.* Times, and other Records of other Kings Reigns; which Opinions were 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 Burdens, 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 Attendance, 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 *Nov.* 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-Justice, my Lord Chief-Baron, and myself, *June* 1635: After Conference together, we delivered our Opinions. And we upon Consultation conceiving the Reason of the Precedents before, and the Rule of the Law, and Reason requiring, that when the whole Kingdom was in Danger that the Defence that concerned the whole Kingdom should be borne by all the Subjects of the Kingdom; this was first verbally delivered to 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 *Eucks* 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 every 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, delivered 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, *Dec.* 1635, *viz.* 'That where the Good and Safety of the Kingdom is in Danger, of which his Majesty is the sole Judge, his 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; and tho' I perceived nothing of this his Opinion in his Argument, yet he still holdeth it.

Wherein I observe, 1. That the King is sole Judge of the Danger, and whether it be imminent. 2. 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 borne by all the Realm in general. Which Opinion was more independent than the rest, for that our Opinion before it had relation to the Precedent of Maritime Parts: but this was, that the Subject might be charged absolutely; and this was delivered by him readily, cheerfully, 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 go 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 to it; we ought to see very good and pregnant Reasons to vary from that Opinion, tho' 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 Misunderstanding of the Law, than for want of Duty, as desirous, out of his princely Love, to avoid all Mistakes, he did upon 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 considered 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, yet we had it in our Consideration from June 1635, which was fifteen Months before the Answer returned; so 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.

1. 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.

2. Whether the Charge of the Defence might not be commanded by the King? Which was also agreed, that it might.

3. 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 their Reasons and Differences; (tho' 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 not our Opinion upon the bye; 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, nor were they so required by his Majesty; of all which I dare boldly say, his Majesty was truly informed. 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's Judges, to deliver it in their Circuits, which might have satisfy'd any that did not respect their own private Benefit. And Mr. *Hampden*, I think, of all hath the least Cause to complain, being assessed but 20s. 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, tho' he hath permitted *Arcana Imperii*, nay, *Imperium ipsum*, (I would to God I could not say even too licentious) to be debated at this Bar; yet I speak it not by way of Reprehension, but admonition to the Counsel, 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 Revenue, and secret Estate of Princes, and what succeeding

Kings may be, or may do, it doth not well become these present Times; it would not have been endured in the best preceding 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 Commonwealth.

It is not well to clog 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 Hindrance 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,

I. To examine what the Case is.

II. I will give my Opinion of the Case, with the Reasons thereof.

III. I will answer the Objections made against it.

IV. I will speak to the Legality and Form 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, where Variety of Opinions gives just Cause to balance them: the Case must arise out of the Record, and must stand or fall upon that.

I. For the Case itself; and therein, 1. I will shew what Danger there is, that is the Ground of the Charge. 2. What things there are to maintain it: As for other things, they tend to the Destruction of the Case.

1. 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. *Hampden* to give him notice, yet he was not liable to the Charge, but by the Writ 4 Aug.

(1.) It is objected, the Danger is not clearly expressed; for it is not upon Words of Certainty, but by way of Uncertainty, *Quod datum est nobis intelligi*.

(2.) 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.*

Altho' my Lord Chief Baron parallel'd this to the Case of Patents, *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 itself, *Datum est nobis intelligi*. It is sufficient that the King knows there

is a Danger; and therefore, if it had been only *Intelligimus*, none can deny but it had been sufficient. And what Difference is there between *Intelligimus* and *Datum est nobis intelligi*? That sets forth the Knowledge of the Danger, and this shews the Means whereby he doth know it; *Ut datum est nobis intelligi*. This goes farther than *ex auditu*, *Rumor est*, &c. Therefore, unless the King should go out of the Kingdom to see the Danger, can it be otherwise expressed?

(3.) I hold, that the Danger itself, 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 to 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 *Hannibal ad Portas*.

I shall not rely much upon that, that the Enemies of Christendom and of this Nation did prepare *ad Mercatores nostros ulterius molestand'*, nor *Ad Regnum gravand' nisi citius remedium apponatur*, &c. But this *Consideratis periculis quæ undique his guerrinis temporibus imminentibus ita quod nobis & subditis nostris defensionem maris & Regni nostri omni festinatione qua poterimus convenit*, &c. shews otherwise than for the Pirate, this Defence was requisite. Therefore the next Clause is, *Nos volentes defensionem Regni, tuitionem maris, securitatem subditorum nostrorum*, &c. And therefore that *Salva conductione Navium & Merchandizarum quæ ad Regnum nostrum Angliæ venerint, & de eodem regno ad Partes externas transeunt*, &c. takes not away the former Works, nor limits them.

As for the Clause in the *Mittimus*, I stand not upon it, nor that *Salus Regni & populi nostri Angliæ periclitabatur*, &c.

(4.) Admit there had been no Preamble nor Expressment of Danger, I hold the Command itself is sufficient for setting forth the Danger, which is, that the Ship be with other his Majesty's Ships, and the Ships of other his Majesty's Subjects, at *Portsmouth* the first Day of *March* next following; the Words of the Record be, *Exinde 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 both of Peace and War, best knows it; and it was the Practice in former 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.

(2.) As to the second Particular, What is alleged 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, for the Distribution of the Surplusage. But the Record is, *Ad assidendum omnes 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 with his Money, if he hath none; but yet the Charge is not for Money, but that he finds a light Horse.

But my Brother *Crooke's* Objection is, If any Surplusage remain, 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*, so far from the Sea to build a Ship.

To this I answer, That those of *Buckinghamshire* may hire a Ship, if they cannot build one; and the Words are but *parare*, not for the building 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.

II. I shall now give my Opinion of the Case, with the Reasons thereof. 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, he may thereupon command all his Subjects to prepare Ships to join 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 join 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 join with him in the Defence of the Kingdom, are these.

1. The Defence of the Kingdom must be at the Charge of the whole Kingdom in general.

2. The Power of laying this Charge is, by the Policy and Fundamental Laws of this Kingdom, solely invested in the King.

3. The Law that hath given this Power to the King to do these things, hath given him Means to put these things in Execution.

And as to all these I shall ground myself upon Authorities in Law, and Precedents in all Ages.

1. That the Defence of the Kingdom must be at the Charge of the Kingdom, I shall prove, (1.) From the Law of Nature, which is, that every thing in Nature ought to defend itself.

(2.) From the Rule of Reason: for *Quod omnes tangit, ab omnibus supportari debet*.

(3.) From the true Use of all that we enjoy, which must be abused, if not employed 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 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 an ill Husband that finds not Safety in that he doth.

(4.) 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

Man's Goods, for the common Good. For the Commonwealth 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 Damage. *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 Subject's: And this is by reason of the publick Interest the King hath in every Subject's 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 he means the King cannot command their Money without their Consent: of which I will speak in its proper Place.

2. I come now to the second 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, thro' God's Blessing, 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 myself with the Original of the Nation and Monarchy; some Stories are fabulous, others doubtful, not any so clear as to set it forth certainly, tho' 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 it is a Monarchy; and that it is most true what *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. Davie's Reports*, Stat. 24 *Hen. VIII.* 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 Sovereignty 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 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 myself, when they were pleased to chuse me 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 Commonwealth, then might we have expected and found good Fruit. But now the best Way to redeem this lost Privilege (for which we may give those Thanks only) is to give all opportune Appearance of Obedience and Dutifulness to 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 Sovereignty 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 Sovereignty of the whole Kingdom both by Sea and Land, who hath a Power of charging the whole Kingdom.

3. 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 Sovereignty 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 Country, 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 ourselves 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, tho' 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. But here the Maritime Towns shall not help the Inland, nor the Inland the Maritime, but each of them bear their own Charge, and 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, (1.) It is a great Authority in Law, that there is no express Authority against it: tho' there have been some Books cited by my Brother *Hutton* and my Brother *Crooke*, (which I shall answer in their due Place, amongst other Objections) yet there is not one Authority or Opinion, much less

Resolution or Judgment, in necessary Time of Danger, that says, the King may not charge the Subjects for Defence of the Kingdom.

2. All these Authorities that prove the King is trusted with the Defence of the Kingdom, and in divers Cases give him Aid, Taxes, Subsidies, &c. prove that the Subject is bound in case of Danger and Necessity, to pay them to the King for Defence of the Kingdom.

(3.) 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 the Subject, and may charge them much more, if for the Well-being, than where the Being itself of the Commonwealth is at Stake and in Danger.

(4.) The Authority 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.

(5.) All the Commissions of arraying Men in *Ed. I. Ed. II. Ed. III. Ed. IV. Hen. VII. and Hen. VIII. Times, &c.* are 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 antient 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 Law is but the common Usage of the Land; and therefore the Precedents alledged by the King's Counsel 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, Ethelred, &c.* the Use was to defend the Kingdom at the Charge of the whole Kingdom, by the Edict of the King. A strong Inference from the Precedent of the Grant to the Clergy and Church of divers Privileges, with these Exceptions of *Pontium, &c.* in the Times of *Edgar, Alfred, and Ethelred, &c.*

The Council of *Enoch* in *Edgar's* Time, about 606, mentioned by the learned Antiquary *Sir Henry Spelman, fo. 510.* And after those follows *hæ sunt constitutiones, &c. fo. 523.* in which are excellent Things, good for Church and Commonwealth. *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 *Cassiodorus* 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 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, (1.) That they are all upon the same common Reason that this is.

(2.) These Writs are not limited for their Number or Time; so they prove the Power was in the King to charge his Subjects.

(3.) In these Precedents, some were to Inland Counties, as *Bucks, Huntingdon, Bedford, Leicesters, Oxford, Berks, &c.* And tho' they went not generally 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. III. 13 Hen. III. m. 4. 18 Hen. III. m. 7. 13 Ed. III. m. 77. 23 Ed. III. m. 4. 28 Ed. I. m. 23.* and many others in *Ed. I.'s* Time, there is proving Contribution towards the Maintenance of the Sea-Coasts from Inland Towns, as *25 Ed. I. m. 13.* the Abbot of *Robertbridge's* Case is a full Precedent, notwithstanding all that hath been said against it. So *9 Ed. II. pars 1. 20 Ed. II. m. 7. 2 Ed. III. Scot. Roll. 7 Ed. III. m. 9. 10 Ed. III. m. 16, 17. 11 Ed. III. 12 Ed. III. 14, 15, 16. 18 Ed. III. 46 Ed. III. m. 34. 25 Ed. III. Rot. Franc' m. 9. 29 Ed. III. 1 Ric. II. 1 Hen. IV. Yet Hen. IV. 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. IV. Hen. VI. Hen. VII. and Hen. VIII.* by way of offensive War, Writs and Commissions to their Subjects to contribute toward it. So in *Queen Eliz.'s* Time, Commissions towards the Maintenance of the Kingdom. *11 Eliz. 41 Eliz. 2* 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; tho' they pass sometimes *sub Silentio,* yet are they good Authorities in the Law. The Abbot of *Robertbridge'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

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 Fortune*: but this Power of Liberty to command the Persons of his Subjects, he agrees is in the King; then I say, more reason that their Estates should be in his Power in this Case of Defence.

Besides, the Precedents warrant the quite contrary, and Wages have been paid the Soldiers by the Subject in this Case.

III. The third thing I shall do in this Case, is the answering of all the Objections which have been made against it, which were three.

1. That this Writ was against the Common Law.

2. That it was against the Statute Law.

3. That many Inconveniences will grow thereby.

1. 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.

2. The second Objection is, that it is against the Freedom of the Subject, who hath a true Property in his Goods, which cannot be taken away without his actual or implied Consent. *Lambert* fol. 294. *Mag. Char.* 17 King *John*, *Mat. Paris* fol. 242. *Fortescue* fol. 9. cap. 13, &c. 13 Hen. IV. 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 Monarchie Regni nostri habeant & teneant terras suas & possessiones suas bene & in pace, liberas ab omni exactione injusta, & ab omni tallagio, ita quod nihil exigatur vel 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 general. but the King may impose just Charges towards the necessary Defence of the whole Kingdom. For this is meant, as by the Work *Tallage* plainly 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, the manner of expounding it must be from the Law.

But my Brother *Crooke* quite left out these Words following that declare and expound the former, *viz: Statuimus & firmiter precipimus 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,

(1.) That the Kingdom is to be defended by the whole Kingdom *pro facultatibus* with their Goods, as well as *viribus* with their Persons.

(2.) 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 next 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 Publick Good.

The next 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 (1.) 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.

(2.) 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 subiectum 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 invitiis. 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 condit sine concessione vel assensu totius regni sui in parlamento suo expresso, &c.**

From them all, I take the true Meaning of him to be; and I hold, (1.) 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.

(2.) That the Subject hath an absolute Property in his Goods and Estate, and that the King cannot take them to his own Use.

(3.) That for his own Use he cannot lay any Burden upon his Subjects, without the Subjects Consent in Parliament.

(4.) 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.

(5.) 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 tho' every Man hath a Property in his Goods, yet he must not use them in detriment of the Commonwealth. A Man may give his Grasse or Corn away in the Field, 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 the 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 Account 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 *Brampton* 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 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 tho' (blessed be God) his Majesty is so gracious and loving to his Subjects, and so just, that we need not fear he will charge them but upon urgent Necessity ; yet we know not what succeeding Ages will do.

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 ruin 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. II. Rot. 60. B. R. 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 entering into his House, and taking away his Goods, and 60*l.* in Money ; the Defendant pleaded Not Guilty, and the Jury upon a special Verdict found that the Defendant 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 ; and according to which the Defendant searched the Plaintiff'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, 1st, because he had sufficient Remedy against the Commonalty of *Durham*, and 2^{dly}, because he did it as a Servant.

But I answer, 1st, Tho' 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 *Ric. II. 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, (1.) that this was no Act, but a Declaration in Parliament of the Law, and indeed no Declaration, but a Relation by the Chancellor.

(2.) If it had been a Declaration, yet it had not been binding without the King.

(3.) 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 endeavoured to please the Parliament.

(4.) It is a Precedent that they, *i. e.* 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 many Wars. Tho' Subjects may be charged for necessary Defence of the Kingdom, yet if Foreign Wars be together with them, it is otherwise. And therefore in the Parliament before, they said such Charge belong not to them ; and therefore they hold, they ought not to bear it : and so that Rule of *Gascoigne*, 24 *Hen. IV. fol. 4.* That no Man shall be charged without Parliament, where Bulwarks were built, &c. it proves not, tho' it implies, that if it had concern'd the Kingdom, it had been otherwise.

3. The next general 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

he pleases, an Example hereof they put in *Danegelt*, that in eleven Years grew from twelve to forty-eight thousand Pounds : therefore the Law hath provided against that Uncertainty, and limited it to a Parliament.

I answer to this, (1.) That if Danger increase, so must the Charge; 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 that 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.

Besides, No Abuse of any thing, must take away the true and lawful Use thereof. But 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, Murder cannot be punished: yet, says my Brother *Crooke*, the King cannot charge his Subjects in any 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, especially having delivered his Opinion, that the King is sole Judge of the Danger before, as indeed he is; and that the King is sole Judge of the Danger, not any have denied it, and therefore else it should be no Danger, but when every one shall say, you shall judge that the Kingdom is in Danger.

(2.) There hath been and may be, as great Danger when the Enemy is not discerned, as when in Arms and on the Land.

In the Time of War when the Course of Law is stopped, when Judges have no Power or Place, when the Courts of Justice can send out no Process, 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. III. Ric. II.* and *Hen. VII.*'s Time, Wars were in some Parts of the Land, yet the Judges sat in *Westminster-Hall*.

(1.) Now, whether a Danger be to all the Kingdom, or to a Part, they are alike perillous, and all ought to be charged.

(2.) The King may charge the 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.

(3.) 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.

And (4.) 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 prepared 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 this Danger remains, I shall bless God for such a King as will provide for the Defence of the Kingdom timely, and rejoice to see such a Navy as other Nations must veil to; and we are not in Case of Safety without it, and should lose our Glory besides.

The next Objection of my Brother *Crooke* was, that there is a Means provided by Parliament, which will not with-hold Aid for the Defence of the Kingdom, and it were a Sin to deny it in case of Necessity. And in *Ed. I.*'s Time, *Ed. II.*'s Time, and 4 *Ed. III.*'s 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 *Ed. I. Ed. II. Ed. III.* there were Pleas in Parliament, but those are now 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, 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.

The Objection of the King's Revenues, Tenures and Prerogative, they have been unfitly remembered, 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 restrain 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 what, in my Opinion, they may do.

1. Acts of Parliament may take away Flowers and Ornaments of the Crown, but not the Crown itself; they cannot bar a Succession, nor can they be attainted by them, and Acts that bar them of Possession are void.

2. No Act of Parliament can bar a King of his Regality, as that no Lands should hold of him; or bar 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 the Subjects, their Persons and Goods, and I say, their Money too: for no Acts of Parliament make any Difference. Now to the particular Statute objected.

(1.) 25 *Ed. I. Chap. 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 for no Business from henceforth, we shall take such Manner of Aids, Taxes, nor Prizes, due and accustomed.' And *cap. 7.* a Release of Toll upon every Sack of Wool 'And grant, that we will not take such things without their common Assent and good liking, saving to us and our Heirs, the Customs granted by the Commons aforesaid.'

As to the other Statute, *de Tallagio non concedendo, cap. 1. Nullum tallagium imponetur nisi per commune concilium regni nostri. cap. 2, 3, 4, 5, &c.*

First, These Words must have relation to the Aids before, and there be divers Aids; as some

by Taillage, some by way of Prize upon Goods, and Ransom of his Majesty's Person, &c. the King thereupon makes this Grant, which hath Relation to such Aids as were granted voluntarily. Secondly, Antient Aids are there reserved, as redeeming the King's Body, *pur faire fitz Chevalier, & pur marier son fle eigne*; and so all other antient Aids, which are to be understood with an *ad redimendum corpus, &c.*

And to the Statute *de Tollagio 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 24 or 25 Edw. I. And therefore I answer. It is not in the Parliament-Roll, and 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, (1.) That *nullum tallagium imponetur, &c.* that is, no unlawful Taillage shall be imposed upon the Subject without his Consent; or else the Aids *pur faire Fitz Chevalier & pur fle marier*, had not been excepted.

(2.) No Aids shall be imposed but by Contribution of the King and People; and here the King is taxed as well as they.

(3.) An Act of Parliament can by no Means take it away, much less by those general Words.

Obj. In 14 Ed. III. cap. 1. No Man from henceforth shall be chargeable, but by common Consent in Parliament.

To this I answer, That tho' it be but temporary in some Parts, yet it is binding only *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.

Obj. 25 Ed. III. cap. 8. No finding of Men at Arms, unless by Consent, much less finding of Ships.

Ans. This takes not away any former Law; and therefore the Precedents following, 4 Hen. IV. shew that it does not reach to this Case.

Obj. 2 Hen. IV. 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 repealed, and it was done.

Ans. I am of the contrary Opinion; for the Petition was, that it might be released; and the Answer was but this, that it should, but the King would treat with the Council about it; and it was but a Repeal of his Commission then only.

Obj. 1 Ric. III. cap. 2. where the King grants, that he would not hereafter charge them by Benevolence, or any such Charge, but that they should be dampned by the Law, by no such Charge or Imposition, *i. e.* by no such Charge of Money.

Ans. That Statute was only against Benevolences, and made by a King that had Reason, as we all know, to please the People for his own Ends.

Obj. 2. The Statute of *Tonnage and Poundage*, granted for the Defence of the Sea, the Words are, That no Taillage or Aid shall be without Act of Parliament, 2. That the King hath Means to defend the Kingdom, with a Protestation not to draw it into Example, 4 Hen. IV. 13 Hen. IV. Pari. Roll, m. 10.

Ans. I will not argue whether *Tonnage and Poundage* was 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. IV. is a Protestation of the Commons only; and this Charge is not taken away thereby, and *Tonnage and Poundage* is for and towards 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 the 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.

Ans. I was then Speaker of the Lower House, and I have Reason to remember what then was made. And I say, 1. There is no mention of this Case. 2. There was no new thing granted, but only the antient Liberties confirmed, taking notice of the Commons Protestation, not to bind the King from his antient Rights. 3. Look upon the Prayer what is desired; and the main Scope was, (1.) Generally against Loans, and this could not be included in these Words. (2.) Imprisonment without shewing Cause. (3.) Billeting of Soldiers. And, (4.) Mariners lying within the Land.

IV. I have now done with my third general Head, I come 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.

It is said, [1.] The Command to charge the Sheriff to levy and assess Money according to his Discretion, 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 rata, &c.* This Assessment is not warranted by the Precedents, (say 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 too vast Power given to the Sheriff, to enhance it as he pleases.

[2.] 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 for 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 what they say, that there is no Precedent for it. (1.) I say, That there is no Precedent that it hath been done by Jury, but always by the Sheriff, or such whom the King was pleased to trust; and since one must be trusted, none more fit than he.

(2.) By Example, we see, he speeds all, and is most ready for it.

(3.) I say, the Writ leads not the Assessment, it commands the Ship 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

but if they do it not, then the Sheriff is to levy it, that the Defence may be seasonable: so that 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.

(4.) The Clause of the Assessment is not only to the Sheriff, but to the Head Officer of the Town and Borough; and tho' 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. *Hampden* had the least Cause of any Man in *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. By divers antient 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 an Abuse in levying this Charge, when 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 Assessors, the Charge had not been complained of; yet the like Inequalities 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 therein, 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 Circuit, to endeavour the same in all Parts: And I myself, by this 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 Consequence, and 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 Hasten and Expedition; and therefore the Sheriff is fittest for this Business. Authorities in Law there are divers herein, as the Writs for the levying Expences for Knights of the Shire, Direction is to the Sheriff to do it, who assesses himself, and yet he is to execute it: So in a Writ of Recovery *de bonis habitantium*, 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 with his Part towards it.

Obj. The Writ is directed *probis hominibus*, and these cannot be charged in an Inland County.

Ans. What difference there is *inter probus homines*, between Inland Counties and Maritime Counties, I know not. 24 *Edw.* III. a Writ whereby they were charged in case of necessity; as to *Yarmouth* it was *probis hominibus*, &c. True, a grant by the King *probis hominibus* generally is void. 1 *Hen.* VI. *Dyer Phil' & Mar.* 7 *Edw.* IV. 14. But a Commission or Writ to assess them good enough. *Probi 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.

Obj. 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.* III. 6. and Impossibilities are void; a Covenant for impossible things is void, but a Bond may be good.

I answer now to the point of Impossibility. And possibly the Ship may be built in an inland County, tho' 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.

Obj. But we have none but trained Soldiers, no Mariners; our Country consists in Tillage, and our Men are trained up to the Plough and Husbandry.

I answer, We have the like occasion of Ploughs and Husbandry in *Kent*, and we have in many places no Maritime Towns; some lie 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 was no distinction of Maritime or Inland Counties, for then all *England* was but one Maritime County.

Then they objected, the Payment of Soldiers Wages for 26 Weeks, to be in the King's Service, is against many Precedents: as 16 *Edw.* II. 10. *Edw.* III. and entirely for Wages to be paid by the County is against all the Precedents: and Tenants 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 own Country till paid, and Order taken for their Pay by the King. And whereas the County had given Bond for Payment of Soldiers Wages, they were cancelled, and Order made in Parliament, that Soldiers should be at the King's Pay, 2 *Edw.* III. 16. 18 *Edw.* III. *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 *Edw.* III. *M.* 2. there is mention made of *Berkshire* Men, commanded to carry their Soldiers forth of their County at their own Costs; and when the Soldiers refused to go thence, no Charge or Payment; for Soldiers used to be paid by their County, as in that Case; and they were forced to go, and did go, and stay there three Years: so 13 *Edw.* III. *M.* 8.

Obj. 1 *Ed.* III. *m.* 14. None compelled to go out of their County without Wages paid. 18 *Edw.* III. *m.* 6, 7. that none should go out of their Counties: And not only those that had Offices and Patents to serve the King, but all with this Proviso, that the King should pay them their Wages.

Answe. 1 *Edw.* III. It is clear, and hath in it the Exception in Case of Necessity, and to be done as in times past.

18 *Ed.* III. It is expressed in the Act, when they go to the King's Wars out of the Kingdom: so 19 *Hen.* VII. &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 local.

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 Land made but one entire Kingdom, and so no going out of the Kingdom here; and consequently the Payment of the Soldiers Wages within the Kingdom is not against Law.

The last Objection is, that the Writ is illegal, because contrary to *Mag' Char'*, *nullus liber homo imprisonetur.*

Answe. As touching the Objection of the Nobility, that they are privileged from Imprisonment, it might well have been spared; and I know not wherefore it was spoken of, unless to make them think they were more interested than the rest of his Majesty's Subjects in this Case.

Obj. But yet, I say, Noblemen may be imprisoned upon Contempt, as my Brother *Crooke* knows well; and 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 Trial 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 itself illegal for Substance.

The Exceptions to the *Certiorari* are these.

1. The Direction of it to two Sheriffs, one out of his Office, when as the Sheriff in being ought only to return it.

Answe. Of this there is little doubt, nothing more frequent than for a *Certiorari* to issue out of the Chancery to two Parties, as to the Executors, 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 deliver'd over by the Jury to the new Sheriff. In *Hobart's Case*, in the *King's-Bench*, being convicted of *Heresy* before Sir *Julius Caesar* Judge of the Admiralty, Certificate to him after Master of the Rolls, and directed to him: so in the Case of my Lord *Paget*.

Obj. The Writ is without Return, saith my Lord Chief Baron; and the *Certiorari*, which is a Year and a half after, cannot renew 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. *Hampden* was Tenant or Ter-Tenant, or that *Stoke Mandeville* is within the County of *Bucks*.

2. It appears not that there was any Ammunition or Ship prepared.

I answer, It doth sufficiently appear, that Mr. *Hampden* was Ter-Tenant, for the *Certiorari* was to the Sheriff, who certifies that he was Tenant; for it was in pursuance of the Writ: the Words are, *Virtute brevis Domini Regis huic sibi d' annexat. certifico quod virtute & secundum exigentiam ipsius, &c.* *Assessari*, *Anglicè* have assessed, *super separales homines & terræ tenentes Com' Bucks prædictorum nomina subscribuntur, &c.* It relates to the Place there, Tenants in the County of *Bucks*, and makes Mr. *Hampden* one. And thus the business of Knighthood 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. 2^{dly}, It was prepared. 3^{dly}, 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 not intitled to bring the *Sci' Fa'*. So there is no *cui oneretur*, to whom he should pay the Money, for whose Good or Benefit Mr. *Hampden* should satisfy the Money assessed.

I answer, the King is interested 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; tho' the King be neither Plaintiff nor Defendant, the King shall recover therein. Many times in Case of a common Informer, the King recovers the one Moiety tho' no Party; so it was in the Case of Knighthood, tho' Suit was depending.

Again, all Writs in the Kingdom are the King's Writs, tho' 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 *Jurum Regiæ*, by Process out of the Exchequer.

Again, where it is said, *Quare ipse de prædicta summa specificat' onerari & inde satisfac' debeat, prout ulterius tibi præcept' &c.* for tho' the Writ be in the King's Name, yet it is but for the performance of the Work and Charge; and tho' 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 not this Objection made by my Brother *Denham*? Tho' none more cheerfully did subscribe to his Majesty's Letter, neither was the *Sci' Fa'* without his Advice, being the aptest Course, and better than *Trespas*: 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 *Aug.* no Judgment, &c.

I answer, This *Sci' Fa'* is not annexed to the Writ, and is a new Action, that Mr. *Hampden oneretur & inde satisfaciet*, and after that Judgment upon the Writ, and upon his saying nothing, why *revocetur*,

revocetur, there shall be a good Record whereupon he shall be charged. 3 *Eliz. Dyer* 156. *Ignoramus* is sufficient Title for the King, and Ground for a *Melius inquirendum*.

No *Sci' Fa'* lies upon the Tenor of a Writ, say they: 39 *Hen. VI. 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. VI.* 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 *Edw. III.* Title Tenure by transcript 8 *Hen. V. 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 certify the Tenor of a Recognizance; so of a Fine of Amerciament, &c. to certify 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 *Jan. 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* her.) 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, *Subis Mittimus presentibus*, &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 *Dunham* know what Judgment was given; when I observed, 1st, 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 satisfy 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. *Hampden* shall be charged with 20*s.* assessed, and that my Lord Chief Baron ought to give Judgment accordingly.

The Argument of Sir John Brampton Kt. Lord Chief Justice of his Majesty's Court of King's-Bench, in the great Case of Ship-Money.

QUARTO Aug 11 *Car.* a Writ issued out of the *Chancery*, being directed to all 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 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 employed in his Majesty's Service, for Defence of the Realm, and of the Sea.

Mr. *Hampden*, in the County of *Bucks*, was assessed at 20*s.* for his Manor of *Stoke Mandeville*, who refused to pay the same; whereupon a *Certiorari* issued to the Sheriff of *Bucks*, to return the Defaulters; amongst whom Mr. *Hampden* was returned to make Default of 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. *Hampden*, to shew Cause why he made Default of Payment of the said 20*s.* Whereupon Mr. *Hampden* 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.* 1. Whether the King may command this general Charge of his Subjects by Law, or no, without their Consent in Parliament? 2. Whether this Kind of Assessment be warrantable by Law, or no? and, 3. 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 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; and that I shall do 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 which 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 these Statutes to be merely Declarations in affirmance of the Common Law. And I shall begin with the Statute 1 *Edw.* III. *cap.* 5. and I shall not go far from the Intent of the Statute; I shall scarce make use of any Precedents, tho' 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.* III. 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 merely declarative, and spoken in affirmance of the Common Law, and this Use is declared by this Statute to be the antient 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. *Hampden's* Counsel 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 *Barkley* well observed, is out of the Precedents of *Edw.* I. *Edw.* II. and II. III. times; and in them you shall find it to be for foreign Wars, or else for 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 is, What the Subject in this Case, *secundum legem Anglic*, may be compelled to 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, there is no time to stand upon Wages. It appears both in *Fitz-Herb. 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 in Wars without the Realm, as in his Wars within, and with him, and without him, in the King's Service.

By the Statute of 18 *Edw.* III. and 11 *Edw.* III. Men of Arms, as Hobbellers, 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, these two Statutes are declaratory Laws in affirmance of the Common Law. In 7 *Hen.* IV. Title *Tenure* 44. there it is said, a Man is not to go with the King in his Wars, out of the Realm, without Wages. And so 7 *Hen.* IV. Title *Tenure* 73. the Subjects of *England* are not to go with the King beyond the Seas, without their Wages: But in the Realm they are at his Command, and there is no Wages to be given. So it is in going out of *England*, when 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 should put an end to the Case, that the Defence of the Realm must 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 thro' 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 this 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: now that 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 Statute of *Edw.* III. which do declare the Law upon the Statute.

And to shew what the Use was, I shall rely chiefly upon those Precedents that are most judicial. First, that of 25 *Edw.* I. *Term' Mich' Rot.* 72. *Banc' Regis*, in the Abbot of *Robertsbridge'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 *Ed.* III. *m.* 2. *fo.* 18. the King by his Writ sent a Command to send to *Portsmouth* one hundred Foot and twenty Horsemen 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 *Ed.* III. *cap.* 8. it is generally assented to by Parliament.

But there we have a general Law in the first Statute 1 *Edw.* III. which was grounded merely on the Common Law, and so was the Statute 25 *Edw.* III. and the rest to the same purpose, because it was against the Right of the Realm. And this Statute of 25 *Edw.* III. was merely 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 ourselves to that which is legal and authentical, so the Parliament Roll 13 *Ed.* III. *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 *Edw.* III. for then there was no Statute?

Now to bring it down to our Times. In 26 *Ed.* III. *M.* 44. every Maritime Town was charged 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.* III. there was a Commission issued out, to distrain every one *secundum potestatem*, 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 join in charge with the King, to defend the Realm *sumptibus propriis*. Thus much for Defence upon the Land; now for Defence upon the Sea.

In the Statute 18 *Ed.* III. *cap.* 7. that they who 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; see 2 *Ed.* III. *cap.* 10. *Proteſt.* 46. *Bract' lib.* 2. *fol.* 365. there the Sea is made part of the Kingdom.

Doctor

Doctor and Student, cap. 51. It is the ancient Custom of *England*, that the King is Lord of the narrow Seas. But that which I most rely upon is, from the Statutes of 1 and 18 *Ed. III.* for they both meet in one, which is according to the Common Law, for all the difference thereof is, the Subject to go out of his own County whether to defend the Land or the Sea.

In the Statute of 1 *Ed. III.* 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. III. Term. Mich.* But I rely not upon Precedents for either, but only upon those Precedents that went out to the Ports and Maritime Towns: for it was well observed by the King's Counsel, that they were not grounded upon any Precedents or Charters, but only upon ancient 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 Statute of 1 *Ed. III.* 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 to 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 their Charge of the Land-Service and of the Ports: And if they may be compelled in the Inland Counties to defend their Inland Counties, and the Sea-Men to defend the Sea-Coast; then I know no Reason but that they may be compell'd all in general to bear a publick Charge in Case of Necessity.

I am still upon the Statute 1 *Ed. III.* wherein I find Mr. *Selden* in his *Mare clausum*, says it was an ancient Use to charge the Inland and Maritime Counties in Case of Necessity; and therefore in my understanding, I hold it to be *secundum legem Anglic.*

But here my Brother *Crooke* objects, there is no Statute or Precedent to shew that any Inland Counties were 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 Statutes of 1 *Ed. I.* and 1 *Ed. III.* they cannot cross one another, for then could not the Statute of *Ed. I.* be confirmed by the Statute of *Ed. III.*

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 *Barely* saith, that the Statute of 9 *Hen. III.* and 25 *Ed. III. cap. 11.* are the great 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. IV.*

But now if concerning the charging of the County, the said Statutes were nothing but according to the Common Law of *England*, I cannot see how they should cross 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. III. 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. III.* 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 Taillage; but there is great difference between the Taillage 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 what every Subject owes to the Common-wealth in a time of common Danger. And after King *Edward the Confessor*, it was ordered by several Statutes, Let every one have their own Goods and Lands free from Taillage, and let nothing be taken from them. But in this Case of Necessity in common Danger is another thing, the King may then compel his Subjects to this Charge; and I may add the Reasons strongly insisted upon by the King's Counsel. My Lord *Coke* said, it could never be the meaning of the great Charter of the Liberty of the Subjects by this Statute 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 a Taillage upon the People, and a Service in a 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 Taillage-Statute taketh not away: And shall it take away this Royal Power of the King, so inherent in the Crown, the Protection and Preservation of his Kingdom?

From this Statute 1 *Ed. III.* Mr. *St. John* raised 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 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 come, else the Defence is too late: there is a Necessity to prevent a Necessity, and who shall give warning in such a Case but the King? Saith *Littleton*, who gives Warning? not the Tenant 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 come too late: Enemies are more easily kept out than overcome when they are got in.

By the Statute of 8 *Ed. IV.* there Bulwarks may be made in another Man's Ground; but this Preparation cannot be without Warning, and none can give the Warning but the King, and the Subjects are to be at his Command, and 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 upon them to build Bulwarks, &c. It is an Assuming of the Royal Power, for it must be done *justa preceptum Domini Regis.*

Now I come to the second Part, whether this Assessment be warranted by Law or not. The Writ was dated 4 *Aug.* to prepare a Ship against the

the 1st of *March*. Therefore we see it is not against the great Laws concerning the Subjects Liberty, because it is no Taillage 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 satisfy therein; there must be, I say, a publick Danger, and then it is *secundum legem & consuetudinem Regni Angliæ*, as appears 20 *Ed. III. m. 21*. And also in *Doct̄or and Student*, cited before, that when Necessity doth require, the King may compel his Subjects to this publick Service and Charge. Tho' the King be the sole Judge, and his Certificate is not traversable and cannot be denied, yet there must be Matter apparent within the Record to satisfy 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 never conceived 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 such publick Danger.

Then for the Assessment; many Exceptions have been taken to it, and to the Record and *Sci' Fa'*: I had provided myself to have given a full Answer thereunto, but my Lord *Finch* hath prevented me, and hath cited the very Authorities that I myself did rely upon.

But for the Assessment itself to the Sheriff, I do not say that I do find he hath like Power in any other Case of Law: Commissions of Sewers may be directed to the Sheriff, but not to give Power to assess Men's Goods.

I answer, that this is in Case of Necessity; for the very 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 unlimited 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 *Rep.* 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 lieth, 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 *in bono publico*, as in making a High-way 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 as this, shall ever bind 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 that he be rated in an equal Proportion. Hath the Sheriff rated Mr. *Hampden* 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 20s. which is no great Sum; and also confesseth upon the Record, that it is an equal Assessment. When Mr. *Hampden* 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 *Bodmin's* Case in *Cornwal*, and upon the Exceptions *super tenorem recordi* in 9 *Hen. VI. fol. 23*, And the Reason why he should not have Execution *super tenorem recordi* is, because otherwise the Subject might be charged double. And divers Cases were put upon suing forth Execution upon 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. VI. 4 Hen. VI.*

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 made another way.

And as 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, no 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 a 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 well 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 than go against the Inclination of my own Opinion: as I have gone thro' all the rest with the Warrant of my own Conscience, I cannot go upon any String in a thing of the least Weight, but I must deliver my Opinion as it inclines; and therefore, upon those Reasons that I have heard, and upon Consideration taken with myself, I do rather incline to the Opinion of my Lord Chief Baron, and upon his Reasons, which I think was in that with the lesser Number: But for my Opinion in all other Points, I agree with the general Vote of the Court.

Upon the 12th of June, 14. Car. Mr. Attorney moved the Court of Exchequer for Judgment against Mr. Hampden, 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. Hampden, and accordingly I do pray Judgment.

To which my Lord Chief Baron answered :

It is very true, it was referred from 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 Cause properly depend in this Court) yet we must apply ourselves to their Resolution, and our four Voices are involved in theirs; and therefore accordingly, *secundum legem, &c. oneretur Johannes Hampden.*

The Copy of the Order, as it was drawn up upon the Motion of Mr. Attorney-General, and now remains entered in the *Exchequer*.

Remem^r
Regis.

Termin^r Ste^r Trin^r Anno 14 Car.
12 die Junii.

Bucks. **W**HEREAS several Sums of Money by virtue of the King's Majesty's Writ under the Great Seal of *England*, bearing Date the 4th Day of *August* in the 11th 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 *Certiorari*, bearing date the 9th Day of *March* in the 12th 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 5th Day of *May* in the 13th 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^r Fa^r* was the 20th Day of *May*, in the said 13th Year of his Majesty's Reign, awarded to the Sheriff of the County of *Bucks*, directing to garnish the several Persons, in a Schedule to the said *Sci^r Fa^r* annexed contained, to shew Cause the Octaves of the Holy Trinity then ensuing, why they should not be charged, and satisfy the said Sums of Money assessed upon them; in which Schedule it was contained, amongst divers others, that *John Hampden Esq;* was assessed at 20s. as by the said *Sci^r Fa^r* and Schedules thereunto annexed, may also more fully appear: Whereupon the said *John Hampden 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, joined 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 Defendant, 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 deliver'd their Opinions and Judgments that the said *John Hampden* ought to be charged with, and to satisfy the said Sum of 20s. and therefore the said Mr. Attorney moved the Court, That Judgment might be entered accordingly: It is thereupon ordered by this Court, that Judgment shall be forthwith entered, that the aforesaid *John Hampden* ought to be charged with, and satisfy the aforesaid Sum of 20s.

A Copy of the Judgment in English, as it is enter'd upon Record, in pursuance of the said Motion, and according to the major Votes.

“ * **A**ND because the Barons here will advise
 “ themselves of and upon the Premises,
 “ before they give Judgment thereupon, a Day is
 “ given to the aforesaid *John Hampden*, in the
 “ same State as now here, upon the Octave of *St.*
 “ *Michael*, that the said Barons in the mean while
 “ of the said Premises may advise, and with the
 “ Justices of both Benches may thereupon delibe-
 “ rate: for the said Barons here, not yet there-
 “ upon, &c. And upon this it is agreed between
 “ the Barons here, as well with Consent of the
 “ said Attorney-General of our said Lord the
 “ King, as of the said Attorney of the aforesaid
 “ *John Hampden*, and the Counsel learned in the
 “ Law of the said *John Hampden*, that some Per-
 “ sons learned in the Law as well of Counsel, and
 “ on the behalf of our said Lord the King, as of
 “ Counsel and on the behalf of the said *John*
 “ *Hampden*, of the aforesaid Matter in Law and
 “ the other Premises, in the Chamber of this
 “ *Exchequer*, commonly called the *Exchequer-*
 “ *Chamber*, before the said Barons, together sit-
 “ ting 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 Hampden* here as be-
 “ fore. And because the Barons here further will
 “ advise themselves of and upon the Premises,
 “ before they give Judgment thereupon, a Day
 “ is further given to the aforesaid *John Hampden*
 “ in the same state as now here, until the Octave
 “ of *St. Hilary*, that some Persons learned in the
 “ Law, as well of Counsel and on the behalf of
 “ our said Lord the King, as of Counsel and on
 “ the behalf of the said *John Hampden*, of the
 “ aforesaid Matter in Law, and the other Premi-
 “ ses in the Chamber of this *Exchequer*, com-
 “ monly

monly 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, and the said
 Barons with the said Justices deliberate there-
 upon; so that no Person learned in the Law,
 either of the Counsel of our said Lord the King,
 or of the Counsel of the said *John Hampden*, 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 Solicitor of our said Lord the
 King, as two learned in the Law of the Coun-
 sel of the aforesaid *John Hampden* in the Pre-
 mises, being on the Part of the said *John Hamp-*
den, twelve several Days in the aforesaid *Exche-*
quer-Chamber, before the Barons of this *Exche-*
quer, sitting with them then there the aforesaid
 Justices of both Benches, were openly and sin-
 gly heard to argue at large, and particularly of
 the said Matter in Law, and other the Pre-
 mises (the aforesaid Record being recited) and
 what thereupon they could or would say. And
 the aforesaid Attorney, and Solicitor-General,
 divers and very many Records, Writs, Com-
 missions and Precedents, as well of this *Exche-*
quer, as of the Court of *Chancery*, the Court of
King's-Bench and *Common-Pleas*, the Matter in
 Law, and other Premises in the several Writs,
 Returns, and Schedules aforesaid contained, on
 the Part of our said Lord the King, to prove,
 confirm and maintain, then and there produ-
 ced, shewed and expounded. And on the
 aforesaid Octave of *St. Hilary*, the said *John*
Hampden came here as before; and because the
 Barons here further will advise themselves of,
 and upon the Premises before they give Judg-
 ment thereupon, a Day is further given to the
 aforesaid *John Hampden*, 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 Hampden* came
 here as before; and because the Barons here
 further will advise themselves of, and upon the
 Premises, before they give Judgment thereupon,
 a Day is further given to the aforesaid *John*
Hampden 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 afore-
 said *John Hampden* came here as before; and
 upon this, the Premises being seen, and by the
 Barons here plainly understood, and mature
 Deliberation thereupon being had with the a-
 foresaid 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 thereupon made,
 it appeareth thereupon to the Barons, by Ad-
 vice of the Justices aforesaid, that the several
 Writs aforesaid, and their Returns, and the
 Schedules aforesaid to the same annexed, and
 the Matter therein contained, are sufficient in
 the Law to charge the aforesaid *John Hampden*

with the aforesaid 20s. assessed upon him in
 the Form and for the Cause aforesaid. It is
 therefore agreed by the said Barons, that the
 aforesaid *John Hampden* be charged with the
 said 20s. and thereof make Satisfaction, &c.

This Judgment in the Case of Ship-Money
 gave much Offence to the Nation, and occasioned
 great Heart-burnings in the House of Commons:
 It was particularly taken notice of in Mr. *Waller's*
 Speech in that House *April 22 1640*, which was
 as follows.

Mr. *Speaker*,

I Will use no Preface, as they do who prepare
 Men for something in which they have a par-
 ticular Interest. I will only propose what I con-
 ceive 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 De-
mands.

First, the Supply.

Secondly, our speedy Dispatch thereof.

Touching the first: His Majesty's Occasions for
 Money are but too evident. For to say nothing
 how we are neglected abroad, and distracted at
 home; the calling of the Parliament, and our
 sitting here (an Effect which no light Cause could
 have in those times produced) 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 Parliaments heretofore (as ap-
 pears by the Writs that call us hither) was to ad-
 vise with his Majesty, of all things concerning the
 Church and Commonwealth. And it hath ever
 been the Custom of Parliaments, by good and
 wholesome Laws, to refresh the Commonwealth
 in general, yea and to descend into Remedies of
 paaticular Grievances, before any mention made
 of a Supp'y. Look back upon the best Parliam-
 ents, and still you shall find, that the last Acts
 are for the free Gifts of Subsidies on the Peoples
 part, and general 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 Counsel and Purfes. 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 threat-
 en 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 Country 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 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 Councillors, 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 rebel 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 benigner 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 mis-judged 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 satisfy 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 Commonwealth 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 Parliaments; and if we look upon the Success of things since Parliaments were laid by, it resembles that of the *Grecians*,

*Ex illo fluce & retro sublapsa referri
Res Danaum*—————

especially on the Subject's Part. For tho' the King hath 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 persuade 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 too) 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 Privileges 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 Privileges 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 arbitrary, *till it was found, 'that to live by one Man's Will, became the Cause of all Mens 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 Prelates 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 the 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 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, tho' 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 to *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 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.

Afterwards the House of Commons took the Affair directly under Consideration, in calling those Judges to an account, who had given their Opinions for the Ship-Money; at which time Lord *Falkland* deliver'd himself in the following manner:

Mr. *Speaker*,

THE Constitution of this Commonwealth hath established, or rather endeavoured to establish to us the *Security of our Goods*, and the *Security of these Laws* which would secure us and our Goods, by appointing for us *Judges*, so settled, so sworn, that there can be no oppression, but they of necessity must be necessary; since if they neither deny nor delay us Justice, which neither for the great nor little Seal they ought to do, the greatest Person in this Kingdom cannot continue the least Violence upon the meanest. But this Security hath been almost our Ruin; for it hath been turned, or rather turned itself into a Battery against us: and those Persons who should have been as Dogs to defend the Sheep, have been as Wolves to worry them.

These *Judges*, to instance not them only, but their greatest Crime, have delivered an Opinion, and Judgment in an extrajudicial manner, that is, such as came not within their Cognizance, they being Judges, and neither Philosophers, nor Politicians. In which when that is so absolute and evident, the Law of the Land ceases; and of general Reason and Equity, by which particular Laws at first were framed, returns to his Throne and Government, where *Salus Populi* becomes not only *suprema*, but *sola lex*; at which, and to which end, whatsoever should dispense with the King, to make use of any Money, dispenses with us to make use of his, and one another's. In this Judgment they contradicted both many and learned Acts and Declarations of Parliaments; and those in this very Case, in this very Reign: so that for them they needed to have consulted with no other Record, but with their Memories.

2. They have contradicted apparent Evidences, by supposing mighty and imminent dangers, in the most serene, quiet, and halcion days that could possibly be imagined, a few contemptible Pirates, being our most formidable Enemies, and there being neither Prince nor State, with whom we had not either Alliance, or Amity, or both.

3. They contradict the Writ itself, by supposing that supposed Danger to be so sudden, that it would not stay for a Parliament, which required but forty days stay, and the Writ being in no such haste, but being content to stay seven times over.

It seemed generally strange, that they saw not the Law which all Men else saw but themselves. Yet tho' this begot the more general Wonder, three other Particulars begot the more general Indignation.

When they had allowed to the King, the *sole Power in Necessity*, the *sole Judgment of Necessity*, and

and by that enabled him to take both from us, what he would, when he would, and how he would, they yet continued to persuade us, that they had left us our Liberties and our Properties.

And, which I confess moved most, that by the Transformation of us from the state of Free-Subjects (a good Phrase under Dr. Heylin's Favour) unto that of Villains, they disable us by legal and voluntary Supplies to express our Affections to his Majesty, and by that to cherish his to us, that is, by Parliaments.

The Cause of all the Miseries, we have suffer'd, and the Cause of all the Jealousies we have had, that we should yet suffer; is, That a most excellent Prince, hath been most infinitely abused by his Judges, telling him that *By Policy he might do what he pleased.*

We must now be forced to think of abolishing of our Grievances, and of taking away this Judgment and these Judges together, and of regulating their Successors by their exemplary Punishment.

Hereupon the Opinions of the Judges, the Ship-Writs, and the Judgment against Mr. Hampden being read openly in the House on Monday Dec. 7, 1640. after long Debate these four several Votes were agreed to by the House, *nemine contradicente.*

1. THAT the Charge imposed upon the Subjects for the providing and furnishing of Ships, and the Assessment for raising of Money for that purpose, commonly called *Ship-Money*, are against the Laws of the Realm, the Subjects Right of Property, and contrary to former Resolutions in Parliament, and to the Petition of Right.

2. That the extrajudicial Opinions of the Judges, published in the *Star-Chamber*, and inrolled in the Courts at *Westminster*, in *hæc verba*,

The CASE.

Charles Rex.

WHEN the good 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, Victual, and Munition, and for such a 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?

C. R.

Their Opinions.

MAY it please your most 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 Opinions signed by your Majesty, and inclosed in your 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, Victual, and Munition, and for such time as your Majesty shall think fit for the Defence and Safe-

guard 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.

In the whole, and in every part of them, are against the Laws of the Realm, the Right of Property, and the Liberty of the Subjects, and contrary to former Resolutions in Parliament, and to the Petition of Right.

3. That the Writ following in *hæc verba*, viz.

CHARLES by the Grace of God, King of England, Scotland, France and Ireland, Defender of the Faith, &c. To our Right Trusty and Well-beloved Counsellor, Thomas Lord Coventry, Keeper of our Great Seal of England, greeting. These are to will and require you, that for the Safeguard of the Seas, and Defence of the Realm, you issue forth, or cause to be issued forth of our High Court of Chancery these ensuing Writs in the Form following, with Duplicates of them, under our Great Seal of England, unto the Counties, Cities, Towns, and Places hereafter ensuing, and for so doing this shall be your Warrant.

And the other Writs, commonly called the Ship-Writs, are against the Laws of the Realm, the Right of Property, and the Liberty of the Subjects, and contrary to former Resolutions in Parliament, and to the Petition of Right.

4. That the Judgment in the Exchequer in Mr. Hampden's Case, a Transcript whereof followeth in *hæc verba*: (*viz. Quod separalia brevia prædicta & retorna eorundem, ac schedul. prædict. eisdem annexat. ac materia in eisdem content. sufficien. in lege exist. ad præf. Joh. Hampden de prædictis viginti solidis super ipsum in forma & ex causa præd. assessis, onerand. Ideo consideratum est per eosdem Barones, quod præd. Johannes Hampden de eisdem viginti solidis oneretur, & inde satisfaciatur.*) In the Matter and Substance thereof, and in that is was conceived that Mr. Hampden was any way chargeable, is against the Laws of the Realm, the Right of Property, the Liberty of the Subjects, and contrary to former Resolutions in Parliament, and to the Petition of Right.

These Votes were afterwards transmitted by the House of Commons to the Lords, and delivered by Mr. Saint-John (afterwards his Majesty's Solicitor-General) at a Conference of both Houses of Parliament, held 16 Car. 1640.

Mr. St. John addressed himself to the Lords as follows.

My Lords,

THE Knights, Citizens, and Burgeses 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 magnifying Glass; it will appear too big in its own Dimentions.

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 Lord's, 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 Descendants, 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 extra-judicial 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 Burden which hath been thereby imposed upon the Subjects, tho' that be great, but the Declarations in them of the Law, and of the Right whereby this Burden may be imposed.

The last is, the Judgment in *Master Hampden'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 to your Lordships.

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 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 Additional. 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 maiore ad minus*, and speak plain *English*, which followeth in *hac Verba*.

The Case.

Charles Rex.

WHEN the Good, and the Ease 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?

The 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 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 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

‘ 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 Proportion, 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 Consideration, 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 got a new Stock or Livelihood, that is no more mine than the former, so that there is no Property left unto the Subject, tho' the Opinions go no further. But, my Lords, Ship-Money is not the whole Extent of them; Ship-Money, by these Opinions, 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 Soldiers, 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 codet.*

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. Because the Writ is long, I shall open it briefly; 'tis 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 Piracy 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 selling of the Distress, to levy these Monies; *si contrarios invenerit*, then to imprison their Persons: And further declares, that all this may be done, *secundum Legem & Consuetudinem Regni*. The Sense 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 Lord might imprison his Villain, but could not transfer that Power to the Bailiff, 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. *Hampden*. The Record is very long: I shall briefly open it to your Lordships. *Quarto Aug. 11 Car.* 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 Sums assessed upon them. From the Chancery, by *Mittimus*, these Certificates were sent into the *Exchequer*, to the intent Proccesses might issue against the Defaulters. A *Scire facias* issued to the Sheriff of *Bucks*.

Bucks, who thereupon, amongst other Returns, returns that Mr. *Hampden* had been assessed 20 Shillings, for some Lands in *Stoke-Mandeville* in that County, which he had not paid. Mr. *Hampden* 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. *Hampden's* Side, and two on the other Side: The first was in *Michaelmas* Term, after *All-Hallowtide*; and all the four Arguments were speeded before *Christmas* Day, two of them in the Term; and no longer time could 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-Hallowtide* and *Christmas* thro'out. After the Arguments, the Counsel 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. *Hampden'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. *Hampden*. When the Judges had deliver'd their Opinions, it was the Barons part to give Judgment; the Judgment was, *Quod separalia brevia prædicti & return' eorundem ac Schedule prædicti eisdem annex' ac materia in eisdem content' sufficien' in lege existunt ad præfatum Johannem Hampden de prædicti. viginti solidis super ipsum in form. & ex causa prædicti. assis' onerand' Ideo consideratum est per eosdem Baron' quod prædictus Johannes Hampden de eisdem viginti solidis oneratum exinde satisfiat.*

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. *Hampden'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 had it been by the former Judgment adjudged already in the Exchequer.

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 thro'out 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 Liberty of Persons, by the Occasion of the Commissions for the Loan, and the Instruction where-with 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 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 further 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 Aspersions upon that Parliament. I am commanded now to present to your Lordships Consideration, 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 *Octob.* 2. *Car.* 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 King assured on the Royal Word of a King, that not one Penny should be bestowed, but upon those publick Services only, wherein every one 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 Subsistence 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 engaged 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. These 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 Febr.* it was dated after the Summons to that Parliament: This Commission issued to 33 Lords, and others of his Majesty's Privy-Council; the Commissioners are thereby commanded to raise Monies by Impositions, 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 extremest Hazard of the King, Kingdom, and People, and of 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 Opinion of the Ship-Writs, or Judgment in the Chequer.

In the Parliament 3 *Car.* 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, desired 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 Rejection were these in Sum.

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, Taillage, 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, but 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 conceived 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 *Glanville*, and Sir *Henry Martin*, received Satisfaction

Satisfaction from these Reasons, and consented to the leaving out 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 Lordships 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 Judgment 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 Judgment, why they should recede 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 Privileges in the Members is tenderly resented, because that without this Freedom, they cannot advise and consult concerning the *Ardua Regni.*

But when they have done all to have 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 Car. 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, tho' 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.

The Judges, as is declared in the Parliament Roll of *Rich. II.* are the Executors of the Statutes, and of the Judgments and Ordinances of Parliament; they have here made themselves the Executioners 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 *Commines*, observe, 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 even with the Ground.

If one that was known to be *hostis Patriæ*, had done this, tho' 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, tho' in a private Person, and in the least things, is odious amongst all Men; much more in a publick 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 deliver'd Possession to his Adversary, it's a Crime scarce punishable by Law.

The Judges under his Majesty are the 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 the 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 their 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 lies smear and blemish the sacred Person of his Majesty, with the odious and hateful Sin of Perjury.

My Lords,

The Heinousness 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, tho' 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 times, having of five Persons received five several Bribes, which in all amounted to 100*l.* was for this alone adjudged to be hanged,

hanged, and all his Lands and Goods forfeited, The Reason of this Judgment is entred in the Roll, in these Words :

Quia prædictus 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 intrusted 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 & fregunt, & 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 its 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 wholesale, and that not to but from the Subject.

In that of *Thorpe*, as to 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 Sheriffs, Bailiffs, and others, which altogether, as is conceived, amounts not to much less than a Million ; besides the infinite Vexation of the Subjects by Suits in Law, binding them over to Attendance at the Council-Board, taking of them from their necessary Employments in making of Assesses, and Collections, and Imprisonment of their Persons : I say, *my Lords*, besides what is past, to make our Miseries complete,

they have as much as in them lies 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 fore 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 Cattle ; and last of all, their Persons and their Lands, for Bread ; and all became *Pharaoh's*. But by this *Lex 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 surrendering of *Berwick Castle* to the *Scots* in *Edw.* III's time, tho' 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 only loseth not a Kingdom, 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 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 Gods, the *Dii Tutelares* 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 (tho' 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 held them for us, the Mouth of our own Cannon is turned upon ourselves.

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 my 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, and forced upon it, is fallen short; and with your Lordships 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 those Judges who have broken this part of their Oath, in that notable 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*, the 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 Serjeant at Law, *Blake* of the King's Counsel 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 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 Traitors, if they returned from their Banishment: And of those eighteen Persons all save three were impeached by the Commons.

The Offences which procured these exemplary Punishments, altho' their Proceedings be long, and comprehended all that was done in this Parliament, I'll briefly open them to your Lordships.

† *Vid.* Trial I. in this Collection.

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 Household, Courts of Justice, and the Revenues; in a Word, in all things concerning the Good of the Realm; with full Power finally to determine and put in Execution such Determination 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 Year's 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 trenched upon the Royal Power, tended to the Dishonour of the King, and Derogation of the Crown, together with the Destruction of the Commissioners who procured it, and put the same in Execution, upon pretence that they and some others had in Parliament forced the Royal Assent:

My Lords, the conspiring to overthrow this Commission, and the Procurers of it, is the Case in brief: for altho' 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 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 that this was Treason. Thereupon *Blake* one of the King's Counsel at Law was advised withal, who declared his Opinion, that it was Treason; he was commanded to prepare an Indictment of Treason against the Commissioners, and some of the Procurers of it, who had been active therein.

The Indictment was drawn by him, which is entred in the Roll, and is to this effect.

That they had traiterously conspired amongst themselves in the Parliament, to make this Commission by Authority of Parliament against the Regality of the King, to his Dishonour, and Derogation of the Crown; that they compelled the King's Consent, and that they confederated and bound themselves to maintain one another in so doing.

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 Trial 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

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 Derogation of the Crown? They answered, it was.

2. The second Question was, Whether the persuading and urging the King's Consent in Parliament thereto was Treason? They answered, That it was. Tho' 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 traitorous 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 altho' 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 all these Judgments, that they are adjudged Traitors, as well against the Person of the King as against the Commonwealth.

2. It is there declared upon great Advice taken, that in Treasons which concern the King and 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. Judgment was given in Parliament, and Execution awarded, and afterwards a Bill of Confirmation passed, in respect of their Lands, to give them from a Day past; and for Declaration that this should be no Precedent to inferior Courts to adjudge the same Cases 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 the 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 it is declared in the Roll, that they spent a long time, and took great pains to examine the Evidences, the better thereby to satisfy 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 21 *Rich. I.* revoked and made void.

But, my Lords, that Parliament of 21 *Rich. 2.* of Revocation was held by Force, as it is declared in the Parliament Rolls of 1 *Hen. IV. N. 21, 22.* that it was held *viris armatis, & sagittariis immensis.*

The Knights of Parliament were not elected by the Commons, *prout mos exigit, sed per regiam voluntatem*: And so the Lords, *summoniri fecit Rex Dominos sibi adhaerentes.*

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, in the Parliament of 1 *Hen. 4. n. 48.* these Judgments of Revocation are declared to be *contra, iniqua, & omni juri & rationi repugnantia*, erroneous, wicked, and contrary to all Right and Reason. In the Parliament of 1 *Hen. IV.* 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 at this Day.

Your Lordships will give me leave to observe the Differences and Agreements, between the Offences of those and of the present Judges, and as well in the Way and Manner of Procurement, as in the Matter 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. IV. n. 18.* they were *violenter attracti*, violently drawn to deliver their Opinions, and that *metu mortis & cruciatu corporis*, for the fear of Death and Tortures of their Bodies: and at their Trials 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 Cowardice 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 the rest, as well as some of them, had repented, and would not have done it over again: for *Belknap*, 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 *Fulthorp*, 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 Judgment 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 against their own Knowledge; they knew the Commission was done by Act of Parliament: so here these knew the Petition of *Right* damned the Commissioners of *Loans*, a stronger Case than that; they subscribed many of them, knew that the Commission of *Excise* was damn'd in Parliament; they knew the other Proceedings in Parliament; and if they had forgotten them, they were afterwards

afterwards put in mind of them; they needed not to have consulted with Books and Journals of Parliaments, saving only with their own Memories.

2. They agree in this, That their Opinions tended to the Subversion of the Laws and Statutes of the Kingdom: for in that of *Rich. II.* the Pretence 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 them upon their *Habeas Corpus*.

In that of *Rich. II.* it was for overthrowing but one Act of Parliament, which was likewise introductive of a new Law; 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*.

This 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 publicly, and upon the Bench, de-

clared, 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 *Rich. 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 *Superfedeas* 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 *Philazers* 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, that 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 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 Commonwealth; and if they should do it without Process of Law before them, and only upon her Command put the other out of Possession, tho' 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*, in *Rich. 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 Hand of Anderson the Lord Chief Justice in his Reports, Vol. I. pag. 152--158.

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, *Corporum 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 Lordship's Patience, are now ready to be opened and delivered to your Lordships.

Mr. Hide * *spake afterwards in the following manner.*

My Lords,

HERE cannot be a greater Instance of a sick and languishing Commonwealth, than the Business of this Day. Good God! how have the Guilty these late Years been punished, when the Judges themselves have been such Delinquents! 'Tis no marvel that an irregular, extravagant Arbitrary Power, like a Torrent, hath broke in upon us, when our Banks, and our Bulwarks, the Laws, were in the Custody of such Persons. Men who had lost their Innocence, could not preserve their Courage; nor could we look that they who had so visibly undone us themselves, should have the Virtue or Credit to rescue us from the Oppression of other Men. It was said by one who always spoke excellently, That the twelve Judges were like the twelve Lions under the Throne of Solomon; *Under the Throne in Obedience, but yet Lions:* Your Lordships shall this day hear of six, who (be they what they will be else) were no Lions, who upon vulgar fears delivered up the precious Forts they were trusted with, almost without assault; and in a tame easy Trance of Flattery and Servitude, lost and forfeited (shamefully forfeited) that Reputation, Awe, and Reverence, which the Wisdom, Courage, and Gravity of their venerable Predecessors had contracted and fastned to the Places they now hold; and even rendred that Study and Profession, which in all Ages hath been, and I hope now shall be of an honourable Estimation, so contemptible and vile, that had not this blessed Day come, all Men would have had that quarrel to the Law itself, which *Marcus* had to the *Greek* Tongue, who thought it a Mockery to learn that Language, the Masters whereof lived in Bondage under others. And I appeal to these unhappy Gentlemen themselves, with what a strange Negligence, Scorn, and Indignation, the Faces of all Men, even of the meanest, have been directed towards them, since (to call it no worse) that fatal Declension of their Understandings, in those Judgments of which they stand here charged before your Lordships.

But, my Lords, the Work of this Day is the greatest Instance of a growing, and thriving Commonwealth too; and is as the Dawning of a fair and lasting Day of Happiness to this Kingdom.

It is in your Lordships Power (and I am sure it is in your Lordships Will) to restore the dejected broken People of this Island to their former Joy and Security, the Successors of these Men to their own Privilege and Veneration: *Et sepultas prope leges cavere.*

So these Judges enter themselves, and harden their Hearts by more particular Trespasses upon the Law; by Impositions and Taxes upon the Merchants in Trade; by Burdens and Pressures upon the Gentry in Knighthood; before they could arrive at that universal Destruction of the King by Ship-Money, which promised Reward and Security for all their former Services, by doing the Work of a Parliament to his Majesty in Supplies, and seemed to delude Justice, in leaving none to

judge them, by making the whole Kingdom Party to their Oppression.

My Lords, the Commons assembled in Parliament hope that your Lordships will call these Judges speedily before you to answer these Articles laid to their charge, that the Nation may be satisfied in your Lordships Justice upon them, as their Crimes demerit.

Then Mr. *Pierpont* delivered in the following Articles against Sir *Robert Berkley*, one of the Justices of the *King's-Bench*.

Articles of Impeachment of Sir Robert Berkley Kt. one of the Justices of the Court of King's-Bench, by the Commons in this present Parliament assembled, in their own Name, and in the Name of all the Commons of England, in maintenance of their Accusation, whereby he standeth charged with High-Treason, and other great Misdemeanours.

Imprimis, THAT the said Sir *Robert Berkley*, then being one of the Justices of said Court of *King's-Bench*, hath traiterously and wickedly endeavoured to subvert the fundamental Laws, and establish'd Government of the Realm of *England*; and instead thereof, to introduce an Arbitrary and Tyrannical Government against Law, which he hath declared by traiterous and wicked Words, Opinions, Judgments, Practices, and Actions appearing in the several Articles ensuing.

2. Whereas by the Statute made in the 25th Year of the Reign of K. *Henry VIII.* Prices of Victuals are appointed to be rated in such manner, as in the said Statute is declared; but it is manifest by the said Statute, Corn is none of the Victuals thereby intended: Nevertheless some ill-affected Persons endeavouring to bring a Charge upon the Subjects contrary to Law, did surmise, that the Prices of Corn might be rated, and set according to the direction of that Statute; and thereupon great gain might be raised to his Majesty by Licences and Dispensations for selling Corn at other Prices: And a Command from his Majesty being procured to the Judges, and sent to them by *William Noy* Esq; his Majesty's then Attorney-General, to deliver their Opinions touching the Question, whether Corn was such Victuals as was intended to have the Price rated within the said Statute: In answer to which, the said Sir *Robert Berkley* then being one of his Majesty's Justices of the Court of *King's-Bench*, in furtherance of the said unlawful Charge, endeavoured to be imposed as aforesaid, the thirtieth day of *November*, in the eighth year of his now Majesty's Reign, did deliver his Opinion, That Corn was such Victual as was intended to have the Price rated within the said Statute; which said Opinion was contrary to Law, and to the plain sense and meaning of the said Statute, and contrary to his own Knowledge, and was given and delivered by him, with a purpose and intention, that the said unlawful Charge might be imposed upon the Subject.

3. That an Information being preferred in the Court of *Star-Chamber* by the said *William Noy*, his Majesty's then Attorney-General, against *John Overman*,

* *Afterwards Lord Chancellor of England.*

man, and fifteen other Soap-makers, Defendants, charging them with several pretended Offences, contrary to divers Letters Patents, and Proclamations, touching the making and uttering Soap, and using the Trade of Soap-makers, and other offences in the said Information mentioned; whereunto the Defendants did plead, and demur as to part, and answer to other parts of the said Information: And the said Plea and Demurrer being over-ruled, for that the Particulars therein insisted upon, would appear more full after Answer and Proof; therefore the Defendants were ordered to answer without prejudice, and were to be admitted to such Exceptions to the said Informations, and Advantages of the matter of the Plea and Demurrer upon the Hearing, as shall be material; and accordingly the Defendants did put in their Answers, and set forth several Acts of Parliament, Letters Patents, Charters, Customs, and Acts of Common-Council of the City of *London*, and other matters materially conducing to their Defence; and, in conclusion, pleaded not guilty. The said Sir *Robert Berkley* then being one of the Justices of the Court of *King's-Bench*, upon the 30th day of *March*, in the eighth Year of his Majesty's Reign, upon an Order of Reference to him and others, by the said Court of *Star-Chamber*, to consider of the Impertinency of the said Answers, did certify the said Court of *Star-Chamber*, That the whole Answers, excepting the four words and ten last lines, should be expunged; leaving thereby no more substance of the said Answers, than the Plea of Not guilty. And after, upon a Reference to him and others, by Order of the said Court, of the Impertinency of the Interrogatories, and Depositions of Witnesses taken on the Defendants part in the same Case, Sir *Robert Berkley*, upon the second day of *May*, in the eighth year of his now Majesty's Reign, certified, That nine and thirty of the said Interrogatories, and the Depositions upon them taken, should be suppressed, with the Answers, (except as aforesaid) and Depositions, altho' the same did contain the said Defendants most material Defence, yet were they expunged and suppressed according to the said Certificates; both which said Certificates were contrary to Law and Justice, and contrary to his the said *Robert Berkley's* own Knowledge, and contrary to the said former Order, whereby the Advantages were saved to the Defendants, as aforesaid: And by reason thereof the said *John Overman*, and the said other fifteen Defendants, were sentenced in the said Court of *Star-Chamber* to be committed Prisoners to the *Fleet*, and disabled from using their Trade of Soap-makers; and one of them fined in 1500*l.* two of them in 1000*l.* a-piece, four of them in 1000 Marks a-piece; which Fines were estreated into the *Exchequer* without any mitigation: And the said Defendants, according to the said Sentence, were imprison'd, and deprived of their Trade and Livelihood, tending to the utter Ruin of the said Defendants, and to the Overthrow of free Trade, and contrary to the Liberty of the Subject.

4. That he the said Sir *Robert Berkley*, then being one of the Justices of the *King's-Bench*, and having taken an Oath for the due Administration of Justice, according to the Laws and Statutes of this Realm, to his Majesty's Liege People, on or about the last of *December* subscribed an Opinion, *in hæc verba*: '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 Safety and Good
' 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
' in general: This I hold agreeable both to Law
' and Reason.'

5. That he the said Sir *Robert Berkley*, then being one of the Justices of the Court of *King's-Bench*, and duly sworn as aforesaid, in *Feb.* 1636. subscribed an extra-judicial Opinion, in answer to Questions in a Letter from his Majesty, *in hæc verba*.

Charles Rex.

' **W**HEN the Good 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*, com-
' mand 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 Dan-
' ger and Peril? and by Law compel the doing
' thereof in case of refusal, or refractoriness?
' and whether in such case, is not the King sole
' Judge, both of the Danger, and when and how
' the same is to be prevented and avoided? C. R.
' May it please your most excellent Majesty,
' we have, according to your Majesty's Command,
' severally every Man by himself, and all of us
' together, taken into serious 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*, com-
' mand all your Subjects of this your Kingdom,
' at their charge to provide and furnish such num-
' ber of Ships, with Men, Victuals, and Munition,
' 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, and 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.
' *John Brawston, John Finch, Humphrey Davenport,*
' *John Denham, Richard Hutton, William Jones,*
' *George Crooke, Thomas Trevor, George Vernon, Ro-*
' *bert Berkley, Francis Crawley, Richard Wylston.'*

6. That he the said Sir *Robert Berkley*, then being one of the Justices of the Court of *King's-Bench*, and duly sworn as aforesaid, did on the deliver his Opinion in the *Exchequer-Chamber* against *John Hampden, E. 7;* in the Case of Ship-Money, That he the said *John Hampden*, upon the matter and substance of the Case, was chargeable with the Money then in question; a Copy of which Proceeding and Judgment the Commons of this present Parliament have deliver'd to your Lordships.

7. That he the said Sir *Robert Berkley*, then being one of the Justices of the Court of *King's-Bench*, and one of the Justices of *Affize* for the County of *York*, did at the Affizes held at *York*, in

in *Lent* 1636, deliver his Charge to the Grand Jury, *That it was a lawful and inseparable Flower of the Crown for the King to command, not only the Maritime Counties, but also those that were Inland, to find Ships for the defence of the Kingdom.* And then likewise falsely and maliciously affirmed, *That it was not his single Judgment, but the Judgment of all his Brethren, witnessed by their Subscriptions.* And then also said, *That there was a Rumor, that some of his Brethren that had subscribed, were of a contrary Judgment; but it was a base and unworthy thing, for any to give his Hand contrary to his Heart; and then wished for his own part, that his Hand might rot from his Arm, that was guilty of any such Crime; when as he knew that Mr. Justice Hutton, and Mr. Justice Crooke, who had subscribed, were of a contrary opinion, and was present when they were persuaded to subscribe; and did subscribe for Conformity, only because the major number of the Judges had subscribed.* And he the said Sir Robert Berkley then also said, *That in some Cases the Judges were above an Act of Parliament; which said false malicious Words were uttered, as aforesaid, with intent and purpose to countenance and maintain the said unjust opinions, and to terrify his Majesty's Subjects that should refuse to pay Ship-Money, or seek any remedy by Law against the said unjust and illegal Taxation.*

8. That whereas *Richard Chambers* Merchant, having commenced a Suit for Trespass, and false Imprisonment, against *Sir Edward Bromfeild* Kt. for imprisoning him the said *Chambers* for refusing to pay Ship-Money, in the time that the said *Sir Edward Bromfeild* was Lord Mayor of the City of *London*; in which Suit the said *Sir Edward Bromfeild* did make a special Justification: The said *Sir Robert Berkley*, then being one of the Justices of the Court of *King's-Bench*, in *Trinity* Term last, then sitting on the Bench in the said Court, upon debate of the said Case between the said *Chambers* and *Sir Edward Bromfeild*, said openly in the Court, *That there was a Rule of Law, and a Rule of Government; and that many things which might not be done by the Rule of Law, might be done by the Rule of Government:* And would not suffer the point of *Legality of Ship-Money to be argued by Chambers's Counsel.* All which Opinions, Declarations, Words, and Speeches, contained in the third, fourth, fifth, sixth, seventh and eighth Articles, are destructive to the fundamental Laws of this Realm, the Subjects Right of Property, and contrary to former Resolutions in Parliament, and to the Petition of Right; which Resolution in Parliament, and Petition of Right, were well known to him, and resolved and enacted when he was the King's Serjeant at Law, and attendant in the Lords House of Parliament.

9. That the said *Sir Robert Berkley*, then being one of the Judges of the Court of *King's-Bench*, and being in Commission of the Peace, and duly sworn to execute the Office of a Justice of the Peace in the County of *Hertford*, on or about the 7th of *January* 1638. at which time the general Sessions of the Peace for the said County were there holden; the said *Sir Robert Berkley*, then and there sitting on the Bench, did revile and threaten the Grand Jury returned to serve at the said Sessions, for presenting the Removal of the Communion-Table in *All-Saints* Church in *Hertford* aforesaid, out of the place where it anciently and usually stood, and setting it Altar-ways, against the Laws

of this Realm in that Case made and provided, as an Innovation in matters concerning the Church; the said Grand-Jury having delivered to them in charge at the said Sessions, by Mr. Serjeant *Atkins*, a Justice of the Peace for the said County of *Hertford*, that by the Oath they had taken, they were bound to present all Innovations concerning Church-Matters. And he the said *Sir Robert Berkley* compelled the Foreman of the Jury to tell him who gave him any such Information; and thereby knowing it to be one *Henry Brown*, one of the said Grand-Jury, he asked the said *Brown*, how he durst meddle with Church-Matters, who affirming, that in the said Charge from Mr. Serjeant *Atkins*, the said Jury was charged so to do, he the said *Sir Robert Berkley* told the said *Brown*, He should therefore find Sureties for his good Behaviour; and that he the said *Sir Robert Berkley* would set a great Fine on his Head, to make him an example to others: and thereupon the said *Brown* offered sufficient Bail; but he the said *Sir Robert Berkley*, being incensed against him, refused the said Bail, and committed the said *Brown* to Prison, where he lay in Irons till the next Morning; and used to the said *Brown*, and the rest of the Jurors, many other reviling and terrifying Speeches; and said, he knew no Law for the said Presentment; and told the said *Brown* that he had sinned in the said Presentment: And he compelled the said Grand-Jurors to say, *they were sorry for what they had done in that Presentment,* and did bid them to trample the said Presentment under their Feet; and caused *Brown* to tear the said Presentment in his sight. And he the said *Sir Robert Berkley*, when as *John Houland*, and *Ralph Pemberton*, late Mayors of *St. Albans*, came to desire his Opinion on several Indictments against *John Brown*, Parson of *St. Albans*, and *Anthony Smith*, Vicar of *St. Peter's* in *St. Albans*, at the Quarter-Sessions held at the said Town of *St. Albans*, on the 24th of *June* 1639. for the Removal of the Communion Table out of the usual Place, and not administering the Sacrament according to Law in that case provided; he the said *Sir Robert Berkley* then told them, that such an Indictment was before him at *Hertford*, and that he quashed the same, and imprisoned the Promoters: by which threatening and reviling Speeches, unjust Actions and Declarations, he so terrified the Jurors in those parts, that they durst not present any Innovations in Church-Matters, to their great Grief, and Trouble of their Consciences.

And whereas several Indictments were prefer'd against *Matthew Brook*, Parson of *Yarmouth*, by *John Ingram* and *John Carter*, for refusing several times to administer the Sacrament of the Lord's Supper to them without any lawful Cause, at the Assizes held at *Norwich* in the Year 1633, he the said *Sir Robert Berkley*, then being one of the Judges of the Assize, proceeded then to the Trial on the said Indictments; where the Matter in issue being, *That the said Brooks* refused to administer the said Sacrament, because the said *Ingram* and *Carter* would not receive Tickets with their Surnames before their Christian-names; which was a Course never used amongst them, but by the said *Brook*: And the said *Sir Robert Berkley* did then much discourage the said *Ingram's* Counsel, and over-rule the Cause for Matter of Law, so as the Jury never went from the Bar, but there found for the said *Brook*: And the said *Sir Robert Berkley* bound the said *Ingram* to the good Behaviour for the prosecuting the said Indictments, and ordered him to pay Costs to the said *Brook* for wrong-

wrongfully indicting him. And whereas the said *Carter*, not expecting the Trial at the same Assizes he preferred his Indictment, was then absent; whereupon the said Sir *Robert Berkley* did cause to be entred upon the said Indictment a *Vacat, quia non sufficiens in lege*, and order'd an Attachment against the said *Carter*. Which said Proceedings against the said *Ingram* and *Carter*, by the said Sir *Robert Berkley*, were contrary to Law and Justice, and to his own Knowledge.

10. That the said Sir *Robert Berkley*, being one of the Justices of the Court of *King's-Bench*, and duly sworn as aforesaid, in *Trinity Term* 1637, deferred to discharge or bail *Alexander Jennings* Prisoner in the *Fleet*, (brought by *Habeas Corpus* to the Bar of the said Court; the Return of his Commitment being, that he was committed by two several Warrants from the Lords of the Council, dated the 5th of *November* 1636. the first being only read in Court, expressing no Cause, the other for not paying Messengers Fees,) until he should bring a Certificate that he had paid his Assessment for Ship-Money in the County of *Bucks*, but remitted him. And in *Michaëlas Term* after, the said *Jennings* being brought by another *Habeas Corpus* before him as aforesaid, and the same returned; yet he the said Sir *Robert Berkley* refused to discharge or bail him, but remitted him. And in *Easter-Term*, after several Rules were given for his Majesty's Counsel, to shew Cause why the said *Jennings* should not be bailed, a fourth Rule was made for the said *Jennings* to let his Majesty's Attorney-General have notice thereof, and notice was given accordingly; and the said *Jennings* by another *Habeas Corpus*, being brought to the Bar in *Trinity Term* after, and the same Return made, with this Addition, of a new Commitment of the 4th of *May*, suggesting the said *Jennings* had used divers scandalous words in derogation and disparagement of his Majesty's Government: He the said *Jennings* after several Rules, in the end of the said *Trinity Term*, was again remitted to Prison. And he the said Sir *Robert Berkley* did on the 5th of *June* last, defer to grant his Majesty's Writs of *Habeas Corpus* for *William Pargiter* and *Samuel Danvers* Esquires, Prisoners in the Gate-house, and in the *Fleet*; and afterwards having granted the said Writ of *Habeas Corpus*, the said *Pargiter* and *Danvers* were on the 18th of *June* last brought to the Bar of the said Court, where the Returns of their Commitments were several Warrants from the Lords of the Council not expressing any Cause: yet he the said Sir *Robert Berkley*, then sitting in the said Court, deferred to bail the said *Pargiter*, and *Danvers* and the 18th of *June* last, made a Rule for a new Return to be received, which was returned the 25th of *June* last, *in hæc verba*.

Whereas his Majesty finding that his Subjects of *Scotland* have in rebellious and hostile manner assembled themselves together, and intend not only to shake of their Obedience unto his Majesty, but also as Enemies to invade and infest this his Kingdom of *England*, to the danger of his Royal Person, &c.

For prevention whereof his Majesty hath by the advice of his Council-board, given special Commandment to all the Lord Lieutenants of the Counties of this Realm, to assemble the Militia at the Places appointed for their Rendezvous in their several and respective Counties, there to be conducted and drawn to-

gether into a Body for this Service. And whereas his Majesty, according to the Laws and Statutes of this Realm, and the constant Custom of his Predecessors Kings and Queens of this Realm, hath Power for the defence of this Kingdom, and resisting the Force of the Enemies thereof, to grant forth Commissions under his Great Seal to such fit Persons as he shall make choice of, to array and arm the Subjects of this Kingdom, and to compel those who are of able Bodies and able Estates, to arm themselves; and such as should not be of able Bodies, but of Ability in Estate, to assess them according to their Estates, to contribute towards the Charge of arraying others, being able of Body, and not able in Estate, to arm themselves; and such Persons as should be contrariant to commit to Prison, there to remain until the King should take further order therein. And whereas the Earl of *Exeter*, by virtue of his Majesty's Commission to him directed, for the arraying and arming of a certain number of Persons in the County of *Northampton*, hath assessed *William Pargiter*, being a Man unfit of Body for that Service, but being of Estate and Ability, to contribute amongst others, to pay the Sum of five Shillings towards the arraying and arming of others of able Bodies, and wanting Ability to array and arm themselves.

And whereas we have received Information from the said Earl, that the said *William Pargiter* hath not only in a wilful disobedient manner refused to pay the said Money assessed upon him towards so important a Service, to the disturbance and hindrance of the necessary defence of this kingdom; but also by his ill example hath misled many others; and, as we have just cause to believe, hath practised to seduce others from that ready Obedience which they owe, and would otherwise have yielded to his Majesty's just Command for the publick defence of his Person and Kingdom, which we purpose with all convenient speed to enquire further of and examine. These are therefore to will and require you to take into your Custody the Persons of the said *William Pargiter* and *Samuel Danvers*, and them safely to keep Prisoners till further Order from this Board, or until by due Course of Law they shall be delivered.

Yet he the said Sir *Robert Berkley* being desired to bail the said *Pargiter* and *Danvers*, remitted them, where they remained Prisoners till the ninth of *November* last, or thereabouts; altho' the said *Jennings*, *Pargiter* and *Danvers*, on all and every the said Returns, were clearlyailable by Law; and the Counsel of the said *Jennings*, *Pargiter* and *Danvers*, offered in Court very sufficient Bail. And he the said Sir *Robert Berkley*, being one of the Justices of the Court of *King's Bench*, denied to grant his Majesty's Writs of *Habeas Corpus* to very many others his Majesty's Subjects; and when he had granted the said Writs of *Habeas Corpus* to very many others his Majesty's Subjects, and on the Return no Cause appeared, or such only as was clearly bailed by Law; yet he remanded them, where they remained Prisoners very long: which said deferring to grant the said Writs of *Habeas Corpus*, and Refusals and Delays to discharge Prisoners, or to suffer them to be bailed, contained in this Article, are destructive to the fundamental Laws of this Realm, and contrary to former Resolutions in Parliament, and to the Petition of Right; which said Resolutions and Petition of Right were well known to him

him the said Sir *Robert Berkley*, and were resolved on and enacted when he was the King's Serjeant at Law, and Attendant in the Lords House of Parliament.

II. That whereas there was a Cause depending in the Court-Christian at *Norwich*, between *Samuel Booty* Clerk and *Collard* for two Shillings in the Pound, for Tithes for Rents and Houses in *Norwich*, and the said *Collard* moved by his Counsel in the Court of *King's-Bench* for a Prohibition to stay Proceedings in the Court-Christian at *Norwich*, and delivered into the said Court of *King's-Bench* his Suggestions, that the said Cause in the said Court-Christian was only for Tithes for Rents of Houses in *Norwich*, which was determinable by the Common-Law only; yet he the said Sir *Robert Berkley*, being one of the Justices of the said Court of *King's-Bench*, and sitting in the said Court, deferred to grant a Prohibition to the said Court-Christian in the said Cause, altho the Counsel did move in the said Court many several times, and several Terms, for a Prohibition. And he the said Sir *Robert Berkley* deferred to grant his Majesty's Writ of Prohibition to several other Courts, on the Motions of divers others of his Majesty's Subjects, where the same by the Laws of this Realm ought to have been granted, contrary to the Laws of this Realm and his own Knowledge.

All which Words, Opinions, and Actions, were spoken and done by him the said Sir *Robert Berkley* traiterously and wickedly, to alienate the hearts of his Majesty's Liege People from his Majesty, and to set a Division betwixt them, and to subvert the fundamental Laws and established Government of his Majesty's Realm of *England*: For which they do impeach him the said Sir *Robert Berkley*, one of the Justices of the Court of *King's-Bench*, of High-Treason against our Sovereign Lord the King, his Crown and Dignity, and of the Misdemeanors abovementioned.

And the said Commons by Protestation, saving to themselves only the liberty of exhibiting at any time hereafter any other Accusation or Impeachment against the said Sir *Robert Berkley*, and also of replying to the Answer that he the said Sir *Robert Berkley*, shall make to the said Articles, or any of them, or of offering Proof of the Premises, or any other Impeachments or Accusations that shall be exhibited by them, as the Case shall, according to the course of Parliaments require, do pray that the said Sir *Robert Berkley*, one of the Justices of the Court of *King's-Bench*, may be put to answer to all and every the Premises; and that such Proceedings, Examinations, Trials, Judgments and Executions may be upon every of them had and used, as is agreeable to Law and Justice.

At the presenting these Articles, Mr. *Pierpoint* deliver'd himself as follows.

My Lords,

I AM commanded to present your Lordships these Articles, with which the Knights, Citizens, and Burgeſſes of the Commons House of Parliament, in their own name and in the name of all the Commons of *England*, impeach Sir *Robert Berkley*, Kt. one of the Justices of his Majesty's Court of *King's-Bench*, in maintenance of their Accusation of High-Treason, and other great Misdemeanors; the Articles they desire may be read. Whereupon the Articles were read by Mr. *Francis Newport*, a Member of the House of

Commons. Then Mr. *Pierpoint* proceeded and said.

The High-Treason is in the first Article, in his Endeavours to subvert the fundamental Laws of this Realm, and to introduce an arbitrary and tyrannical Government, which hath been lately adjudged Treason in the Cause of the Earl of *Strafford*.

The other Articles prove the first by his Opinions, Certificates, Judgments, by his Denials of the Benefit of our Laws, which have been read by your Lordships. No fundamental Law to the Subjects is left; our Goods, our Lands, our Bodies, the Peace of a good Conscience, are by him given up to arbitrary tyrannical Government.

Nothing hath been omitted to make a Judge know the Laws, to make him just, or fright him from being evil: We have Inns of Court peculiar to that Study, Judges from thence only chosen; seldom any but what have been twenty years there; Honours and Revenues are given to Judges, encouragement to do well; this Judge had these: Judges are sworn according to Law to serve the King, and his People; according to Law to counsel the King; and for not so doing, to be at his Will for Body, Lands, and Goods. This Judge took that Oath; the Laws (the Judges Study) impose the greatest Punishment upon unjust Judges; they shew that these Punishments have been inflicted, and more could not be done to persuade or fright a Judge.

His Offences shew in him great Ambition, yet he was most timorous of displeasing the great in Power; he did not only forbear doing what he was sworn to do, but was most active against our Laws, and in opposing and punishing any that did maintain them.

To have only received Bribes, (tho' they blind the Eyes, and tho' the desire to get Money increaseth with Age) that heinous Crime in a Judge had been, in comparison with his Offences, a tolerable Vice; for from such a Judge Justice is also to be had for Money. Ambition is violent, and ruins whilst Covetousness is making a bargain.

The Words of his Opinion and Judgment are for the King's Power. It is pleasing to the nature of Man, that others should obey his Will; and well-framed Dispositions of Princes may easily be persuaded, their Power is unlimited, when they are also put in mind, that therefore they have more cause to do well, and for doing well are more renowned: for in the most oppressive Designs, (which we have suffered under) the Pretences of his Majesty have ever been the Good of his Subjects; his is the Sin, that is to judge by the Laws, and knows the Laws are to the contrary, yet puts and confirms such thoughts in his Prince.

He that incites another to arbitrary Government, when his Self-ends are thereby compassed, hates him for taking that Power he persuaded him unto.

The Writs, those *Monsters of Necessity*, to provide Ships to avoid imminent Danger, that could not stay 40 Days for the Calling of a Parliament, were therefore to go out in *September*, to have Ships ready in *March*. This hath been adjudged by your Lordships to be destructive to the fundamental Laws of this Realm, and to the Subjects Right of Property and Liberty, &c. that I shall say but this concerning them; that this Judge published them to be inseparable Flowers of the

Crown; and that we have lived to see for five Years together imminent Danger, and thus to be prevented.

This Judge did advise to such a Government, as future Kings here might exercise the highest Tyranny, and the Subjects want the Benefit of Restraints, known to the most slavish Eastern Nations; where, if their Prince do unjustly, he hath Hatred for it, and the Dangers that follow that. This Judge will have that Hatred to go to our good Laws: *No such Bondage, as when the Laws of Freedom are mis-interpreted by Judges to make Men Slaves.*

What can be considered of in a Judge of Law, to give his Opinion and Advice to his Prince, how the Laws (the mutual Covenants of Kings and Subjects) are to be broken, but that his intentions are to have his Prince do ill, by making his evil Servants to study, and to be pleased with their wicked Designs; because they see means to put them in execution, by making them to persuade their Prince, because in imminent Danger his Subjects Goods are at his Will, *that there is such Danger when there is not*, and that they have only some by-ends of their own?

This Judge will have the Law to be what to him seems Reason; the Reason limited to him to judge of, is what the Common Law saith is so, what a Statute hath so enacted. For him to judge this or that is Law, else a Mischief shall follow, because the Law in such a thing is imperfect, therefore he will make a Law to supply it; or because that the Law written in such Particulars is against his Reason, therefore his Reasons to be Law; then must follow, as often as a Judge's Reason changes, or Judges change, our Laws change also.

Our Liberties are in our Laws, which a Subject may read, or hear read; this is his, this he may do and be safe: and that thus the Judge ought to give Judgment, and then he is free. The excessive growth of Courts of Reason and Conscience came from great and cunning Persons; and tho' not the most sudden, yet the most dangerous, and sure ways to eat out our Laws, our Liberties.

Unlimited Power must be in some to make and repeal Laws, to fit the dispositions of Times and Persons: Nature placeth this in common Consent only; and where all cannot conveniently meet, instructeth them to give their Consents to some they know or believe so well of, as to be bound to what they agree on. His Majesty, your Lordships, and the Commons, are thus met in Parliament; and so long as we are often reduced to this main Foundation, our King and we shall prosper.

This Judge will not allow us our Knowledge, or any Reason; he will have our Minds our Souls Slaves. A Grand Jury Man gave his Fellows true Information; they present an Innovation in Church, are threatned and reviled for it; he that told this truth is charged (I shall use this Judge's own words) to sin in that, and that he made others forswear themselves; this Judge sent him to the common Goal, where he is laid in Irons; and all this, because he and they durst meddle with Church-Matters. He is forced to tear the Presentment in Pieces in open Court. Our Laws provide for the Peace of our Consciences, many Acts of Parliament are for it, and the Trust by those Acts set to Juries: this Judge well knew all this; your Lordships have heard what he did to the Jury at *Hertford*;

he would have us know no more Divinity than to obey what the chief of the Clergy directed, no more Law than what he said was so.

Judges in former Times (except only such as were examples of Punishment, as of Injustice in Cases of great and publick Concernment) forbear Proceedings till the next Parliament. This necessitated the Calling of Parliaments. This Judge had as many such Causes before him, as ever any had; yet he never desired the Resolution of Parliament in any one; for the ways he went, the Necessity was never to have a Parliament; he would pull up that Root of our Safeties and Liberties, which whilst ye enjoy, the Malice and Injustice of all other Courts and Persons can never ruin; and when near to Ruin, (as most near of late) this only sure Remedy will help us; nothing can ruin a Parliament, but itself.

The Evils which we have suffered under, they were committed by the Judges; or by them ought to have been, and might have been prevented.

This Judge assited in causing the Miteries we suffered in the *Star-Chamber*, and at the Council-Table: he denied the known Rights, which he ought to have granted us, to stop our Grievances in the Ecclesiastical Courts; he was the Caufer of our Sufferings in other Courts.

The best Lovers of their Laws and Liberties, the most honest, suffer most by an unjust Judge, they most oppose his Vices; dishonest Persons find such a Judge to fit their purposes, the Judge finds them for his, the Bond of Iniquity confederates them.

He that will do no wrong, will suffer none which he can help: The Man that knows himself born free, will do his utmost to live so, and to leave Freedom to his Posterity; were he in Slavery, when by outward gesture thought to be most delighted, were his Mind then known, there would be found vexation, and his busy thoughts employed to redeem himself and his Posterity from Thralldom. But to say, could this Judge intend to make himself and his own Posterity Slaves? what he did was thro' Error of Judgment only. No, my Lords, what his Aims and Endeavours were, is apparent. To consider Man in the general, we shall find in every Age he will be a Slave to some few, that many may be Slaves to him, he looks to himself only; this he would do, or forbear doing, to be great, to be rich, had he Children or Kindred, or had he none. This highly unjust Judge, by continuing Sins, maintained his actions to preserve himself; he knows; to be found guilty in one of his Offences, the Penalty of the Law for it, therefore covers the Offences committed with inventing and acting other.

For a Judge to be unjust, more hurts the Publick than any other; he is not suspected. What a Judge doth, is looked on as a thing that ought to be done. The most pernicious great Man, that by Cunning hath got to himself the Heart and Tongue of his Prince, his ill Acts have died with him, if not taken up by others, and then they walk in Darknes; no Man will justify what he doth, by saying such a Favourite did it: But the unjust Judgments of this Judge, were given in Noon-day, were done in the face of the whole Kingdom, in the hearing of such as might carry the news to all parts of the Realm, and was therefore done; his unjust Judgments were our Records. We have teen wicked great Men most craftily politick; they hated our Laws, yet not meeting

with

with active Judges moulded to their purposes, they and their Acts have died, the Realm flourish'd: but of late, others less politick meeting with most unjust Judges, every way as ill as they could wish them to be, then did the Kingdom faint, under the load of its Misery did long struggle: Now it's rising, I assure myself, your Lordships will assist to take off the burden.

If the Designs of some would not have such a Man to be at liberty, a Warrant from some Lords of the Council would soon have laid him in Prison, and given no Cause; had he moved this Judge to be discharged or bailed, he could have obtained neither. If their Ways would not have endured that Man to live, a Judge reviling the Prisoner, and the Counsel that moved for his Discharge or Bail, joined with the hate of some great Man, might soon have moved a Goaler for unwholesom Rooms and Lodging, and ill Diet for his Prisoner, and they may soon take Life away. Offenders in Prisons are looked after to be safe only; such as are brought in by Power against Law, are abused.

Had a great Man desired the Estates of others, the breach of a Proclamation might readily have been charged against them in *Star-chamber*; but they, it may be, could have answered and cleared themselves, and proved their Answer by Testimonies: had they been referred to this Judge, he would have expunged the one, suppressed the other. Then followed Fines to the value of their Estates or more; then Imprisonment of course, till they paid such Fines: your Lordships have heard what this Judge did to the *Soap-boilers*.

The Country-man followed the Plough, and to his thinking he was assured of his Right, Property, and Liberty, which gave him ability to do it. He believed his Neighbour, his Landlord, his King, could not take his Goods from him without his consent. He knew the usual Payments by Law; and in extraordinary Causes thought to have that care to chuse such for the Knights of his Shire, or for his Burgesses, as might be mindful of the Cause of Payment, and of his Estate.

This Country-man hath heard the Opinions and Judgment of this Judge, hath seen his Goods taken from him, without his, or his Knights of the Shire, or Burgesses Consent or Advice. These have made him, his Wife and Children, to join in tears to wish they had never been born; they have made them think on many ways to keep safe that Estate which was yet left them, have made them desire to sell all their Goods, and hide the Money: but then he remembers this Judge, how that he shall be carried to Prison, and remain there, if he pay not what it pleases others to assess him. Then they think idle persons (the Drones and Moths of the Commonwealth) to be a wise People, whilst the Country-men expect, and can think of nothing, but being Beggars.

Where publick and enormous Offences have been committed, eminent and notorious Punishments must be: such will make your Lordships Proceedings highly esteemed, else there will be so many Offenders, and none without danger can be punished.

This Judge subverting our Laws, took away the Hearts of many; he subscribes for the King's Power, but so as he put him on taking his Subjects Goods; and of all other, such ways be most dangerous: for we know his Majesty is not the

last that suffers, and is not the King worth many thousands?

The place of this Judge was to have given and preserved to the King the Hearts of his Subjects, the due Execution of the Laws had done this; and when such notice is taken of a Prince, none will conspire against him, who cannot feign to themselves Safety before or after any Fact committed, foreign Enemies will not invade his Kingdoms.

Thus hath his Majesty now got our Hearts, and will for ever have them. This Judge is to answer for what his Majesty, and for what we have suffered.

I am commanded by the House of Commons to desire of your Lordships, that the Proceedings against Sir *Robert Berkley* Kt. one of the Justices of his Majesty's Court of *King's-Bench*, may be put in as speedy a way of Trial, as the Course of Parliament will allow.

At the same time Mr. *Hollis* made a Speech in behalf of Sir *Randolph Crew*, formerly Lord Chief Justice of the *King's-Bench*, but remov'd for giving his Opinion against Loan-Money.

My Lords,

These Gentlemen have presented unto your Lordships the sad Object of Justice perverted, Liberty oppressed, of Judgment turned into Wormwood, the Laws, which should be the Bars of our Gates to protect us, keep us, and all that is ours in safety, made weak and impotent, to betray us unto the hands of Violence; instead of Props to support us, become broken Reeds to deceive us, and run into our sides when we lean upon them; even so many Snares to entrap and entangle us.

And all this by the Perfidiousness of those who are intrusted with our Laws, who call themselves the Guardians, and the Interpreters of the Law; but by their accursed Glosses have confounded the Text, and made it speak another Language, and another Sense, than ever our Ancestors, the Law-makers intended.

Our Ancestors made Laws to keep themselves, and their Posterity after them, in the possession of their Estates: these Judges could make the Law itself rob us, and despoil us of our Estates. Were we invaded or persecuted at any time for pretended Crimes, or rather because we were free from Crimes? And did we put ourselves upon a Legal Defence, and shelter ourselves under the Buckler of the Law, use those lawful Weapons which Justice, and Truth, and the common Right of the Subject did put into our Hands, would this avail us? No: These Judges would make the Law wrest our Weapons from us, disarm us, take away all our Defence, expunge our Answers, even bind us hand and foot, and so expose us naked and bound to the Mercilessness of our Oppressors. Were our Persons forced, and imprisoned by an Act of Pover, would the Law relieve us when we appealed unto it? No: It would join hands with Violence, and add Bitterness to our Sorrow. These Judges would not hear us when we did cry; no Importunity could get a *Habeas Corpus*: Nay, our Cries would displease them, and they would beat us for crying; and over-do the unjust Judge in the Gospel, with whom yet importunity could prevail.

My Lords, the Commons of *England* finding themselves in this lamentable Condition, by the Wickedness of these Judges, it is no wonder that we complain of them. It is no wonder if the Knights, Citizens, and Burgesſes assembled in Parliament, have sent up ſome of their Members to ſtand upon Mount *Ebal* to curſe theſe Judges; to denounce a Curſe upon them who have removed our Land-Marks, have taken away the Bound-Stones of the Propriety of the Subject, have left us no *Meum & Tuum*; but he that had moſt Might had moſt Right, and the Law was ſure to be of his ſide.

It hath been the part of theſe Gentlemen who have ſpoken before me, to pray for Juſtice upon thoſe Men, who would not do Juſtice to others. My Lords, I come upon another Errand, and yet for Juſtice too; for there is Juſtice upon Mount *Gerizim*, as well as upon Mount *Ebal*. It is as great a point of Juſtice to give a Bleſſing, a Reward where it is due, as Punishment were Punishment is due: for Reward and Punishment, *premi-um & pœna* be the two Legs that Juſtice walks on, and Reward is her right Leg, the more noble and the moſt glorious Supporture of that Sacred and Divine Body, that which God himſelf, the Foundation of Juſtice doth more delight in.

Tardior ad pœnas Deus eſt, ad præmia velox;

Punishment is good as Phyſick in the Conſequence, Reward as whoſome and nourishing Food in the Eſſence; the one we do, becauſe we muſt do it as neceſſary; the other, becauſe we love to do it, as being pleaſing and delightful.

Your Lordſhips then, I doubt not, will as willingly join with the Commons in doing good to a good Judge, as in publiſhing of the bad.

My Lords, We honour them, and reckon them Martyrs for the Commonwealth, who ſuffer any thing by defending the common Right of the Subject, when they will not part with their own Goods contrary to Law; when indeed their private Intereſt goes along with it, or rather before it; and the publick Concernment ſeems to come but in a ſecond place. Such were thoſe many whom theſe Judges have oppreſſed; yet theſe Men we magnify, and judge worthy of Praise and Reward.

But what Honour then is he worthy of, who merely for the Publick, hath ſuffered himſelf to be divested and deprived of his particular; ſuch a Judge as would loſe his Place, rather than to do that which his Conſcience told him was prejudicial to the Commonwealth? is not he worthy of double Honour?

And this did that worthy reverend Judge, the Chief Judge of *England* at that time, Sir *Randal Crew*, becauſe he would not, by ſubſcribing, countenance the Loan in the firſt Year of the King, contrary to his Oath and Conſcience, he drew upon himſelf the Diſpleaſure of ſome great Perſons about his Maſteſty, who put on that Project, which was afterwards condemned by the Petition of Right, in the Parliament of *Tertio*, as unjuſt and unlawful; and by that means he loſt his Place of Chief Juſtice of the *King's-Bench*; and hath theſe 14 Years, by keeping his Innocency, loſt the Profit of that Office, which upon a juſt Calculation, in ſo long a Revolution of time, amounts to 26000*l.* or thereabout. He kept his Innocency when others let theirs go; when himſelf and the Commonwealth were alike deſerted: which raiſes

his Merit to a higher pitch. For to be honeſt when every body elſe is honeſt, when Honesty is in Fashion, and is Trump, as I may ſay, is nothing ſo meritorious; but to ſtand alone in the Breach, to own Honesty when others dare not do it, cannot be ſufficiently applauded, nor ſufficiently rewarded. And that did this good old Man do in a time of general Deſertion, he preſerved himſelf pure and untainted.

Temporibusque malis auſus iſe eſſe bonus.

My Lords, The Houſe of Commons are therefore Suitors unto your Lordſhips, to join with them in the Representation of this good Man's Caſe unto his Maſteſty, and humbly to beſeech his Maſteſty to be ſo good and gracious unto him, as to give him ſuch Honour (the quality of this Caſe conſidered) as may be a noble Mark of Sovereign Grace and Favour, to remain to him and his Poſteſity; and may be in ſome meaſure, a proportionable Compentation for the great Loſſe he hath with ſo much Patience and Reſolution ſuſtained.

After the Conference the Lords came to the following Reſolutions.

Die Mercur. 20 die Jan. 1640.

It was Reſolved by the Lords upon the Queſtion, *Nemine contradicente;*

I. **T**Hat the Ship-Writs, the extra-judicial Opinions of the Judges therein, both firſt and laſt, and the Judgment given in Mr. *Hampden's* Caſe, and the Proceedings thereupon in the Exchequer-Chamber, are all illegal, and contrary to the Laws and Statutes of this Realm, contrary to the Rights and Proprieties of the Subjects of this Realm, contrary to former Judgments in Parliaments, and contrary to the Petition of Right.

Likewiſe reſolved upon the Queſtion, *Nemine contradicente;*

II. **T**Hat the extra-judicial Opinions enrolled in the Exchequer-Chamber, and in other Courts concerning Ship-Money, and all the Proceedings thereupon, are illegal in part and in whole, and contrary to the Laws and Statutes of this Realm, and contrary to the Rights and Proprieties of the Subjects of this Realm, and contrary to former Judgments in Parliaments, and contrary to the Petition of Right.

Die Veneris, 26 die Februarii, 1640.

UPon the Report of the Right Honourable the Lords Committees appointed to conſider of the way of Vacating of the Judgment in the Exchequer concerning Ship-Money, it was Ordered by the Lords Spiritual and Temporal in the High Court of Parliament aſſembled, That the Lord Keeper or the Maſter of the Rolls, the two Lord Chief Juſtices, and the Lord Chief Baron, and likewiſe the Chief Clerk of the Star-chamber, ſhall bring into the Upper Houſe of Parliament the Record in the Exchequer of the Judgment in Mr. *Hampden's* Caſe concerning Ship-Money; and alſo the ſeveral Rolls in each ſeveral Court of *King's-Bench*, Common-Pleas, Exchequer, Star-Chamber, and Chancery, wherein the Judges

extra-judicial Opinions in the Cases made touching Ship-Money be entred; and that a *Vacat* shall be made in the Upper House of Parliament of the said several Records: And likewise the Judgment of Parliament touching the Illegality of the said Judgments in the Exchequer, and the Proceedings thereupon; and touching the Illegality of the extra-judicial Opinions of the Judges in the said several Courts concerning Ship-Money be annexed and apostiled unto the same. And that a Copy of the Judgment of the Parliament concerning the Illegality of the said Judgment in the Exchequer, and the said extra-judicial Opinions of the said Judges concerning Ship-Money, be delivered to the several Judges of Assize; and that they be required to publish the same at the Assizes in each several County within their Circuits, and to take care that the same be entered and enrolled by the several Clerks of Assizes: And if any Entry be made by any *Custos Rotulorum*, or Clerk of Assize, of the said Judgment in the Exchequer, or of the said extra-judicial Opinions of the Judges, that several *Vacats* be made thereof, *per judicium in Parlamento*: And that an Act of Parliament be prepared against the said Judgment and extra-judicial Opinions, and against the Proceedings touching Ship-Money.

Memorandum quod vicesimo septimo die Febr. 1640. Annoque regni Regis Domini nostri Caroli Anglie decimo sexto;

Vacatur istud Recordum & Judicium inde habitum per considerationem & judicium Dominorum Spiritualium & Temporalium in Curia Parliamenti. & Irrotulamentum ejusdem cancellatur.

Memorandum quod vicesimo septimo die Febr. praed.

Istud Irrotul. & omnia & singula in eodem contenta & expresse vacantur per Judicium Dominorum Spiritualium & Temporalium in Curia Parliamenti.

And that all the Rolls be rased cross with a Pen, and subscribed with the Clerk of the Parliament's Hand. All which was accordingly done in open Court.

After this it was Resolved upon the Question, *Nemine contradicente;*

That the Resolutions of the Judges touching the Shipping-Money, and the Judgment given against Mr. *Hampden* in the Exchequer, and all the Proceedings thereupon, are against the great Charter, and therefore void in Law.

Resolved upon the Question, *Nemine contradicente;*

That *Vacats* and Cancellations shall be made of the Resolutions of the Judges touching the Shipping-Money; and of the Enrolments thereof in the several Courts, and of the Warrants for Ship-Writs, and Proceedings therein; and the Judgment given against Mr. *Hampden*, and Proceedings thereupon; and that Entries be made of those *Vacats* upon the several Rolls, according to the Form read in the House.

The same Session an Act of Parliament passed for that purpose, *viz.*

That the Charge imposed upon the Subject for providing and furnishing of Ships, commonly called Ship-Money, and the extra-judicial Opinions of the Justices and Barons, and the Writs,

and every of them, and the Agreement or Opinion of the greater part of the Justices and Barons, and the Judgment given against *John Hampden*, Esq; for the Payment of Ship-Money, were, and are contrary to, and against the Laws and Statutes of the Realm, the Right of Property, the Liberty of the Subjects, former Resolutions of Parliament, and the Petition of Right made in the third Year of his Majesty that now is.

That all and every the Particulars prayed and desired in the Petition of Right, shall from henceforth be put in execution, and shall be firmly and strictly holden and observed, as in the same Petition they are prayed and expressed; and that all and every the Records and Remembrances of all and every the said Judgments against the said *John Hampden*, and all and every the Proceedings whatsoever, upon or by colour of any of the said Writs, called *Ship-Writs*, and all and every the Defendants on every of them, shall be adjudged to all Intents, Constructions and Purposes, to be utterly void; and that all and every the said Judgment, Inrolment, Entries, Proceedings, and Dependents of what kind soever, shall be vacated and cancelled, in such Manner and Form as Records use to be that are vacated.

Afterwards Articles were exhibited against the other Judges. Those against Mr. Justice *Crawley* were delivered by Mr. *Waller*, July 6, 1641. who spoke as follows:

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 after a Declaration in his Charge at an Assize, That Ship-Money was so inherent a 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 tho' 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 called, 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 styl'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 Commonwealth. Of the Judgment for *Ship-Money*, and those extra-judicial Opinions preceding the same, (wherein they

are jointly concern'd) you have already: 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 Commonwealth as any of the rest, but dipped 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 he 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 learned, 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; 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 the 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 Necessity produces, that the Heathen thought their Gods also 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 Vizard 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 us, than 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 Balance with the Opinion of the Judges, I shall intreat 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 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 pass'd Judgment upon them for this Neglect of their Oaths, and betraying that publick Trust, which, for the Conservation 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 see the 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 have 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 Ruin 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 Countrymen) 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 from relieving the present, or preventing the future Necessity, that as it changed our real Property into a Shadow 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 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 *Hostibus bellicoque 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 Countrymen are these, *Ne quid duce aut auspicio Decemvirorum prospere geretur, vinci se patiebantur*; they chose 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, imprison'd, banish'd, and some lose 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 antient Laws alone, but the Restoration of our antient 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, tho' 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 incapable of your Lordships Favour, and his own Subsistence 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 stabis 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 they 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 Burgeses 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.

* Lib. 5. c. 32.



XXXVIII. *The Trial of THOMAS HARRISON, † Clerk, at the King's-Bench, for a Misdemeanour, in speaking reflecting Words of Judge Hutton. 1638. Trin. 14. Car. I. **

Middx' ff.

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 thro' 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, maliciously 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 *Common Pleas* aforesaid, many ways to defame and scandalize, and contriving and maliciously intending, as much as was in his power, to bring the said *Richard Hutton* into Scandal, Ignominy, Contempt, and vile Character, and the said *Richard Hutton*, of his Life and Goods and Chattels, Lands and Tenements, 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 provoke, and using his utmost Endeavour to make the said *Richard Hutton* be held and esteemed a Traitor 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 Ad-

ministration 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 mere 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 aforesaid *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 Courts aforesaid, and of the Justice and Laws of our said Lord the King, his Kingdom aforesaid, and the Court of *Common Pleas* aforesaid, and the Justices of our said Lord the King, and Admi-

† He was Parson of *Creeke* in *Northamptonshire*.

* Cr. Car. 503. *Hut. Rep.* 131.

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 Destruction of the aforesaid *Richard Hutton* Knight, and against the Peace of our said now Lord the King, his Crown and Dignity, &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.

Mr. Serjeant *Heath*. 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 ancient 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 Defendant 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 losing 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 4th 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 Defendant, 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 interested. Whether this Offence may be punished, that is the Force and Intent of this Indictment. My Lords, to this the Defendant hath pleaded not guilty: we that be of the King's Counsel shall make it appear, that this Defendant did do this, and in this Manner as it is set forth.

Mr. Attorney*. 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 *Brampton*, 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 the Points on which he charged him with High-Treason, as aforesaid. Farther, he was asked why he charged him with the first, and how he doth deny the King's Supremacy: he answers, for that by 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 Stubbornness, 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 farther 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.

Mr. Attorney. May it please your Lordship, and you of the Jury, the Prisoner at the Bar, Mr. *Harrison*, 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 by 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 King's 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, it is a heavy Thing to accuse any Man of Treason, whereby he shall forfeit his Lands and Goods, and lose 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. Of Honour, for they be reckoned in the old Statutes among the *Magnates Regni*, 2 Ric. 2. &c. 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 Commonwealth. And surely if Mr. *Harrison* had looked upon these Statutes, he would have been better advised: Of Trust, for he trusted with the Administration

of equal Justice between the King and his Subjects, and the Lives, Fortunes, and Estates of Men. Therefore being a Place of so great Honour and Trust, the Scandal is the greater; and Offences and Crimes against them have been punished not with ordinary Punishment.

25 *Edw.* III. 1 *pr.* It is declared to be Treason to kill a Judge in execution of his Office.

Our Books say, That if one draw a Weapon upon a Judge sitting in Judicature, tho' he strike him not, he shall be imprisoned during Life, and forfeit his Goods and Lands, and lose his Right Hand.

Tho' the Offence be not done to the Judge, yet being in the Judges presence (the Courts sitting) as if one strike a Juror, or any other Person in *Westminster-Hall*, sitting in the Courts, it hath been punished with the loss of Hand, Goods, and Lands during Life; this appeareth, 19 *Ed.* 3. Judgment, 174. 22 *Ed.* 3. 13. *Mich.* 6 *Ed.* 3. *Coram Rege*, *Rot.* 55. *Stamford's Pleas of the Crown*, 38.

The Offence of Mr. *Harrifon* is not for accusing Judge *Hutton*, or any other, of Treason, for God forbid but that should be lawful where there is just Cause; but to do it without any colour of Ground, and to forge a false Accusation out of his own Brain, and to act in such an insolent and mad way against a reverend Judge, sitting in the Seat of Judgment, this is the Offence.

37 *Hen.* 6. 3. If one call another Traitor, an Appeal lieth before the Constable and Marshal; and if the Appellant be killed in Battle, it is justifiable.

30 *lib. Ass.* One called Justice *Scaton* Traitor, and answered well in Damages, as appeareth more at large in the Record than in the Printed Book.

Mich. 5 *Car.* in *Banco Regis*, *Nich. Jeffes* was indicted and fined in the King's-Bench, for writing a Petition, wherein he said the Lord Chief Justice *Coke* was a Traitor.

Treasons are declared by the Statute 25 *Ed.* 3. and this Gentleman may expound a Text, he cannot expound Statutes, for this is proper for the Judges of the Realm.

He is not to judge what is Treason, and what not: *Treſent febrilio fabri*, let him keep himself within the compass of his own Profession.

This Offence is *contra Coronam & Dignitatem*, and the Scandals against the King's Judges and Ministers trench upon the King himself, and therefore his Royal Majesty detesting this odious and foul Fact in the Prisoner at the Bar, hath commanded us his Counsel to give Evidence.

The Person of the Party accused is best known to your Lordships to be a most grave, honest, learned, and reverend Judge, and, I presume, free from any thought of Treason.

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 implicit Way taxing the Judge of Injustice, he was indicted, and confessed the Indictment, as Mr. *Harrifon* doth: The Judgment was, That he should be committed, and there to remain during the King's Pleasure, besides a great Fine.

The Record saith, *Et quia sicut honor, & reverentia qui Ministris Domini Regis ratione officii sui faciuntur, ipsi Regi attribuuntur, sic dedecus & contemptus ministris suis fact. eidem Domino Regi inferuntur, consideratum est quod predictus Willielmus de Bruce districtus in corpore, capite nudo, toga deposita eat à Banco Domini Regis ubi placita tenentur in Aula W. Simonasterii per medium Aulae predictae cum coram pleno fuerit, usque ad Scac. ubi deliquit & ibidem veniam petat à prefato Rogero, &c. Et postea committatur Turri London. ibidem moretur ad voluntatem Regis.*

My Lords,

This Offence, which was offered to the Person of a most reverend, learned, and honest Judge, by the Rules of our Books, 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.

I doubt not but you will maintain the Honour of a Judge, and punish this Delinquent according to his Demerits. His Offence contained in the Indictment, is confessed in his Examination, and by himself *ore tenus*, therefore you of the Jury need not depart from the Bar.

Whereupon the Jury immediately gave in a Verdict, that he was guilty of the Indictment.

Mr. Attorney General. Now, my Lord, I desire Judgment.

Upon which the Court pronounc'd the following Sentence^{*}.

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. Afterwards Justice Hutton brought an Action for these Words against Harrifon, in which he recovered Ten thousand Pounds Damages.

* Vide *Croke's Reports*, pag. 362. *Thomas Harrifon's Case.*



XXXIX. *The Trial of THOMAS Earl of STRAFFORD**,
Lord Lieutenant of Ireland, for High-Treason, the 22d of
March 1640. 16 Car. I.

Articles of the Commons assembled in Parliament against Thomas Earl of Strafford, in maintenance of the Accusation, whereby he stands charged of High-Treason.

I. **THAT** he the said *Thomas Earl of Strafford* hath traitorously endeavoured to subvert the fundamental Laws and Government of the Realms of *England* and *Ireland*, and, instead thereof, to introduce an Arbitrary and Tyrannical Government against Law; which he hath declared by traitorous Words, Counsels, and Actions; and by giving his Majesty Advice, by Force of Arms to compel his loyal Subjects to submit thereunto.

II. That he hath traitorously assumed to himself Regal Power over the Lives, Liberties, Persons, Lands, and Goods of his Majesty's Subjects in *England* and *Ireland*; and hath exercised the same tyrannically, to the subversion and undoing of many, both of Peers, and others of his Majesty's liege People.

III. That the better to enrich and enable himself to go thro' with his traitorous Designs, he hath detained a great Part of his Majesty's Revenue, without giving legal Account; and hath taken great Sums out of the Exchequer, converting them to his own Use, when his Majesty wanted Money for his own urgent Occasions, and his Army had been a long time unpaid.

IV. That he hath traitorously abused the Power and Authority of his Government, to the increasing, countenancing, and encouraging of Papists; that so he might settle a mutual Dependance and Confidence betwixt himself and that Party, and, by their Help, prosecute and accomplish his malicious and tyrannical Designs.

V. That he hath maliciously endeavoured to stir up Enmity and Hostility between his Majesty's Subjects of *England* and those of *Scotland*.

VI. That he hath traitorously broke the great Trust reposed in him by his Majesty, of Lieutenant-General of his Army, by wilful betraying divers of his Majesty's Subjects to Death, his Army to a dishonourable Defeat by the *Scots* at *Newborne*, and the Town of *Newcastle* into their Hands; to the end, that by the Effusion of Blood, by Dishonour, and so great a Loss as that of *Newcastle*, his Majesty's Realm of *England* might be engaged in a national and irreconcilable Quarrel with the *Scots*.

VII. That to preserve himself from being questioned for those, and other his traitorous Courses, he laboured to subvert the Right of Parliaments, and the antient Course of Parliamentary Proceedings; and, by false and malicious Slanders, to incense his Majesty against Parliaments. By which Words, Counsels, and Actions, he hath traitorously, and contrary to his Allegiance, laboured to alienate the Hearts of the King's liege People from his Majesty, to set a Division between them, and to ruin and destroy his Majesty's Kingdoms: for which they impeach him of High-Treason against our Sovereign Lord the King, his Crown and Dignity,

VIII. And he the said Earl of *Strafford* was Lord-Deputy of *Ireland*, and Lieutenant-General of the Army of his most Excellent Majesty, for his Kingdoms both of *England* and *Ireland*, and the Lord President of the North, during the Time that all and every the Crimes and Offences before set forth were done and committed; and he the said Earl was Lieutenant-General of all his Majesty's Army in the North Parts of *England*, during the time that the Crimes and Offences in the fifth and sixth Articles set forth were done and committed.

IX. That the said Commons, by Protestations saving to themselves the Liberty of exhibiting at any time hereafter any other Accusation or Impeachment against the said Earl; and also of replying to the Answers that he the said Earl shall make unto the said Articles, or to any of them, and of offering Proofs; also of the Premises or any of them; or any other Impeachment or Accusation that shall be exhibited by them, as the Cause shall, according to the Course of Parliament, require: do pray that the said Earl may be put to answer for all and every of the Premises, that such Proceedings, Examinations, Trials and Judgments may be upon every of them had and used, as is agreeable to Law and Justice.

Articles of the Commons assembled in Parliament against Thomas Earl of Strafford, in maintenance of their Accusation whereby he stands charged with High-Treason.

WHEREAS the said Commons have already exhibited Articles against the said Earl, *in hæc verba*, now the said Commons do further impeach the said Earl as followeth: (*That is to say*)

I. That the said Earl of *Strafford*, the 21st Day of *March*, in the eighth Year of his Majesty's

* *Clar. Hist. Vol. I. pag. 118, 152. &c* See the larger Trial, which being an entire Volume in *Rushworth's* Collections, to be had by itself, is here purposely omitted, and this inserted in the stead thereof.

Reign, was President of the King's Council in the Northern Parts of *England*.

That the said Earl being President of the said Council, on the 21st of *March* a Commission under the Great Seal of *England*, with certain Schedules of Instructions thereunto annexed, was directed to the said Earl, and others the Commissioners therein named, whereby, among other Things, Power and Authority is limited to the said Earl, and others the Commissioners therein named, to hear and determine all Offences, and Misdemeanours, Suits, Debates, Controversies, and Demands, Causes, Things and Matters whatsoever therein contained, and within certain Precincts in the said Northern Parts therein specified, and in such manner, as by the said Schedule is limited and appointed.

That, amongst other Things in the said Instructions, it is directed, that the said President, and others therein appointed, shall hear and determine according to the Course of Proceedings in the Court of *Star-Chamber*, divers Offences, Deceits and Falsties, therein mentioned, whether the same be provided for by Acts of Parliament or not; so that the Fines imposed be not less than by the Act or Acts of Parliament provided against those Offences is appointed.

That also, amongst other Things in the said Instructions, it is directed, that the said President, and others therein appointed, have power to examine, hear, and determine, according to the Course of Proceedings in the Court of *Chancery*, all manner of Complaints, for any Matter within the said Precincts; as well concerning Lands, Tenements, and Hereditaments, either Free-hold, Customary, or Copy-hold, as Leases, and other Things therein mentioned; and to stay Proceedings in the Court of *Common Law* by Injunction, or otherwise, by all Ways and Means, as is used in the Court of *Chancery*.

And altho' the former Presidents of the said Council had never put in practice such Instructions, nor had they any such Instructions; yet the said Earl, in the Month of *May*, in the said eighth Year, and divers Years following, did put in practice, exercise and use, and caused to be used and put in practice the said Commission and Instructions; and did direct and exercise an exorbitant and unlawful Power and Jurisdiction over the Persons and Estates of his Majesty's Subjects in those Parts, and did disinherit divers of his Majesty's Subjects, in those Parts, of their Inheritances, sequestered their Possessions, and did fine, ransom, punish and imprison them; and caused them to be fined, ransomed, punished, and imprisoned, to their Ruin and Destruction: and namely, Sir *Coniers Darcy*, Sir *John Bourcher*, and divers others, against the Laws, and in subversion of the same. And the said Commission and Instructions were procured and issued by Advice of the said Earl.

And he the said Earl, to the intent that such illegal and unjust Power might be exercised with the greater Licence and Will, did advise, counsel, and procure further Directions; in and by the said Instructions to be given, that no Prohibition be granted at all, but in Cases where the said Council shall exceed the Limits of the said Instructions: And that if any Writ of *Habeas Corpus* be granted, the Party be not discharged till the Party perform the Decree and Order of the said Council.

And the said Earl, in the 13th Year of his Majesty's Reign, did procure a new Commission to

himself, and others therein appointed, with the said Instructions, and other unlawful Additions.

That the said Commission and Instructions were procured by the Sollicitation and Advice of the said Earl of *Strafford*.

II. That shortly after the obtaining of the said Commission, dated the 21st of *March*, in the eighth Year of his Majesty's Reign, to wit, the last Day of *August* then next following, he the said Earl (to bring his Majesty's liege People into a dislike of his Majesty, and of his Government, and to terrify the Justices of the Peace from executing of the Laws; he the said Earl being then President, as aforesaid, and a Justice of Peace) did publickly, at the Assizes held for the County of *York*, in the City of *York*, in and upon the said last Day of *August*, declare and publish before the People there attending for the Administration of Justice according to Law, (and in the presence of Justices sitting) that some of the Justices were all for Law, and nothing would please them but Law; but they should find that the King's Little-finger should be heavier than the Loins of the Law.

III. That the Realm of *Ireland* having been time out of mind annexed to the Imperial Crown of this his Majesty's Realm of *England*, and governed by the same Laws; the said Earl being Lord-Deputy of that Realm, to bring his Majesty's liege Subjects of that Kingdom likewise into dislike of his Majesty's Government, and intending the Subversion of the fundamental Laws and settled Government of that Realm, and the Destruction of his Majesty's liege People there, did upon the 30th Day of *September*, in the ninth Year of his now Majesty's Reign, in the City of *Dublin* (the chief City of that Realm, where his Majesty's Privy-Council and Courts of Justice do ordinarily reside, and whither the Nobility and Gentry of that Realm do usually resort for Justice) in a publick Speech, before divers of the Nobility and Gentry of that Kingdom, and before the Mayor, Aldermen, and Recorder, and many Citizens of *Dublin*, and other his Majesty's liege People, declare and publish, That *Ireland* was a conquered Nation, and that the King might do with them what he pleased. And speaking of the Charters of former Kings of *England* made to that City, he further then said, That their Charters were nothing worth, and did bind the King no further than he pleased.

IV. That *Richard* Earl of *Cork* having sued out Process in Course of Law, for Recovery of his Possessions, from which he was put by colour of an Order made by the said Earl of *Strafford*, and the Council-Table of the said Realm of *Ireland*, upon a Paper-Petition, without legal Proceeding, did the 20th Day of *February*, in the 11th Year of his now Majesty's Reign, threaten the said Earl, (being then a Peer of the said Realm) to imprison him, unless he would surcease his Suit; and said, That he would have neither Law nor Lawyers dispute or question his Orders. And the 20th Day of *March*, in the said 11th Year, the said Earl of *Strafford*, speaking of an Order of the said Council-Table of that Realm, made in the Time of King *James*, which concerned a Lease which the said Earl of *Cork* claimed in certain Rectories or Tythes, which the said Earl of *Cork* alledged to be

be of no Force, said, That he would make the said Earl, and all *Ireland* know, that so long as he had the Government there, any Act of State there made, or to be made, should be as binding to the Subjects of that Kingdom, as an Act of Parliament. And did question the said Earl of *Cork*, in the Castle-Chamber there, upon pretence of Breach of the said Order of Council-Table: and did sundry other Times, and upon sundry other Occasions, by his Words and Speeches, arrogate to himself a Power above the Fundamental Laws and Established Government of that Kingdom; and scorned the said Laws and established Government.

V. That according to such his Declarations and Speeches, the said Earl of *Strafford* did use and exercise a Power above, and against, and to the subversion of the said Fundamental Laws and Established Government of the said Realm of *Ireland*; extending such his Power to the Goods, Freeholds, Inheritances, Liberties, and Lives of his Majesty's Subjects of the said Realm: and namely, the said Earl of *Strafford*, the 12th Day of *December*, 1635. in the time of full Peace, did in the said Realm of *Ireland* give, and procure to be given, against the Lord *Mountnorris*, (then and yet a Peer of the said Realm of *Ireland*, and then Vice-Treasurer and Receiver-General of the Realm of *Ireland*, and Treasurer at War, and one of the Principal Secretaries of State, and Keeper of the Privy-Signet of the said Kingdom) a Sentence of Death by a Council of War, called together by the said Earl of *Strafford*, without any Warrant or Authority of Law, or Offence deserving any such Punishment. And he the said Earl did also at *Dublin*, within the said Realm of *Ireland*, in the Month of *March*, in the fourteenth Year of his Majesty's Reign, without any legal or due Proceedings or Trial, give, and cause to be given, a Sentence of Death against one other of his Majesty's Subjects, whose Name is yet unknown; and caused him to be put to death in execution of the same Sentence.

VI. That the said Earl of *Strafford*, without any legal Proceedings, and upon a Paper Petition of *Richard Rolston*, did cause the said Lord *Mountnorris* to be disseized, and put out of possession of his Freehold and Inheritance of his Manor of *Tymore* in the County of *Armagh*, in the Kingdom of *Ireland*, the said Lord *Mountnorris* having been eighteen Years before in quiet possession thereof.

VII. That the said Earl of *Strafford*, in the Term of *Holy Trinity*, in the thirteenth Year of his now Majesty's Reign, did cause a Case, commonly called, *The Case of Tenures upon defective Titles*, to be made and drawn up without any Jury or Trial, or other legal Process, and without the Consent of Parties; and did then procure the Judges of the said Realm of *Ireland*, to deliver their Opinions and Resolutions to that Case: and by colour of such Opinion, did, without any legal Proceedings, cause *Thomas Lord Dillon*, a Peer of the said Realm of *Ireland*, to be put out of the Possession of divers Lands and Tenements, being his Freehold, in the Counties of *Mayo* and *Roscommon*, in the said Kingdom: And divers other of his Majesty's Subjects to be put out of Possession, and disseized of their Freehold, by colour of the same Resolution, without legal Proceedings;

whereby many Hundreds of his Majesty's Subjects were undone, and their Families utterly ruined.

VIII. That the said Earl of *Strafford*, upon a Petition of Sir *John Gifford* Knight, the first Day of *February*, in the said thirteenth Year of his Majesty's Reign, without any legal Process, made a Decree or Order against *Adam Viscount Loftus* of *Ely*, a Peer of the said Realm of *Ireland*, and Lord Chancellor of *Ireland*, and did cause the said Viscount to be imprisoned, and kept close Prisoner, on pretence of Disobedience to the said Decree or Order.

And the said Earl, without any Authority, and contrary to his Commission, required and commanded the said Lord Viscount to yield up unto him the great Seal of the Realm of *Ireland*, which was then in his Custody by his Majesty's Command, and imprisoned the said Chancellor for not obeying such his Command.

And without any legal Proceeding did, in the same thirteenth Year, imprison *George* Earl of *Kildare*, a Peer of *Ireland*, against Law, thereby to enforce him to submit his Title to the Manor and Lordship of *Castleleigh* in the Queen's County, (being of great yearly Value) to the said Earl of *Strafford's* Will and Pleasure, and kept him a Year Prisoner for the said Cause; two Months whereof he kept him close Prisoner, and refused to enlarge him, notwithstanding his Majesty's Letters for his Enlargement, to the said Earl of *Strafford* directed.

And upon a Petition exhibited in *October*, *Anno Domini* 1635, by *Thomas Hibbotts*, against Dame *Mary Hibbotts* Widow, to him the said Earl of *Strafford*; the said Earl of *Strafford* recommended the said Petition to the Council-Table of *Ireland*, where the most part of the Council gave their Vote and Opinion for the said Lady: but the said Earl finding fault herewith, caused an Order to be entered against the said Lady, and threatned her that if she refused to submit thereunto, he would imprison her, and fine her Five hundred Pounds: that if she continued obstinate, he would continue her Imprisonment, and double her Fine every Month. By means whereof she was enforced to relinquish her Estate in the Lands questioned in the said Petition, which shortly after were conveyed to Sir *Robert Meredith*, to the Use of the said Earl of *Strafford*.

And the said Earl in like manner did imprison divers others of his Majesty's Subjects, upon pretence of Disobedience to his Orders, Decrees, and other illegal Commands by him made for pretended Debts, Titles of Lands, and other Causes, in an arbitrary and extra-judicial Course, upon Paper Petitions to him preferred, and no Cause legally depending.

IX. That the said Earl of *Strafford*, the sixteenth Day of *February*, in the twelfth Year of his Majesty's Reign, assuming to himself a Power above and against Law, took upon him, by a general Warrant under his Hand, to give power to the Lord Bishop of *Dowrie* and *Connor*, his Chancellor or Chancellors, and their several Officers thereto to be appointed, to attach and arrest the Bodies of all such of the meaner and poorer sort, who, after Citation, should either refuse to appear before them, or appearing, should omit, or deny to perform, or undergo all lawful Decrees, Sentences, and Orders, issued, imposed, or given out against them,