

there was a Treaty of Peace between *Baliol* and *Ed.* the First, he refused to acknowledge the Signory of *England*; and there the Parliament resolves he should rather have a War than lose this. So see *Selden* upon *Fortescue*. War in *Scotland*, not foreign War, but like to that in *Wales*; and so was it ever since held, since the Conquest, to be within the Signory of *England*. By the Statute of 12 *Ed.* I. and by the Statute of *Hen.* VIII. it appeareth to be within the Fee of *England*. War against one another, cannot be called a foreign War; as in the War to *Scotland*, *Wales*, and elsewhere, which is not meant of foreign Parts; for then it would have been expressed where, as well as *Gascoigne*. And by the Histories of those Times, we shall find there were Armies carried to no other Place. Nay, to shew this elsewhere is meant in *England*, see the 1 *Ed.* III. Parliament-Roll before this Parliament. The *Scots* invaded *England*, as appears by a Writ of *Ed.* III. where is mention of an Invasion, and thereupon requires Aid. If there be Wars in *Gascoigne*, and if occasions to *Scotland*, and in *England* too where the *Scots* are, and this a defensive War. Further for the Wars of *Scotland*, if that should be called a foreign War; if the King should go thither and make a War, yet by the Rules of the King's Council, if a War in foreign Parts is but to prevent a War at home, this War is not foreign, but for Defence.

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

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

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

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

From all this I conceive that it is strongly inferred that he could not force them: And when the Lords and Commons did meet, to take Consideration for the Wars against *France* and *Scotland*, the Commons laid the whole Charge on the Cinque Ports, they disclaim'd to have any thing to do with it. And for the Land-Service, they

said, let those of every County reside there, but no Charge on the Subject in pursuance of this. *Claus.* 13 *Ed.* III. M. 11, & 14. *Dors.* The Town of *Bodmin* doth shew the Execution of this Judgment; it being agreed, that the Sea-Towns, and bordering Shores, should look unto it.

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

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

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

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

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

Under favour, the Matter shews that they claim in point of Right: And it is to be supposed, that they would not make such an unreasonable Request, as to lay that wholly on the King, if they of Right ought to do it. And if Words were put in a fair Language, it was but a fit and humble Language for so great a Prince as *Ed.* the Third was. But *Ed.* the Third gave no Relief: yet that doth shew the Judgment of the two Houses; and as there was no granting, so there was no express denial. A handsome Prayer, and a handsome Answer. 14 *Ed.* III. Parliament-Roll, there it appears there was a Charge of 2 s. on all Woolfells, and this for Defence of the Sea; and in the 15th taken away in the Parliament.

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

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

It is true, about this time there are some Records of 16 and 18 *Ed.* III. in the *Exchequer*, where Charges are laid on the Subject for Hobbellers, and such things: But you shall find in the *Exchequer*, that the Money came thence, which was before

before the Statute; these things were the Grievances complained of. So the Practice there will not expound the Statute, for the contrary Practice did beget the Statute. But the last of these, in 24 *Ed. III.* who was an active Prince, and maintained Wars, and so had great Occasions for Moneys, and so charged the People higher than they would endure; for which he did afterwards repent, and desired to be prayed for; and therefore there were divers Impositions on Merchants; all which I pass over, only this out of the Roll, 50 *Ed. III. M. 24.* It is the Lord *Latimer's* Case, a Privy-Counsellor and Chamberlain to the King; there was a Complaint in Parliament against him for divers things, whereof one was for laying an Imposition upon Merchandize. In his Justification he pleads the Command of the King; and for that Particular he was sentenced, imprisoned, fined and ransomed; so careful were they to revive that Law. And that Sentence of his, 2 *Ric. II.* made the great Lords so unwilling to talk of the Defence without Parliament.

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

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

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

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

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

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

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

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

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

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

Judgment was delivered so, because *sonat in prejudicium Populi*.

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

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

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

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

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

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

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

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

In the time of *Henry* the Sixth there's little.

I come next to the Time of *Edw. IV.* wherein, tho' there is not much upon Statute, yet there is a Speech of his that shews much of this. 7 *Ed. IV. Parl. Roll* 1. there was a Speech made and cited; the King first protests, which was not immediately upon his coming to the Crown, that he will live of his own, and not charge the Commons but in Cases extraordinary, and those Burdens too should be *secundum morem Majorum*; and that he hopes they will be as tender of, and kind to him as to his Predecessors, saying that he would lay no Charge upon them, but in extraordinary things.

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

But those Loans were by way of Commission, and not to some poor Men, but they did concern the general. And tho' *Rich. III.* had Reason to bring in good Laws, because of the Defect of his Title, yet my Lord of *St. Albans* called it a kind of Brokage to get the Peoples Good Will; yet, however, this must be a Declaration of both Houses of Parliament; and it was not so much offered by *Rich. III.* but because *Edw. IV.* had made many Borrowings.

I come now to *Henry* the Seventh's Time; that which hath been pressed, is the 19 *Hen. VII. c.* 11. Provision that the King's Servants that were to attend upon him in the Wars out of the Counties, should be paid; then if they were to have it, then *à fortiori*, they that were not to attend. This shews that the King is to be at the Charge, and not the Subject.

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

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

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

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

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

Yea,

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

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

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

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

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

The Commission of Loans and Benevolence, the Necessity of the Time did require an instant Supply; and it appears by the Commission, that there was a Necessity which could not stay for a Supply another way, and your Lordships know what was done in this. This Commission was not to borrow of a few, but it was general, with an equal and proportionable Weight; and this, as it appears, was for the Defence of the Kingdom.

It hath been said, that mention is made of supply for the *Palatinate*, and to send Aids to *Denmark*.

True, it is so; but that of the *Palatinate*, and that of *Denmark*, do upon the matter concern us;

for that War being upon our Resolutions, there was a kind of Ingagement laid upon us.

In that Commission, there appears more than a possible Danger to the Kingdom; there was a Necessity, yet this was laid down, it held not; and in pursuance thereof there was an Order, whereof we have a Copy; it is in the Exchequer moved by the King's Attorney for staying the Proceedings for Money spent about Loans, which was by his Majesty's gracious Command, wherein his Majesty did prevent the Commons desire.

The Petition goes on, that there were Soldiers billeted in several Parts, and there was a Charge; and this was after a late foreign War, an Enemy then known and declared; there was a Necessity for instant Defence, and to stand upon our Guard; the Enemy might in a short time have been upon our Coasts: yet your Lordships know what was said to that.

And as the Petition looks back to those things that are taken off their Hands, so it looks forward and provides, that no such things should be taken hereafter by the Power of the King alone, altho' upon matter of Necessity. And all this was a Petition not of Favour merely, but in point of Right, according to our Laws and Statutes, which are the Statute 25 *Ed. I.* the Statute *de Tallagio non concedendo*, and *Magna Charta* the ground of all. And to all these his Majesty promiseth such things should be done no more. And they not content with this, his Majesty gives this Answer, *Soit droit fait*.

I cannot leave this great Strength thus, but bring it home to this very Case. The Substance of this Petition being for charging of the Subject out of Parliament by the Royal Power, when this Petition had passed the Lower House, it came to the Lords; and upon some Motion, there was a Proposition of a Saving to be put in the End of the Petition, Saving the Sovereign's Power, which his Majesty is intrusted with for the Defence of the Kingdom. All this your Lordships know, that after several Conferences, in the Conclusion the Petition passed without any Saving.

My Lords, upon what Reason this Saving was left out, your Lordships may see by the Record; which your Lordships and the rest of the House best know, and whether upon this Reason or not.

That the Laws the Petition went on, whether the Saving would stand with those Laws.

My Lords, it appears that the first Answer was, that the Laws should be put in Execution; yet in the Close there is put in a Saving of the Prerogative, but this Answer did not satisfy; and therefore there was a general Answer, *Soit droit fait*. But now what was granted by the last Answer more than by the former, only that the Law was left more absolute?

As to that Commission of Advice for consideration of Means to raise Supplies, and it was for Defence, and a necessary Defence, and that did not bear delays, that Commission was laid down by his Majesty; yet in that there was no more than this Consideration, how Supplies might instantly be raised, which could not indure delays by Impositions or otherwise, that is still lawful ways. If there had been any to lay a Charge on the Subject by way of Loan, then that Commission had not been excepted against; yet his Majesty was pleased to lay down this upon the desire of the House.

I conclude with that which I conceive to be the Judgment of both Houses in point. It is the Judgment of both Houses against the Sermon touched upon by Mr. *St. John*, which I shall press as far as it will be applicable to our Case.

The Sermon was to shew the Power of the King in case of Necessity to lay a Charge on the Subject without a Parliament. When this came into the Lower House, this was the main and principal Charge, I say not the sole Charge. When it came into the Upper House, there it was pressed against that Divine by the King's Council; and it appears by the Journals of the Upper House, that the Crime was, that he should shew the King's Power to charge the Subject without Parliament. It appears by the said Journals, that the Doctor's excuse was, that he meant nothing but to shew what Kings might do in extreme Necessity of Danger. And your Lordships may read in his Sermon, that he speaks of Necessity, not attending the slow Motion of Parliamentary Advice; so that it is pinched on extreme Necessity: but neither one Excuse nor the other did serve his turn. The Offence is acknowledged, Submission made in both Houses, and the Sermon called in by Proclamation.

Ay, but saith Mr. Solicitor, this Sentence was for other Matters.

I say not, but that the Sentence was for this thing alone: there were other things, but they were only by the by; only occasioned by this. Now how far this Case comes to our Case, I leave to your Lordships Judgments.

Mr. Holborne's Fourth Days Argument in the Exchequer-Chamber, on the behalf of Mr. Hampden, before all the Judges.

May it please your Lordships,

I Have thus far gone on in my Proof from Reason, Books, Cases and Authorities, all being of highest Nature, that is, by the Laws of *England*; that the King cannot charge his Subjects without their Consent in Parliament, tho' it be *pro bono publico*, or for Case of Necessity. It now remaineth that I offer, what either the Practice hath ever been in the best Times, and the contrary Practice decried from time to time.

In this I shall do a Work of Supererogation. It is not material what the Practice is, if the Laws be once settled. A Law once made, over-ruleth all Practice afterwards. And as a Law is Law before Practice, so it is Law against Practice: yet because Practice may be an Expositor of Law, especially where the Words may seem general, I shall shew from Age to Age, that the Subjects without their Consent could not be charged.

From the Practice of the Kings themselves, even in all Ages, that on extraordinary Occasions they have resorted unto Parliaments; and when they could not do good by that, they have made many Borrowings, as appears by the Parliament-Rolls. What other Courses they have taken, your Lordships have heard upon the former Argument. And when the King received these Supplies, it came voluntarily, and with Protestation, that those things should not be drawn into Example.

I shall go now to the Practice of the Subjects Part. First, I shall go as high as the *Saxons* Time. That of *Danegelt* did begin by a common Consent: and in the very Laws in Mr. *Lambert*, it is said *Statutum est*. Tho' it always did not signify a Statute, yet when it was written by one that knew the Laws, and writ of the Laws, it must be so taken. *Tilburicensis* saith, as it was the Act of the King, so it was the Petition of the Commons; *Statutum est a Regibus*, still the King. It is strange in that time of *Ethelred*, when *Danegelt* was so great and common as it was, the Subject being easily drawn unto it, that the King should not ask it, when he might have it for asking. But this *Danegelt* being raised by *Ethelred* upon emergent Occasions, as it was not like to be always, so the Provision was not for all Times. After him came in some of the *Danish* Kings, and they continued the *Danegelt*. And what became of those that were the Collectors of the *Danegelt* between *Ethelred* and the Confessor, doth appear in *Huntingdon*, and how the People did decry it in general; then it was laid down *ut gravissimum*, as appears in *Ingulphus*.

Edward the Confessor he laid it down. At the Conquest, still they go on with the *Danegelt*. It was part of the Terms made by the People with several Kings, that it should be laid down, and King *Stephen* did promise to lay it down; tho' notwithstanding they did now and then take it up. In *Hen. II.* Time yet still more Complaints, and that was left out of the Charter of King *John*.

The Use of all this is, That tho' there were a Practice under pretence for Defence of the Kingdom, yet the People did decry it; it was not such a Practice as could bring in a Law.

When *Danegelt* was thus laid down for the time of King *John*, *Hen. III.* and *Ed. I.* in which times Practice for Shipping will not be material, for in all those times the very Shipping itself was decried. *Parl'* 25 *Ed. I.* there the very Charges of the Subjects for Shipping were the Complaint, the Complaint is the thing I am upon. After the 25 *Ed. I.* and the Statute *de Tallagio non concedendis*, the course of these Proceedings did alter; for before in 24 he sent forth Writs under a great Penalty, and 29 *Ed. I. M. 10.* he contracts for his Ships, and they go at his Charges. *P. 76. Ed. I. Rot. 35. Reginald de Grey* when the *Scots* entered the Kingdom, he was commanded to bring Seamen out of their Counties, and he durst not without Money; and thereupon he had Money out of the Exchequer.

But the Answer was, this was for *Scotland*.

For that no doubt this War was at Home, for in the 26 the *Scots* had entered the Kingdom. *Br. Trin. 32 Ed. I. Rot. 11.*

I come now to *Ed. II.*'s Time, there is not much against us, but for us. This I shall observe, that the first Writ that went out was 9 *Ed. II.* It is true, a *Mandamus* went out for Shipping, and against an Enemy, and for Defence of the Kingdom, but how? Not a *Mandamus firmiter injungentes*, nor *sub pena forisfacturæ*; but a *Mandamus rogantes*, and the means of compelling *quatenus honorem nostrum & Salvationem vestram diligitis*. So you see how the Course of the Law altered in that time.

I come to *Ed. III.* for I will but touch upon every Time, and offer but one Thing to shew the Practice in it. As I find a Statute in the beginning

ning of his Reign, concerning Provision made for Wars, so I find an Execution. *Rot. Sco. 1 Ed. III. M. 8.* there went out two Writs, and they were concerning raising of Shipping, and in respect of the *Scots* entering that Year. This is that I put it for, to shew that upon that Occasion *1 Ed. III.* Soldiers were paid, altho' for the Wars in *Scotland*. It doth recite that the *Scots* had entered the Land that Year, and did make further Preparation; and if they could not have their Peace on their own Terms, they would proceed. *Consideratis etiam periculis*, for it was in *articulo necessitatis*; he giveth a Command that there should be Ships, but it is a *Mandamus rogantes*, nothing at all by Compulsion or Forfeiture in the Writ, *Sicut honorem nostrum*. It appears by the Writ, that he said, he sent Money at that time for the Victuals for the Soldiers; and this very Writ was *pro Salvatione Regni*, and that we could not be safe without Shipping; and this was in a pure and innocent Time.

I will not say, that in all the Actions of *Ed. III.* he never broke this Rule: your Lordships know what Wars he had, and what Necessities, and what those Necessities brought him to; but he was so far from justifying of himself, as it appears by *Daniel's* History, that he sent to the Archbishop of *Canterbury*, to pray for him, and desired the People not to think ill of him for laying those Charges upon them in Case of Necessity. *12 Ed. III. Rot' Alm'*. Your Lordships shall see upon that Acknowledgment, how he began to alter his Course. Parliament Roll, *13 Ed. III.* tho' he laid Charges before now, he calls a Parliament, and desires Supplies for Shipping that way; and that Acknowledgment *12*, will answer home that famous Year of *10 Ed. III.*

Next, my Lords, to shew the decrying of the People in this time of Shipping itself, in the Rolls of *21* and *51 Ed. I.* there the People said they were not to bear the Charge; so it was no Practice, for the Commons did decry it. That for Hobbellers, they were at the Charge of the County before *25*; but that they were complained of in Parliament, wherein the Statute of *25 Ed. III.* was made. But all that I aim at in this is, whatever the contrary Practice was, to out-balance it by the contrary Opinion, and Claim of the Kingdom; and the Practice I hope shall not be able to make it Law.

I come now to the Time of *Richard II.* for his Time I shall remember but one, *Tr. 7. Ric. II. M. 15. de contribuendo ad Custodiam Maris*, there is a Recital of *Danegelt*; and that the Subsidies that the King had were not sufficient, and therefore commanded an Aid, but to do it *gratuitur*.

I do observe, that all Ship-Writs do end in the Time of *Ed. III.* one or two perhaps may be after, and therefore I do end with the Practice of those Times; but from those Times downwards to *Hen. VIII.* this was offered, and not denied. That there are several Records, how the Kings of *England*, both at Sea and Land, did bear the Charge of Defence; and all the Answer was, that it doth not appear how the King doth raise the Monies.

For the Time of *Hen. IV.* *2 Hen. IV.* Parliament-Roll. A Complaint of the Commons, of a Commission for building of Gallies for Defence: And their Complaint was, that it was done without Consent of Parliament, which ought not to be

done, and this Commission is repealed. This shews the decrying of the Subject, and that the Practice hath been, that the Defence was at the Charge of the King.

I have thus finished the Negative Part of the Argument, that the Subject is not compelled to find Shipping for Defence at their own Charge.

Next for the positive Part, that the Charge both in Cases ordinary and extraordinary lies on the King, and that by the Common-Law; and that the King hath Provision and Consideration for it.

My Lords, for Provisions regularly, whatsoever Estate is in the King in the Politick Capacity, is in him as *Rex*, and not in him in his natural Capacity; and what is in him so, is for the Benefit of the Kingdom: and that hath ever been the Ground of the Acts of Resumption, and some of Resumption made by *Hen. VII.* where Lands were aliened by him, he made a Resumption; and those many Privileges that the King hath in him, are as *Rex* in his Politick Capacity. All which Cases are put together in *Calvin's* Case in the 4th Report, and not only in *England*, but in all Christendom: All Estates in Princes are held for the Benefit of the Kingdom, as well as for themselves; and that is not denied by King *Jemes* in his Answer to *Perroy*; he would have it absolutely to be to that purpose. All that is to the Advantage and Honour of the King, is for the Benefit of the Kingdom.

My Lords, from the Consideration of the Interest of the Kingdom in the Estate of the Prince, the Parliaments have so often offered their Service to the King: And the Parliament in former Times did require a Hand in the naming of a Treasurer, they called it *antiquus Mos*. And it was *5 Ed. III.* in a Parliament, but repealed *15 Ed. III.* And for antient Lands of the Crown they were not devisable out for that Reason; and that none should buy the Land of the Crown, for it was not alienable in that Time.

My Lords, in the Form of our Government, the King in the Supposition of the Laws had all these. By the Books cited by Mr. *St. John*, all were in the Crown, and being so, they were for the Service of the Kingdom; and that is the Reason that all Land is held immediately or mediately of the King. As a Lord of a Manor, when he hath a Circuit of Ground, he lets one Part to one Man to plow in Knights-Service, and part he keeps for himself. So the King when all was in him, he disposed of some for the Service of the Kingdom. Hence ariseth the Tenures originally. As they kept in their Hands Palaces and Demesns, so for publick Service they made distribution of certain Lands for publick Defence; some by Knights-Service, some by Scutage, some by Cornage, and some for Castle-guard and Grand Serjeanty, all for the Service of the Kingdom; and Tenures *per Baronagium*, which was an eminent Service, as appears by the Books of the Knights Fee. Petty Serjeanty for meaner Offices, and Grand Serjeanty for greater Offices.

Divers Lands were given to find Ships, as in *Doomsday-Book*, besides the Cinque-Ports, which were to find a certain Number; and so some Inland Towns did find Ships, but how? As by Tenure, not generally as Subjects. And tho' Mr. *St. John* did urge one or two Precedents by way of Example, yet he said not there were no more.

Mr.

Mr. Solicitor did give an Answer, that all those came out of the Estate, what was that Charge to the Publick?

It is true, if the King had that for himself originally, he said well; but if it was in him originally *pro Regno* as well as for himself, then it is otherwise.

But it hath been said, what are a few Men, or one Ship?

But it appears in *Doomsday-Book*, the King hath a great Navy. There were sixty thousand Knights Fees in the Conqueror's Time; and tho' divers Serjeanties are turned into Rents, yet the Revenue is the same. I shew it for this, that there was a Provision made in the Institution of our Frame of Government, but for the guarding of the Sea more particularly.

The King for the guarding of the Seas hath all the natural Profits thereof; as all great Fishes, Whales, Sturgeons, &c. and all other Profits of the Sea, if the King would take them; and so Letters of Marque: and tho' some of them are got into the Subjects Hands, yet originally they did belong to the King. So the old Customs by the Common Law, *antiqua consuetudo*: and so holdeth Sir *John Davies* in the Customs of *Ireland*. So Prizes and Impositions are for the Defence of the Sea. So Tonnage and Poundage, which was originally granted for ordinary, but oftentimes upon emergent Occasions it appears it was granted *pro Salvatione Regni*, and not granted amongst other things, but by itself. But in latter Times, when it was settled upon the Prince for Life, then it was for extraordinary Defence, and to have Money in readiness for an instant Occasion: for it is said, in the very Grant to King *James*, that the King must not be without Money; and therefore, towards his Charges upon an instant he must have it. And tho' it was granted on particular Occasions, yet that is enough that it was granted on great Occasions; and this was granted out of their Love to him. The Words of the Act 1 *Jac.* speak of a sudden Invasion; now whether this is by Sea or Land, it is general.

My Lords, I shall now upon the whole observe what I have made good, either upon those general Statutes, that the King shall lay no Charge, or rather by the Books, that the King cannot charge for little things; or upon the Practice of Times, where in every Time the King hath been at the Charge, and when it hath been on the Subject they have decried it. How you, my Lords, believe it in point of Right, I leave it to your Judgments.

My Lords, I shall go on to the Answer of Mr. Solicitor; I have made a Reply to all his Answers to our positive Part. It remains I should offer an Answer to his positive Part.

First, I shall give a general Answer to his whole Argument; for if the Case be, as we conceive it is, that the Point of *Salus Regni* is not now in question, the Argument will fall off.

How far *Salus Regni* is in the Case, notwithstanding, I shall argue over, and examine the nature of his Proofs.

I am sure he had none from Parliament, either Act or Declaration of both Houses; what there is, is against him. The Answer of the King, with the Judgment of both Houses, is a main thing in point of Right. I did not receive any legal material Record, but that of the Abbot of *Robert-*

bridge, not any Book-Cases in Point, where it is said the King shall charge, but the Books 13 *Ed.* IV. I shall answer these First, Practice next, and Reasons last.

To begin with the Case of the Abbot of *Robert-bridge*, which was opened by both Sides. It was 25 *Ed.* I. the Abbot had Land agifted *ad Custodiam Maris*; and in an Action brought, the Abbot pleads that he had found a Horse for the same Land. Here is an Argument, that the Abbot doth admit that the King might agift *ad Custodiam Maris*: now if that Admittance in this Case should be of any Authority to alter your Judgments, I shall leave it. The Abbot's Counsel did no more than a discreet Counsel would have done. If an Action be brought for Words, and it appears the Action will not lie, what then? If the Abbot had a Plea that he was agifted to find a Horse, what Reason had he to put himself on matter of Law with the King? So the Authority can be nothing against us; and at the best the Case did rest there, and went no further.

For the Book-Cafe, 13 *Ed.* IV. where it is said, that the King can lay a Charge, that Book is with reference to Toll; and such things are nothing to our main Case; and that Book will prove strongest against the King. The main Case was concerning a new Office of Measurage erected with a Fee, this was *pro bono publico*, yet an Action brought; it began in 11 *Ld.* IV. then cometh the Parliament in 13. and this was complained of to be against the Statutes, that provide that no Taxes should be laid. The Answer is, Let the Statute be observed.

To the Case of Toll, which for common Necessity to maintain Traffick, and because there must be a Power in some Body, and without a Fee not possible to maintain the Charge, it is allowed it may be done by the King: but in our Case here is no common Necessity, here is a thing that may seldom or never happen. The ground of granting Toll is this, because it is *pro bono publico*; yet if not for common Necessity, the King could not do it.

Next, the Toll is not so much a Charge, it is *quid pro quo*: in the 5th Report it is said there, that it is no Charge for the Benefit in the thing itself will quit the Charge.

Again, Toll is but *inter minimum*, this of Weight; and tho' an Argument will hold *a minori ad majus* in the Negative, because a Man cannot do a less, therefore not a greater, but not in Affirmatives, because he can lay those, therefore greater, *non sequitur*.

Next, for Toll; no Man is forced to pay Toll, because no Man is compelled to come to the Market; if he will come voluntarily and receive the Benefit, then there is Reason he should pay it; but this is not our Case.

Lastly, The Law doth allow in this Necessity, in case of Toll, to the King a Power to grant, yet the Law doth not leave the King absolute Judge of the *quantum*: For if the Toll be not proportionable to the Benefit, the Patent is to be avoided, as in case of a Fine uncertain. Now, my Lords, in our Case here is no Judge of the Proportion but the King; so the Argument is thus:

If the Law admit not the King to charge but in common Necessity, then not in Cases that may happen but seldom or never; if not in small things, then not in greater.

I come now to Practice: And for Practice, where there is no Opinion, either for Records or Books to warrant it, it is something weak, especially when there is no urgent Occasion.

For the Practice, I shall give this general Answer: If I can satisfy your Lordships by Authorities of Parliament, how the Law standeth; the contrary Practice, either before or after, is not material; and for that, I must leave it to your Lordships.

Your Lordships have heard us read the Words of the Acts of Parliament, and explain our Meaning thereon, and we have brought them home to our Case: It will be hard to make an Exception if the Act be general.

For, my Lords, the Practice, it consists of two Parts. *First*, Arrays of Men. *Secondly*, Of Shipping, and for Shipping; *de Navibus congregandis*, or *municiendis* and *inveniendis*.

For Practice of Arrays, I shall lay them by, and give them a general Answer: for there were very few if any that went from the Beginning of *Rich. II.* but only to see if they be armed, & *prompti*, and that is made by the Statute of *Winchester*. It is one thing to see that they be armed and in readiness; and another thing, at whose Charge they shall go: that appears not out of those Arrays. There is no doubt but the Subject, on the Statute of *Winchester*, ought to be ready with Arms, and in his County to make Defence; and upon Occasion he ought to go out of his County, but at whose Charge, that is the Question. And if those Writs of Array were the same with the Commissions now to the Lieutenant, yet I know not how; this is my Argument in the Case: and so your Lordships see that a great Number of the Arrays falls off this way.

But if Arrays had been, and at the Subjects Charge, yet against the Statute; I leave it to your Lordships to judge, how far Practice shall be an Argument.

But for Shipping, for Writs *de Navibus congregandis*, those are nothing; for the Matter is, whether they shall be paid before they go, and many of the Ship-Writs are of that Nature. No doubt but the King may command *ad congregandas Navis*, to use them upon occasion; but the Matter is, at whose Charge they shall be. And for all the Writs that are to find Ships, I hope those Writs are not concluding.

My Lords, for those Writs that are *sumptibus propriis*; a Writ, and no more, without Execution, is not a Practice sufficient to make a Law, no more than a common Evidence, when to prove Right by Usage. Now whether or no they have shewed a general Execution, by obeying and doing it at their own Charge, or Money levied upon them, I leave it to your Lordships; I see no Proof. It may be, such Writs might be; but that there was an Execution of them at their own Charge, or Money levied on them, we see no such thing. And if Writs were to find Shipping in these Times, it is like the Moneys were returned by the Counties, and so the Receipt might shew it, especially if Inland Counties, where nothing could be had from them but Money.

But, my Lords, to examine on those Grounds, whereby a Practice must make a Law: If this charge be within the Words of the Law, no Practice can take this out of the way of Exception. The Practice must either shew that was the Common Law, and so *Generalis Consuetudo*, or must declare the Meaning of a Statute by con-

stant Consent; which must be of those that could consent, and those which did not express a Dissent.

We are now upon Inquiry as on Practice, tho' the King cannot generally lay a Charge, yet whether he can do it in this Case, to make an Exception of Law; it must be done by Use and Practice; as to make a Law, Practice doth not make Common Law, but as it is a Proof of common Consent: for all Laws are made two ways.

First, By express Consent of Parliament: Or, *Secondly*, By Use, from Time to Time, whereby it doth appear this was excepted, and the Use becometh a Common Law: So as still, if an Use doth make a Law, such Use it must be as doth prove a tacit Consent.

Next, as the Use must bind the Kingdom, so it must be general over all the Kingdom; it is not enough to be at some times and seldom, but it must be *semper eadem*. And, *Lastly*, It must be reasonable.

I shall examine on these Rules, for these are undoubted Rules to examine a Law by, the Writs of *Hen. III. Ed. I. and Ed. III.* In all these Times the Practice, as to this, will not make a Law; here will be no Proof of a Consent.

First, For *Hen. III. to 28 Ed. I.* here the Subject, as before the Complaints, which begot the Charter of King *John*, was upon the Charges imposed on the Subjects; so afterwards, until the *25 Ed. I.* the Law of the Liberty of the Subject was not settled: For tho' King *John* did grant his Charter, yet the Pope did dispense with him, and he broke it, and so it rested till *9 Hen. III.* So all this time the Subjects of *England* were under Power; and what in that Time he might do by Duress, was not by Consent.

Then, *9 Hen. III.* he made a Charter, yet from time to time he broke it, tho' he desired to be excommunicated if he did it; and so it rested until *25 Ed. I.* and then with much ado was gotten a *Confirmatio Chartarum*: yet this satisfied not at all. Till *28 Ed. I. Mag. Chart.* not observed. I could shew divers Cases point-blank against these.

The Statute *28 Ed. I.* saith expressly, that this Charter was not observed; and it was once a Punishment for those that were the Breakers thereof. Now when Acts of Parliament declare that the Law of the Liberty of *England* was not observed, I shall not need to shew any Record how it was broken: So that all the Practice in *Hen. III.'s* Time, tho' much, yet that will not serve the Turn; for that Government was more of Force than Law.

But for that of *Hen. III.'s* Time, I shall give a further Answer; the very Courts of Justice were shut up, then it was *in flagrante Bello*.

And for *Ed. I.'s* Time, all the main ones considerable were immediately before the making of that Statute; if rightly apprehended, they did particularly occasion that Statute; so the Subject did deny it, and it is a Dissent.

After *28 Ed. I.* little considerable; and *Edw. I.* when he made *28 Ed. I.* when the Charters were confirmed, yet he had his *Salve Jure Coronæ*, which did not please the Subject: And afterwards, notwithstanding he made some Grants in Parliament, yet sometimes he did revoke. Your Lordships know what a great Renunciation he made; but as some of our Historians observe, when he had Occasions for Moneys he did grant, but otherwise did not; so that in all his Time the Subjects did

did not consent, but as much as they could, did dissent: and in the 25th, you see how the Practice did alter for commanding of Ships.

Next for *Ed. II.* for his Time, we see how he went. In the Beginning of his Reign he sends but a *Mandamus Rogantes*. In the End of his Reign, whether his Government was more of Law than Power, I leave to your Lordships; that little Practice that way, if it doth come home, is not sufficient to make a Law, who was under Will.

Next for *Ed. III.* for him in his best Times; you see how he went, he laid not the Charge on the Subject at the first; afterwards there is no Age wherein there were so many Complaints as in his Time, from the first to the last: and not only in this of Shipping, which, as often as it was, there was still Complaint, but in Impositions on Merchants, whereupon Lord *Latimer* was imprisoned: so that in point of Charge, the Subject did enforce him upon it in time of Necessity. So that in those Times the Practice will not be any Argument against us.

That of *10 Ed. III.* he confessed that he had laid too heavy Charges on the Subject, and did ask Forgiveness; so here was no Consent, but a several Dissent by their several Complaints. And if I take off these three Kings Reigns, I take off all the force of Practice concerning Shipping; for from that time afterwards you will find very little, for what cometh afterwards is but for Matters of Arrays.

The next Thing is, that every Practice that must bring in a Law, must be constant and continual, so long together as may bring it into a Custom.

Now out of what your Lordships have heard, if you conceive in the Times of those three Kings, that they had one way and the Subject another, then there is no constant Practice to lay it on the Subjects: And for Arrays, I conceive them to be no part of the Case.

And for the next; if Practice make a Law, it must be general through the whole Kingdom; for that is our Case, we are in an Inland County; and observe how few Writs we have that went over the whole Kingdom: Nay, have you any that proveth it indeed? That they went to some Inland Counties it is true, but that they went to all throughout the Kingdom, you shew not.

Now if you will have a Practice to bring in a Law, you must not bring your Practice by pieces; at one time in one part, and at another time in another part: for that in one part of the Inland Counties alone will not be justifiable, for that was to lay a Charge on the one, for the Maintenance of the whole; and that is against Reason, and the Reason of this Writ. So to charge the whole Kingdom, you must shew they went over the whole Kingdom, and were obeyed by the whole Kingdom; for Obedience in some Parts, will not bind all, so once or twice will not do it; for the Writs that have been produced, many of them went to the Sea Towns only.

Next, my Lords, admit that the Practice had been constant from King *John's* Time down to *Hen. III's*, so to this Day; under favour, as the Case standeth, your Lordships could not find such a Practice as could now introduce a Law. The Custom, which must be of a Manor, you must not shew the Beginning of it, that within Time of Memory the Thing was not so. True, if the Time

had been long, and I cannot shew when it hath not been, that is Time out of mind.

To examine this upon the Rule; it hath been said, that from the Time of *Hen. II.* *Danegelt* was taken: True, it was taken, *de facto*, but not *de jure*. The Subject was not at that Time charged both with *Danegelt* and Shipping too. Then our Course of charging the Subject to find Shipping, must begin since that Time.

But peradventure it will be said, as Sir *Henry Spelman* in his *Glossary*, that when *Danegelt* went down, this other came in. And peradventure it will be said, this is enough to shew this begun, tho' but in Memory; then it is but to see upon what Warrant of Law this begun.

If *Danegelt* had not been legal, then this to come in instead of that which was not legal is not sufficient. Now for *Danegelt* it was not legal, and so *fallit Fundamentum*: if it had been legal, yet not so pursued in the Course as is legal, so that there is no Ground for it on Right or Wrong.

That *Danegelt*, when it went, it went over all the Kingdom, and in a proportionable way to all; yet these Writs for Shipping were commonly to the Sea-Towns, and but some times to some Inland Towns. If *Danegelt* were on the Land, and certain, this is on the Person, and uncertain; this respects both Lands and Goods, the other not. There is no such Assurance of equal charging in this, or in the other, if *Danegelt* had been legal; yet whether this coming in lieu of *Danegelt*, being of a far different Nature, be legal, I leave it to your Lordships Judgments.

Next to examine it upon another Reason, upon the Reason of the Practice. If the Practice went over the whole Kingdom from time to time, there was the more Equality; but if the Practice went over the Kingdom, but by degrees sometimes to one part, sometimes to another, tho' over all the Kingdom at Times, yet this is not sufficient to make a Law. For that Act which is unreasonable in itself, and not agreeable to Justice, will never make a Law; for a Law will never arise out of an Act illegal. Now, my Lords, when a Charge is laid upon Parts of the Kingdom, which the Whole should bear, it is unreasonable. I will not deny, but in Manors, where you are to have a Custom, sometimes on one Piece, and sometimes on another; this may be good, though it goes not over the whole Manor; because in this Act there is nothing against Justice, for here one Man doth not bear the Charge for the whole; but 'tis otherwise in our Case.

My Lords, I shall go further; as for the Inland Towns, so for the Sea-Towns, we do not find a general Practice of all Sea-Towns together, sometimes to one, sometimes to another; if any to all, yet not to all oftentimes.

My Lords, admitting Arrays would be material in this Case, as I conceive they will not; yet under favour they will be no Precedent for the defending of the Sea, the Case doth differ.

For though the King be Lord both of Sea and Land, and hath in them both the sole Dominion; yet in the Sea he hath the whole Property, and in a manner all the considerable Profit and Privilege; the Subject hath but the Passage of the Sea, and the *Minima* to take Fish, not considerable in point of Benefit: But for the Land, that is our own, and the Land of the Kingdom is the House of the Kingdom. As for the Charge of the Land

Land to find Shipping, there will be a great deal of difference between Sea-Towns and Inland Towns: As those that live in Sea-Towns are in more Danger from the Sea, so they have more Profit and Privileges; and that is the Reason that in the Parliament 13 *Ed. III.* the Sea-Towns should do it in regard of their Profit and Privileges.

And for the Command to find Ships; the positive Law is to make those to find Ships which are chargeable, as your Sea-Towns; and for Inland Towns to find Arms; because both are not fitted alike, there is no Reason that they should be charged alike. Upon this Reason is the Case of *Beverly* put before 2 *Ric. II.* where the Complaint is, that they are charged for Shipping, being a dry Town; they say they were charged *indebitè.* 10 *Ed. III. Shoreham,* they plead they never found Arms, but Shipping, and a good Discharge. And in *Mat. Paris,* upon Wars with *France,* the Sea-Towns complain, and desire Help; so that the Burden lies on them if on any. My Lords, I have gone over in a general Way, as well as I can, and endeavour'd to answer the Practice; to have gone over all in particular would have required longer Time than your Lordships can spare.

The Reasons now only rest to be examined; for if no full Authority, nor sufficient Practice, Reason alone will not argue against a fundamental Rule: for we are not now to examine on Reason what is fit, and what not, but to see what is the Truth.

The first is, that *Salus Populi suprema Lex:* the Question is not what we are to do by Necessity, but what is the positive Law of the Land? The Question must now be as before; What Power is in the King, and did our Forefathers in that Time of Peace and Government leave in the Crown, not in Case of Necessity and publick Danger; when with them, *Salus Populi* was *Suprema Lex,* and upon that they did ground the Rule of Government? In this Case, whether or no, in their Consideration, they did conceive for the publick Good, to leave the Power in the King or not, to lay a Charge on the People; there the Rule came in, *Salus Reipublice Suprema Lex:* And that which they looked on most, was the Benefit of the Multitude. So that now, my Lords, it is not to dispute, whether it be better or worse, but that it was.

And to shew there was no such great Necessity as can countervail the Possibility of Prejudice the other way: If there do come such a Danger, then the Subject is at that time under a Law of Preservation of Life; and all which makes the Subject as willing to obey, as to submit to Government in the Creation. This Law is of an higher Force than any positive Law can be.

But admit that this cease in this Case, and all positive Laws of Property yield to the Law of Necessity; yet I admit nothing, tho' I might admit much, and not prejudice the Case.

Tho' no positive Law doth charge, yet in case of imminent Danger, if I should say my private Property is become publick, it is no Mischief, for so it is in some Cases: for in this Time of imminent Danger, the King and Subjects are under a Law of absolute Necessity, and publick Safety. In all human Reason, when the Danger is in *Proxima potentia,* we may prevent it; thus if another Man's House be on Fire, mine may be pulled down to stop it; so that we may see by

what Grounds we do go in case of absolute Necessity. If the King doth command any thing concerning the Property of Goods, in respect of Danger, the Execution may not be by any positive Law merely, which in such Cases do cease in *furor Belli;* for those are acted by Formalities, and *inter Arma silent Leges.* And in these Cases, as the King may command my Property, so may the Subject command the Property of another: The Books are so, 8 *Ed. IV.* for hindering the Landing of an Enemy, Bulwarks may be built on my Land without Consent. So the Power is not only in the King in these Cases of Necessity, but in the Subject: and the Books say not that the Power is only in the King, but I can do it, and the Law of Necessity is the Warrant.

Then, my Lords, it resteth considerable in this Case, what shall be said to be a Time of Necessity: I speak still by way of Admittance, for I grant nothing.

It must be in a Danger now acting, or in *Proxima Potentia;* as Fire, tho' not burning, yet ready to burn: that is, there must be a War, *furor Belli.* Note, That when the King makes Proclamation of War, or the King is in the Field: and that indeed was not Mr. *St. John's* Meaning, it was taken further than he meant it.

It must be in such a Danger, when this Power is of Necessity to be used; as in case of Fire; there must not only be Fear of Fire, for one House must be first actually on Fire; before the House can be pulled down, but withal such a Danger; that if this be not pulled down, the other will be lost: And as in case of an Enemy; a Subject, out of Fear of an Enemy, cannot build a Bulwark on another Man's Land, but when he is a coming. So that none of these Cases will match ours.

The Property yieldeth not in Fear of Danger; but such a Danger, as Help must come in *nunc aut nunquam.* This Time is not when the King will think there is Occasion to exert this Power; as in the Case in 88. Tho' the Queen and State did command the burning of those Goods and Provisions, if an Enemy landed; which was a lawful Command, and justifiable to be done, so they did land; but could not command them to burn their Corn before an Enemy did come.

Your Lordships know the King may command in case of Danger the Destruction of all Suburbs, rather than an Enemy should come in them: But if there be a Fear only of Wars, if the King should command it, how far that is justifiable, I leave it to your Lordships Judgments. All this Difference appears out of the Case of the *Gravesend Barge,* *Duffield's Case,* 12 *Jac.* If there be a Storm, or a Leak in a Ship, that the Danger be actual, it is justifiable for the Master to throw out the Goods; but if he sees a Cloud arise, and out of Fear of a Storm he threw out the Goods, I doubt on a Jury which way this will go with the Bargeman; but if a Storm do come, or a Leak spring in, in that Case the Bargeman may do it. So you see upon what Law my Property yieldeth.

That Position generally taken, as it is said; may be of a great deal of Consequence; for it doth not rest there, solely upon yielding of the Laws of Property: for all positive Laws do cease in that Danger; then the positive Laws of my Liberty and Person also do cease.

Now, whether or no you conceive all Laws of Liberty and Person cease in this time of Dan-

ger, when the Danger was but conceived and not actual, that I leave to your Lordships Judgments. And if that Rule be general, then why not the other?

So we may see the difference from our Case; for in that Case there is no manner of loss to the Subject, for he shall have Allowance for his Loss, or make Suit to the Parliament, and they can recompense him; for what is taken for the publick Good is but borrowed. As in Case of Shipping, if my Goods be cast out to save the Ship, every one of the Ship is to bear a Share; so in our Case, either the King must do it, or the Parliament: so there is no Prejudice.

So upon the whole, my Answer is, admit the Rule of *Salus populi suprema Lex*; yet the Law of Practice doth not yield, till there be an actual Enemy, or *flagrans Bellum*. It is not enough that there be but an Apprehension.

There were divers other Reasons urged, (but those two of *Salus populi suprema Lex*, and of private Property must yield to publick Safety) were the two *Rationes cogentes*; the other were but *a pari & a simili*; and all those I shall pass over which were only for Convenience, as the granting of Toll, or a Corporation to make Ordinance for the Good of the Corporation: all these will not come home in the manner. My Lords, in all these Cases *a minore ad majus non valet, negativum valet*.

But there are only two Reasons urged, which require an Answer: The Trust that the Laws put in the King in greater Matters, *viz.* the shutting of the Ports; and the *Droit Royal* of Wars and Peace.

For the shutting of the Ports, there is more difference in point of Prejudice of the King than the Subject. The King cannot shut the Ports but to his own Prejudice. Again, the shutting of the Ports without cause of Necessity, the King hath the Loss as well as we; for by that he loseth his Customs, and by shutting them he can gain nothing at all. And besides, there is no Law at all that hinders him from that. But there is a Law saith, that he shall not tax the Subject without Consent in Parliament.

The next is the *Droit Royal* of Wars and Peace. It is one thing to say, the King can make War and Peace; another thing to say, he can charge. In War and Peace the King is equally charged with the Subject, nay more; and for those things there are no great Reasons, but that in the first Form of Government they might be well suffered. For that Cause touching the King's Power over Coinage, there was a Necessity to counterpoise the like thing in another State; in that Case the King loseth, and we lose. The King may dispense with Penal Statutes, and make them as none. Doth any Laws say he shall not do it? The Reason differeth in that Case; there is a common Necessity that there should be a Power in somebody, for Acts of Parliament are but *Leges temporis*. It is one thing for the King to have Power in point of Favour, and another thing in point of Charge; so in case of Pardon, there is no hurt if he doth pardon, God forbid that he should not have Power to shew Mercy.

My Lords, there are in the Case two Points more which I shall move. Whether or no, admit the King could command the Subjects to find Ships, he can give Power to the Sheriffs to make

the Assessment as in the Writ? The Ground is upon this, that in all Cases of politick Charges the Law takes an especial Care to make an Equality. In Parliaments of old, they were always careful to make Provision that way, as upon Fifteenths and Subsidies. And in *Danegelt* they went such a way, as there could be no Inequality; they went by taxing of Hides. Now if the Law doth make this a legal Way of charging, it allows the like Way for Assessment that is allowed in other Cases, such a Way as wherein there can be no Inconveniency. Now how a Sheriff hath that Knowledge to lay it on Mens Estates and Lands, I cannot tell.

My Lords, not to leave a Power in the King to lay an arbitrary Charge, but in the Sheriff to lay more or less on any Man; tho' the Law may trust the King, yet it is a Question, whether it will trust the Sheriff.

Nay, I ask if the Sheriff be an Officer of Law in this Case; yet the King may command any Man as well. Assessments are usually made by others, and not so much by the Sheriff. So I do conceive that this is a Thing that doth properly belong not to the Sheriff, he is not an Officer sworn, and it resteth not only in the Sheriff, but the Under-Sheriff. So that if the Law doth trust the King, yet whether or no this be the way to charge it, I leave it to your Lordships Judgments. If a Hundred be charged, they have Ways to lay it on themselves proportionably.

The next Thing is this; admit a Levy may be well made, whether the Money thus paid may be brought into the *Exchequer* by a *Sci. Fa.* I do think that this is the first Writ that ever was of this kind, I do not find it regularly.

My Lords, I think it is hard to find where there is a Writ that commands and prescribes the manner of Levy. It not only gives you Power to levy, but sets the way of Levying, by Imposition, by Distress, by Selling; for my part I know no Case can match it.

The First Day's Argument of Sir John Banks, Knight, his Majesty's Attorney-General, on behalf of his Majesty; before all the Judges in the Exchequer-Chamber, in the great Case of Ship-Money.

May it please your Lordships,

There was a *Sci. Fa.* brought against Mr. Hampden, and divers others, to shew Cause why those Sums of Money assessed upon them by the Sheriff of *Bucks* should not be paid and answered; it beareth Teste the 22d of *May*, 13 *Car.* and a *Sciri Feci* returned.

Mr. Hampden demandeth Oyer of the Original Writ 4 *Aug.* 11 *Car.* and of the *Certiorari*, and the *Mittimus*, and of their several Returns. The Writ 4 *Aug.* which went out to provide a Ship of 450 Tons, with Victuals, Men, Ammunition, &c. that Writ giveth Power to the Sheriff to make an Assessment upon the County, and giveth Power of Distress and Imprisonment in case of Non-payment. He demandeth Oyer of the *Certiorari*, which consists of two Parts; the one to certify the Sums assessed, the other to certify the Names of the Defaulters. And the Names of those that made Defaults were returned, and Mr. Hampden amongst

amongst others. He doth demand Oyer of the *Mittimus*, which doth recite the Tenor of the first Writ.

Upon Oyer of all these, both of the Writ 4 Aug. of the *Certiorari*, *Mittimus*, and *Sci. Fa.* and their several Returns, Mr. *Hampden* hath demurred in Law.

The Case that riseth upon the Record is thus. The King is Lord of the Sea (for that is part of the Record) the Seas are infested by Pirates and *Turks*, which commit Depredations, and take Goods and Merchandizes, both of the King's Subjects and others that traffick here, and carry them away into Captivity. There is Preparation of Shipping and imminent Danger, for so the Writ reciteth: A Danger that the King's Dominion of the Sea should be lost, or at least diminished. There was a further Danger, that *Salus Reg. periclitabatur*, whether in this Case the King *pro defensione Reg' tuitione Maris, securitate subditor' & salva conductione Navium*, may command his Subjects *per totam Angliam*, by Writ under the Great Seal, to provide Ships at their own Charge and Cost; and this do, when the King in his own Judgment conceiveth such a Danger, as doth necessarily require that Aid? That under favour is the Question upon the Record.

There is in this Record, whereof your Lordships are Judges, four Writs. First, That of 4 Aug. 11 Car. which goeth out of the *Chancery*, for setting forth this Ship of 450 Tons. Secondly, the *Certiorari* 9 Martij 12 Car. Thirdly, the *Mittimus* 5 Maij 13 Car. And Fourthly, that of the 22 Maij 13 Car. which is the *Sci. Fa.*

The Second and the Fourth Writ, which is the *Certiorari* and *Sci. Fa.* they are returnable. The First and the Third Writ, which is the Writ 4 Aug. and the *Mittimus*, they have no Returns; but they give Command, and require Execution shall be done, *prout de jure, & secundum consuetudinem Reg' Angliæ fieri consuevit.*

The First Writ, which is the Ground of this Business, it standeth upon two Parts: A Preamble, and the Body of the Writ. The Preamble that containeth; First, a Direction; and Secondly, the Causes and Motives of the issuing of this Writ. The Body containeth Six Parts. First, the Direction that is to the Sheriff of the County of *Bucks, nec non* unto the Bailiffs and Burgeses of the Borough of *Buckingham*, and Mayor and Burgeses of *Chipping-Wiccomb*, alias *Wiccomb*, and *pro his hominibus* of all the County. Secondly, the Motives and Reasons inducing this Writ, which are nine in Number. 1. *Quia Pirata & Maris Grassatores, &c.* That these commit Spoils and Depredations by Sea, and take the Goods of the King's Subjects. 2. Because they carry the King's Subjects into miserable Captivity. 3. Because of the Preparation of Shipping that is made *undique* to infest the Coasts. 4. *Quia pericula imminent, &c.* 5. *Quia pro defensione Reg. tuitione Maris, &c.* 6. *Quia pro debellatione quorund' hostium satagent, &c.* 7. *Quia Progenitores nostri Reges Angliæ dig' Maris temporibus, &c.* 8. *Quia onus defensionis, &c.* 9. The most prevalent, *Quia hoc per legem & consuetudinem Angliæ, &c.* The Body of the Writ contains also several Mandates to the Sheriffs and Head Officers, *quod fide & legiancia, &c. & sicut nos & honorem nostrum diligitis.* The Mandates are six. 1. To provide a Ship of 450 Tons well manned and furnished with Provision, and

that was to be in readiness by the first of *March*, to continue for the Space of six and twenty Weeks, *ad proficiscendum cum Navibus nostris, &c. pro tuitione Maris, &c.* 2. That the Sheriffs and Head Officers meet within thirty Days, and set down what shall be taxed upon the Incorporate Towns. 3. A Command to the Head Officers of those Incorporate Towns, that within their Baliwick they make an Assessment upon particular Persons, and compel them to pay the same. 4. A Power to the Sheriffs to assess all the rest within the County, *juxta statum & facultates.* 5. A Command for the levying of these Sums by Distress, *& quos rebelles inveneris* to imprison their Persons. 6. That no Part of this Sum collected shall be converted to any private Use; but if any Money shall be remaining, it should be paid *inter solvendo.*

My Lords, the Reasons expressed in this Writ might justly satisfy any Man's Judgment without further Argument; but I shall clearly manifest there is no Clause or Practice by this Writ, but is verified by many Records, and is *secundum Legem & Consuetudinem Angliæ.*

The Question that is made, is of a high transcendent Nature; it concerneth the King, both in his ordinary and absolute Power. Whether the King in those Cases, where he in his Royal Judgment shall conceive a Necessity for the Defence of the Realm, may command Ships in this kind; whether by his Royal Power he may do it, or must require the Aid *per commune Concilium* in the Parliament. And I conceive his Majesty may do it, not only by his Kingly Prerogative, but *Jure Majestatis.*

This Power is not only *inter Prerogativa Regis, sed inter Jura summæ Majestatis.* I find by many Records, that these Writs have issued out in all Succession of Times; in the Times of the *Saxons* before the Conquest: But I never find that this Power was judicially questioned in any Court at *Westminster* before now. I find Questions made touching Assessments, whether they have been equal, touching the Levying, whether within the Warrant of the Office; touching the Discharging of some, by reason of a Grant of Exemption; but to question the main Power, whether the King by his Royal Power might command this for the Defence of himself and the Kingdom, was never disputed before now. But his gracious Majesty, who hath declared himself, that he will rule his People according to his Laws, for the Satisfaction of the People, and to clear his Justice and Judgment, does suffer these Writs to go forth, to which Mr. *Hampden* hath demurred, and to be questioned in this legal Way to be determined by your Lordships, to which I hope you will give a clear End.

My Position shall be thus, That the King, as he is King of *England, pro defensione Reg' tuitione Maris, &c.* when his Majesty in his Royal Judgment conceiveth it a Time of such Danger, as doth necessarily require the Aid commanded in this Writ, that he may command and compel his Subjects *per totam Angliam* to set forth Ships with Men and Ammunition and double Equipage; and this may be done, as well by the King's Writ under the Great Seal, as by Consent in Parliament.

For the Proof of this Position, I shall reduce what I have to say to these Heads. First, That this Power is *inter Jura summæ Majestatis, innate*

in the Person of an absolute King, and in the Persons of the Kings of *England*. That this Power is so inherent in the King's Person, it is not any ways derived from the People, but reserved unto the King when positive Laws first began. And that in this Case the King is sole Judge of the Danger, and how this Danger is to be prevented and avoided: this is my first Ground.

The Second is this, that the Regal Power is not confined to the Politick Advice, that the King must be *in Cathedra* sitting in Parliament; but that it hath been always done, either *per ipsum Regem, aut per Regem & Concilium, aut per Dominos suos, aut per Regem*, when he shall please to call a Consultation of Merchants and Portmen experienced in the Service.

My Lords, I shall present unto your Lordships, that this Power is so inherent in the King, that during the Time of Parliament, and in those Years when Parliaments were sitting, these Writs issued out by a Regal Power, without any Aid or Power from Parliament; and that Advice was not thought necessary in former Times.

3. I shall also shew unto your Lordships, that this Power is implied out of the Sovereign's Titles given unto him by the Common Laws of *England*.

4. And also I shall insist upon Precedents; and herein I shall desire your Lordships to take notice that these Writs have not issue out at the first any sudden Advice; but that there was a great Search made: First, by my Predecessor Mr. *Noy*, a Man of great Learning and profound Judgment; other Searches made by the King's Counsel and some others; and a great Number of Records were considered of maturely before these Writs issued: so nothing was done upon the sudden; and we that are of the King's Counsel, did think it fit that most of these Records should be cited in the first Argument by Mr. Solicitor, to the end that the Counsel at the Bar might give an Answer to them in their Reply: many more have been added by Mr. Solicitor, and many more I shall cite which have not been remember'd.

My Lords, in the vouching of these Records, I shall observe eight Things. (1.) That the Records we insist upon, are not grounded upon any private Custom, or upon any Charter, or upon any Covenants, but upon the Laws of the Land; and there is not in any of these Records any Recital that these Writs went out upon any of these Grounds.

(2.) That in all Ages before the Conquest, and in the Time of *William I.* that these Writs have issued *per ipsum Regem, per Regem & Concilium*, and did not issue upon any Advice of Parliament.

(3.) That these Records and Writs were sent out, not in case of *Hannibal ad portas*, or an Enemy discovered, or sudden Invasion; but upon case of Rumours, and in that a Danger might happen; so not in approaching of an Enemy, but in case of Preparation to provide against an Enemy.

(4.) That the King did command Shipping to be set forth in those Years wherein there were Parliaments, and sitting Parliaments, by his Royal Power, without Advice of Parliament.

(5.) That when great Subsidies and Aids have been given unto the King by Parliament *pro defensione Regis*, in the same Year that Writ went forth for the Defence of the Kingdom.

(6.) That these Aids have not been required only from the Maritime Parts, the Ports, nor from the Inland Counties only, but *per totam Angliam*.

(7.) That many times when these Writs issued, there have been no such Causes declared, as hath been in this Writ. I shall observe, that in many of these Writs no Cause at all is set forth in them, but only that they should repair to the Place of Rendezvous, and there receive further Directions.

(8.) I shall verify every Clause of this Writ by many Precedents. A *Mandamus*, and not a *Mandamus Rogantes*, Shipping at the Charge of the County, and Assessments made by the Sheriffs, as Commoners, and a Penalty greater, not only Distress and Imprisonment, but Extent of Lands, seizing of Goods, till the King was paid. These are the Things I shall observe out of the Precedents, when I shall come unto them.

My Lords, in the *fifth* Place, when I have laid these Foundations, I shall then dispel those Mists that have been raised, remove those Forces that have been muster'd, and answer the Objections of those Gentlemen, that will not be satisfied by the King's Writ under 'the Great Seal: And in the *sixth* give a particular Answer to the Acts of Parliament that they have cited, to the Records that they have insisted upon, and to the Reasons and Authorities they have alledged.

In the *seventh* Place, I shall answer their Exceptions that have been taken unto the several Writs, Records, and Proceedings thereupon, that have been produced by us.

And in the *eighth* Place, I shall collect some Conclusions and Reasons out of the Premises, and cite unto your Lordships some Judicial Records, that may satisfy your Lordships in point of Judgment. These are my Materials, I shall proceed to the Building.

My Lords, my first Ground was, that this Power is innate in the Person of an Absolute King. All Magistracy it is of Nature, and Obedience, and Subjection. It is of Nature. And before any municipal Law was, People were govern'd by the Law of Nature, and Practice did rule according to natural Equity: This appeareth in the Reports of Sir *Edw. Coke*, written by him, when he was Chief Justice, 7 *Rep. Fob.*

13. I will not take Occasion to discourse either of the Law of Nature, which doth teach us to love our Country, and to defend it, to expose the Hand to Danger, rather than the Head should suffer; nor of the Law of God, which commandeth Obedience and Subjection to the Ordinance of our Superiors; nor of the Law of Nations, which doth agree, that there must be Protection from the King; and Obedience from the People; and without Defence there can be no Protection; and without Aid of the People there can be no Defence: Nor of the Imperial Law, which saith, that in Cases *pro communi utilitate*, the King may *statuere* alone.

My Lords, upon this Subject I will confine myself to the Law of the Land, and insist upon such Records, and such Precedents, and such Reasons, and such Authorities, as I find both by Records of former Times, and in our Books.

First, In the Original Government of this Nation, I do not find that it was a Monarchy; I find the contrary, that there was a great Number of petty Regiments. And when *Julius Cæsar* invaded this Realm, he writeth there were Four Kings in *Kent*; and *Strabo* saith the like, *Lib. 4.* so those Times

Times will not be material. During the Domination of the *Romans*, which continued five hundred Years, the *Romans* had their Prefects here in *England*. No Man will doubt but that they might command what they pleased, *Notitia utriusq; Imperij*, Fol. 161. that in their Times there were special Officers, called *Comites*, &c. Officers appointed by Sea, and other Officers by Land. Those that succeeded the *Romans* were the *Saxons*; and in their Times, both by antient Grants, and by Edicts of the Princes of those Times, it appears, that this Naval Power was commanded by them for the Defence of the Realm.

First, To begin with King *Ina*, A. D. 725, King of the *West-Saxons*. This King in that Year made a Grant to the Abbot of *Glastenbury*, *Quod &c. sint quieti ab omnibus Regiis exactionibus & operibus quod indici solent*, except *Expedi' Arcium, & Pontium constructionem sicut in antiquo, &c.* which shews that these Expeditions were accustomed to be done. *Wuldredus*, who was King of *Kent* in the Year 742, granted unto his Churches, *quod sint liberi ab omnibus secularibus servitiis*, except *expedit' Pontium &c.* so in that Grant these Expeditions were excepted. *Ethelredus*, King of the *Mercians*, Anno 749. granted *Monasteriis de, &c.* except *ut supra*. So as in those Times these Services were common, and were done by a *Dispo Regis*. That the Churches should be free from all Services, except these three, Expeditions of building Castles, Bridges and Forts; *a quibus nulli unquam laxari possunt*. *Egbert*, An. 840. commanded a great Navy to be provided; and that for the Defence of the Realm, and Safeguard of Ships. *Ethelwald*, that was King of the *West-Saxons*, Anno 854. granted to the Church, that it should be free from all Service Temporal, except *Regalibus Tributis*. In the Time of King *Alfred*, who was the first Monarch, and King of all *England*; one who was a Privy-Counsellor in his Time, and wrote the Story of that Time, he, in the ninth Page of his Book, saith, *Quod Rex Alfredus misit Galleas longas Naves & Cymbas edificari*; and agreeing with this, is the History of *Affer Menevensis, Florentius Wigornensis* 316, and *Huntingdon* 351. wherein your Lordships may see by the Record, it was done *ex precepto Regis per totum Regnum*. This King made a Law, which is not remember'd by *Lambert* in his *Saxon Laws*, to this effect, That no Man, by Summons, by the Horn or Word of Mouth, should sit still in Matter of Theft, Bloodshed, or going to War, whensoever his Expedition should require; and there he doth mention it to be upon pain of Forfeiture of Life.

King *Edgar*, who stiled himself *Anglie Basilicus*, he in the Year 959 provided a great Navy of 3600 Ships, as saith *Wigornensis*, and *Matth. of Westminster*; and he gave a Command, that every Year, at *Easter*, a Navy of three or four Thousand should be set out, and divided into three Parts, *East, West* and *North*: The Ships in those Times were not so great as now they be. The same *Edgar*, in the Year 973, granted to the Abby of *Thorney* all manner of Immunities, and that it should be free from all Services, except those three of building Bridges, Castles and Forts. And the same King, in his Charter to the Church of *Worcester*, granteth them to be free *ab omnibus exactionibus*, except *constructionem Pontium, Arcium, &c.*

My Lords, by all these several Grants, and what hath been done by those Kings, it doth ap-

pear that these three fundamental Services were ever reserved unto the Crown, saving the Grants to two or three Abbeys, which had some particular Exemption. In the Year 1008, which was remember'd by Mr. Solicitor, there was then a great Navy provided by King *Ethelred*. The Words are thus: *Rex Ethelredus per totam Angliam ex 310 Hides, Navem unam, &c. preparare fecerat, &c.* that was for every 310 Hides of Land to build one Ship; and every eight Hides of Land to find a Man and a Corslet, and to meet at *Sandwich* for Defence against the *Danes*. This appeareth in *Huntingdon* 360. *Matth. of Westminster* 387. *Hoveden* 426. and *Malsbury*, 100.

In this Record these Things are observable, *Rex parare facit, & Rex eos misit*; then *per totam Angl.* all *England* was to be charged. By the Glossary of that Learned and Judicious Antiquary, Sir *Henry Spelman*, it appears that *Virgata terre continet 24 Acras, quatuor virgate continent unam hidam, & quinq; hidas Feod. Militar.* Upon casting up of this, it doth appear, that there be in *England* 363600 Hides of Land; and every 310 Hides being to set out one Ship, the whole Number amounteth to divers Thousands, 11072; and every eight Hides, to set forth a Soldier, amounts to 45450 Men: but it is not the Number, but the Matter that is done by the King's Command, *per totam Angliam*.

In the thirtieth Year of King *Ethelred*, he made an Edict, which Mr. Solicitor caused to be read in Court, saying he had it out of an old Book in *Cambridge*, *Quod instaurant tiel number del Naves per singulos annos*. I read it to this Purpose, to shew that in the thirtieth Year of his Reign, there was a Naval Expedition to be always ready at *Easter*, and sheweth the Penalty of such as did depart without Licence.

King *Canutus*, *Lambert Fol. 117, 118. ex sapientum Concilio, &c.* ordained a Command amongst his Temporal Laws, *Cap. 10. quod presidia fiant, &c.* commands Ships to be provided; and *Fol. 118.* a Penalty upon all those that refused to pay 120*s.* which was a great Sum in those Days.

That which I observe out of these two were these: First, That they were made by the King, by the Advice of his Lords; that there were to be yearly Preparations for Shipping; and those that departed out of the Service without License, were to incur the Forfeiture of all their Estates. If these Edicts were Acts of Parliament, they stand unrepealed; and if no Acts, then they stand by Command from the King's Power.

My Lords, I have shewed you the Practice, as it was before the Time of *William* the First: He did not abrogate the former Laws, but was sworn to perform them. Nay, it was said that he did confirm *Antiquas Leges & Consuetudines Anglie*. So then, if these were the Laws, and this the Power that the antient Kings of *England* had before his Time, he did ratify and confirm it, but not diminish it.

This power of commanding of Shipping, for the Defence of the Realm, it is a principal Part of the Power Royal. This Kingdom, it is a Monarchy, it consists of Head and Members, the King is the Head of this politick Body; it consists of Clergy and Laity: The Head, it is furnished with entire Power and Jurisdiction, not only to administer Justice in Cases criminal and temporal unto his People, but likewise for Defence of both; and he may command the Power both

of the one and the other. This Power I find to be mentioned in the Register of Original Writs, written before the Conquest, 127 *b.* it reciteth, that *Nos considerantes quod ratione Regiæ dignitatis maxime ad providendum Salvationi Reg' nostri circumquaq; astringimur.* It appears by *Stamford*, in his *Prerogat. Cap. 1.* that as the King is the most excellent and worthiest Part of the Commonwealth, so is he also the Preserver, Nourisher, and Defender of his People. I find it in *Fortescue*, that they have cited; that a Commonwealth, without this Head, is but a Trunk, as the natural Body is a *Cadaver.* I find it in *Fitz. Her. Na. Br. Fo. 73,* or 173. that the King of Right ought to save and defend the Realm, as well against the Sea as against the Enemies, that it be not surrounded nor wasted.

How is this Defence against the Sea and Enemies of the Kingdom? Is the King bound to defend the Kingdom by Sea Walls at his own Charges?

No, the Power of Defence is a Superintendent Power in his Majesty, to authorize Sheriffs and Commissioners to see it done, but by his Power; yet at the Charge of the People. Register 127 *b.* it appeareth there, where the King commandeth the People by his Writs; the one directed to the Sheriff, and the other to Commissioners, and in both willeth and commandeth, *quod distringat A. B. & al'*, to distrain the Lands of all those that may receive Damage to repair the Sea-Walls, as well as the *Ter' Tenn'*. This Writ was before any Statute concerning that, for the Register was before the Conquest; and the first Statute that concerneth Commissions of Sewers, was made 6 *Hen. 6.* So it is by the Power the King had at Common Law, and not upon any Statute: And this was to the Sheriff, as well as to Commissioners; and that it was done at the Charge of the Country, and not at the King's Charge. *Pat. 33. Ed. I. M. 4. Dorf.* agreeth with the Register: The King doth there recite, *Quod ratione Dignitatis Regis, &c. & per Juramentum sumus ascripti ad providendum Salvationi Reg'*; and there he giveth Power to Commissioners to distrain the People to make Defence against the Sea, at their own Charges. *Pat. 2. Ed. II. pars 2 M. 5. Dorf.* in the Case of *Wiseman.* Rep. 2. Fol. 15. the King, *ex officio*, ought to govern his Subjects in Peace and Tranquillity. 7 Rep. Fol. 9. Protection of the King is general over all the Kingdom, there is Reason why it should be thus: For the King of *England*, he hath an entire Empire, he is an absolute Monarch; nothing can be given unto an absolute Prince, but is inherent in his Person, as may appear by Books, Records, and Acts of Parliament: *Braët. Lib. 2. Fol. 55. b. Sciendum, &c. Dominus Rex super omnes qui ad Coronam pertinent.* This appears likewise in the Statute 24 *Hen. VIII.* there it is declared that this Realm of *England* is an Empire, and hath been so accepted in the World. *Stat. 25. Hen. VIII. Cap. 21. 1 Eliz. Cap. 1. 1 Jac. Cap. 1.* the Crown of *England* is affirmed to be an Imperial Crown; and Acts of Parliament are Proofs of the highest Nature. 16 *Ric. II. Cap. 5.* that the King holdeth his Empire immediately of the God of Heaven: And at his Coronation, his Crown is elevated as a Signification thereof. This is likewise acknowledged in the *Irish Reports, Fol. 60. Rex Angliæ est absolutus Monarcha in Regno suo.* *Fortescue* saith, the King of *England*, as well as any other

King or Emperor, hath all the Liberties within this Kingdom *in Imperio suo.* The Law of *England* makes the King of *England*, not as his Subjects are, a Natural Body, but a Body Politick, freeth him from all Imperfection and Infirmity; he is immortal and never dies; the King ever liveth, *Com. 177. 11. Rep. Fol. 7. 21 Ed. IV.* and other Records.

My Lords, as he is an absolute Monarch, so all these, *Jura summe Majestatis*, are given unto his Person by the Common Law.

First, He hath supreme Dominion, both by Sea and Land, as is proved by the *Mirror*, the greatest Part whereof was writ before the Conquest. Some things are added to it by *H. Horne* in the Reign of *Ed. IV.* he holdeth, that all Lands, and all Jurisdiction, and all Dominion is derived from the Crown: That whatsoever was not granted from the Crown, remaineth in the Person of the King. This *Supremum dominium* is so inherent in the King's Person, that if the King grants away his Lands, *absq; aliquo reddendo*, yet the Tenure must still remain to the King; 8 *Hen. VII. 12. 30 Hen. VIII. 45 Dyer.* This Dominion is not only upon the Land, but it is upon the Sea. And so the King he hath not only a Dominion at Sea, but he is *Dominus Maris Anglicani*; he is both Owner of the Sea, and of the Soil under the Sea. And so it was resolved lately, by my Lord Chief Baron, and the rest of the Barons in the *Exchequer*, in the Case of *Sutton Marsh, Mich. 13 Car.* That the Soil of the Land, so far as the Sea floweth, is the King's, and the King is seized thereof, *Jure Coronæ. Mirror 8. Braët. Fol. 8. Temps Edw. I. Avovery, 46 Ed. III. Com. 3. b.* That not only the Dominion of the Sea, but the very Soil belongeth unto the King.

In the next place he hath, besides his *Supremum Dominium*, a Sovereign Jurisdiction, and that extends both by Sea and Land.

First, For Creation of all his great Officers and Judges; Creation of the Admiralty, time out of mind. 20 *Hen. VII. Fol. 8. 12 Hen. VII. Fol. 17.* Power to make Justices could not be granted; and all these Powers resumed in the Statute, as inherent in the Crown. 12 *Hen. VII. Fol. 17.* there it is said by *Fineux*, that at the Beginning all Administration of Justice was in one Hand, that is, in the Crown. And surely this Jurisdiction did not begin in the Time of *Ric. I.* when those Laws were renewed by him at his Return from the Holy Land; but there were Admirals in *England*, and the Admiral Law by Sea long before. 27 *Ed. I.* a famous Record in the Tower, that the Commissioners for the Emperor, *Spain* and *France*, did appear before the King's Commissioners, and did acknowledge the Sovereignty of the King of *England* upon the Sea, did belong unto him time out of mind. And for further Proof of this, it likewise appeareth in that learned Book of Mr. *Selden's*, called *Mare Clausum.*

My Lords, the next inherent Power of the Crown are Pardons of Offences and condemned Persons, and Restitutions, which none can do but the King himself, 1 *Hen. IV. fol. 5. 20. Hen. VII. 8.*

The next is *Jus nummi percutiendi*, a setting of a Royal Stamp upon his Coin, the advancing of the Value of his Coin, and the debasing of it. 21 *Ed. III. 6.* That the King only can put a Va-

due upon it. 5 Rep. fol. 114. That the King, by his absolute Prerogative, may make any foreign Coin lawful Money of England, by his Proclamation, Davies Reports, fol. 20.

The next, *Jus summe Majestatis*, is that of concluding War and Peace, which is absolutely inherent in the King's Person, which he may do without calling his great Council, 19 Ed. III. 6. and 7 Report 25. That all the Subjects of England cannot make a War, *Bellum indicere* belongs not to the Subject. And to make Aliens, Denizens, is a high Prerogative.

My Lords, this Trust that the King hath for making of War and Peace, and for the Defence of the Realm, both by Sea and Land, it is a great Trust, inherent in the Person of the King; no Man ought to mistrust where the Law doth trust.

There is an Objection made, That if it should rest in the Power of the King, he might do it when there was no Ground for it, and without Cause; and cause Forces to be mustered, and Ships provided where there is no imminent Danger, in such a manner, as that it might be grievous unto the People.

These are Objections clearly against Presumption of Law; for where the Law trusteth, we ought not to distrust. The King, as appeareth by all our Books, is the Fountain of Justice and Piety, and will do Justice unto all his Subjects, 1 Com. 240. All Justice is derived from the King, 13 Ed. IV. 8. The King can do no Wrong, *Braet. Lib. 3. Cap. 9. 8 Hen. VI. 20.* It's Royal Power, *De aver Correction deluy m.* He is the sole Judge, and we ought not to question him, *Braet. Rex non habet superiorem nisi Deus*, 11 Rep. fol. 72. The King is the Fountain of Justice and common Right: And the King being God's Lieutenant, cannot do wrong, 17 Ed. III. 49. The King could not be made an Instrument of Covin and Fraud, but the Patent was void, *Littleton's Comment.* 99. the 5th Report, fol. 14. That Religion, Justice and Verity, are the sure Supporters of Crowns and Diadems, 24 Ed. III. 42. *Stamford's Pleas of the Crown*, fol. 72. At the common Law, the Law doth not distrust where the King doth commit one, but that it is upon just Cause, and so we are not to doubt it. And therefore at the Common Law, *West 1. Cap. 15.* a Man committed by the King was not repleviab: Nay, if he was committed by his Council that was his representative Body, he was not repleviab. Shall we then, when the Law hath committed this Power unto the King, who is the Fountain of Justice and Equity, who is mistrusted by the Law of the Realm, and the Commonwealth intrusts him; shall we think that succeeding Kings will do that which is not fit to be done? I say, if the Law trust him, we ought to trust him. At the Common Law, if the King commit a Man *per Bouche*, he is not repleviab.

But for a further Reason, those that are his Delegates or Judges, are not to be mistrusted. That which a Judge doth, as in his Office, shall not be assigned for Error. If it be so in the Delegate Power, much more in the Primitive and Fountain. 5 Mar. Dyer 163. the Court of King's-Bench did receive a Record of *Nisi Prius*, the *Postea* returned by the Clerk, and the Death of the Justice of Assize assigned for Error, and could not be received; and so, 1 Mar. Dyer 89. a Writ of Error to reverse a Fine; *prout in Dyer.*

That is the Reason of the Book, 7 Hen. VII. fol. 40. 10 Hen. VII. 28. *Fitz. Her. Na. Br.* 126. faith, he cannot assign for Error, nor shall be admitted to alledge any thing contrary to the Office of a Judge; as to say, the Judge did not give right Judgment, or the Clerk did not make right Entries, *M. 7. Ed. I. B. Rs.* and that is the Reason why a Man of *Non compos mentis* in a Fine, and suffering of a Recovery, it shall not be assigned for Error against the Acts of a Judge, 8 Rep. Dr. *Bonner's Case.* Records by a Judge; nor Justice of Peace, nor traversable. Good my Lords, then, if by the Laws of this Kingdom one shall not be admitted to receive an Averment against any Acts done by your Lordships the Judges, or against Acts done by inferior Judges; surely in this, where the King is absolute Judge, it shall not be allowed to say, there was no Cause of Danger, or that is done by the King which ought not to be done. *Braet. Lib. 1. cap. 24. est in Corona Regis facere Justitiam*; The King is so absolutely trusted with this Defence, that a Subject cannot make a Fort or Castle upon his own Freehold without the King's License; that appears in the old *Mag' Char' fo.* 162. Inquiry made of those that do build Forts and Castles without the King's License, *Rot' Part' 45 Ed. III. M. 34. 6 Hen. IV. 19.* and a Book of *Long. 5 Ed. IV. fol. 129.* that a Subject cannot make a Fort or Castle without the King's License; not in his own Ground.

My Lords, the King hath so discharged this Trust, that tho' there were no Account unto the Subject, yet these Ships that have been commanded were *ad proficiscend' cum Navibus Nostris.* The King hath been at greater Charge with these Ships going out, than any King of England ever was, as will appear by those vast Sums of Money the King hath spent in these Years; besides what hath been contributed to it by the Subjects.

My Lords, I have done with my first Position; that it is an inherent Right in the Person of the King of England; and that the King is the sole Judge, both of the Danger, and when and how it is to be avoided.

It hath been objected, that the King of England may do it, but how? It must be according to the Institution of the Laws of the Realm; there must be a concurrent Power, a Politick Advice in Parliament, and so it may be done. But the King, either by his ordinary Power or absolute, without the Assistance of the great Council, he cannot do it, as hath been objected:

And therefore in the second Place; I shall come to the second Thing I did propose; that was, That the King, as he is King of England, that he alone; for this common Defence of the Realm, without the Aid of Parliament, may *Statuere*, &c: That the King, by the Advice of his Council, when he pleases, may do it; that he may ordain several Ways by the Institution of the Common Laws; by his Ordinance, by his Proclamation, by his Patents, by his Writs, and in legal Matters by his Judges. That this may be done by him.

First, It is agreeable to Reason; for Kings were before Parliaments, and then surely they might have done it. As Justice doth flow from the Crown originally; as it was in *Moses*; so it is in the King of England, only in the King's Person. But afterwards the King did depute his Deputies; and gave others Power; this is no Con-

ceit of mine. 12 Hen. VII. Fol. 17. b. per *Fineaux*, there was a Time when there were no municipal Laws, when positive Laws were not established, when Kings did rule their People according to natural Equity; and then surely the King might ordain. No Man will question it: since there have been positive Laws and municipal Laws, the Kings of *England* they have ordained, as by those several Records cited appears. It appears by the Practice since the Time of *William I.* that the Kings of *England* in all those Writs that they have ordained, have prescribed the Time for issuing of these Writs, the Numbers of the Ships, the Times of meeting, the manner of Munition, and to stay for the Defence *quamdiu nobis placeret*. I have made a Collection of what have gone out by the King himself, what *per Regem & Concilium*, and what by Advice of his Council, and with the Advice of Merchants and Portsmen; but they are so infinite, and so many of them, that I will not trouble your Lordships with the Repetition of them.

These Ordinances for the Defence, they are suitable and agreeable to the Ordinance that the King maketh in other Cases, where the King alone doth ordain, as by his Proclamation. *Claus.* 24 *Ed.* III. *Pars* 2. *M.* 2. *dors.* The King by his Proclamation commanded all Earls, Barons, Knights, Esquires, and other Men at Arms, that none of them should depart into foreign Parts. *Fitz. Na. Br. fo.* 85. he agreeth it; and saith the Book, he that transgresseth this Proclamation shall be fined for his Disobedience. And this Command may be under the Great Seal, Signature, or Privy-Seal; for saith the Book, the Subject is to take notice of any of the King's Seals: so in all Ages he hath commanded no Victuals shall be transported. *Claus.* 24 *Ed.* III. *M.* 7. *dors.* 5 *Dec.* 4 *Hen.* VIII. 11 *Hen.* VII. 23. The King granted a Proclamation for a Justing; and if one of the two that be fighting be killed, it is no Felony. 5 *Report* 114. the King by his absolute Power may make any kind of Money current by his Proclamation. In the next Place, the King may ordain by his Patent alone. 40 *Ed.* III. *fol.* 17, 18. the King did grant a Privilege to the Scholars of *Oxford*, that they should have the Choice of the Inns in *Oxford*, which was before there were any fair Colleges in *Oxford*: saith the Townsman, this is my Freehold, the King cannot do it; say the Judges, this is by the King's Patent, and is in favour of Learning, and therefore a good Ordinance. So the Justice in Eyre may take up the principal Inn in a Town. Is there any thing more usual than for the King to give Power to a Corporation to make Ordinance for a common Good? 49 *Ed.* III. 162. Shall it be so in the Creature, and not in him that makes the Creature? A Case or two upon every one of them. The King may ordain by his Writ, and that appears 9 *Ed.* III. 16. a Writ of *Cessavit* against the Tenants of *Northumberland*. The Tenants had been mightily oppressed by the *Scots*; they petitioned the King, and said, they were not able to pay their Landlords their Rents, by reason of those IncurSIONS upon them of the *Scots*, and desired stay of Suit; and there it appeareth, that the King did ordain by his Writ, that those Suits upon those Reasons should not proceed against the Tenants for non-payment of their Rents. Out of the same Reason are the Writs of Protection.

Then the King and his Council may ordain, for that I find, *M.* 4. *Hen.* III. *Fitz. Her. Na. Br. Dower* 179. a Writ of Dower there brought by a *French* Woman. The Tenant of the Writ pleaded, that there was an Ordinance of the King and Council, *Quod nullus de potestate Regis Franciæ respondeatur in Anglia antequam Angl' respond' de jure suo in Francia*; that is, We *Englishmen* should not be compelled to answer any *Frenchman* or Woman in a legal Way, till the *English* were answered in *France* to their Suits there. 39 *Ed.* III. 7 *per Thorp*. The King and his Lords may make an Ordinance, which shall be as binding as a Statute. *Rot. Franc.* 72 *Ed.* III. *M.* 6. The King by the Advice of his Council did ordain *quod omnes Magnat. & al' qui habent terras & tenementa continue morat'*, &c. Upon this Ordinance I can shew above 40 Writs that have gone out to the Nobility, Clergy, Archbishops and Bishops, and to all the King's Subjects too that had Houses in the Maritime Parts. *Rot. Franc.* 22 *Ed.* III. *M.* 16. and 50 *Ed.* III. *M.* 47. *dors.* 24 *Ed.* III. *M.* 6. that of 24 is to the Inlands within 16 Miles of the Sea Coasts. 40 *Ed.* III. *M.* 37. the like Writs awarded to most Maritime Counties, upon pain of Seizure of their Lands and Goods. So likewise for Provision for the Army; the King and his Council have ordained, both for Markets to be kept within such a Distance of the Army, and Wine to be sold there, and no where else. *Rot. Sco.* 10. 12 *Ed.* 2. *M.* 13 *dors.* So they have set down the Number of the Men of Arms that every Town should be charged with, *Claus.* 13 *Ed.* III. *pars* 1. *M.* 14. *dors.* with a Command that they should distrain the Commonalty of that County for the Wages of those Men at Arms.

My Lords, if the King may at any time of Danger, by his Proclamation, by his Patent, by his Writ, by the Advice of his Council; surely in case of Necessity it is much more lawful; for *necessitas est lex temporis*, where a Defence by Sea and Land is required. 5 *Ed.* IV. 6. 14 *Hen.* VII. 29. Jurors by Law are to hold together till they give up their Verdict, yet otherwise, if the Houle be like to fall upon their Heads. 38 *Hen.* VI. 11. upon a *Precipe*, the Tenant may be excused if he could not pass the Waters.

My Lords, I find that in legal Matters the King and his Judges make certain Explanations upon the Statute of *Glocester*, as appears by *Mag' Char.* And what was done then by the Judges Advice, hath the Force of a Law at this Day. So as you see by the Laws of *England*, as well in other Cases, as in Cases of Defence, the Law hath given the King of *England* this Power to ordain for the Good and Safety thereof.

I find that in all Ages, and in all Times, the Incidents to a Defence, as well as this principal Part, hath been given to the King himself, as he is King of *England*.

First, For the Murage of Towns: That the King hath commanded the Murage of Towns to be done at the Peoples Charge; the Precedents are so many, I will mention none of them; and shall he not command for the Defence of the wooden Walls of the Kingdom? *Rot' Alm'* 12 *Ed.* III. *pars* 2. *M.* 10. The King commands by Writ a Place to be fortified towards the War; and every Man having Rent there to contribute, or to be compelled thereto by Distress; that was commanded to be done by Writ, *Pat.* 12 *Ed.* III.

pars 3. M. 5. it appeareth it was done. The King imposed a certain Rate upon all Goods and Merchandize that came unto *Kingston upon Hull*, and commanded this should be employed to the walling of the Town; this was *de voluntate Regis*; this appeareth *Rot. Pat. 19 Ed. III. pars 1. M. 12.* There was the same Command for other Towns, as *Dover*, &c. the said Roll, *M. 22. Pat. 12. Ed. III. pars 3. M. 14. dorf.* A Writ for the repairing of the Walls of *Winchester* at the Subjects Charge. *Rot. ib. M. 15.* The King by special Grant gave Power to the Mayor and Burgeses to assess the Inhabitants towards the making of the Wall, and the Defence of the Town. *Claus. 1 Ric. II. M. 12. Oxford* was commanded by the King to be fortified at the Inhabitants Charge. *Claus. 12 Ed. III. pars 3. M. 32.* The King commanded particular Subjects to fortify their Castles at their own Charges in Time of Danger. *Pat. 18 Ed. III. M. 9.* The King taketh the Castles of the Subjects into his own Hands in Time of Danger, *ad evitandum damna & pericula que nobis evenire possint.* *Claus. 13 Ed. III. pars 1. M. 36. dorf.* The King by Advice of his Council did ordain, that the Town of *Southampton*, *pro salvacione ejusd'* should build a Wall.

My Lords, if the King may command the Walling of a Town at the Charge of the Inhabitants, he may likewise command the Defence of the Kingdom by Sea; so for other Incidents of Defence, as for erecting Beacons upon the Sea-Coasts. *Rot. Vas. 11. 12. Ed. III. M. 29. de Communibus in singulis*; *Claus. 1 Ric. II. M. 4. dorf. de Ordinatione per Regem & Concilium pro vigiliis faciend'*. So likewise the King in all Ages hath commanded the imbaring of Ships for the Defence of the Realm, and for all publick Service; this appeareth *Claus. 14 Hen. III. M. 17. dorf.* all Ships arrested that could carry 16 Horses. *Rot. Sco. 10 Ed. III. M. 2. dorf. Omnes Naves pro defensione, &c. Rot. Alm. 12 Ed. III. M. 23. pars 1. & 12.* for the imbaring of Ships for the Defence of the Realm.

So likewise the King commandeth and appointeth who shall be Officers, who shall be Admirals of the Fleet, who shall be *Custodes Maris*, as appears *Pat. Ed. II. M. 7. dorf.* and in the same Roll, *M. 10. Pat. 15 Johannis M. 10. Pat. 48 Hen. III. M. 5. Claus. 23 Ed. III. M. 5. dorf.* and an infinite Number more.

Then that the Country paid the Charges of those who had *Custod' Maritim'*. that appears, *Rot. Fra. 21 Ed. III. M. 31. dorf. Claus. 13 Ed. III. pars 1. M. 14. dorf.* The King when there was Cause he moderated the Expence. *Claus. 25 Ed. III. M. 16* The King did order how much, and how long the County should pay for Wages; and commanded the Stay of those that could have been gone before their Time: and this appeareth *Pat. 48. Hen. III. M. 4. Claus. 48. Hen. III. M. 2, 3. dorf.*

Then it appeareth by many Records, that this Guard of the Sea-Coasts was to be according as the King should order and direct, sometimes *per Regem*, and sometimes *per Nos & Concilium*: and this appeareth *Claus. 23 Ed. I. M. 5. dorf. Claus. 13 Ed. III. pars 2. M. 14. dorf. Pat. 29 Ed. I. M. 1.*

Sometimes the King out of his Royal Power hath been pleased to give Discharges to particular Men, to be discharged from this *Custod' Maritim'*. this appeareth *Claus. 23 Ed. I. M. 5. dorf. Portsmouth* discharged, because their Ships were in the King's Service. *Claus. 8 Ric. II. M. a Discharge*

for the Abbot of *St. Albans. Pat. 12 Ed. III. pars 2. M. 8. Pat. 12 Ed. III. pars 1. M. 14. Discharges de Custod' Marit.*

Then the Power of punishing those that should neglect those Commands hath been always in the King, and to be punished by his Commissioners, or by his Writs, and that in a high manner.

That there have been Commands by Distress, by Imprisonment, by Seizure of Lands, Goods, and Forfeiture of all that they had, this appeareth, *Pat. 48 Hen. III. dorf. Claus. 48 Hen. III. M. 3.* and a great Number in the Times of *Ed. II.* and *Ed. III.*

The King hath so far meddled in this Business, that tho' it hath been the Money of the Country, yet the King hath appointed the Pay-Master, *Claus. 48 Hen. III. M. 20. Claus. 16 Ed. II. M. 13.*

So all Arrays for mustering of Men between 16 and 60, have been in all Ages, and by the King's Command, to be in and continue in readines so long as the King shall please, *Rot. Alm. 12 Ed. III. pars 2. M. 6. dorf.*

So, my Lords, it doth appear by these Precedents that have been cited, by these Records, and by these Book-Cases, that the Kings of *England* have in all Ages given Command, and made Ordinances by themselves, by their Council, by their Judges, and by their Peers; and these Ordinances have been obey'd.

My Lords, I promise upon this Head to make it good, that in these Times, and in these Years, wherein there were Parliaments, that tho' the Parliaments did determine Matters concerning the Land Forces, and the going of the King's Army into *Scotland*, that yet sitting the Parliament, the King hath commanded the setting forth of Ships by his Writ; this was ever left to the Royal Power. For the Proof of this, there was the 24 *Ed. I.* a Parliament, as appears in the printed Books of that Year; and in that Year the King commanded Ships by his Writs at the Charge of the Subjects. *Pat. 24 Ed. I. M. 17.* Command to take up a hundred Ships; and in *Pat. 24 Ed. I. ex parte Regis Rem. Exchequer-Roll 22.* Command *pro Custod' Marit' Hil. 9 Ed. II.* a Parliament holden at *Lincoln*, and yet in the same Year Writs went out to provide Shipping, as appears by *Rot. Pat. 9 Ed. II. pars 2. M. 26.* I find there was a Parliament held 12 *Ed. II.* This appeareth in the Book of Statutes, *Rot. Scot. 11 and 12. Ed. II. M. 8.* the King recites certain Inroads made upon the Men in *Northumberland*, *& quod de communi concilio*, held at *York*, *ordinavimus*, &c. and assigns the Earl of *Pembroke*, and Bishop of *Norwich*, *ad requirend' Norff' & Suff' juxta discretiones vestras subsidium facere per Naves, &c. per tempus trium vel quatuor mensium.* At this Time there was a Provision by Parliament for the King's Service by Land, and for his Armies to meet him at *Newcastle*; and for two Reasons why *Navale Subsidium* should be necessary. First, to hinder the bringing of any Victuals into *Scotland*. Secondly, For the free Intercourse of Trade. So as you see, in this Year wherein a Parliament was holden, this *Navale Subsidium* was commanded by the King's Writ without an Act of Parliament; tho' this Writ was for *Norfolk* and *Suffolk*, yet the like was for *Dorset*, *Somerset*, &c. It appeareth likewise 10 and 11 *Ed. II.* which were those great Years of sending out of Writs, that then Parliaments were holden. And so it doth appear by the printed Book of Statutes; yet in that Year of 10 *Ed. III.*

Claus. 10 Ed. III. M. 37 dorf. A Writ directed to the Mayor and Bailiff of *Bristol*, with a Command, that all Ships of 40 Tons & *ultra*, should be seized. *10 Ed. III. M. 21. dorf.* Command that the Ships should be set forth for the preventing of Danger, and that no Foreigners Ships come in to aid the *Scots*, *M. 21. dorf.* The same Roll, Command to the City of *London* to set out Ships at their own Charge. *10 Ed. III. M. 21. dorf.* Writs to the Sheriff of *Bucks* to send Horsemen and Footmen to the County of *Southampton*: so there were Men drawn out of their County, and the Refusers there were called Rebels. *Rot. ib.* Writs *de Navibus pro defensione Regni.*

My Lords, there was something more observable in this Year of *10 Ed. III.* for some of the Writs that went out bear Teste *3 Octobris 10 Ed. III.* and mention a Parliament, but did not go out by any Ordinance of Parliament; so that the awarding of these Writs *10 Ed. III.* were sitting the Parliament, and by the Royal Power: which is a strong Argument, there needeth not Aid of Parliament for the King to command his Forces. *11 Ed. III.* there was likewise a Parliament, as appeareth in the printed Books of Statutes, yet Writs dated *10 Januarii 11 Ed. III. per ipsum Regem*, Ships are commanded *pro guerra super Mare.* *Rot. vaf. 20 Ed. III. M. 6. dorf.* Proclamation to several Counties, that all Ships be in readines. In the *12th Year of Ed. III.* there was a Parliament at *Northampton*, *Claus. 12 Ed. III. pars 2. M. 1.* the same Roll *pars 2. M. 32.* and yet the same Year the King commanded Shipping at the Charge of the Counties, as appeareth *Rot. Parl. 12 Ed. III. pars 1. M. 12. Claus. 12 Ed. III. pars 3. M. 29.* And in the *13th Year of Ed. III.* there was likewise a Parliament holden, as appeareth *12 Ed. III. M. 9, 10.* but printed Statutes make no mention of a Parliament then.

My Lords, in this Record these Things are observable, cited, and made use of by the Defendant's Counsel; a strong Record as any can be against them! In that Parliament the King he did pray the Advice of the Commons in Parliament touching his War with *France*, and the guarding of the Sea-Coasts; the Commons they make Answer, *Prient les Commons que ils ne Counsel doner al choses de quel ne pass Conuzance*, &c. They say further, And they grant that the Maritime Towns ought to make the Guard upon the Sea without Wages, and the Inland Towns upon the Land.

Two Things are observable in this Record. *First*, When the King doth descend so low as to pray the Advice of his Commons in Parliament, and Assistance for the guarding of the Sea; the Commons disclaimed it, and said, they have no Connuzance, &c. and yet the Defendant's Counsel did press, that now the King should ask the Advice of the Commons in Parliament; a Thing disclaimed by the Commons in Parliament *13 Ed. III.* to have any Cognizance of. *Secondly*, That by this Record, the Maritime Parts ought to guard the Sea at their own Charges: This, tho' it was granted in their Petition, it was not granted by the King; for it appeareth in the same Year, *Rot. Alm. 13 Ed. III. M. 13 Dorsf.* that the King that Year hearing of some Preparations in *France*, commanded Ships for three Months. *Claus. 13 Ed. III. pars 1. M. 14.* That in several Counties Men were distrained for not Payment of Wages for the Archers and others that guarded the Sea-Coasts. It appeareth by these Records, that both

the Guard of the Sea, and the Sea-Coasts, was done *juxta Ordinationem nostram*, Order made by us and our Council. *Rot. Alm. 13 Ed. III. M. 15. dorf.* the King appointed the Archbishop of *York*, *Hugh de Percy & al'* for that purpose, &c.

So, my Lords, I have done with the second Ground, that is, that the King is the sole Judge of this without his Parliament: That the Commons in Parliament have disclaimed to have any Cognizance of it: That in the same Year, when Parliaments were holden, the same Year these Writs have issued without Advice of Parliament.

The third Thing I did propose was those supreme Titles, which the Common Law of *England* giveth unto the King, which may enforce this. *Braet. lib. 2 cap. 24.* saith, that the King he is *Vicarius Dei*; his Power, as was agreed, is *Jure Divino*. God is the God of Hosts, and the King is a Model of God himself, *40 Ed. III. fol. 18.* The King is the chief Guardian of the Commonwealth. The Sheriff hath *Possé Comitatus* under the King, the King's Vicegerent in the County: And he hath this Power, not only for the Execution of legal Process, but for the Defence of the Realm. *12 Hen. VII. fol. 7.* This delegate Power of the Sheriff, is as well for Defence, as for the Execution of Process. Shall the Sheriff do it, and not the King? *10 Hen. III. fol. 1. B. Hen. VII. fol. 1.* The King is the Conservator of the Law. *20 Hen. VII. fol. 4. Rex est Capitalis Justiciarius totius Angliæ*; he is not only to maintain Justice in the Courts of Justice, but to protect and defend his People. *Stamford's Prerogat. cap. 1.* The King is the most worthy Part of the Body of the Commonwealth, the Preserver, Nourisher, and Defender of it: And by this they enjoy their Laws, Goods and Lands. *11 Rep. fol. 70. b. Magdalen-College's Case, Rex est Medicus Regni & Sponsus Reipublicæ.* It is the part of a good Physician, as well to prevent Diseases, as to cure them; and the Office of a good King, as well to prevent Danger, as to remedy it. *Com. fol. 130.* He is the Soul that animates the Body of the Commonwealth; and we ought to move as he moves. *11 Rep. fol. 72.* The King is the Fountain of Common Right, therefore we have no Reason to stain the Fountain.

I am now come to my fourth Proof, which is by Precedents, wherein I shall be somewhat long.

The Second Day's Argument of Sir John Banks, Knight, his Majesty's Attorney-General, before all the Judges in the Exchequer-Chamber, on the behalf of his Majesty.

May it please your Lordships,

TO remember I shewed by Charters, Aids, and a great Number of Precedents, that this Royal Power was in the King of *England* before the Conquest: And that tho' some were exempted from the setting forth of Ships by Grant unto some particular Men, or some particular Churches; yet these three fundamental Services of Expedition, repairing of Castles, and making of Bridges, were always exempted.

Then I shewed, by a great Number of Precedents, that not only the Principal, but all other Necessaries that concern the Defence of the Realm, both by Sea and Land, hath been always commanded by the King's Writ: for the fortifying of Towns

Towns and Castles, and the Murage of Towns, the Appointment of Admirals of the Fleet, and those that should be Guardians by Sea and Land; the Imbarring of Ships, and Arrays of Men, the erection of Beacons, and discharging of some upon just Cause, and by punishing of those that were refractory: And all this was done by the King's Command, *per ipsum Regem*, or *per Regem & Concilium*, without any Aid of Parliament.

Likewise, I have made it appear to your Lordships, that the King is the sole Judge of this Defence: That the King is not to be mistrusted in the Execution of his Office, as King; nor your Lordships as Judges, are not to be mistrusted. I have then shewn out of Precedents, that in those Years, wherein there have been Parliaments, and sometimes sitting the Parliaments, Writs have issued *per ipsum Regem*; and *per Regem & Concilium*.

I shall proceed to make good other Particulars, which I have opened unto your Lordships. *First*, That these Precedents that have been shewed, and which I shall shew unto your Lordships, have not been grounded upon any particular Covenant or Charter of Custom, but upon the Law of the Land, and upon such Reasons as are irreversibile, and bind all the King's Subjects, as well Clergy as Laity. For this I shall remember *Claus. 48 Hen. III. M. 3.* The Writs do recite, *quod tum Milites & liberi Tenentes quem omnes alij, &c. ad defensionem Regni teneantur.* *Claus. 9. Ed. III. M. 11. pro defensione Regni omnes teneantur.* *Scot. 10 Ed. III. M. 12. quia consonans Rationi, quod omnes tangit per omnes supportari debet:* And the same Roll, *M. 20. dorf. ex legiantia ad defensionem contra hostiles ingressus inimicor' manus exponere adjutrices, &c. Rot. Alm. 12 Ed. III. M. 1. dorf. omnes & singuli tenentur, &c. Se & sua exponere;* the same Roll, *m. 12. dorf. omnes & singuli ad defensionem Regni astricti.* And I think every Man will acknowledge himself to be bound out of his Allegiance. *Rot. Alm. 15 Ed. III. M. 13. dorf. ex legiantia ad defensionem Regni & vestri & vestrorum.* Same Rolls *M. 17.* And there be Writs unto all the Bishops of *England*, *quod invenerint homines ad arma pro defensione.* *Francke Almoigne Tenure* was no Plea against this Service. *Rot. Franc. 46 Ed. III. M. 34.* There was a Writ directed to the Bishop of *Canterbury*, for the arming and arraying all Ecclesiastical Persons within his Province: The like to the Bishop of *York* in the same Roll. So it extends to all the King's Subjects, as well to the Clergy as the Laity.

Nay, Ports that were obliged to do particular Service, yet in case of extraordinary Defence, that there the Writs went out, not only to perform the ordinary Services, but Services *ultra debitum*. The Cinque Ports, by their Charter of *Ed. I.* were to set forth 52 Ships at their own Charge for fifteen Days; yet we find by several Writs, and in several Kings Reigns, that the Cinque Ports have been required to do further Services. Arrests have been of their Ships, *Ultra servitium debitum.* *Scot. Roll 10 Ed. III. M. 2, 3. dorf. and 28. dorf.* there is a Command, that all their Ships of 40 Tons should be arrested for the King's Service. And so likewise, *M. 22.* that all the Ships of the Cinque Ports, *tam majores quam minores*, should be arrested. *Rot. Alm. 13 Ed. III. M. 13. Omnes Naves quæ transire poterint,* arrested and brought to the Cinque Ports.

So then, to tell of particular Rolls, that these and these Towns were obliged to do these Services; this, under favour, is no Argument. For altho'

they be obliged to do the Service, yet upon other Occasion, the King took all their Ships, *ultra servitium debitum.* *Claus. 16. Ed. II. M. 13. dorf.* The King writeth to divers Earls, Barons and others in this Manner, *Quod sint tam citius quatenus poterint parati*, beyond your Service, with Horse and Arms, and come to our Town of *Newcastle upon Tyne*: So as this Writ was directed to all the Lords Spiritual and Temporal, and all the King's Subjects; not only with their due Service, but beyond their Service, to be at *Newcastle*. So your Lordships see the Motives, and Grounds, and Reasons of these Writs are universal; they concern not a particular Part and Subject, but all the King's Subjects; and they are *Legiantia sua debita*. So that is the first Thing I would observe to your Lordships, that these Writs and Precedents are grounded upon the Law of the Land, and not upon particular Custom.

The second Thing is this: That all these Writs have issued by the King's Mandate, either by the King only, or by the King and his Council, without Advice in Parliament; of which I have made a Collection: And it is better for me to attend your Lordships withal, than to cite them; because they are above five hundred, wherein I have distinguished what have been *per Regem*, and which *per Regem & Concilium*, and where the Advice of particular Merchants and Portsmen were required, *Scot. 11 Ed. III. M. 2. dorf. 19 Ed. III. pars 1. M. 26. dorf.* And in these, the Advice of particular Men were called to assist the King and his Council.

Now, my Lords, if before Time of *William I.* and since, and for so many hundred Years together, this hath been done; shall not these Precedents make a Rule?

That Precedents that are not against the Law, nor contrary to the Rules and Reasons of the Law, make a Law, this appeareth by *4 Ed. IV. fol. 43.* The Lord-Chancellor sent forth a Writ of Error. The Judges took Exceptions both to the Matter, and the Manner, saith the Book, because it hath been always so; the Precedents make a Law. *33 Hen. VI. fol. 20.* An absurd Return made by a Sheriff; yet because Precedents to warrant it, a good Return. *2 Ric. II. fol. 7.* where a Duty was to be paid to a Corporation of Mayor and Commonalty, the Duty to be paid to the Body, and an Acquittance to be had from them; but because it had been used the Mayor alone to give the Acquittance, a good Acquittance. *2 Rep. Haines's Case;* the King shall not part with his Interest without the Great Seal; but yet a Lease for Years, under the Seal of the *Exchequer*, is good by Custom. *4 Rep' fol. 9.* that the Precedents of the Court are good against the express Words of a Statute. Having so many Precedents, I will not trouble you any longer, tho' I have reserved a special Place for answering of Objections; yet such Objections, as fall materially in the way, I shall give an Answer to, tho' I reserve the Answer to the main Objection to the fifth Place.

It hath been said, by Mr. *Holborn*, that here hath been a Discontinuance of Time; and that since the Time of *50 Ed. III.* none of these Writs have issued.

Shall Discontinuance of Time take away the King's Right? If there have been no Use within the Time of the Memory of Man; yet if there have been an inherent Right in the Crown of *England*, shall the Crown lose it by Discontinuance of

Time, contrary to the Rule of the Law? 10 *Hen. IV. fol. 6.* Where the King is the Founder of a Bishoprick or Abbey, and is by common Right to have a *Corody*, tho' not used, and the King hath not demanded it in time of Memory, yet the King shall not lose it. *Fitz. Her. Na. br. fol. 5.* A Writ of Right brought by the King, where you must alledge *expleis & Seisin*, will not bind the King to alledge a *Seisin* in him and his Progenitors: for if once the King had a *Seisin*, Protracts of Time shall not discontinue it. 12 *Hen. VII. fol. 20.* The Statute of *Mortmaine* confineth the Lord to enter within a Year and a Day; but it shall not bind the King, for he may do it any time. 35 *Hen. VI. fol. 26.* If a Villain doth alien his Lands, it barreth not the King. Plenarty after six Months, no Plea against the King. 6 *Rep. no Discontinuance of Time, if the King hath a Right. 7 Ed. IV. 30.* If an Alien and another Man purchase Lands together, and the Alien dies, the King shall not be prevented by Survivorship: and in personal Goods, you shall raise no Prescription against the King. 35 *Hen. VI. Fol. 27.* There is no Man can pretend a Title to the King's Goods, for Waifs, Estrays, or Wrecks; for no Prescription can invade the King's Profit.

But then they say the Precedents are not in all Times; for we have not shewn, nor cannot shew that in all Times these Writs have issued.

A strange Objection, in all Times! My Lords, it is a casual Service. In all Times, God be thanked, not that Occasion or Necessity of this Defence. Will you have us shew you Precedents for a casual Service done at all Times? 4 *Rep. fol. 10.* If a Man hold to do Service to his Lord, to go with him into the War of the King, this is out of the Statute of Limitation; for it may happen not once in two or three hundred Years: therefore the Law doth not require we should have a *Seisin*, for this very Reason, because it is casual. 33 *Hen. Br. Fealty 15.* That for Homage and Fealty, casual Service, they are out of the Statute of Limitations: so as now, by the same Reason that they would tie us to Precedents where there was no Occasion, by the same Reason the Tenants are to do Homage, or go into the Wars when there was no Occasion.

But besides, he is much mistaken, these Precedents do not end with *Ed. III. 7 Ric. II. M. 18. 13 Hen. VI. M. 10. 14 Hen. VI. pars 1. M. 14.* a great Number of Ships commanded then in the King's Service.

But it hath been said, that the People have always petitioned against it, and there hath been a decrying by the People; and they have petitioned in Parliament against it. And these things, that must be made good by Custom, must gather Strength by a Consent. And further, that when Petitions have been preferred, the King hath not denied the Petition expressly.

My Lords, I shall shew, when I come to give a particular Answer to those Records and Petitions that they have mentioned, That notwithstanding these Petitions, this Service hath been always continued: and for the Answer that he speaketh of, that they have not been denied; these are the very Words of the Answer, *Le Roy se avisera.* We know whether this be an express Denial or no. So tho' the King took time to advise of the Petition of his Commons, this is no Argument, but that it is a mannerly kind of Denial. Besides, in these very Years of 10, 11 & 12 *Ed. III.* the

Writs went out for the Shipping Business, by the Royal Power.

Then it hath been said, that we can make no Precedents of these; for tho' Writs have gone out, yet it doth not appear that these Writs have been put in practice, or that any Execution of them have been done.

But the Service hath been done, as doth appear by the Monuments of those Times. Then it doth appear by other Records, that the Wages of Mariners have been paid by the Country. These very Years, *Rot. Claus. 20 Ed. III. M. 6, 7.* It doth appear, that some particular Men had particular Discharges, either because they were in the King's Service, or in *Gascoigne*, or lived on the Sea-Coasts; that they pleaded their Discharges, and had them allowed for that Reason, 23 *Ed. III. M. 14.*

So as, my Lords, upon this second Ground, that these Writs have gone forth thus constantly in several Ages; that there being such a Number of Precedents, the Discontinuance hath ever been when there was no Occasion. That the Precedents of the Courts of Justice make a Law, and Discontinuance cannot take away the King's Title. This is the second Thing I do insist upon, that these Precedents make a Law.

The Third thing I shall observe upon these Precedents is, That these Writs have gone forth, not only in Cases of an actual War, or in Cases of an Invasion, when the Enemies Fleet hath been upon the Sea; but by way of Preparation before-hand, when the Enemy meant to come; and in contingent Cases, when the King might conceive any Danger might insue: But in these Cases Writs have issued out, will appear. *Rot. Claus. 48 Hen. III. M. 2.* The Writs are here in Court. *Cum necesse sit ad defensionem Regni esse promptum, &c. Claus. 23 Ed. I. M. 5.* There were several Writs directed to divers Earls, Bishops and others, *de custod. marit.* the Words are thus, *Quia volumus quod partes marit' in Com' Essex, &c. contra Inimicos diligenter custodiend. forsansi in partes illas venire contingent.* 24 *Ed. I. Remembrancer in the Exchequer;* upon Information given, that there were 1000 Men in *Flanders* made Preparation to come unto *Yarmouth* to burn the Town, Writs sent forth by the Treasurer and Barons, *ex officio*, to be in readiness in case there was an Invasion. *Pat. 9 Ed. II. pars 2. M. 26.* Writs directed to all the Port-Towns between *Southampton* and *Thames*, to set forth Ships at their own Charge, for the better Defence of the Kingdom; and against those that commit Depredations upon the Sea, as well to Men of this Kingdom, as to others coming to this Kingdom. *Rot. Scot. 11 & 12 Ed. II. M. 8.* The King, by several Writs, directed to several Commissioners in several Counties, recited the Provision made for his Army at Land at the last Parliament, and saith, *Nos considerantes ad expeditionem præd. tam ad impedend. Scotos, quam pro custodiend. Maris, &c.* and so commandeth for that purpose, that Ships should be sent out of several Counties for these two Causes; the one to hinder Victuals from going into *Scotland*, the other for free Intercourse of Trade. It appeareth, 10 *Ed. III.* that the Ships of *France* were not upon our Sea-Coasts, but were in *Britain* in *France*; and yet the King, upon Relation that they had an Intention to invade the Realm, did send forth for the providing of Ships in most Parts of the Realm; this was only upon Information. *Rot. Scot. 10 Ed. III. M. 30. Ut audivimus: M. 23. Ut intelleximus; M. 16.*

M. 16, 22. Quod audit. M. 18. dorf. 12. dorf. 5. dorf. in partibus transmarinis. So by these Records, this Preparation of Shipping was only upon Information. *Franc. 26 Ed. III. M. 5. Quia vulgaris opinio Regnum nostrum Angliæ invadere,* therefore commandeth Shipping by Sea, and Forces by Land. *Rot. Franc. 10 Ric. II. M. 23, 24. Quia certi rumores quod Franc. infra breve tempus cum magnis Armat' hoc Regnum invadere, &c.* commands the Custody of the Sea and Sea-Coasts. So as it doth appear, by these Records, that upon an Information, or Conjecture of the King, he may send forth these Writs, and commanded his Subjects to be in readiness, in case that Danger might happen; better so, than to receive a Blow, and then to make Preparation for Defence; we should buy that Wit with Repentance. *Prudentissima ratio, quia timor Belli, &c. præparavit.* And surely when the King sees those Preparations abroad, those great Armies in adjacent Countries, *qui nocere possunt,* great Reason we should be in Preparation.

This is not only consonant to Precedents, Wisdom of Times, Policy of State, *Venienti occurrere morbo,* but to the Reason of our Common Law. If a Man be in fear, that another Man lieth in Wait for him to do him a Mischief, shall he stay till he receive a Wound? *17 Ed. IV. 4.* In this case he may have a Writ to bind him to the Peace, *13 Hen. VII. fol. 17.* If a Man have a Warranty for his Land, shall he stay till he be impleaded? No, a *Warrantia Charta* lieth till he be impleaded. If Lord and Tenant in antient Demesn, and the Lord shall require more Service of the Tenant than he ought to perform; shall the Tenant stay till there be a Distress taken? No, he shall have his *Monstraverunt, Fitz-Her. Na. Br. 40 Ed. III. fol. 45, 46.* and this only upon Verbal Demand of Service.

Shall then the Common Law of *England* secure the Subject not to stay till a present Danger, but he shall have his *Warrantia Charta,* and *Monstraverunt* before Distress taken; and shall not the Common Law provide for the King, that he, in his Expectation of Danger, may make his Preparation against it? So surely these Precedents are according to Reason of Law.

The next Thing that I did observe out of these Precedents was, that in these very Years, wherein there have been Aids granted to the Crown *pro defensione Regni,* in those very Years these Writs have issued out by the Royal Power. *Claus. 48 Hen. III. M. 2, 3. dorf.* There was then a Tenth given by the Clergy *pro defensione Regni;* and yet in that Year he did command the Defence of the Realm, both by Sea and Land; and that appeareth, *Pat. 48 Hen. III. M. 6. dorf. and Claus. 48 Hen. III. M. 30.* In the *22 Ed. I.* the King had given him in Parliament, *pro subsidio guerræ,* a Tenth of all moveable Goods, which was to be collected in the *23d* Year, as appears, *Pat. 22 Ed. I. M. 2.* My Lords, this very Year, when this was paid, he commanded a great Number of Shipping for the Defence of the Coasts, and that appeareth, *Pat. 23 Ed. I. M. 6.* Writs were directed to divers Counties, as *Suffex, Southampton, Dorset, &c.* commanding them to be aiding and assisting to *William Thornton,* in the taking of all the Ships in those Counties, *Pat. 23 Ed. I. M. 7. a Com' Radolpho de Salwico ad providend. de Navibus, ita quod prompti sint quandocunq; mandamus.* So to be in readiness with all Ships in those Parts, that were of *40 Tons. M. 8.* Some Roll-Writs directed to most of the Sheriffs of *England* to be assisting to *John de Barwicke,* to the

chusing and sending forth of Archers, *ad proficiscendum cum Fleta nostra.* So as they were not only brought out of their own Counties, but all the Counties of *England, ad proficiscendum.* My Lords, this *23* Year, when this great Aid of Tenths, and Part of all the Moveables were granted, *Pat. 23 Ed. I. M. 7.* the King writeth to all the Archbishops, Earls, and others, reciting, that he hath committed the Custody of the Sea to *William de Stoaks, Ita quod idem Willielmus vos omnes,* naming the Archbishops, Bishops, Earls, &c. *prout necesse fuerit.* So as you see the greatest Subject is not exempted from these Commands, but should be *auxiliantes, respondentes & intendentes. Claus. 23 Ed. I. M. 5. dorf.* The King commanded the Bishops of *London* and *Norwich,* for the Safeguard of the Sea-Coasts. *Pat. 23 Ed. I. M. 1.* A Command to all Archbishops, Bishops, Abbots, Earls, Barons, Knights, and others; commanding them to be aiding to *Adam de G. Ita quod idem Adam compellere posset quoties necesse, &c.* So *Claus. 23 Ed. I. M. 5. dorf.* the like Commands. So as, my Lords, in those Times, which was *23 Ed. I.* when there was an Aid granted by Parliament, it doth appear, those great Defences, both by Sea and Land, were commanded.

My Lords, *10 Ed. III.* in a Parliament holden at *Nottingham,* there was a Fifteenth granted to the King for three Years, and so it was recited in the Record. And it appeareth likewise, *Pat. 12 Ed. III. M. 2. Pars 3. Claus. 12 Ed. III. M. 28. Pars 3.* it appeareth, that a Tenth and Fifteenth were granted to the King in Parliament; and this was *tam pro defensione quam arduis Negotiis. 12 Ed. III.* The Prelates, and Lords and Commons at a Parliament holden at *Westminster,* gave the King ten thousand Sacks of Wool, said to be given *pro defensione Regni,* as appears *Rot. Alm. 12 Ed. III. pars 1. M. 1.* In the same Year there was granted likewise *pro defensione Regni medietatem lanarum,* the Moiety of all their Wool, *M. 31, 32.* In the same Year the Clergy, they gave the King in Parliament, *medietatem lanarum usq; vigint. mill. saccar.* as appeareth, *Rot. Claus. 12 Ed. III. Pars 3. M. 13. Rot. Claus. 12 Ed. III. Pars 2. M. 1. dorf.* And in this Year the King collected a Tenth and Fifteenth, that was granted to him by the Laity in Parliament for two Years; as appeareth, *Claus. 12 Ed. III. M. 30.* And besides all this, the Clergy gave the King a Tenth, *Claus. 12 Ed. III. Pars 3. M. 30.* These I cite the more particularly, because no Memory of them in the printed Statutes.

Were all these Aids granted, *10, 11, 12 Ed. III. pro defensione Regni;* and shall the King in those very Years send forth Writs for the Defence of the Sea and Kingdom? And may not the King do it now, when he seeth such great Cause?

Now, my Lords, in this *12th* Year, when all these great Aids were granted, *Rot. Alm. 12 Ed. I. 3. Pars. 1. M. 12. Walter de M.* was appointed Admiral of the Fleet towards the North, and appointed Commissioners *ad assidendum villas bonis & Catallis ad contribuendum, &c.* and commandeth all Sheriffs and Officers to be aiding and assisting. So in this Record it doth appear, that in these *10, 11* and *12* Years, Ships and Forces were commanded. *Claus. 12 Ed. III. Pars 1. M. 17. dorf.* Command by the King, that the Men of *Surrey* and *Suffex* should have their Goods seized, and Persons imprison'd, if they refused to contribute towards the Charge of Shipping. *Rot. Alm. 12 Ed. III. Pars 1, M. 2.* A Commission to *William de B.* and others,

ad assidendum omnes homines juxta statum, and to seize their Goods and Chattels, if they refused to contribute for the Wages of Mariners for the Ships.

So as your Lordships see by these Records, tho' there be Aids, Tenths, Subsidies and Fifteenths, granted by the Clergy and Laity; yet in that very Year, if an extraordinary Occasion comes, tho' Ships not upon the Sea, the King hath commanded the Defence of the Sea and Land at the Charge of the Counties. I have done with the fourth Particular.

The fifth Particular is this. This Aid, and these Contributions, they have not been required only from the Maritime Towns, but from the Inland Counties, *per totam Angliam*. And this is materially to be insisted upon, because we are now in an Inland County, in the County of *Bucks*.

My Lords, That this was done before the Conquests, your Lordships have heard. For *Alfred*, the first Monarch, *Anno 827. jussit Cimbas, &c. per totam Angliam. Asser. Menevensis fol. 9. Wigor. Floren. 316. Huntington 351.* That King *Ethelred* did the like, *Anno 1008. per totam Angliam*, every 310 Hides of Land to find one Ship. *Floren. fol. 9. Matth. of Westminster 387. Huntingdon fol. 360.* The Decree or Council, which was held at *H.* about the 30th Year of King *Ethelred*, was that Ships should be prepared against *Easter*. And those Laws, which are remember'd in *Lambert*, were before the Conquest, *cap. 10. fol. 106. Quod praesidii, &c.* So it was general and universal throughout the Realm, concurring with those antient Precedents and Council, since the Time of *William the First. Glouf. 48 Hen. III. M. 2.* For where a Record is to be applied unto several Purposes, I must mention that Record again. It appeareth by that Record, that *Bedfordshire*, which is an Inland County, was charged with the Guard of the Sea-Coast, and paid for Wages: Same Roll, *M. 3. intus M. 2. dorf. Rutland, Oxfordshire, Dorsetshire, Inland Counties charged for the same Service. Pat. 48 Hen. III. M. 7. Cambridgeshire and Huntingtontshire charged for the like Service, and that they should do prout per Concilium nostrum ordinatum fuerit. 24. Ed. I. King's Remembrancer in the Exchequer, Rot. 77, 78, 79. Title de associando pro custod. Maris; and Writs went out for Ships in divers Counties; and amongst others to *Bucks. Pat. 26 Ed. I. M. 21.* When there was a Complaint that the Subjects did suffer upon undue Service, the Commissions that are directed for Enquiry thereof, are directed to all the Counties of *England*, as well Inland as Maritime. *Pat. 23 Ed. I. M. 5.* That Men, to furnish a Fleet, were drawn and commanded from the most Parts of the Kingdom. *Rot. Scot. 10 Ed. III. M. 14.* Inland Counties charged with Shipping for the Defence of the Kingdom, as *Cambridgeshire, Huntingtontshire, Nottinghamshire, and Derbyshire. Claus. 13 Ed. III. Pars 3. M. 14. dorf.* and there *Oxfordshire* is charged with *Custod' maritim. Rot. Scot. 12 Ed. III. M. 12. dorf. Bedfordshire, Bucks, your County, and Derbyshire* charged there with the same Defence. *Claus. 1 Ric. II. M. 18.* There *Cambridge* and *Huntington* were to provide a Barge at their own Charge; and yet Seafaring Men there were none. Writs were then also directed to *Nottingham*, and *Derby*; tho' they had no Seamen, yet they had Money and Means to provide them, *Rot. Franc. 7 Ric. II. M. 18.* The King sends his Writs into most Counties of *England*, as well Inland as Maritime, reciting that the King of *France* was gone with an Army into *Flanders*, and that *Calais*,*

was in danger; and commandeth all Knights, Esquires, and Archers, and every of them, according to his Estate and Faculty, to be sufficiently arrayed and armed, and come to the Port of *Sandwich*, *ad proficiscend'*. My Lords, in this Record there was mention'd *Bucks, Bedford, Huntington, Cambridge, Nottingham, Derby, Leicester, Rutland, Northampton, and Berks*, all these Inland Counties. The Words of the Writ are, *Quod omnes tenentur pro defensione Regni, &c. Claus. 9 Ed. III. M. 12. per omnes supportari. Rot. Alm' 12 Ed. III. M. 12. vel 20. quod, &c.* All and every of our Kingdom, out of their Allegiance, to be ready to defend the Realm. *13 Ed. III. dorf.* a great Number of Ships.

By all which it doth appear, *First*, That the Service was commanded from those Inland Counties. *Secondly*, That the same Reasons which are given to bind the Inland Counties, are given to bind the Maritime Counties, *Pat. 23 Ed. I. M. 6.* for the taking of Ships in *Suffex, Devon, Middlesex*, and other Counties. If so be the Maritime Counties be in danger, surely the Inland Counties cannot be in safety. We are in an Inland County; and the Entry of an Enemy upon any Part of it, concerns the Safety of us all. And by the Rule of the Law, every one that is to receive a Benefit, is to give a Contribution. As the Case of *16 Hen. VII. fol. 13.* all Feoffees, whose Lands were liable to a Statute, the one shall have Contribution against another. If four or five Cognizors in a Cognizance, all shall have Contribution one against another. *40 Ed. III. Parceners*, upon whom a Warranty descendeth, they shall be equally charged. If a Man bind himself and his Heirs in an Obligation, having Lands partly by his Father, and partly by his Mother, and they descend to several Heirs, both shall be equally charged, as it is *3 Rep. fol. 13. Herbert's Case.*

So I go upon these Reasons, that it is consonant to Reason of Law, besides these Precedents, that where a Danger is to all, and all receive a Benefit, all are to be equally charged.

My Lords, to illustrate it by further Reasons, that tho' the Inland Counties, and Maritime Counties be charged, I find that the Ports, by the Charter of *Ed. I.* were to find 52 Ships. I find that when the Necessity of the Service did require it, then all their Ships were seized in the King's Service. I find likewise, that when there hath been a Disability in the Ports to perform the Service, as now they are, for then the main Part of the Trade was in the Port Towns, but now it is gone from thence, and gone to *London*; and few Ports have the Trade, but *London, Newcastle, Bristol, and Hull*; and shall it not now be required of the Inland Counties, since there is a Disability in the Ports? *Rot. Franc. 21 Ed. I. M. 23.* I find there, that *Plymouth*, and some of the Port-Towns, did bear more than *London*; for *Plymouth* found 4 Ships, *Dartmouth* 6, *Bristol* 4, *Newcastle* 3, *Norwich* and *Yarmouth* 4, *London* 2, *Hartle-Poole* 2, *Sandwich* 2, *Dover* 2, *Rye* 2, *Shoreham* and *Arun-del* 2, and other Places found but one. It appeareth, *Rot. Alm' 13 Ed. III. M. 3. dorf. that Yarmouth* furnished, at their own Costs, 4 Ships, *Kingston* 2, *Boston* 2, *Lynn* 2, *Harwich* 2, and *Ipswich* 2.

My Lords, are these Ports able to furnish the King with so many Ships in these Days to do their Service? The Wealth of one Portman in those Days, was worth the Wealth of a whole Town now.

Admit the Maritime Towns were bound to it; yet if there be a failing of their Ability, that they cannot do it, shall it not elsewhere be required? That it is agreeable to the Rule of the Law, before any Commissions of Sewers, where particular Men are bound to defend the Sea-Banks, yet before any Statute, in case the Man was not able, the Service was required from the County; for by it they might have either Gain or Loss. This appeareth by the Rules of the Common Law, before any Statute; *Register fol. 123. Quod distringat omnes, &c.* when one Man was to maintain the Banks against the Sea; if not able to do it, the rest that had Benefit by it, were to be distrained to do it, *5 Rep. fol. 99. 10 Rep. fol. 140, 141.* the Case of the Isle of *Ely* agreeable, that all that have *Salvationem & Damnificationem* shall contribute.

To this Purpose are those two Records mention'd by Mr. *Sollicitor*, *Rot. Par. 7 Hen. IV. M. 18.* that where there was a Subsidy granted to the King for the Defence of the Realm, it was assigned to Merchants, yet with a Salvo, unless Royal Power came. *Rot. Franc. 6 Ric. II. M. 8.* certain Merchants had the Custody of the Sea, except *Regalem potestatem.*

So the Conclusion is, if an extraordinary Defence, there may be no Cause to go into the Inland Counties; but if a Royal Power, or extraordinary Danger, tho' not imminent, the King may require an extraordinary Contribution, *per totam Angliam*, from all his Subjects.

But this hath been objected against, and some Records vouch'd; that is, say they, we will shew you many Precedents, wherein *Navale Subsidium* hath been required from Inland Counties, and they have been discharged thereof, as *Pat. 2. Ric. II. Pars 2. M. 42. dorf.* The Town of *Beverly* petitioned, because they were to contribute, being an Inland Town, towards the finding of a Ship with the Town of *Hull*, and were discharged thereof.

This is Truth, but not the whole Truth: for the Town of *Beverly* was discharged by reason of a Charter of Exemption granted unto them *in honorem S. Johannis de Beverby*, the King's Confessor; upon that Charter they were discharged.

They have objected likewise the Town of *Bodmin*, an Inland Town in *Cornwal*, was discharged a *Custod' Maris*: For this *Claus. 13 Ed. III. Pars 2. M. 14.* was vouch'd for it, that the Town was discharged of this Contribution.

For answer to that, it will appear, that one *Truffel* was then Admiral of the Fleet, and was by his Commission to be furnished from the Ports at their own Charge for three Months. My Lords, this appears, *Rot. Claus. 13 Ed. III. Pars 1. M. 35.* and so that Town, an Inland Town, was to be discharged. My Lords, likewise there were other Discharges; upon this Reason *Norwich* was discharged from finding of Men for manning of Ships, because the Admiral's Commission did not warrant it, *Rot. Scot. 10 Ed. III. M. 15.* for it only extended to the Ports; but yet *Norwich* was charged to find Ships, *Claus. 13 Ed. III. Pars 2. M. 14.* So *Colchester* was discharged for finding of a Ship, but it was because they were not within the Words of the Writ, as appeareth, *Rot. Claus. 13 Ed. III. Pars 1. M.* So to tell your Lordships a Story of a great Number of Land Tenures, discharged *de Custod' Maris*, and not to give your Lordships the Reason, it is nothing to the Purpose.

So, my Lords, having verified these five Points by the Precedents, and justified them by these

Reasons, and answered these Objections, I shall now come to the sixth Matter upon this Record; and that is, tho' no Cause be declared in the Writ, no Danger manifest, nor against what Enemies; that yet the King by his Writs hath commanded Shipping for Defence of Sea and Land; and in the King's Wisdom the Danger hath been reserved in his Breast, and not communicated to his People by his Writs.

First, I find that antient Precedents have been so, that it hath been reserved to the King himself, and those that he did depute to take care thereof; this appeareth, *Rot. Claus. 14 Johan. M. 2.* the King directed his Writs to *Herbert*, with a *Mandamus* to make ready all Ships for our Service, when we shall command; not a Word of the Cause declared, or an Enemy proclaimed. The same Roll, *M. 6.* the King by Writ, directed to several Parts, causeth all Ships that could carry six Horses or more to be sent unto *Portsmouth*; and the like Writs were directed to other Ports, *Rot. Pat. 15. Johan. M. 4.* The King appoints a Guardian upon the Sea-Coasts, and commandeth all Men that they should be *intendentes*; and other Writs in the same Roll, directed into many Counties with a *Mandamus*, *Claus. 17. Johan. M. 7. dorf.* Writs for taking of Ships, and bringing them into the *Thames* Mouth, without shewing any Cause: All this was done in the Time of King *John*. In the Time of *Hen. III. Rot. Pat. 13 Hen. III. M. 5.* a Writ commanding the Sheriff of *Kent* and *Suffex* to arrest all Ships in those Counties to be at *Portsmouth*, to be ready to go into that Service we shall command. And it appeareth in the same Roll, that these Ships were able to carry but six Horses. So *Rot. Claus. 14 Ed. VIII. M. 13.* To our Bailiff of *Portsmouth*, and Keeper of our Navy, to make ready one good Ship, and to be ready to go in our Service, whither and when we shall command it. *Rot. Claus. 23 Ed. I. M. 5. dorf.* The King declares that he will have the Sea-Coasts in *Essex* guarded against the Enemy; and there commandeth them to be obedient to such an one, who had the Custody. *Rot. Pat. 23 Ed. I. M. 2.* The King writeth to all the Archbishops, Bishops, Sheriffs, Knights, and others, to be assisting unto *William de S.* who had the Custody of the Sea. So as by all these, it appeareth the King did give no Account to his Subjects, either of the Service, or the Time when. *Rot. Scot. 10 Ed. I. M. 13.* The King commanded all Ships to be arrested, and Men and Mariners to be sent to the Admiral of the Fleet, *ad proficiscend.* The same Roll, *M. 5. dorf.* a Matter fit for the Council, and not for the People to know. Same Roll *M. 20.* that they should do *prout nobis, &c.* the King oweth no Account to his Subjects of these things. *24 Ed. I. M. 19.* The King having commanded *E. S.* to take up 100 Ships fit for his Service, commandeth the Sheriff of *Northumberland* and others to be assisting. Same Roll *M. 17.* A Command to the same Effect, that all Ships should be taken between *Lynn* and *Berwick*. It was so likewise in the Time of *Ed. II. Pat. 9 Ed. II. Pars 2. M. 26.* Ships taken up at the Charges of the Inhabitants, to defend the Sea against Malefactors and Pirates. *Rot. Claus. 12 Ed. II. M. 11. dorf.* Writs directed to the Mayor and Bailiff of *Sundwich*, to make ready all Ships within their Port of 40 Tons, *Ita, &c.* that they be ready within three Days Warning to go, as we shall more fully declare; but the Service that was to be

be done; not mention'd. So it appear'd by other Writs to other Towns in the same Roll, 17 Ed. II. M. 11. Pat. 14 Hen. VI. M. 14. *Rex quia quibusd' arduis causis, &c.* doth assign *John Hoxham* to take up all Barges of 10 Men and upwards.

So in all these Times of King *John*, Hen. III. Ed. I. Ed. II. Ed. III. and Hen. VI. Writs have gone out generally; that the Service hath been concealed; and for Instruction, they were referred to the Council.

It standeth with Reason, for Resolutions of War are not to be communicated; his Majesty hath a separate Council of War from the Body of his Privy-Council.

Now, my Lords, for the Objection that hath been made against the first Writ of 4 Aug. 11 Car. that is, That the King hath not declared sufficient Cause for the issuing of this Writ: The King hath not communicated to *J. S.* and *J. N.* what the Employment must be; he must satisfy the Council at the Bar, which he ought not to communicate to his Privy-Council, but is reserved for his Council of War.

This is a Writ to command Obedience from his Subjects, and upon such Reasons as may satisfy any reasonable Man; and if fewer Reasons, it had been the better agreeable to all former Writs.

For the next Matter out of the Precedents, which is, that during the Times of the Sitting of Parliaments, these Writs have issued out by Command from the King, I have made it good upon my former Head.

The last Thing I observe upon the Precedents was this, That there was no Clause, no Particular in the Writ of 4 Aug. 11 Car. but was warranted by many Precedents: And that in this thing the King doth but *jubere per legem*.

First, For the Direction: It is, as in this Writ, sometimes upon one, or *probis hominibus* of such a County, sometimes the Direction is to Commissioners; sometimes one way, and sometimes another: and of this of the Precedents themselves, when your Lordships come to see them, I shall speak. They would have the King descend so low, as to give them a Reason why he doth it: some Reasons are expressed in the Writ; as *quia periculum imminens, quia pro defensione Regni, tuitione Maris, securitate subditorum, salva conductione Navium, &c.* My Lords, all these are expressed in the Record, 9 Ed. III. M. 12. Scot. 10 Ed. III. M. 20. Rot. Alm' 12 Ed. III. M. 1. Rot. Alm' 13 Ed. III. M. 13. I find in these Writs the same Matter, Power of Assessment, sometimes Levies by Distress and Imprisonment; nay, Seizure of Lands and Tenements, Goods and Chattels, that are expressed in former Writs: and that it was at the Charges of the Counties, both Inland and Maritime, this appeareth, Rot. Scot. 8 Ed. II. M. 9. *De Navigio providend.* Pat. 9 Ed. II. M. 26. Pars 2. *De Navigio providendo pro Custod' Maris.* Many more of these, Scot. 10 Ed. III. That the Wages of the Men that went in the Ships, and guarded the Coasts, were at the Charge of the County; this appeareth 10 Ed. III. M. 2. dorf. 60. Men appointed and sent to *Portsmouth*, and they refuse to go without Wages; but a Command came from the King, and commanded the Counties to pay them Wages. 10 Ed. III. M. 21. dorf. And his Predecessors not to bear any Charge whatsoever, tho' *pro defensione.* Rot. Alm' 12 Ed. III. Pars 1. M. 2. Those of *Wym*, who refused to contribute towards the charge they were assessed by the Commissioners,

juxta quantitatem, were compelled to contribute; so Rot. Claus. 12 Ed. III. M. 8. the like *pro Custod' Maritim.* I might be infinite in these Particulars, but I will not trouble your Lordships.

Here they have made some Objections; tho' to answer the main Objection, I am not yet come. They say, this Power of assessing the People for Sums uncertain, ought to be no more than Escuage uncertain, and must be assessed in Parliament: And this Assessment for Defence, ought not to be by Commission, or the King's Writ. *First*; for the Authority, which is *Littleton*, he saith, fol. 20. *Que communiter dicit que Escuage sereca assesse per Parliam'*

I do not find by the Register, where these Writs are; neither do I find them grounded upon any Act of Parliament. Some that are grounded upon Acts of Parliament, do recite them. But what if it be by Act of Parliament? A Service that is to be done by the Tenant to his Lord; what if this be so, that it must be assessed in Parliament? Your Lordships know that the Tenants must do according to the original Duties of them. And if this be, that the Lord shall not assess them but in Parliament, is that an Argument from a Tenant to a Lord in this Case?

This is a Service commanded not by Tenure, but by a King from his Subjects; this is suitable to the Reason of Law in other Cases: For those antient Aids, which the Law doth require for the making of his eldest Son a Knight, or *pur file marrier*; are not those certain at the Common Law? Must there be an Act of Parliament to assess those Aids? The Books are otherwise.

But the King at the Common Law might require an Aid uncertain, and might assess it as he pleased. *Glanville lib. 9. cap. 8. Brit. fol. 57. cap. 27. Braet. lib. 4. cap. 16.* So as at the Common Law they were uncertain. 11 Rep. fol. 68. D. It is said there, the Statute of *Westminster* 1 cap. 15. which puts reasonable Aid in certain, doth not bind the King; *a fortiori* we must not bind him to a Certainty for the Defence of the Realm. No Man tell what the Preparation must be, or the Charge thereof. If they can shew an Act of Parliament, that limits the King for the Defence of the Realm, they say something.

But they say the Sheriff is no proper Officer, not sworn to execute this Writ.

This is as wide as the other: for, my Lords, the Sheriff is sworn to execute all Writs that shall be delivered to him for the King's Service. And surely this Writ, if it come to him, he must at his Peril execute it.

First, The Direction of those Writs have been many times as well to the Sheriffs as the Commissioners, Rot. Scot. Ed. III. M. 13. Claus. 15 Ed. III. M. 17. The King commandeth the Sheriff of many Counties to furnish Men with Arms, Victuals, and other necessary Provisions, both for Sea and Land. 23 Ed. III. M. 5. dorf. 24 Ed. I. Rot. 7. 9. Ex' Remem' Regis 11. The Lands of the Sheriffs and other Officers, were extended because of their Negligence in doing of their Duties concerning those Writs, 25 Ed. I. Ex' Remem' Regis. A Commission went out to enquire of the Execution of the Officers in the Duty of their Places.

Besides these Writs at the Common Law, this is seconded by the Authority of the Common Law, Register 122, or 127. The Writs that go out to the Sheriff (for they go out to the Sheriff as to Commis-

Commissioners) it is left to the Discretion of the Sheriff or Commissions, as occasion shall require, *Register* 191. *Bre. de partitione*, before any Statute was made concerning the same, that Writ went out generally to the Sheriff; so that in all Times and Ages it hath ever been in these Cases, where no Certainty, left to the Discretion of the Sheriff and Commissioners.

My Lords, for the Manner of the levying *per Districiones*, and by Imprisonment of those that do refuse: Is this new? It hath been so in all the Precedents that have been vouched, both by Distress and Imprisonment. For the Distress: If the King makes a Corporation, and gives them Power to ordain for the Common Good of the Corporation; and if they make an Order for the Payment of Money, and that those that do not pay the same, shall be distrained; is not this adjudged a good ordinance? *5 Rep. fol. 64. Clark's Case, Trin. 7 Hen. VII. Rot. 3.* There is a Benevolence granted to *Ed. IV.* for his Voyage into *France*, one *T. R.* did deny Payment, and he was distrained for his Proportion.

They except to the Penalty of the Writ.

The Penalties of former Writs have gone higher. *Inter Communi* in the *Exchequer*, there was a *Mandamus* to assess those that were employed in the Provision for Shipping; and the *Mandamus* was, *sicut nos & honorem nostrum & salvationem Regni diligitis*. In that Roll that is so often remembered, *Rot. Scot. 10 Ed. III. M. 11. dorf. quod, &c.* their Lands, Goods, and Chattels to remain seized in our Hands. And *M. 2.* under Pain of Forfeiture of Life: *11 Ed. III. M. 2.* to cast those in Prison that did refuse. *Rot. Claus. 12 Ed. III. M. 18. dorf.* Writs directed to *Henry Hussy*, and others, to punish those that refused to contribute; and to imprison them, and to seize their Lands and Goods into the King's Hands. *Claus. 13 Ed. III. pars 1. M. 36. dorf.* to seize into their Hands the Lands and Tenements of the Refusers. *Rot. Franc. 21 Ed. III. pars 1. M. 11.* the King commands Ships, under pain to lose Life, and all their Estate, *Rot. Franc. 10 Rich. II. M. 23.* to imprison those that are contrary, under forfeiture of all they had. So as your Lordships see *Mr. Holborne* was very far mistaken.

My Lords, in the next place, they have laid hold on the Distance of Time! They say there was seven Months between the *Teste* of the Writ, and the Time of the Rendezvous; that the King in that time might have called a Parliament, and there might have been an Aid granted, and the Service performed in a Parliamentary Way.

But they may remember the 40 Days between the *Teste* and the Return of the Writ for summoning a Parliament; then the time spent in presenting of a Speaker; the solemnity used before they begin their Grand Committee; their Reading of a Bill thrice, the Debate about Passing of it in both Houses before it be granted; and after all this be done, and the Parliament ended, a Time for the levying of the Money must be had, and when it is levied, Time for the Return of it; and when it is returned, Time for the expending of the Money: and the Preparation will go slowly on till the Money be returned. *48 Hen. III. M. 4. dorf.* There was a Command for guarding of the Sea-Coasts. *Claus. 23 Ed. I. M. 5. dorf.* The Port of *Yarmouth* commanded to find Ships for a certain Time, *Rot. Scot. 11, 12, 13 Ed. II.* They are put down in that Roll, *M. 8.* that there was

a Command for a *Navale Subsidium* for three or four Months.

So as, my Lords, for the Time of Preparation and for the Time of the Continuance, it hath ever been referred to the Wisdom of the King. My Lords, for the *Spanish* Invasion, that hath been so late in our Memory, I find by the Books that are kept in the Council-Chamber, that the Preparations were in *Octob. 87*, against the coming of the *Spanish* Fleet in 88, which did not set forth till *June*: I find no Parliament called that Year. And by Letters and Orders from the Council-board, those Ships, and Defence that was made, was *ad sumptum* of the Subject.

So, my Lords, by this that hath been said, it doth appear to your Lordships, that there is not any Clause in this Writ, either for the Direction, Motives, Mandates, or Penalties, but are warranted by former Precedents in a higher Degree.

My Lords, these are the Precedents that I have collected, and reduced to these several Heads. I shall now remember to your Lordships divers others. And in the first Place observe, that *William I.* came not to abrogate any former Law, but was sworn to observe *antiquas leges Anglicanas*, that appeareth in *Lambert, fol. 125. prout.* So every Man by this Law, that was but a Confirmation of former Laws, must provide *pro viribus & facultatibus*.

I find by the Grant that *William I.* made to his Abbey of *Battel* of his own Foundation, a Charter to be free from *Danegelt & omnibus auxiliis*. If they had not been freed, they had been subject. I find *Pat. 7 Joban. M. 3.* the King authorized *Walter Scot* and others, *quod omnes Naves, &c.* which they should find, to arrest, and command all to assist, as they love us and our Peace in our Realm. *14 Joban. M. 6.* as your Lordships have heard, all the Ships were arrested, that could carry six Horses, and to be at *Portsmouth, M. 2.* all the Ships in the Port were to go in his Service, without expressing for what, and unlade. *Claus. 12 Joban. M. 7. dorf.* commanded all Ships to be brought into the *Thames* Mouth. So here was not a laying down, but a Continuance of it. So in *Hen. III.'s* Time, *Claus. 14 Hen. III. M. 12. dorf.* all Ships taken that could carry sixteen Horses. *Claus. 15 Hen. III. M. 17. dorf.* Command for the furnishing of Arms, Men with Victuals, and other Provisions for forty Days. And here was the like Command to Sheriffs in several Counties. *Claus. 26 Hen. III.* the King commandeth the Men of *Yarmouth*, to have their Ships ready with Men and Arms; the same Roll, to find ten Ships to go to *Picardy. Pat. 48 Hen. III. M. 3. dorf.* Writs to the several Port-Towns, that no Ships should go Beyond Sea, but all to stay at home. *M. 5. dorf.* Those that returned from guarding the Sea-Coasts without Leave, were punished, by seizure of Goods and Chattels. *M. 4.* Same Roll, *dorf.* Provision to be made till further Orders be had. So it was not confined to Time, but Occasion, as need should require. And there be divers others in the Time of *Hen. III.* upon other Occasions, which I have remembered. In the Time of *Ed. I.* *21 Ed. I. M. 23.* It appeareth there, that all the Port-Towns were appointed by the King and his Council, how many Ships every one of them should set forth. *Rot. Vas. 22 Ed. I. M. 11. dorf.* The King of *England* in that Writ stileth himself *Dominus Regni Scotie, &c.* And sends his Writ to the King of *Scotland*, to let him know, the King

of *France* had taken part of *Gascoigne*, an Inheritance of the Crown of *England*, that he should *in fide & homagio*, be at *London* with Horse and Arms, &c. This Writ is very observable, the King of *England* is *Superior Dominus Scotiæ*. A part of *Gascoigne* was then lost. The King of *Scotland* was required by this Writ, as well as requested, to give him Aid for the Recovery of those Grounds taken from him in *Gascoigne*. My Lords this Power is not confined only to *England*, but it reacheth, as GREAT LORD, into *Scotland*. Also into *Ireland*, *Vasc. 22 Ed. I. M. 5. dorf.* The King by his Writ commandeth divers Earls, and others, in *England* and *Ireland*, to do the like, to send Men to *London* with Horse and Arms. The same Roll, *M. 13. dorf.* All that claim to be of the Liberty of the Port so commanded. *Pat. 23 Ed. I. M. 1, 5, 7.* All Ships of 40 Tons were to be furnished and provided for the King's Service. *Claus. 23 Ed. I. M. 5.* Every Man is compelled to contribute. The same Roll, *M. 4.* those that did not inhabit in maritime Towns, yet if they had Lands there, they must contribute, resident or not resident, within or without the Liberty, all must contribute.

My Lords, in that Writ, which is *Claus. 23 Ed. I. M. 5. dorf.* I will observe these things: 1. A Command to all Bishops, Abbots, Lords Spiritual and Temporal, *Quod sint intendentes & respondentes ad custodiam Maris.* 2. In contingent Causes; *Causa, &c.* 3. The Writ saith, *quod omnes ad arma, &c. secundum statum, &c. ad transfretandum cum nobis;* and Possession of Goods and Lands to be taken for the Custody of the Sea, as in former times they were accustomed: so it is to be done in this manner as in Times past. 4. The Writ was directed to several Sheriffs, *per corpora, bona, & terras*, to distrain.

Next 24 *Ed. I. M. 15.* the King commanded the Archbishops, Bishops, Barons, and all the Commonalty, to defend the maritime Parts. *Claus. 24 Ed. I. M. 19. pro custodia Marit.* There was another of *Symon de Spencer*, which I remembered before 24 *Ed. I. Rot. 76.* Another of the like. *Ext' Remem. Regis, Claus. 25 Ed. I. M. 26. dorf.* the King moderateth the Expences of the Country when the Danger ceaseth. *Claus. 25 Ed. I. M. 12.* The King commandeth the Sheriffs of several Counties, and others, to bring all the Ships to be ready for our Service, when we command. *M. 26.* The like Command. *De custodia Marit. Pat. 31 Ed. I. M. 20.* Power given to *Thomas de B.* to raise Forces in *Cumberland* to resist the *Scots*; and those that did refuse, to seize their Goods. In the Time of *Ed. II. Claus. 2 Ed. II. M. 21.* the King commandeth divers Towns to set out Ships against the *Scots*; and after, by special Writs, some of those were discharged. *Rot. Pat. 9 Ed. II. Pars 2. M. 6. Pat. 16 Ed. II. M. 11.* A Writ directed to *Sir Thomas Weston* and others, to array all between 16 and 60, or to take their Lands and Goods, if they did refuse, *Pars 1. M. 7.* of the same Roll, *Claus. 20 Ed. II. M.* — the King doth there declare that those that stay at home ought to contribute to set forth Ships, and for the Wages of the Men employed. *Claus. 20 Ed. II. M. 6.* Writs directed to the Scholars at *Oxford*, they were not exempted, but commanded to keep *Southgate* safely. *Rot. Vasc. 18 Ed. II. M. 18.* The King writeth to the Archbishop and others, commanding them to have Horses and Men in a readiness, as often as need shall require. For Time of *Ed. III. Claus. 2 Ed. III. M. 13.* and *M. 22. dorf.* to *Southampton*, and to several other Towns, for their Shipping, a-

bove 40 Tons. *Pat. 3. Ed. III. Pars 2. M. 6.* The King commandeth the Sheriff of *Cornwal* to distrain Knights and others, that abide not upon their Lands in maritime Parts, and to imprison. Those Years of 10, 11, 12 and 13 of *Ed. III.* having been remembered 21 *Ed. III.* The King concerning the Defence of the Sea and Sea-Coasts, gave special Rules to be observed, both for the Number of the Ships and the Men, and the Quality of their Persons, and for the Proportion of their Wages; as appeareth, *Pat. 21 Ed. III. Pars 1. M. 26, 17.* where there was special Order taken for the guarding of the Sea and Sea-Coasts at the Charge of the Inhabitants. *Rot. Franc. 21. Ed. III. Pars 1. M. 11.* Command to the Sheriff of *London* to arrest all Ships in *London* to be sent to *Calais*, to resist the Enemies against us then about to come. *Rot. Franc. 25 Ed. III. M. 9.* The King reciteth, that *France* made a Preparation to invade the Realm, and gave a Power to some to raise Forces; and commandeth the Sheriffs to raise the *Posse Comitatus*, to assist the Commissioners. *Pat. 26 Ed. III. Pars 1. M. 7.* The King, by his Writs to several Counties, commanded all Men between 16 and 60 to be in readiness to resist the *Scots*. *Rot. Franc. 25 Ed. I. M. 31.* commanding all Officers and Ministers to assist *Andrew de Gulpho*, in the raising of Forces for Shipping. So as in that Roll likewise, your Lordships see that the Inland Counties were commanded for Shipping. *Rot. Franc. 28 Ed. III. M. 6.* the King appointed *Ro. Co.* and *Ro. A.* to arrest all Ships of 20 Tons and upwards, between such a distance, and to bring them to *Southampton*, *Rot. Scot. 29 Ed. III. M. 13.* Several Writs were directed to the Bishops of *Durham* and *Carlisle*, and others, for the arraying of Men. *Rot. Franc. 40 Ed. III. M. 37.* The King sent forth divers Writs, commanding *quod, &c.* with all their Forces, they should assist to the safe keeping of the Sea-Coasts, to resist the Malice of the Enemies. *Rot. Franc. 50 Ed. III. M. 47. dorf.* Command to make Proclamation, that all that have Land upon the Sea-Coasts should repair thither with their Families. So in all Ages, and at all times Writs have issued both for the Defence of the Sea and Land by the King's Command. In the time of *Rich. II. Rot. Parl. 6 Rich. II. M. 42.* that was objected as a Record against the King, but maketh clear for him; *Que dit que le Roy persons assemble, en Parliament, est desire de vivre del reveneus del Corone car Escheats Marriages & Forfietures sont pur le Defence nostra Royalms.* The King answers, *Le Roy volet de faire in ceo Case come per de advise des Seigniors, &c.*

Your Lordships see they desire of the King, that he would live of his Revenues, that the Profits of Escheats, Wards, &c. might be kept for the Defence of the Realm. The King giveth them this Answer, That he will do in this Case by the Advice of his Lords, as shall be most for his Honour and Profit: So no Reason to make any Enforcement out of this Record, that the Profits of Escheats, Wards, &c. should go for the Defence, because the King maketh no absolute Denial unto it, saying, that he will do as he shall be advised by his Lords. *Rot. Franc. 7 Rich. II. M. 18.* That the Lords beyond the Seas be arrayed and armed according to their State and Faculties. *Pat. 8. Rich. II. Pars 2. M. 15.* A Command, that all between 16 and 60 be in a readiness. *Rot. Franc. 10. Rich. II. M. 23.* Arrays thro' all *England*. And so in the Time of *Hen. IV. Rot. Parl. 5 Hen. IV. M. 24.* for the arraying of all Men throughout *England*, and those that were impotent, and could not go, to contribute unto it. 3 *Hen. V. M. 36. dorf. Pat. 13 Hen. VI. M. 10.* General Commissions for the ar-

resting

resting of Ships, without declaring the Cause. *Pat.* 14 *Hen. VI.* assign'd *Job. de N.* to arrest all Ships in the Port of *Southampton*, to do Service as the King shall command, there was no Cause declared. *Pat.* 28 *Hen. VI. M. 2, 13.* Commissions to array, and those arrayed to keep in Array, with diligent Watches into several Counties. 1 *Hen. VII. pars 1.* The King writeth to Sir *Fitz Hugh*, to array Archers and Horsemen.

So that it appeareth by those Precedents in all Ages, that those Defences which have been made by Sea and Land, are not confined to Port Towns, and Maritime Places, but *per totam Angliam.*

In the next Place I shall give a particular Answer to some objections that have been made, as have not fallen in my way; and to the Acts of Parliament, Reasons, Records and Book-cases, urged by the other Side.

The Third Day's Argument of Sir John Banks, his Majesty's Attorney-General, before all the Judges in the Exchequer-Chamber, on behalf of his Majesty.

May it please your Lordships,

THE Matter that I did propose to insist upon this Day, was the answering of the Objections. I shall use no Preamble, no Repetition to introduce what I have to say: But in the answering the Objections, I shall first give answer to the several Acts of Parliament insisted upon, then to the several Records and Reasons that have been urged on the other side. And in the last place, I shall answer the Exceptions that have been taken to the Writ, 4 *Aug. 11 Car. Mittimus*, and Form of Proceedings.

The first Act they have insisted upon, is that of *William* the first, call it what you will, an Act or a Charter. The Words of it are verbatim in *Mat. Paris, Volumus & concedimus, quod omnes liberi homines sint quieti ab omni tallagio, &c.*

It doth no way trench upon the Royal Power: for as in the beginning of my Argument, I open'd to your Lordships, that this Power was inherent in the Kings of *England* before the Conquest; here is only a Concession that they shall be free *ab omni injusta exactione.* Now this is no unjust Exaction, for it is of common Right. And then the other Part of that Law doth explain it; for it doth say, *Quod sumus fratres conjurati, &c.* so for the Defence of the Realm. By the same Law they would urge to take away the Power, by the same Law it is reserved.

The next thing they insisted upon, was the Charter 17 *Johan.* or on *Magna Charta* as they call it; which indeed is mentioned in *Mat. Paris*, and may be under the great Seal. The Words of that are, *Nullum scutagium vel auxilium nisi per commune Concilium, nisi ad primum filium militem faciend' & maritand' fil', &c.*

This Charter, as it was acknowledged by themselves, was granted at *Running Mead*, where the Banners were display'd, when there was War or Rebellion between the Barons, Commonalty, and the King. It was not assented unto, the King sitting in Parliament: For Parliaments are not called with Arms, and in the Field. It was, in truth, an enforced Act from a distressed King. Shall this bind the Crown? I shall remember the Act of Parliament made 15 *Ed. III.* and there only were things that were in Parliament enacted derogatory to the Crown, as this is; That no Peer

should be questioned but in Parliament; That no great Officer be removed but in Parliament; That no Clergyman shall come before Temporal Judges. These were Things that were much derogatory to the Prerogative of the King, 15 *Ed. III.* That King the same Year, when he was better advised, did make a Charter which is in print, for the recalling of this prejudicial Act of Parliament still in force. It appeareth by the Parliament-Rolls and printed Books, where the King declareth it was drawn from him with an unwilling Mind, and was prejudicial to the Prerogative of his Crown; and therefore by that Charter it was repealed.

But my Lords, if that Charter 17 *Johan.* should be in force, why hath there been no Confirmation of it in so many Parliaments since? The Statute of *Magna Charta*, 9 *Hen. III.* hath been confirmed one and thirty times; why no Confirmation of the Charter 17 *Johannis*? And why have we not heard of it since that Time? The Reason for it is, that it trencheth too much upon the Prerogative of the King and Crown.

But take the Words as they are, what be they? *Nullum scutagium vel auxilium nisi per commune concilium Reg. nostri.* If these were an Act, doth it extend to take any thing away that belongs of common Right unto the Crown? And that hath been the Exposition of my Lords the Judges, of Acts of Parliament; that Aids due of common Right, are not taken away by general Words, *Commune, &c.* And therefore these Aids due of common Right, as this is, are no way taken away.

Besides for the Statute of *Magna Charta*, it is made 3 *Hen. III. cap. 29. Nullus liber homo capiatur, aut imprisonetur nisi per legem, &c.* The general Words of this Act of Parliament do no ways impeach the Royal Power, for this Royal Power is *Lex terre.*

Besides, in these Precedents, 14 *Hen. III. 15 Hen. III. 26 Hen. III. 48 Hen. III.* and all the succeeding Kings remembred in all of them, that these Writs went out to provide Shipping at the charge of the Inhabitants; so, surely, if they had been taken away by *Magna Charta*, the Writs after *Magna Charta* would not have used it.

But then there hath been objected, the Statute *de Tallagio non concedendo.* If it be 25 *Ed. I.* as it is printed, or 34 *Ed. I.* or as the Petition of Right doth recite it *temp' Ed. primi*, be it when they will under favour, there is nothing in that Act doth take away this Power: The Words are thus, *Nullum tallagium vel auxilium sine voluntate Episcoporum Baronum Burgensium &c.* Mr. Solicitor, in his Argument, upon probable Grounds, did make question whether this was an Act of Parliament yea or no: 1. In respect it was not inrolled amongst other Acts of that Time. 2. because by the penning of it, it may seem rather to be an Abstract. 3. Because when the other Acts of those Times were sent over to *Ed. I.* to be sealed and confirmed, no such Act was sent over.

My Lords, I will not lay hold on this, but will admit with them that it is recited in the Petition of Right to be an Act of Parliament: So I will admit, yet to wave nothing that hath been said, but by way of Admittance I give this Answer.

First, that it taketh away no Aids that are due by the Laws of the Realm; yet the Words are general: *Nullum tallagium vel auxilium nisi assensu Parliamenti, &c.* Here is not in this Act of Parliament so much as any Exemption of an Aid to

Knight the King's Son, or to marry his Daughter; yet in this the Law is observed, that these Aids are not taken away; and so it is declared, 25 *Ed. I. cap. 11.* which doth reduce these Aids unto certainty. So as your general Words of *nullum auxilium* will not do it, if this be an Aid due by the Laws of the Land.

Then I say this is not properly an Aid, but a Contribution of King and People for the Defence of the Realm, it is *ad proficiscendum cum Navibus nostris*: then I say this Power is *inter jura summe Majestatis*, one of the highest Prerogatives of the King, and shall never be taken away from the King. 17 *Hen. 7.* Statute *Quia emptores terrar'* doth not extend to the King to take away his Tenure. If you will have such a high Prerogative taken away, you must shew it in the Acts of Parliament. Nay, my Lords, I say that in the Times of *Ed. 1.* this Royal Power is expressly reserved by Act of Parliament to the Crown; and therefore in after-times never intended to be taken away.

First, I shall enforce it out of the Statute of 25 *Ed. I. cap. 5, 6.* that doth recite, that Aids and

Vide les parols del Statute. Taxes that have been given unto us towards our Wars, and other Business of our own Grant and good Will, howsoever they were made, might turn to a Bondage, &c. We have granted that we shall not draw these Taxes into a Custom, &c. and do grant that for no Business henceforth, we shall take such manner of Aids, but by a common Consent of the Realm, &c. saving the ancient Aids due and accustomed.

This Aid is not taken to be an Aid, for this was never given to the King of *England*, but taken by Royal Power: the Statute of 25 *Ed. 1.* speaketh of such Aids as have been given, and excepteth such Aids as have been due and accustomed. And by the Precedents shewn, it appeareth these have been due and accustomed. It hath been desired in *side legiantie*, and with a *Mandamus.* 2 *Ed. I. cap. 1.* this Statute doth confirm the great Charter, and the Charter of the Forests; but in the End of it in the Parliament-Roll, that notwithstanding all these things before-mention'd, both the King and the Council, and all they present at the making of this Ordinance, will intend the Prerogative of his Crown to be saved unto him.

A further Answer to the Statute *de Tallagio non concedendo*; the Practice that hath been since the time of *Ed. I.* in the time of *Ed. II. Ed. III. Rich. II.* and the Practice since, doth shew plainly, that it was never intended by the Statute to take away this Royal Power.

But then there was a Thing materially objected, if the Records would have warranted what had been said, and that was, *Rot. Parl. 29 Ed. I.* and then it was said, That tho' there be a Saving, 25 *Ed. I.* and 28 *Ed. I.* yet here is no Saving in this Act; so then if not for the Act 29 *Ed. I.* all was lost.

My Lords to this I say, *Nul tiel Record.* And therefore I shall desire, that this which they call an Act, 29 *Ed. I.* I may attend your Lordship's with. By this Record it doth appear that it is only a Record of the Perambulation of the Forest, and no repealing of any former Law; neither is any thing enacted by that Law, derogatory to the Crown.

The next Statute objected, is 1 *Ed. III. cap. 5.* the Words are these: That 'no Man shall be charged to arm himself otherwise than in the time of the King's Progenitors; and that none

' be compelled to go out of his Shire, but where Necessity requires, and the sudden coming of strange Enemies within the Realm.'

So this Statute is relative to what hath been formerly done: What hath been found done formerly, appeareth by the Records of King *John's* and *Ed. the First's* Time, that the Subjects were to set forth Shipping at their own Charge: then those Writs went out in King *John's* and *Ed. the First's* Time, as hath been shewed. And then this Statute alloweth in two Cases, one where Necessity requireth, the other upon coming of strange Enemies; and this Writ requireth no other, but where there is Necessity in the King's Judgment.

The next Statute is 1 *Ed. III. cap. 7.* which was objected, where Men at Arms were conveyed into *Scotland* and *Gascoigne* without Wages; the King saith, it shall be done so no more.

The Statute mentioneth *Scotland* and *Gascoigne*, foreign Wars, and so foreign to this Business; for tho' *Scotland* was subject to the Dominion of *England*, yet it was a divided Kingdom. 8 *Rich. 2.* Continual Claim. *Com. 376.* That a Fine shall be paid by a Stranger, because he was in *Scotland* at the time of the Fine levied. *Bract. 436.* An Abjuration into *Scotland* is good. 6 *Rich. II.* Protection. 46. That *Scotland* is out of the Realm; therefore this Statute that speaketh of *Gascoigne* and *Scotland*, speaketh of foreign War not of Defence.

The next Statute is 18 *Ed. III. cap. 7.* Men of Arms, Hobellers and Archers, shall be at the King's charges; the Statute speaketh likewise of going out of *England*.

But he that is upon the Defence at Sea of the Kingdom, it is no going out of *England*; for that see 6 *Rich. II. Protection. 40.* The sending of Men and Ships for the Defence of the Coasts, is no going out of *England*.

The next Statute is 25 *Ed. III. cap. 8.* no Man shall be compelled to find Men of Arms, Hobellers or Archers, otherwise than those that hold of such Service, without Consent.

My Lords, this Statute of 25 *Ed. III.* doth not take away any former Laws. These three former Statutes of 1 *Ed. III. 13 Ed. III. and 25 Ed. III.* are recited in the Statute 4 *Hen. IV.* and 'tis enacted, they shall be firmly holden and kept in all Points; so if these Statutes must be kept firmly in all Points, then the Statute of 25 *Ed. III.* doth not repeal any of these. Now that of 1 *Ed. III. cap. 15.* reserveth a Power to the Crown where Necessity requireth, and where sudden Enemies come. 26 *Ed. III.* Those Ships were sent forth, and commanded for the defence of the Realm, at the charge of the Subjects, *Rot. Franc. 26 Ed. III. m. 4, 5. Rot. Franc. 28 Ed. III. m. 6.* So as clearly there is no Part of this Power impeached by this Statute of 25 *Ed. III.*

Then they have objected *Rot. Parl. 2 Rich. II. m. 3.* That upon a Council of a great many Earls, Barons, and Sages of the Realm, assembled by the King's Privy-Council, it was there declared what Danger the Kingdom was then in, and that Money was wanting; they declared they could not remedy these Mischiefs, without charging the Commons, which could not be done, but by a Parliament.

This is no Act of Parliament; it is but a Parley, or Discourse, or Communication between the Lords and Commons; it was 2 *Rich. II.* in the Non-age of a young Prince who did not assent; for there was no Royal Assent unto it, so no Proof in this Case.

The next Record they objected was, *Rot. Parl. 9 Rich. II. m. 10.* there was a Tenth and a half, and a Fifteenth and a half granted to the King, upon Condition contained in the Schedule; which is, that the King should assent that the great Officers of the Kingdom should be named by Parliament. And Servants appointed for dispencc of the Money.

If the King doth accept of the Subsidies and Aid upon Condition, doth this take away his Royal Power? There is no more done in this than was in the Parliament 21 *Jac.* for there the Officers and Treasurer were appointed by the Houses of Parliament.

But then further it doth appear, that this was granted, *pro viagio Johannis Regis de Castile, &c.* so that it was not granted for the Custody of the Sea, but for that Voyage.

The next Record they insisted upon was, *Rot. Parl. 8 Hen. IV. m. 2.* A Tenth and a half, and a Fifteenth and a half granted with a Protestation, that this should not be brought into Example.

This is nothing, no more than the other. A Parliament grants a Subsidy, with Condition it should be thus and thus employ'd; and the Protestation can no ways prejudice the Crown in this.

And 7 *Ed. IV. Rot. Parl. m. 7.* hath been objected; there the King's Speech is enter'd upon the Roll, that he will not charge his Subjects but upon great and weighty Occasions.

My Lords, this is nothing but a gracious Speech of the King to his Subjects, that he would charge them but in such Cases as should concern the Defence of the Realm.

The Statute next objected was, 1 *Rich. III. cap. 20.* that the Subjects from henceforth shall in no way be charged by any such Exaction or Imposition.

This is no Benevolence, but a legal Due.

Next they object, the Statutes of Tonnage and Poundage granted to the Crown for the Defence of the Realm.

First, In answer to this, I say, that there is no Act for Tonnage and Poundage that is now in force, neither are any Duties taken to the Crown upon any Act of Parliament. Those Acts for Tonnage and Poundage that have been granted, make for the Crown. And therefore, if your Lordships look the Statute 1 *Eliz.* and 1 *Jac.* it was given towards the King's Charges, for the Defence of the Realm and Safeguard of the Sea: It was given towards his Charges, it was not intended of extraordinary Defence. So, my Lords, these Acts, when they were in force, did give this but towards the Charges. It is so now; for this which is done, and those Contributions levied, are but towards his Charges: and that will appear upon account, that his Majesty for these three or four Years, hath expended more upon the Sea, than any of his Progenitors.

Besides, an Acknowledgment in these Acts, that this Defence could not be done without the intolerable Expence of his Majesty; these Aids are of Necessity, and are not to be lacking at any time.

My Lords, in the next place, they insisted upon the Petition of Right, 3 *Car.*

It was never intended, that any Power of the King, by his Prerogative, should be taken away or lessened by it. I dare be bold to affirm, for I was of that Parliament, and was present at the

Debate, that there was never a Word spoken in that Debate of taking away any Power of the King for the Shipping-Business.

Besides, it is declared, assented unto, and denied by none, that there was no Intention by the Petition of Right, to take away the Prerogative of the King. The King thereby did grant no new Thing, but did only confirm the antient and old Liberties of the Subject.

My Lords, these were the Acts of Parliament that have been objected and insisted upon by the other Side.

In the next place, for an Answer to scandalous Objections. It hath been said by Mr. *Holborne,* of these Statutes of 25 *Ed. I.* and 28 *Ed. I.* that at the Times of making these Laws they were positive, no such *Salvo* was in them of the King's Prerogative: That the Acts before *Hen. IV.* were penned by the King's Council, and those Clauses of a *Salvo* crept in by the King's Council.

These were bold and presumptuous Assertions of the Acts of Parliament made in that Time of *Ed. I.* that there should be any Clauses added by the King's Council, that should not be added to the Record. I have here the Parliament Record, that these Exceptions are recorded as fully as any Part of the rest of the Record, and those Laws confirmed since: therefore to make any such Assertions against Records, ought not to be done; he may object the same against *Magna Charta,* which is for the Liberty of the Subject.

In the next place they have objected out of the Parliament Books, 33 *Ed. I.* that upon a Petition made to the King, to have Restitution of Money taken, that the King did ordain the Treasurer should giye Satisfaction.

I shall desire it may be read, and you shall see, those Moneys for which Direction was given for Satisfaction, were for Goods taken for the King's Use. *Rot. Parl. 33 Ed. I. fol. 105. dorf. per scrutin' pro guerra, &c. Respons. per Regem, Rex ordinavit per Concilium quod satisfactio fact' tam cito quam poterit.* So this Record was for Moneys taken for the King's Use, therefore Reason Satisfaction should be given, *Perambulat' Forest' Rot. 20 Ed. I. de Libertatibus Angl. 18 Febr. Lincoln.* So here is no taking away of any former Act of Parliament; it referreth to what shall be futurely amended and revoked.

The next they objected was, *Rot. Parl. 8 Ed. II. m. 8.* the Fryars of St. *John's* at *Jerusalem* did petition to have Satisfaction of 2354*l.* taken by the King out of their Treasury.

Now, because this Record was vouched two Days together, I desire it may be read; and upon the reading, it will appear, to be upon another Purpose, *Sur' le Roy, &c.* there was Cause and Reason why the King should make Satisfaction.

The next Record was, *Pat. 26 Ed. I. m. 21.* and that was highly magnified by them: That there were several Commissions went out to enquire of *Gravaminibus,* of Wools, and of other Particulars, *de Custod' maris;* and in this it was affirmed, that (as all the King's Counsel took their Notes) these Clauses were omitted out of the Writ that concerns the Forfeiture of Lands, Goods and Chattels, or Seizures.

This Commission maketh nothing to this Purpose, for like Commissions daily come, where there are Taxes laid upon Men heavier than ought to be. Then a Commission to enquire of Grievances

ances in this kind, wherein an Answer of any thing unjustly taken shall be restored, but not a Word to impeach this Royal Power. And, my Lords, for the Penalties in the Writ, 31 *Ed. I. m. 20.* Power to seize the Lands and Goods of the Refusers, 20 *Ed. II. m. 10.* under Forfeiture of all their Goods, 10 *Ed. III. m. 5. dorf. Claus. 12 Ed. III. m. 18. dorf.* that the Penalties and Commands were as high in this Commission as before.

The next Objection was, that the Kings of *England* have always consulted with their Parliament concerning the Defence of the Realm, and that the Aids and Subsidies for Defence have been granted by Parliament.

This is no Argument to impeach this Royal Power; for if in time of War the King will consent to it, shall this take away his Royal Power? In the Times of *Edw. III.* and *Rich. II.* did that take away the King's Royal Power, that he may not ordain Standards of the Money himself? He may by his Royal Power erect Courts of Justice: Shall that take away this from his Power, because the Court of Wards was erected by Court of Parliament?

Next they objected *Rot. Alm. 12 Ed. III. pars 3. m. 22.* That *Edw. III.* was so penitent for what he had done, that he sent to the Archbishop of *Canterbury* to pray for him; and that the People would forgive him for laying those Taxes upon them, which his War compelled him unto, and he would never do the like again.

You shall see, it was only to pray for him for his Voyage into foreign Parts, (and he caused the Record to be read, beginning thus; *De excusando Regem versus populum*, and ending, *de gravaminibus*) dated at *Berwick upon Tweed.* Your Lordships see nothing by this Record, but the Desire of a Prayer; first to pray for the King for his Voyage beyond Seas; the other, concerning the Charges and Impositions. Surely this Contribution commanded in the Shipping-Business, was none of these Charges, Tailages, or Impositions. This his Desire to the Archbishop was not only in the 12th Year of his Reign, but the like in *Anno 25, 26, and 50.* so surely those Prayers of the Archbishop were for other Causes, and not for this, which was for the Defence of the Realm.

Next they do object *Rot. Franc. 7 Rich. II. m. 13.* That the King assigned Tonnage and Pannage to *Henry Earl of Northumberland* for guard of the Seas.

My Lords, it doth appear by the very Record itself, that this was only for an ordinary Defence, and not for an extraordinary Defence.

Then they insisted upon the Parliament-Roll 13 *Hen. IV. m. 43.* the Office of measuring of Lincen-Cloth, a Half-penny upon the Buyer, and as much upon the Seller, and other Fees upon Long-Cloth; the Parliament, 13 *Hen. IV.* declares it to be a void Office, and that accordingly Judgment was given, 13 *Hen. IV.* Out of this he would conclude, that therefore there should be no new Office, and that an Office granted with a Fee is void in Law.

For answer to this: *First,* The Reason why that was a void Grant was this; it appeareth, 4 *Ed. I.* that the Office of Measuring of all Woollen and Lincen-Cloths, was one entire Office. If the King will grant that to another Man which did intrench upon the former Office, a void Patent; therefore a strange Conclusion, that because

this Office was void, therefore no new Office to be granted, 22 *Hen. VI. fol. 9.* The Office of surveying the packing of all Cloth, a good Office. 27 *Hen. VIII. fol. 28.* The King granted to one to be his Surveyor, a good Office? *Fitz-Her.* saith because it had no Fee, therefore it was a void Office. And now at the Bar it is said, because it hath a Fee, it was a bad Office. If this Reason may hold, all antient Offices may fall. 34 *Hen. VI.* Office to be Marshal of the *King's-Bench*; 12 *Hen. VII. 15.* To be Warden of the *Fleet.* Nay, it taketh down all Offices that have been erected for the publick Good, and upon just Occasion, as the Office of *Subpenas* in *Chancery, Star-Chamber, &c.* All those within time of Memory must be shaken by this.

In the next place they object, that these Contributions, they are in Substance Impositions; and that the King should not impose upon the Subject by his Charter, or by his Writ; but it must be done by common Consent in Parliament.

Your Lordships have observed in all my Discourse, that I have not insisted any way upon any Power of Imposition, neither is it the Question in the Business: For no Man's Property is invaded, no Seizure of any Man's Goods, unless they incur it for Contempt; and by a wilful Contempt, the Subject may lose his Property. Therefore, *Dyer, fol. 16.* and 13 *Eliz. fol. 296.* if the King will command his Subject to come into the the Realm, and he will not, he shall forfeit for his Contempt all his Goods; or if he be attached to appear in the Courts of Justice, and not appear, he shall forfeit his Goods, 34 *Hen. VI. 49. 9 Hen. VII. 6.* If a Man will wilfully contemn the King's Command by his Writ, he may be distrained; this he incurreth not by an Invasion of his Property, but in respect of his Contempt.

Then they alledged *Rot. Parl. 50 Ed. III. m. 24.* the Lord *Latimer*, he was sentenced for persuading the King to lay Impositions on the People.

My Lords, I have looked upon the Record, and there the Case of the Sentence is declared, that he himself laid the Impositions, and did take upon him Royal Power; and therefore he was justly sentenced.

And for the Sentence of Dr. *Manwaring*, 'tis nothing to this Purpose. This Writ denieth not the Property to be in the Subject, but saith, the Subject hath the Property; and therefore commandeth the Sheriff to distrain him if he will not pay.

And for the Commission 2 *Car.* for the borrowing of Money for the *Palatinate*, this was for the Recovery of the *Palatinate*, and not for the Defence of the Realm; and besides, it was called in by special Order.

In the next place, they objected and shewed divers Records, that the King hath paid the Wages of divers Mariners and Soldiers. And I do agree it. Is that an Argument that he may not command the Mariners to be sent at the Charges of the County to furnish the King's Ships? This is against the Records that I have remember'd.

So likewise they have cited 21 *Ed. III. Rot. 77. Ex parte Remem' Regis.* The King commanded the Constable of his Castle of *B.* to build Ships, and the King to pay for them. So he doth at this Day; he hath built the *Sovereign of the Seas*, and paid for it.

They have objected Dr. *Cowell's* Book, which was called in. I wish they had read the Proclamation: There are three Causes expressed. First, Because he had writ Things derogatory to the Crown. Secondly, For———. And, Thirdly, speaking irreverently of the Common Law. Just like to the Men who do not spare to wade into all the deep Mysteries of Princes, who are Gods upon Earth.

For their Objection, that the King hath a Revenue belonging to his Crown, for the defraying of all ordinary and extraordinary Charges, and for the Guard of the Sea, as Tenures by Knights Service, Escuage, Wards, Marriages, antient Demesne, &c. Tonnage and Poundage, Service of the Ports, and Profits of the Sea.

My Lords, it is not for us that are Lawyers to look into the Secrets of the King's Revenue; he hath high Officers, as Treasurer, and Under-Treasurer, that look to the Secrets of his Estate, and they know well whether his ordinary or extraordinary Revenues do answer more than his annual Expence. The Story of *Atreus* might deter Men from looking into the Secrets of Princes.

For his Tenures, that Knight-Service Tenure was originally instituted for the Service of *Scotland* and *Wales*, 19 *Rich. II. Fitz-Her. Guard.* 165. and old Tenure, fo. 10. The Duties of Tonnage and Poundage are not given now to the King by Acts of Parliament; and when they were given, it was for the great Charges of this Defence. And besides, those Acts of Tonnage and Poundage only concern the ordinary Defence: the sending forth of the 75 Ships out of the Cinque Ports, it was but for fifteen Days, at their own Charges. And for the Profits of the Sea by Sturgeons, Whales, &c. is it a proper Defence for a Kingdom? And for the Service of the Ports, you may remember by the Records shewed, they were several times commanded *ultra servitium debitum*.

But then they have granted one Case, and, I think, but one; that the King may ordain a Toll in a Fair or Market, or grant Pontage or the like because there is an *ad quod Damnum*, and thereupon shall be an Inquiry *si Patria gravetur*.

The King may grant a Fair, without an *ad quod damnum*, if in his Judgment, &c.

Rot. Scot. 1 Ed. III. m. 8. A Writ directed to the Treasurer to pay for the Shipping at *Yarmouth*. My Lords, it doth particularly appear in the Record, that *J. S.* was Admiral, and going into *Scotland*; so the Defence was for a foreign War.

It hath been mightily insisted upon, that here needeth no Command to furnish Ships, by the King's Writ; every Man, by the Instinct of Nature, will do it, where there is a Necessity; no need of a Royal Power to command it.

Surely this Argument is made by the People, or to please the People. What will the Consequence of it be, but the introducing of a Democratical Government when every Man shall be his own Defender? The God of Hosts chose captains and Leaders to go before his People, and command them. But to give the People this Liberty, that every Man shall do as he pleases, and make a Defence by an Instinct of Nature, is a strange Position.

But it hath been said in these Cases, it is better to sustain a Mischief than an Inconvenience: By this Inconvenience every Man's Property is

taken away from him, as often as the King pleaseth, and in what Proportion he pleaseth.

This, tho' a Maxim in Law, yet it goeth but to Particulars: But the Loss of a Kingdom is both Loss of Liberty and Estate; this is not to be reckoned among the Mischiefs, for this Mischief destroyeth both Head and Members. Therefore I do marvel to hear the Rule of *Mr. Holborne*, Suffer a Mischief rather than an Inconvenience.

The next Objection was the Parliament-Roll 2 *Hen. IV. m. 22. Pur faire des Barges*; this was the Petition of the Commons, that the Commissions granted to Burroughs, Cities and Towns, for building of Barges, should be repealed. The King's Answer for the present is, They should be repealed, but for the future, for Case of Necessity he would advise with the Lords.

It doth not appear that these were granted for the building of any Ships for the Defence of the Realm. These are the Objections that have been made out of the Acts of Parliament, out of the Records, and Reasons they have insisted upon.

Now I come to their Exceptions and Objections against the Writs and Proceedings in this Matter. First they say, there was no sufficient Danger represented by the Writ 4 *Aug. 11 Car.* they say a Supply by the *Mittimus* comes too late; and that the Words of the *Mittimus* are not a good affirmative, *quia salus Regni periclitabatur*. And it doth not appear there was any Danger, 4 *Aug. 11 Car.*

For this I have given it an Answer, That it was not necessary to represent the Danger in the Writ: The King hath secret Intelligence, he hath his Spies abroad, his Ambassadors beyond Seas; he knows the Danger, we know not; nay, he knows that which is not fit to be discovered, and those Dangers by Preparation perhaps diverted another way: It's not fit by a publick Writ to reveal the Danger. But, my Lords, for the Satisfaction of his People, he hath expressed sufficient Cause enough in the Writ; *Quia Salus Regni periclitabatur*: They say there was no Danger represented at this time when the Writ went out. That is mistaken, for the Writ of *Mittimus* doth recite the Writ 4 *Aug.* and that saith, *quod quidem Prædones, Piratas, &c.* Which shews that Danger was the Cause of the issuing of these Writs.

Then they except at this Word, *Salus*; it is a physical Word, and signifieth Health, and you must have no Metaphors in Writs.

Surely the Grammarians tell us, that *Salus* is taken *pro Incolumitate*, as well for Safety as for Health. Metaphors are usual in Writs; I dare be bold to speak, there are more Metaphors in the Register than in any Book: *Register* 61. *Turba, &c.*

Then they have left no Stone unroll'd in this Case: Now they say the King's Testimony, by his Writ, is insufficient for that. Under favour, the *Teste meipso* is without Exception; we are bound to give Credit to it. 1 *Eliz. fol. 105. Ne exeat Regno*; the King affirms *J. S.* will go beyond the Sea, saith the Book, this Averment of the King in his Writ is not traverseable, you shall not aver against it. The Case remembered by *Mr. Solicitor*, was mistaken by *Mr. Holborne* in the Answer, *Hil. 20 Ed. I. Coram Rege Rot. 14.* He saith, these Words vouched in the Record, were but the Saying of the King's Counsel, and not the Opinion of the Court. Clear otherwise, for it was the Saying of the Judges; and then agreed, *Quod Dominus*

Dominus Rex est superlativum Record' & præexcellens. Will your Lordships give Credit to the Marshal of the King's Host, to the Certificate of the Captain of a Company, if the Men be in the King's Service, as 11 Hen. VII. fo. 5. to the Certificate of a Bishop, as in case of Bastardy; to the Certificate of a Mayor and Alderman, by the Recorder, as 5 Ed. IV. 30. and will you not admit of the Certificate of the King by his *Mittimus*?

The next Exception was taken to the *Scir' Fac'* that this *Scir' Fac'* ought not to go forth for this Debt; and gave two Reason for it. First, The Writ of 4 Aug. doth direct a Form of levying, which is by Distress, or imprisoning those that are Rebels. Secondly, It is no Debt to the King, and therefore ought not to be levied by *Scir' Fac'*

My Lords, for this, this Duty is a Duty to the Commonwealth; it is *pro defensione Regni, Thesaurus publicus respicit Regem*; whosoever shall detain any publick Duty, he may be questioned by the King, as the Head of the Body Politick; for that it appeareth, 27 Aff. Pl. 17. it was declared that J. S. and J. D. had levied 100 Marks on the County for the Array of certain Archers; which Money did not come for the Profit of the King. Out of which I observe two things.

First, This Money that was for Archers: The Money was levied on the Body of the County. Secondly, Recover'd by an Indictment at the King's Suit, 27 Aff. Pl. 17. 11 Hen. IV. fo. 2. The Fees of the Knights of the Shire that serve in Parliament, they are reckoned among publick Duties; therefore the Goods of a Stranger may be taken within the Town to pay those Fees, if the Money be not paid; the Distress may be sold, for it is for a publick Duty, 11 Hen. IV. 2. So are the Books: *Regist.* 19. the King may command the Sheriffs to levy these Fees, as well within his Liberty, as *extra. Hil.* 23 Ed. III. Rot. 57. *coram Rege. Juratores Hundredi de S.* they make a Presentment that J. S. and J. D. Chief Constables of E. paid Wages to Archers which went not beyond Sea. So as by this Record it appeareth, these publick Duties are recoverable at the Suit of the King, *quia ad opus Domini Regis. Pat.* 14 Ed. I. M. 1. 14. the King commandeth an Account to be taken of the Murage, and how the Sums levied have been employed. P. 15 Ed. I. *coram Rege* 70. *dors.* Rippon was besieged, they gave Hostages; Promise made by the Town that these Hostages should be redeem'd, they were not: Complaint is made to the King, and it came to the *King's Bench*; and these Moneys being 700*l.* that was promised by the Town for the bringing back those Hostages, was ordered to be paid, because it was for the publick Service. So for other Things that are *pro communi utilitate, inter Communia Hil.* 5. Lib. 4. Rot. 4. *Aurum Regine,* due unto the Queen, may be levied by Process out of the *Exchequer* in the King's Name, nothing more usual.

This *Scir' Fac'* is grounded upon the whole Matter, the Writ 4 Aug. the *Certiorari,* and *Mittimus*; and commandeth that the Defendants shall shew Cause why they should not pay the Moneys assessed upon them for the Publick Service.

My Lords, I have done with the Objections. I shall come to the judicial Records, 24 Ed. I. *Ad custodiam Maris.* Berks, an Inland County, refused to contribute, the Names of those that made Default, were certified into the *Exchequer*; it appeareth by the Records, that Process went out of

the *Exchequer* in the strictest manner, *A capias in manus,* of their Lands, Tenements, Goods and Chattels; and that their Bodies, with Horse and Armour, be sent to *Portsmouth*; for besides the doing of their Service, the Seizure of their Lands and Goods, 24 the same Year, *Exc. Remem. The-saur.* On the other side, J. de S. gives Information to the Chancellor of the *Exchequer,* and Barons, in absence of the Lord Treasurer, of the Preparation of Men in *Flanders,* (this being remember'd before to another Purpose.) It appeareth that after Consultation had, they did resolve to send forth two Writs, one was to the Town, the other to *T. H. Custos Maris,* to call all for Defence of the Maritime, &c. *Exc. Remem' Regis,* 24 Ed. I. Rot. 80. Henry Hussy was seized of the Manor of *W.* in *Berks,* he was assessed to find a Horse *pro Custod' Marit.* He complained in the *Exchequer,* that he had not the whole Manor, and yet he was assessed to find a whole Horse; he did not come and say, I ought not to be taxed, but submitted to the Power, and desired a Manorial Contribution. 28 Ed. I. Rot. 72. the Abbot of *Robertbridge's* Case, remember'd on both Sides, divers times: under favour, the joining of the Issue in the Record is a very full Proof in the Cause; he brought a Replevin against J. S. for taking his Goods in an Inland Town in *Kent*; he pleadeth the Contestation between our King and the King of *France,* and *Leighorne* assigned Keeper of the Sea, that the Plaintiff was assessed unto 7*s.* 7*d.* Anno 22. to 13*s.* Anno 23. to 15*s.* and the Defendant being Collector did distrain; the Plaintiff did not say in bar of this, that he ought not to be taxed, but that he was assessed *ad inveniend'*, &c. for such Lands: the Defendant saith, the Plaintiff holds other Lands in the County, and for that Land he was assessed. Now this doth admit the Power of Taxing. *Hil.* 16 Ed. III. Rot. 23. *coram Rege*: The Jury of *Suffolk* did present that J. Russel, and others, 8 Ed. III. were Hobbellers, elected in the Hundred of *T.* and staid at home: They plead, Not Guilty. The Jury finds that J. Russel did perform the Service, but J. S. did not perform it, therefore committed to Prison, and paid a Fine unto the King. By this Record it appeareth, the Money paid to the Archers and Hobbellers was at the County's Charge. Methinks that the Disclaimer that is by the Commons, 13 Ed. III. Rot. Par. 9. & 11. is in nature of a Judgment in this Case; for there they did disclaim they had no Cognizance, and there likewise upon their own Concession, that the Maritime Parts ought to defend at their own Charges, as the Inland Parts, the Inland Counties. This Concession, 13 Ed. III. is a strong Argument, *Parl.* 21 Ed. III. Rot. 20. when the Commons did petition for a Guard for the Sea: The Answer is, *Soit guard fait,* and that was at the Charge of the Counties, as your Lordships know. 20 Ed. III. divers Ordinances made, which Ordinances made had the Force of a Law: The King and his Council did ordain, *Quod omnes illi,* &c. which have such a Quantity of Land should be assessed to find one Archer; one Hobbeller *decem l.* two Hobbellers *vigint. libr. unum hominem ad arma* 25*l.* This appeareth *Rot. Franc.* 20 Ed. III. part 1. m. 17. in the Counties of *Bedford* and *Bucks.* In the same Year, another Ordinance, that those that did reside with their Families, *cum toto posse,* within six Miles of Maritime Parts, were excused from finding of Men without.

My Lords, upon the Occasion of this Service, there were divers Refusals made, Certificate by *Mittimus* of their Names into the *Exchequer*; as in this Case, *J. T.* and *W. G.* were certified for Defaulters amongst others: upon this, the Court of *Exchequer* award Proceſs againſt thoſe Men and others, which was a *Capias in manus*, Seizure of their Lands and Goods; they came in, and pleaded, they reſided *infra ſex leucas*, with their Families and all their Powers: Iſſue joined; upon this, the Jury impannelled, and it appeared, thoſe that were found within ſix Miles, Judgment *quod ſine die*; but for others, they were impriſoned and fined; for ſo much Land as they had without the ſix Miles, for that they were charged. If I ſhould number to your Lordſhips all the Judgments in this kind, I might ſpeak here till to Morrow-morning. *P. 22 Ed. III. inter Communia*, in the *Exchequer*; *P. 25 Ed. III. M. 27. P. 27.* and *28 Ed. III.* and there is a Number more in other Years, as *29 and 30 Hen. IV.* And, my Lords, according to thoſe Judgments, *Trin. 31 Ed. III. Rot. 3.* the Writ went forth for diſcharging of ſuch as have reſided upon their Lands within ſix Miles. *21 Ed. I. Pipe-Roll*; ſome diſcharged becauſe they were in the King's Service.

So as, my Lords, out of theſe Records thus much may be collected. Firſt, They affirm the King's Power in aſſeſſing and levying. And Secondly, that they are grounded upon thoſe Ordinances made by the King and his Council. Thirdly, The Proceſs went out of the *Exchequer*, and in the King's Name. *M. 22. Ed. III. Parl. coram Baro.* Iſſue joined, whether *J. S.* had Lands to the Value of *40 l.* to find Hobbellers; if he had; then he was to do it.

My Lords, I have now done with the Judicial Precedents; I have cited ſome few, amongst many others. It is now time, after ſo long Premiſes, to draw to a Concluſion: wherein your Lordſhips have heard. Firſt, That the King of *England*, he is an abſolute Monarch; and that by the Common Law of *England*, all thoſe *Jura ſumme Majeſtatis* are inherent in his Perſon. This *Supremum Dominium* for all the Land that any Subject holdeth, it is derived from the Crown; and, as *Plowden* putteth it, *12 and 13.* that there is a tacit Condition in Law annexed to his Grant, that his Officers may do Juſtice to execute Proceſs ſurely upon his Grant. This tacit Condition may be ſubject to a Common Defence. Supreme Jurisdiction, both by Sea and Land, was never yet impeached, and from him lieth no Appeal. And originally, by the Inſtitution of the Laws of this Realm, what was once in his Hand, and was never granted from him, is ſtill in him; he hath abſolute Power of concluding War and Peace: All theſe are in him as he is an abſolute Monarch, and holdeth his Kingdom under none but God himſelf. It hath appeared alſo, that a principal Part of this Kingly Office conſiſts in the Defence of the Realm; that as his Jurisdiction is by Sea and Land, ſo is his Defence. And this hath been made appear to your Lordſhips, both by Precedents before *William* the Firſt, and ſince: *pro communi utilitate*, and, in Caſe of Neceſſity, the Kings of *England* may ordain, by their Proclamation, Writs or Patents, by the Advice of their Council, or Judges, in legal Matters. That the King is the ſole Judge of this Danger, both for the Prevention of it, and for the avoiding of it. Therefore for us to diſtruſt that he will command too great a

Power or Aid, it is a Preſumption againſt the Preſumption of Law.

It hath appeared likewiſe that all the Incidents of Defence are likewiſe inherent in his Majeſty. We cannot build a Fort or Caſtle on our own Ground, without Licence from him. Your Lordſhips have heard the Precedents, particular and general; Precedents which have univerſal Reaſons, *quod omnes ex debito aſtricti ſunt*; Writs awarded by the King's Royal Power, in Times of Parliament, when Parliaments were fitting, and in thoſe Years when great Aids and Subſidies were granted to the King, many times no Cauſe declared, nor the Occaſion diſcover'd.

There is no Act of Parliament made to take away this Power: And the judicial Precedents which your Lordſhips have heard, have affirmed this Power.

My Lords, if there were no Law to compel to this Duty, yet Nature and the inviolate Law of Preſervation ought to move us. Theſe Vapours that are exhale from us, will again deſcend upon us in our Safety, and in the Honour of our Nation. Therefore let us obey the King's Command by his Writ, and not diſpute it. He is the firſt Mover amongst theſe Orbs of ours; and he is the Circle of this Circumference; and he is the Center of us all, wherein we all, as the Lines; ſhould meet; he is the Soul of this Body, whoſe proper Act is to command.

But I ſhall need to uſe no Perſuaſions to your Lordſhips to do Juſtice in this Cauſe: And therefore I ſhall humbly deſire Judgment for the King.

The Argument of Sir Francis Weſton, Knt. one of the Barons of his Majeſty's Court of Exchequer, in the great Cauſe of Ship-Money.

IN *Eaſter-Term* laſt, there was a Writ of *Scire Fac'* went out of the *Exchequer*, directed to the Sheriff of *Bucks*, reciting, That whereas divers ſeveral Sums of Money, ſpecified in a Schedule annexed to the Writ, by virtue of the Writ *4 Aug. 11 Car.* were aſſeſſed upon the ſeveral Perſons, in the Schedule named, towards the providing of a Ship of War mentioned in the Writ, which Sums being ſo aſſeſſed, and not paid, by Writ of *Certiorari 9 Martii 12 Car.* under the Great Seal of *England*, the Names of thoſe ſeveral Perſons and Sums aſſeſſed are certified into the *Chancery*, and by Writ of *Mittimus* dated *5 Maii 13 Car.* ſent into the *Exchequer*, and there to be proceeded upon according to the Courſe of the Law. The Sheriff of *Bucks* is commanded to warn the Parties named to appear, and to ſhew Cauſe why they ſhould not be charged with thoſe ſeveral Sums aſſeſſed upon them.

Hereupon Mr. *Hampden* appeareth, and demandeth Oyer of the Writ *4 Aug.* of the *Certiorari* and *Mittimus*, and their ſeveral Returns; they being all read unto him, he ſaith that theſe ſeveral Writs, and the Returns thereof, and the Schedules thereunto annexed, do not contain any ſufficient Matter to charge him to pay the *20s.* and thereupon demurred. Mr. Attorney-General ſaith, that they do contain ſufficient Matter to charge him. And thereupon the Demurrer is joined.

The Demurrer being joined, the Record was read in the *Exchequer*; and the Cauſe appearing to be of great Weight, it was adjourned unto this

Place in the *Exchequer-Chamber*, to have the Advice of all the Judges of *England*.

Upon this Record, I am to deliver my Opinion; and I take it there is sufficient Matter to charge Mr. *Hampden* with this 20s. And so I give Judgment for the King.

Here have been twelve Days spent in the arguing of this Case at the Bar: I will confine my self to two Hours and less, tho' not tied unto any Time. The Way to be short, is shortly to find out the Points.

But I must first observe, in what State this Cause cometh in Judgment before us. There is a Rule in Law, that if a Man shall demur generally to the Writ, he doth confess all other Matters in Fact that are alledged. The Reasons of it are apparent, Because Matters of Fact are to be tried by Jury, and Matters of Law by the Judges. So in this Case all the Danger alledged by the Writ, is confessed; and the Matter in Law is that which we that are Judges are to deliver our Opinions upon:

It hath been objected, by Mr. *Holborne*, That we are tied to the Writ 4 *Aug.* for that Writ is the Ground of all, and upon that doth all the rest depend. It is true, that if he had relied upon the Writ, it had been so. But his Demurrer is this, That the Writ, and the rest of the Proceedings with the Schedules, do not contain Matter sufficient: So that now they have not put to us the Writ 4 *Aug.* alone, but all the rest, to give Judgment upon. For the Writ of *Mittimus*, it is confessed, That in that there is an Expression, that *Salus Regni periclitabatur*, which is not in the Writ 4 *Aug.*

To this he hath taken Exception, that *Salus Regni periclitabatur*, the Danger is at the present Time of the *Mittimus*, and doth not say, *periclitatur*, 4 *Aug.* 11 *Car.* and therefore this Expression now in the *Mittimus* cannot make good the Defect thereof in the Writ of 4 *Aug.*

To this I answer, That the demurring to all, hath confessed all, and yet the Matter in the Writ is sufficient to express the Danger.

Then he objected, That *Salus* signifies Health, and not Safety; and that the Physicians term it so.

But *Salus* signifies Safety as well as Health. So it is englished in *Cooper's* Dictionary, and so it is taken by Poets and Historians for Safety.

The next Objection was to the Writ 4 *Aug.* That if there were a Danger, it must be plainly expressed in the Writ, &c. the Words are, *Datum, est nobis intelligi*, &c. How cometh the King to understand it? the Danger must be fully expressed.

For this I hold it more fit for a Statesman than myself to give an Answer to, that the King should discover his Intelligence; whether it is fit to make known to all the World the Danger the Kingdom is in. But yet I find that in the said Writ 4 *Aug.* there is expressed both Danger by Pirates on the Sea, and that the Dominion of the Sea is like to be lost: And that these are Dangers to the whole Kingdom. For the *Certiorari*, I find it is directed to the Shire, and the Writ of *Mittimus* to the Court of *Exchequer*; and therefore he could not take Exception to these Writs: whatsoever I shall take Advantage of, it must be contained in the Writ 4 *Aug.*

In this Writ, three Things, as Dangers, are expressed. 1. The Danger by Pirates. 2. The Danger of losing the Dominion of the Narrow Seas. And, 3. The great Peril in this Time of War.

For the Pirates, I shall not meddle with them; they are but petty Robbers, and still running away: The Ports must defend themselves against these; the Inland Counties are in no Danger of them.

I will not insist upon the Dominion of the Narrow Seas, tho' that is considerable; for in the Defence of that consists much the Preservation of the Kingdom. But I shall insist on the Danger of the Kingdom expressed in the Writ 4 *Aug.* thus, *Consideratis etiam periculis undiquaque*, &c. there is Danger, there is Peril round about us; and it is by reason that there are now Times of War, we see Danger on every Side.

There are two Things trouble this Point. 1. The Subject suspects that this is only a Pretence, and that the Kingdom is not really in Danger.

2. That there being great Sums of Money raised upon this Occasion, this, in the end, will be drawn to be annual and perpetual: But if they were satisfied that the Kingdom were really in Danger, likely they would be content to pay the Money till the Danger be over.

For my part, I answer to these Objections, That it is an unworthy Supposition. I must be satisfied, and I am, that the Kingdom was in Danger for two things: One Reason is, Because it is so expressed in the Writ 4 *Aug.* It cannot be denied, but that the Kingdom may be in Danger. It hath been conquered, and so it may be again, therefore it is necessary it should be foreseen and prevented; and somebody must do it, and who better than the King, that hath the Care and Charge of the Kingdom? He saith the Kingdom is in Danger, and hath so declared it by his Writ; why I should not believe it, when the King hath declared it so by his Writ, I know not.

My other Reason that the Kingdom is in Danger is, That it is so *de facto*. It cannot be unknown to any Man, that these three or four Years last past, great Navies have been at Sea, and great Forces on Land. If we should have but an ordinary Defence at Sea by Shipping, no Man can tell or suppose, but that those Navies, being so great, may land where they will, and in as many Places as they will; what spoil would they make before such time as any Resistance could be made against them?

They objected here, That these Navies at Sea, they are engaged in War one with another; we are safe enough, we need not fear them.

I answer, They are, I think, engaged in good earnest; but who knoweth how soon these Wars may end? They may end by the Mediation of Friends, or the Death of some one Person. And when there is a great Navy at Sea, and Forces at Land, how easy is it to remember an old Quarrel, or to pick a new one?

These Things do persuade me that the Kingdom is in Danger, and a very great and just Cause to make Preparation for Defence. And if every Man would be so persuaded, they would not deny the Payment of the Money. An Example of this Nature hath happened in former times: In *Henry* the Seventh's Time, it appeareth, by a Record on the King's Part, *Pat. 1 Hen. VII. pars 3. duo*; there were Wars between the King of

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the Romans and the King of France; they were both Friends to Hen. VII. they ought him no Ill-will; yet by reason of these great Wars, great Forces at Sea, and great Forces at Land, the King would not trust them, but sent forth his Proclamation, to command that Watch and Ward be kept over the Sea-Coasts, and Command was to all his Subjects, that upon short Warning they should be ready for Defence of the Kingdom. So this may well be an Example for the Course that is now taken, for Defence of the Kingdom.

I shall now come to those Reasons, and to the Records that have been objected on either Side. I shall begin with the King's Side, because that layeth a Charge on the Defendant.

It hath been objected, That some of them are not warranted by the Record. First, say they, there is a Ship commanded to be provided, and Money must be levied: But in the End, when this great Sum of Money is collected, it must be disbursed, no Man knows how. No such thing in the Record.

To this I answer, The Record saith, a Ship must be provided, and the Sheriff is to rate the County, *secundum facultates*, towards the same; not a Word of any Money to be paid unto the King. It is a Ship that the Sheriff is to build, and to assess Money towards it.

They have said besides, Here is in the Writ a Command for the Imprisonment of the Party, and that his Liberty, dearer to him than his Life, and his Goods, wherein he hath an absolute Property, shall be taken away. These things, they say, are not warranted by the Writ, nor by any thing in the Record.

I answer, It is not warranted by the Proceedings in this Case; for the *Scir' Fac'* is not to shew Cause why the Party's Goods should not be sold, or he imprisoned, but why he should not be charged with the Money assessed upon him.

They say, That the general Defence of the Sea lieth upon the King; because he hath wherewithal to do it.

I would willingly disburden myself as much as I can of the Objections: A general Answer I shall give to these Particulars.

They say, The King hath personal Service, the Service of Tenants, by Knights Service, Escuage, Castle-Guard, Grand Serjeanty, Petty Serjeanty.

Is the King bound by these to the Defence of the Kingdom? He that doth look on their Originals, will not say so; For these are Tenures reserved upon the several Grants made by the King; and no more Reason is there that the King, by this, should be tied to defend the Kingdom, than there is for the Lords, that are Subjects, and have the like Tenure, that they should be bound to the Defence of the Sea.

They say, He hath besides these, Wards, Marriages, Reliefs, Fines, Issues, Amerciaments, primer Seisin, Fines of Alienation, Respites of Homage, all Fruits of the Tenures; which all must go towards the Defence of the Kingdom.

I answer, These Profits are casual; besides, if he be not bound in respect of the Tenure, as aforesaid, he cannot be bound by the Fruits of them.

It hath been objected, That the King hath the Profit of the Sea, as Royal Fishes, Whales,

&c. Wrecks at Sea, Treasure Trove, Royal Mines, &c.

I answer, These he hath by his Prerogative, and not for the Defence; neither are they fit for a Subject to have.

You say, He hath particular Service from the Cinque Ports and other Places, as from *Malden*, *Colchester*, and other Places; and besides, he hath all manner of Customs, and in Regard of these he is bound to provide for the Defence of the Sea.

It is true, the King must, for an ordinary Defence, use the Means the Law hath allowed him; but that is not now the Question: It is for an extraordinary Defence. The Question now ariseth, if it were asked any Man, Whether they do think in their Conscience that the King is able of himself, out of these, to prepare a Royal Navy, without help from the Subject? None are so senseless as to think it.

There be some other things, to which I shall give a general Answer.

It appeareth by many Records, that the King hath paid Wages to Soldiers, and sometimes hath hired Ships; and unless there had been a Consideration, the King would not have done it.

To this I answer, It was for ordinary Defence, and he is bound to do it; and if he engaged himself by Promise to repay unto them their Charges, I can say no more but this, That every honest Man that makes a Promise will perform it, and so is the King bound to perform his Promise: for that which Honesty binds others to the Performance of, Honour binds the King.

I shall come to those things to which a more particular Answer is to be given. The Charge lieth general upon the whole Kingdom, which I shall divide into three Parts. 1. The Ports. 2. The Maritime Counties. And, 3. The Inland Counties: And to these three I will apply the Records.

1. For the Ports; they are of two Kinds, the Cinque Ports, and the Ports at large. What Services are due from the Cinque Ports, is expressed in *Libr' Rubrico*, in the *Exchequer*, that they were to find 52 Ships, and 24 Men in every Ship, for fifteen Days; which cometh to 1188 Men.

The Ports at large are tied to no certain Service; it will appear by most of these Records which I shall apply, that the Cinque Ports have been charged with more than their Due, and the Ports at large equally with the Cinque Ports. *Pat. 25 Job. m. 6.* the King sent his Writ to the Cinque Ports, and thereby commandeth, *quod omnes Naves paratæ, &c. & homines*; he doth not here tie them to a Number, but all must go. *Claus. 17 Job. m. 7.* here the King sent his Writ *Baronibus suis de Rye*, a Member of the Cinque Ports, *Quod venire faciatis omnes Naves apud Quinque Portus*; this was general, as the others. All the Ships, not tied to the Number of 52. *Claus. 14 Hen. III. m. 13.* a Writ went out to *Portsmouth*, being a Port at large, to provide a Galley, *& eam munire faciant cum hominibus, & quod prompti & parati sint ad proficiscend' cum necesse fuerit.* So here is a particular Charge upon *Portsmouth*, not bound unto it, to provide a Galley with all

manner of Munition. *Claus. 25 Ed. I. m. 5. dorf.* A Writ went unto *Guernsey*, a Port at large, to make a Ship ready as often as Need should require, *de contributione faciend' pro Navibus quoties opus fuerit. Pat. 9 Ed. II. pars II. m. 26.* A Writ goeth forth, and that was directed, *Ballivis & probis hominibus comit' Southampton*, to make *Provisionem Navigii sumptibus propriis*; no Promise from the King to pay this again. *Claus. 20 Edw. II. m. 7.* A Writ goeth to the Sheriff *London*, and that reciteth a Charge formerly laid upon the City, and upon *Kent*, for finding of 12 Ships; *London* to find 9 Ships, and *Kent* 3, and forty Men in every Ship, *ad sumptus illarum. Claus. 20 Edw. II. m. 8.* A Writ directed to the Bailiff of *Yarmouth*, which is none of the Cinque Ports, and they were charged with two Ships at their own Costs. And the same Command, in the same Roll, for all Ships of 50 Tons to be ready. *Rot. Scot. 10 Ed. III. m. 12.* That Writ reciteth the general Obligation that they are bound in to defend the Kingdom, almost in the same Words mentioned in this Writ; it reciteth, that every Man should be assessed *juxta statum & facultates*, so there was a Contribution; then cometh in the Clause *ultra illam pecuniæ summam debit' pro servitiis*. It is true, indeed, the King did pay towards this, but it is expressed to be of his mere Grace and Favour. *10 Ed. III. m. 2 dorf.* A Writ to *Winchelsea*, a Member of the Cinque Ports, and that was *Quod omnes Naves sint paratæ*, both of the Ports & *aliarum villarum*; and the Reason is expressed, Because without their Help the King was not able to defend the Kingdom; and appointeth them, by that Writ, that the Ships should be ready victualled for thirteen Weeks; whereas the ordinary Time was but for fifteen Days. *Vas. 12 Edw. III. m. 8.* there a Writ goeth forth to the Sheriff of *Kent*, and to the Barons of the Cinque Ports, whereby they were all commanded to look to the Custody of the Sea-Coasts; here are the Maritime Towns and Port Towns joined together. *25 Edw. III. m. 22. dorf.* A Writ to *Southampton*, *ad congregandum Naves*. In the same Roll *m. 8.* more Writs to other Towns. *Pat. 12 Ed. III. pars 4. m. 3.* there was a Command that all that dwell within the Isle of *Thanet*, from 16 to 60, should be ready to defend the Sea-Coasts, and this was *juxta statum & facultates. Rot. Alm. 13 Ed. III. m. 12.* *Yarmouth* charged with 4 Ships, and in each Ship 24 Men: whereas usually it was but 21 Men in a Ship, now I think they are come to sixscore Men in a Ship. There are an infinite Number of Rolls to this Purpose, to charge the Port-Towns.

I come now to my second Division, which is Maritime Towns. *Pat. 48 Hen. III. m. 4. dorf.* A Writ went to the Sheriffs of *Norfolk*, reciting, That Ships and Soldiers had staid there long, and that they were intending to depart, because their forty Days were past; command was, that they should stay, *donec aliud inde mandatum fuerit. Claus. 23 Edw. I. m. 5. dorf.* There were Writs directed to the Sheriffs of *Southampton*, *Dorset* and *Wilts*, these three are all Maritime Counties: A Command, that they should raise three thousand Men to defend the Coasts. *Pat. 24 Ed. I. m. 17.* A Writ directed to the Sheriffs of *Lincoln*, *York*, and *Northumberland*, to assist certain Commissioners to take up an hundred Ships, with a competent Number of Men, these are to Maritime Counties: The like Writs go to the Sheriffs of

Suffex and *Southampton*, and these for the Preparation of Ships, and to take them wheresoever they are to be found. *Rot. Pat. 25 Edw. I. m. 6.* Writs went to *Southampton*, *Devon*, *Cornwal*, *Dorset*, and many other Places that were Maritime Towns, for arresting of Ships, and raising of Men. But the Rolls, I might most insist upon, are only these; I'll but name them. *Pat. 24 Ed. I. m. 16. Ex parte Remem. Regis. & Rot. 78. Claus. 25 Edw. I. m. 26. Claus. 13 Ed. III. m. 14. pars 1. dorf. Scot. 10 Edw. III. m. 22.* By all which it appears, not only the Ports, but the Maritime Counties have contributed towards the Charge of the Defence of the Kingdom. And the other Side do hardly deny it, but that the Maritime Towns may be charged.

I will open it plain, that it is for their Ease to bring in the Inland Counties. This Cause is not of so great Consequence, as is conceived; for if the Port-Towns and Maritime Towns may be charged, then it bringeth but in the Inland Counties. In *England* and *Wales* there are fifty-two Counties, thirty-three of these are Maritime Counties; so the Inland Counties are but nineteen at the most, and they contribute but to a fourth Part of the Charge, for the Defence of the Kingdom. And so much to my second Division of Maritime Towns.

3. To the third Division, which is of Inland Counties, that they have been charged; I shall make that appear, that the greater Part of them have been charged formerly for this manner of Defence.

They objected, that the County of *Bucks* is an Inland County, and that Mr. *Hampden* dwells there; and therefore no Reason he should contribute to the Defence, no Inland County ever did it, say they.

There may be two Reasons, why, in former Times, the Writs for the most part went to the Ports and Maritime Counties. 1. Because they have the Benefit of the Seas by Exportation and Importation of their Goods. And, 2. Because they are continually in danger of Pirates and Robbers; and far nearer for a sudden Defence, than the Inland Counties are. But this cannot be held for a sufficient Reason, that they only that are near the Danger should be put to defend the whole Kingdom. I am sure the Inland Counties receive great Gains and Profits by the Commodities from the Port-Towns: and they are the more in Safety, the stronger the Sea-Coasts are kept: and therefore no Reason, but that they should contribute towards the Charge of the Defence of the Sea. For all the Writs, save one Commission, have gone to be for the general Defence of the Kingdom; then no Reason but Inland Counties should be charged. If they say they never did it, it is a strange Prescription, that because they never did it, they never will do it. A Man cannot excuse himself, that, because he never paid Tithe to such a Vicar, or such a Parson, that therefore he will never pay it.

I shall go to the Records that charge the Inland Counties. *Claus. 48 Hen. III. m. 2.* A Writ directed to the Mayor and Bailiff of *Bedford*, an Inland County; it doth recite, that divers of that Town were called to go with the King towards the Sea-Coasts, *contra hostilem invasionem, & nunc necesse est, & causas fortuit' ut levare fac' & expensas*; and appoint at what Rate they should levy it, the Horsemen were to have eight Pence per Day, and the

the Footmen four Pence. *Claus. 48 Hen. III. m. 7.* A Writ directed to the Sheriff of *Huntington*, whereby the Men of that County were commanded to go to *London*, and from thence to the Sea-Coasts, for the Defence of the Kingdom. *Rot. Scot. Exc. Remem. Regis 24 Ed. I. m. 78. dorf.* A Writ is directed to the Sheriffs of *Berks*, and this is to distrain Men to make good the Custody of the Sea-Coasts. *Rot. 26 Ed. I. m. 5.* The like Writs were directed to the Sheriffs of *Hertford, Essex, Nottingham, Derby, Huntington, Cambridge, &c.* and almost to all the Inland Counties, *pro custodia Maritima*, all to come to *London*, and to go from thence to the Sea-Coasts, for the Defence thereof. *Claus. 13 Ed. III. pars 1. m. 14. dorf.* A Writ goeth out to *Oxford, ad distringendum*, for Wages, *pro Custodia Maritima*; one Man was distrained, and he pleaded he had been charged in *Wilt*, and ought not to be charged in another County, and for this there went a *Supersedeas*. *Rot. Viagii 1 Hen. IV. m. 10.* A Writ was directed to the Sheriffs of *Nottingham* and *Derby*, two Inland Counties, and this was to proclaim *quod omnes homines, inter 16 & 60, parati sint, &c.* to go with the King, within the Kingdom, where he pleased. *Claus. 1 Ric. II. m. 18.* Writs were directed to the Mayor and Bailiffs of *Huntington* and *Cambridge*. This Roll is cited by the Counsel for the Defendant; and in part it maketh for the Defendant, and in part against him. The Effect of it is this, the Writ is directed to the Bailiff of *Huntington*, and this recites a former Writ to provide Barges, called *Balingers*, with forty and fifty Oars a-piece, like to a Galley, at the Charge of the most rich Men, and this was *ad custod. Maris*. And the like Writs went to the Towns of *Nottingham, Gloucester, and Warwick*, and divers other places; these Vessels were not devised then, I find them used before in K. *Edward* the Third's time. In the Parliament Rolls, *2 Ed. IV. m. 22.* the Commons did complain, that a Commission was gone forth for the making of these Barges. True, upon a Petition of the Commons, the King saith, he will advise with his Lords, there is no more done; but upon this they cease. I have now done with the Precedents on the King's Side.

I shall now come to that which hath been said on the Defendant's Side for their Discharge. And, *First*, For the Acts and Petitions in Parliament, which are weighty and considerable.

First, For the Statute *de Tallagio non concedendo*, which was in the time of *Edw. I.* It hath been doubted, whether this be a Statute or no. I see no colour of doubt, but that this is a Statute; it is printed amongst the Statutes, and ever accounted for a Statute: and in the Petition of Right, it is recited for a Statute. And to say it is no Statute, because the Parliament-Roll is wanting; if it should be disallowed, it would draw a great Inconvenience with it: for private Men might embezzle the Records, and then if the Records were wanting, the Acts of Parliament should be void.

It is an Act of Parliament no question; but the Question is, whether the Provision made by this Writ, be within the meaning of this Statute.

And I conceive it is not; for there are two Words in this Statute observable, *Taillage and Aid*. By *no Aid* here, will you take away the Aid *pur fils marrier*, or *pur faire Fitz Chevalier*? By *no Taillage*, will you have it so, the King shall de-

mand no Sum of Money? Then if you will give it this large Construction, you will take away all Fines and Amerciements that are due to the King, all lawful Impositions; and surely this was not the Intent and Meaning of this Statute: but it was only to take away all Taxes and Tailages that were unlawful. If they were lawful this Statute meddled not with them.

Now that no Taillage is to be taken, it appears in the Parliament-Rolls, *13 Hen. IV. m. 42.* where an Office was granted by the King, with a Fee, for the measuring of Linnen-Cloth, that the Subject should pay him a certain Sum of Money for every Piece measured; whereupon at the Parliament, the Commons complain, that this was an unjust Imposition, and they desire that they might not be charged with this kind of Taillage, which, as was apparent, was unjust, and so they had present Relief against it.

The next Act of Parliament is *14 Edw. III.* the second Parliament of that Year, three Parliaments being held that Year. The Commons grant the King a certain Sum of Money, for the great Business he had as well on this side the Sea, as beyond; but after a Cessation of the Troubles, then the King is to be at the charge of the future Defence; thereupon the King granteth this shall not be had in *exemplum*, and that they shall not afterwards be taxed without Parliament: and this is the strongest thing that I have heard objected.

It requireth a good Answer; the Words are plain, no Charge no Question; but this is a Charge. I looked into the Petition of Right, and it is not there mentioned, nor amongst those Acts of Parliament that are in the Margin; but the Reason why it was omitted, I know not.

I observe in this Act of Parliament a subsequent Clause, that will go far to the answering of this Objection; for neither in the Acts of Parliament, nor in the Petition of Right, is there any mention made of the Defence of the Kingdom; if the King had been bound to defend the Kingdom, could the Parliament have accepted this as a Kindness at his hands? *14 Edw. III.* This Act was made, yet the Aids continued, none of these Writs found till *24 Ed. III. Rot. Franc. 24 Ed. III. m. 9. & 26.* there went out Commissions to array Men, to the Counties of *Suffolk, Dorset* and *Somerset*, for the Defence of the Maritime Parts; within eleven Years after the making of the Statute, *Rot. Franc. 26 Ed. III. m. 5.* the like Writs to the Earl of *Huntington, Considerantes quod omnes incole tenentur de jure ad defendend' in periculo*; and that they shall array the Men in this County, and to bring them *ad custodiend' mare*; and by this it is recommended for the erecting of Beacons, which is the first Direction of that nature: So here is a new Charge, and within eleven Years after the making of the Statute. The same Year likewise there went Writs to the Sheriffs of *Nottingham, Derby, Salop, Berks, Middlesex, Bucks, Northampton, &c.* So tho' these Writs go almost into every County, and divers other Writs of the like nature, as *Rot. Franc. 28 Edw. III. m. 34.* yet as I said, in no Act of Parliament extant, nor in any Writ that ever went forth that I can find, there is any thing appears to charge the King with the Defence of the Kingdom, and in all of them, no Distinction made between the Port-Towns, Maritime-Towns, Counties, and Inland-Counties; but that all of them are generally chargeable. And for the rest of the Acts of Parliament

liament, they are all mentioned in the Petition of Right, and therefore I pass them over. There is in those Acts, Provision against Loans and Grievances; but this Clause, for the Defence of the Kingdom, I find it mentioned in no Act of Parliament but this of 14 *Ed. III.* before mentioned.

I will now come to the Petitions in Parliament. *Rot. Parl. 13 Ed. III. m. 9, 11.* It was there declared to the Commons, that the *French* had invaded the Island of *Guernsey*, and all this was for Default of a Navy upon the Sea; and therefore it was needful to consider how this might be regained. It was answered by the Commons, That concerning the Right and Guard of the Sea, they desired to give no Advice, saying, they have no cognizance of Things concerning the Sea; but if there be Occasion, the Cinque-Ports are to be charged: and said further, that in the Marches of *Scotland*, they were to defend the Kingdom against the *Scots*: But that this kind of Defence should lie upon them, was never heard of.

I will give you an Answer to your Acts of Parliament, and Petitions of Parliament, by putting of a Case. I will admit you have an Act of Parliament as strong as you can make it, that the whole Charge of the Defence of the Kingdom should lie upon the King, and not upon the Subject, in case of any sudden Invasion. Admit there was a greater Power at Sea, than the King was able to make Defence against; then, I pray, whether should this not give way to the present Necessity, or the Kingdom, should be lost? Is it not better to endure a Mischiefe, than an Inconvenience?

If you say, the Acts of Parliament should give way to Necessity, then you have answered all you have objected.

This is not the only Case of Necessity. I shall put you another Case, when Acts of Parliament must give way to Necessity: That if a Man be attainted of Treason, he is disabled to inherit by Act of Parliament; but if the Kingdom should descend to such a Man, then the Act of Parliament should give way to it. And shall not the Acts of Parliament give way to Necessity for Defence of the Kingdom? What tho' there have been Petitions in Parliament to have it decreed, that this kind of Charge should not be laid upon the Subject? Admit it had been so decreed in Parliament, yet by the Law of Equity they ought to be charged; and in all Reason they ought to be charged towards the Defence of the Kingdom, and that for three Respects.

1. For the Reason given in the Writ, *Quod omnes tangit per omnes debet supportari*; which is but Equity.

2. The King is trusted with the Defence of the Kingdom, and therefore 'tis fit he should have Means wherewith to do it.

But you say he may call a Parliament, and they will give him Means wherewith to do it.

'Tis true, this Thing in question, if it had been done by Parliament, it had been done by the happiest Means; but because he might have it by Parliament, must he therefore have it no other ways? The Question now is, whether what is done, may be done without a Parliament or no? What is done, is done by the great Seal, which is the next Authority to a Parliament. What if an Enemy had come before the Parliament had met, or before they had granted any Aid, should the Safety of the Kingdom depend upon such Contin-

gencies? God forbid. Will you have Forces on both Sides, and restrain the King to his Power by Parliament, which may be so dilatory, that the Kingdom may be lost in the mean time?

3. Many Inconveniences might happen both to the King and Subject, if this should be suffered: If the King should be restrained of his Royal Power, it would turn to his Contempt, both at home and abroad: And all this while the Matter is not so great, it is but parting with a little Money *secundum statum & facultates.*

It is true, as Mr. *Holborne* hath said, that in former Times they have been careful not to leave too much Power to the King; but you would leave so little as would bring him in Contempt both at home and abroad. The worst that comes to the Subject, is but to yield their Help to the King, in such Times of Danger, with a small part of their Estate; and then it would make foreign Nations that know of it afraid of us, which now by this Occasion have Encouragement to attempt that which otherwise they would not.

It hath been objected, That if the King may raise Moneys in this manner, many Inconveniences would follow, and it would be a Means to keep back Parliaments.

To this Objection I answer, It is no Means to keep back a Parliament; for there are many other Causes of calling a Parliament, besides for the Defence of the Kingdom: as, For making good Laws, redressing of Grievances, &c. The King may be engaged in a Foreign War, and the Subject must help him. But to call a Parliament always is not necessary; for when the Kingdom was in the greatest Danger that ever it was, as in 88, and the Rebellion in the *North*, yet no Parliament was called in either of these Dangers.

Next they object, That if this Course be admitted, the King may pretend a Danger when there is none; or a great Danger, when it is but small: and so may raise a great Sum of Money, and the Subject shall have but little Benefit thereby.

I shall give three Answers to this Objection.

1. If this Power be in the King, and that Power be just and equal, then it is not to be taken from him, because he may misemploy his Power. If he misuse his Power, the Fault is his.

2. This Objection cannot be made, unless you suppose Injustice in the King: Make what Laws you will, if the King be unruly, he will break thro' them.

3. If it so falls out, that the Writ going out upon this Pretence, and that great Sums of Money are levied, and the Moneys employed to another Use, it were a great Inconvenience; but in this Case there is no such Fear, for the Writ is expressly to make a Ship; and if they would have taken any Advantage upon that, the Counsel ought to have pleaded it, and the Judgment ought to appear there upon Record. There appears no Money in this Case to be coming to his Majesty's Hands; but it is said in the Writ, *volumus autem, &c.* we will that no part of the Money be converted to another Use than to the building of a Ship.

Then they object, That by the same Reason the King commandeth his Subjects to provide one Ship now, he may command two Ships the next Year.

To this I answer, If the Danger be greater, the Defence must be greater, and then the Supply must be greater; and no Man can suppose that

the King will impose that on his Subjects when there is no need.

I shall now come to the two last Exceptions. *First*, That the Power cannot be given to the Sheriff by the Writ 4 *Aug.* to tax every Man *secundum statum & Facultes*; that this is too great a Power to be committed to the Sheriff.

To that I answer, That I conceive the Sheriff to be the fittest Man, and most indifferent for that Purpose; for if there were Commissioners, or many Men appointed for doing thereof, they might perchance be partial to their Friends: And the Sheriff having all the Freeholders Names, and the Bailiffs for his Ministers, that know the Estates of most Men; therefore out of all doubt he is the fittest Person.

For the Exception to the *Scir' Fac'* it hath been objected, That the King cannot by that Course levy Moneys, because the King having no Interest in the Money, he cannot levy it by *Scir' Fac'*; neither doth it appear in the Writ, to whom this Money is to be paid.

I confess this Point, tho' not spoken to by the Defendant, is of most Difficulty.

Tho' no Person certain is named, to whom this Money is to be paid, and the Sheriff is only to levy it according to the Writ, and the King providing a Ship, I suppose that *Scir' Fac'* may issue for it; for if a common Person claim any thing, or be wronged, or debarred from his Right, he hath, by the Law, a Writ for his Remedy: and shall not the King have the like Remedy for this Ship, being for the Defence of the Realm in general, for which he is intrusted, to prevent a Wrong to be done to this Common-wealth?

But in this Case, the *Scir' Fac'* is not for Mr. *Hampden* to shew Cause, why he doth not pay the Money to the Sheriff; but, why he doth not pay the Money he was assessed towards the making of the Ship; which, for ought I know, when it hath done the Service, is the Subject's again, at whose Cost it was provided, for they might either have hired a Ship or bought a Ship. In *Fitz-Her. Na. Br.* it is held, the King may, for the Good of his People, send forth Writs for removing Common Grievances, and for repairing of Bridges, and the like: And why may not the King send forth Writs for so necessary a Service as to defend the Kingdom? *Claus. 1 Ric. II. m. 7.* A Writ went out to the Mayor and Bailiff of *Oxford* to repair the Walls and Ditches about the Town; and why not as well to repair the wooden Walls of the whole Kingdom, as the Walls and Ditches of a Town? The King hath Charge and Power over all, to see all done.

But it hath been said, When this Money is gathered, we know not what becomes of it.

I answer them, with the common Roll in *Scacc'* 24 & 25 *Ed. III.* where a Commission went forth to levy Money for Maritime Defence, but what was done thereupon is not expressed. But at that Time there was a Cause adjudged in the Exchequer, it is a *Norfolk* Cause, where divers being commanded to go to the Wars against the *Scots*, and had thereupon Armour and Wages allowed them; afterwards comes a Counter-command to some of them not to go, and two Men that had Wages went not. Whereupon a Writ went out against them, and the Jury found the one Guilty, and he was ordered to pay back the Money; but the other going to the Wars, afterwards, by a

second Direction, was quit: And the first gave Security for the Repayment of his Wages, being 30 s. and also for the Armour.

It hath, *Lastly*, been objected, That this Taxation ought to be *secundum legem & consuetudinem Angliæ*; and that ought not to be by Writ, but by Parliament.

To this I answer, That from King *John's* to *Henry* the Fourth's Time, there hath been an Usage and Custom to send forth Writs of this Nature, and since that Time till now not the like Command.

About *Henry* the Fourth's Time, began your Tonnage and Poundage; so long as he had that, the Defence was at his own Charge. There is no Act for taking this Charge by Writ away; it is become a general Custom, and the general Custom makes the Law of *England*; and we are to examine and try new Causes by the old Law, and now compare this with what hath been done in former Times.

I shall make an end: For my own part, I am persuaded in my Conscience that there is imminent Danger: I am satisfied in it, both by the King's Writ, and that which is apparent to every one; and there is a Necessity this Danger should be prevented. I do conceive this Writ to be grounded upon this Danger of Necessity; and that the Danger appears sufficiently in the Writ.

Therefore I conceive that the Proceedings are legal, and that there is good and sufficient Cause to charge Mr. *Hampden*, and that he ought to pay the 20 s. assessed upon him.

The Argument of Sir Edward Crawley, Knt. one of the Justices of Common-Pleas, in the Exchequer-Chamber, in the great Cause of Ship-Money.

THE Record hath been opened, therefore I shall spare that Labour. I conceive the Case in Question to be this,

Whether the King, by his Right of Sovereignty, may charge the Subject, in Case of Necessity, to contribute with him to the necessary Defence of the Kingdom, without the Subjects Consent in Parliament.

Mr. *St. John*, whom I take to be the Mouth of the Defendant's Counsel, confesseth, That this Question is not so much *de re*, of Necessity, but *demedo*, if done without Parliament.

This is one of the greatest Cases that ever came in Judgment before the Judges of the Law. The King's Right and Sovereignty, in a high Point, is concerned, and the Honour and Safety of the Kingdom, on the one Side; and the Liberty of the Subject, in the Property of his Goods, on the other Side.

This is the first Cause, that ever came to Judgment, of this kind, that I know of. Kings have not suffered their Rights of Sovereignty to be debated at the Bar, as now it is; for these are *Arcana Regni*, not fit for publick Debate. The Use of Law was to have Causes debated; as saith one, No Man knows what Metal the Bell is of, untill he hears it ring. This Bell hath been rung very roundly and laboriously on both Sides.

The Subjects have objected, That they may bring Actions against Officers of the King for Assessments by virtue of this Writ. But for that I find

find no Precedents, save only one, which is 25 *Ed. I.* the Abbot of *Robertsbridge's* Case; and he was taxed double for this Matter of Defence of Sea and Land, in two several Places: and therefore he brought his Action to be discharged in one Place. But in Cases of this Nature, they petitioned in Parliament to the King for Redress, as appears by many Precedents.

In *Bracon*, who wrote after *Hen. III.*'s Time, and inclined to those Times, when the Liberty of the Subject was strongly maintained, he saith, *Totum Regnum petatur, &c.* They used to petition the King; but now you have Actions brought against the King's Officers in the *King's-Bench*, *Common-Pleas*, and here in this Court; and it pleaseth the King to bring this *Scir' Fac'* to the End that the Right of this Cause may be tried by the Judges of the Law.

In 11 *Rep.* and *Coke's Comment. on Littleton, fol. 10.* it's said, That the Laws and Customs of the Parliament are obscure: *Lex est consuetudo Parliamenti, querenda est ab omnibus, ignota a multis, & cognita a paucis.* As *Tully* said of one that would define *Anima*, and said it was *Musica Harmonia*, that was, a Musician: *Homo non multum recessit ab arte sua.* I, for my own part, will keep myself to my own Art of the Books of the Law and Statutes. And if I use the Help of others, I hope you will pardon me for that.

I will briefly propound my Order and Method, thro'out the Case. 1. I will remove some few impertinent Discourses, which are not in the Record, as being out of the Ring of this Bell.

2. I shall propound, that the sole Care of Defence, at Sea and Land, *Jure Regio*, appertaineth to the King, and none other; and that he is the sole Judge of this.

3. That the sole Charge of Defence, in ordinary Cases, regularly and legally appertaineth to the King.

4. That the extraordinary Charges of Defence ought to be supplied by the Parliament, and upon this Rule, *Quod omnes tangit ab omnibus debet supportari.*

5. If the Defence be of Necessity, and the Danger great, and so great as the King's Revenue is not sufficient to supply the Occasion, then the Rule comes to be in Use, *Qui sentit commodum sentire debet & onus*; and if it be general, *Quod omnes tangit, ab omnibus debet supportari.*

6. That in the Defence, where all ought to join the Sea and Land ought to assist and contribute the one to the other.

7. I say, there are some particular Cases, in which this Charge of Defence cannot be imposed by Parliament.

8. That the King solely is intrusted, by the Law, to impote this Charge upon the Subject.

And, 9. These being my Generals, I shall come to my Minor, and conclude that this Charge is justly imposed by the King, without Parliament.

As to the first Impertinency, you speak of Tonnage and Poundage: Is there any such Grant on Record? Shall we take notice of a Thing that is not *in rerum Natura*? I say, I wish it had been granted, for *Qui adimit medium demit finem*: He that taketh away the ordinary Means of Preservation, is the Author of Ruin and Destruction. You see it is taken, but you cannot tell by what Right. If this were material, you wronged your Client, you pleaded it not: and if it is not mate-

rial, you wronged us, and your Auditors, and yourselves, to talk of it.

You say, This Ship-Money hath been charged for these three Years together; Is this Discourse within the Record? If not, you speak without Book.

You say, The King hath imposed great Sums of Money upon Merchandizes: But what is this to the Business now in question?

Then you talk of a Property the Subject loseth thereby; but this rather to abuse the People, without either Colour or Shadow. It was *ad faciendum*, or rather *inficiendum Populum*. If you at the Bar had not spoke it *Argumenti Gratia*, it could not but have proceeded out of the Depth of Malice, or Ignorance, or both. If one be found guilty of Murder, and the Judge knoweth the contrary, what shall be done? He ought to acquaint the King therewith; for it is the King's Right of Sovereignty to pardon, but the Judge hath no such Power. I say, the whole Care appertaineth to the King only, and he is the sole Judge both of the Defence at Sea and Land. *Pitz Na. Br. fol. 113. Le Roy de droit saver & defender son Realme al bien vers la Mere come vers les enemies.* *Regist. fol. 127. Rex, &c. pro eo quod nos Dignitatis nostrae Regni ad providend' salutacionem Regni nostri circumquaq; sumus astrikti.* *Fortescue cap. 37. Omnes potest' Regis deferre, &c. in defensione & tuitione Regni.* I think no Man can well oppose this.

But we will come to the *Third*. The sole Charge of the Defence regularly and legally appertaineth to the King. *Braet. fol. 1. In Rege, qui recte regit, haec duo sunt necessaria, Arma & Leges, &c.* with which Words accords *Justinian*, in his *Proemium*, from whence that is taken in *Pleowden, fol. 315.* in the Case of Mines. One Reason why he saith Royal Mines belong to the King, is, because he is the Head, and the People his Members. And he is to preserve the Subject two ways: by Arms, to defend them against all Hostility; and by Law, to preserve them from Injuries. 3 *Rep. fol. 11.* The Body, Lands, and Goods of the King's Debtor were liable to Execution; *quia Thesaurus Regis est Pacis vinculum & Bellorum nervi, Rep. 11.* The King's Treasure is the Ligament of Peace, the Preserver of the Honour and Safety of the Realm, and the Sinews of Wars; and is of high Estimation in Law, in respect of the Necessity thereof; that the imbezzling of Treasure Trove, tho' not in the King's Chest, is Treason. And Treasure, and other valuable Things, are so incident to the Crown, that they cannot go from the Crown. He hath on the Land, Wardships, Elcheats, Amerciaments, &c. for the Maintenance of his Honour and Dignities Royal. For the Sea he hath Waks, &c. these do little towards an Army to defend the Sea. The Reason why the King hath the Customs, is for the Protection of Merchants upon the Sea, against Pirates and Enemies of the Realm. So I shall conclude this Point, That the ordinary Defence, both for Care and Charge, of Sea and Land, doth appertain to the King.

The next is this, which is my *Fourth* Head; That the extraordinary Charge of Defence regularly ought to be supplied by Parliament, and cannot be done without it. Albeit Subsidies be of Gift and Grant, yet this is of Right and Reason; the King is *Pater Patriae*. If the Son give to the Father when he wants, it is his Duty. 19 *Hen. VI.*

the Rector of *Cheddington's* Case, whether the King may grant a Discharge of a Fifteenth? If the King may grant a Discharge to one, so he may do to all. It is against Law the King should not have Subsidies of his People, in case of Necessity and Danger; the same Law that willeth the King should defend the People, tells us we should grant to the King Aids for the Defence. This is to be done in Parliament, regularly; and that this extraordinary Charge cannot be imposed but in Parliament, these are their Objections.

I come now to the Statute *de Tallagio non concedendo*, which without question is a Statute, being in our printed Books; and in the Petition of Right 3 *Car.* it is recited as a Statute, and established: the Words of that are, *Nullum Tallagium sine assensu Parliamenti.* And 14 *Ed. III. cap. 1.* there the King expresses himself, he will not impose any Charge or Aid on the Subjects, but in Parliament. *Fortescue* reciteth this to be the Law, No Charge without Parliament. And *Bodinus, lib. 1. fol. 97.* saith, "That the Statutes of England are as a Buckler to defend the Subject against the King, for laying any Charge upon them but by Parliament." And in his sixth Book he magnifieth this Kingdom for the due observing this Law. Other Kings, in this Point, have no more Power than the King of England for that it is not in the Power of any Prince in the World, and his Pleasure, to raise Taxes on the People, no more than to take another Man's Goods from him. And yet, nevertheless, if the Necessity and Danger of the Commonwealth be such, as it cannot stay for the calling of a Parliament, the King in his Wisdom and Foresight may lay a Charge without their Consent; and this is by the Law of *Jus Gentium*, the Rule of Law and Reason holdeth *quod omnes tangit ab omnibus debet supportari.*

And so I come to my Fifth Head, If the Defence be of Necessity, and the King's Treasure doth not suffice to defray the Charge, then, instead of the Rule *quod omnes tangit, &c.* this Rule succeeds, *qui sentit commodum, sentire debet & onus.* If the Treasure of the King will not defray the Charge, I do not conceive he is bound to sell or pawn his Crown, or his Lands, tho' some Princes have been so courteous to do it, and paid it again.

You say at the Bar, He must spend all, and more if he had it. I will put this Case in the 10th *Rep.* One is bound at the Common Law by Prescription to repair a Wall against the Sea, yet in Case of Necessity, in Avoidance of publick Mischief, the Prescription ceaseth; yet in this Case, if Reparation must be done, then cometh this Rule, *quando Impotentia excusat, tunc qui sentit commodum, sentire debet & onus.* And if he be not able to do it, the Charge being so extraordinary, shall he not have Contribution? The Law compelleth not Impossibilities. So the King is bound to defend the Kingdom by Land and by Sea: but if the Defence be so great, and the Danger tends to the Subversion of the Kingdom, and the King not able to make Defence, the King and his Subjects ought to contribute to this Charge, in due Proportion. *Ubi est eadem ratio, ibi est eadem lex.* If the Law shall make this Provision for a small Level of Ground, *à fortiori* for the Commonwealth, in the Time of extraordinary Danger and Necessity.

Sixthly, In this joint Charge of Defence, the Land ought to assist the Sea: nay, it is not possible that any Island should be defended without the wooden Walls of the Navy at Sea. *Canutus the Dane* enter'd the *Thames* Mouth with an Army, and afterwards went and landed in *Dorsetshire*; and again shipped his Men, and enter'd the *Severn*; then he went into *Worcestershire*, then he sailed back again to other Parts of the Kingdom: so he that is Master of the Sea, may make great Spoil upon the Land at Pleasure. The *Netherlanders* having a great Navy, the *Spaniards* fortified strongly; as soon as the Wind served they set sail, and were Fourscore Miles off before the *Spaniards* could march with their Forces to make Resistance; the *Netherlanders* presently got a strong Place, and afterwards sailed to another Place, and took that also. These are no new Examples, for Islands to be Masters of the Sea. Our Grand Army in 88, at *Tilbury*, what Good had they done, if the *Spaniards* had been Masters at Sea? It is not possible for an Island to be safe, without a Navy at Sea, as appeareth in *Sir Walter Raleigh's History of the World*; and if the Sea must defend the Land, why should not the Land be contributory for the Defence of the Sea and Land? There are several Precedents where Writs have gone to Inland Counties, to charge them to go to the Custody of the Sea. *Claus. 48 Hen. III. 24 Ed. I. 26 Ed. III. &c.* Writs have gone into *Berks, Oxon, &c.* Inland Counties, to command them to contribute towards the Defence of the Sea.

To the *Seventh*, That in case of instant Danger, the Imposition cannot be by Parliament. I will here consider the Nature of the Danger, as Mr. Solicitor readily pursues it; if it concerns the Essence, Subversion, Destruction and Ruin of the Kingdom, or the Dishonour of the Kingdom, *Quando Hannibal ad Portas*, for the Senators then to sit down in their Robes, is rather a Charge to the Commonwealth, than ought else. It is no Time then to call a Parliament, no well-advised Man will think it fit; here are *Pericula visa*, the Danger is certain, none will say it is fit to call a Parliament.

This Kingdom of *England* hath been four Times conquer'd, and therefore we have Reason to foresee the Danger; first, by the *Romans*, then by the *Saxons*, then by the *Danes*, and last by the *Normans*.

The Moralists do make three Parts of Providence. 1. *Memoria præteritorum.* 2. *Perspicientia presentium.* And, 3. *Providentia futurorum.* It much concerns the King, the Head of the Commonwealth, to be circumspect in the Prevention of publick Danger; Conjectures and Probabilities are to be regarded. Now put the Case upon a probable and violent Presumption; a potent Enemy is prepared and ready to come. Is it not fit there should be a Defence prepared instant'y? Besides, there may be just Reason of State, wly an Enemy is not fit to be revealed in Parliament; for if great Preparations be, and very probably against us, then to discover them to be an Enemy, is to give them Occasion to become a Challenger. No Man can know the certain Event of Things. One may be a Friend, in shew, to the Kingdom, or a Neuter, not yet openly discover'd; yet we may be mistaken in our Opinion of them. I leave this to your Consideration, whether it be fit, or no, to discover our Thoughts, in Parliament, of an Enemy?

The *Eighth* Thing is, That in these Cases of Necessity and Danger, the King, *Jure Gentium* may charge the Subject, without his Consent in Parliament, by his Regal Prerogative; for in the King there are two Kinds of Prerogatives, *Regale* & *Legale*; which concern his Person, Lands and Goods.

Now for the Prerogatives Royal of a Monarch, they may be resembled to a Sphere; the *Primus Motor* is the King. It is observed, that every Planet but one hath a little Orb by it self, that moveth in its petty Compass: So the Center is the Commonwealth, the King is the first Mover. I will repeat some of these Prerogatives, for they are by all Laws, and by our Laws.

The first Regal Prerogative is this, that containeth all the rest, That the King may give Laws to his Subjects: and this doth not detract from him, when he doth it in Parliament. 2. To make Peace and War, 19 *Ed. IV.* 6. 3. To create supreme Magistrates. 4. That the last Appeal be to the King. 5. To pardon Offences. 6. To coin Money. 7. To have Allegiance, Fealty and Homage. And, 8. To impose Taxes, without common Consent in Parliament. These are the principal, and there are many more of them, and allowed by Law. *Comines, fol. 179.* saith, "That if the Cloud be seen but afar off, the King, without the Consent of the Subjects, cannot tax them; but if the Cloud be over-head, the King may call certain wise Persons to him, and tax his Subjects."

You say, That if the King doth move a War Offensive, there's Time enough to call a Parliament; if Defensive, the Cloud is seen long before.

But, oh, good Sir! is this always true? Is not the Cloud sometimes even over the Head, before descried? If you read *Comines*, he will tell you, That in times of Peace we ought to fortify. "But in these Cases, where the Danger is imminent, saith *Bodin*, *lib. 1. cap. 47.* the King ought not to expect a Parliament, but is to raise Moneys suddenly, and such Impositions laid upon the Subjects are just and necessary." This is the Opinion of those Writers, who wrote not according to the Law of any one Kingdom, but according to the Law of Reason. I could vouch these two Authors, concerning the Right of Sovereignty which they gave to Kings, to impose Charges on the Subjects, without Consent of Parliament, in time of Necessity.

But what if the King will levy Money, upon Pretence of Defence, in time of Danger, and dispose of it otherwise, and the Danger not so apparent?

I say, so pious and just a King will never pretend a Danger, if it were not *Re vera*. And if any Man will think the King will charge himself and his Subjects to no Purpose, far be it from my Thoughts to think so. This Money, thus taxed, is employed accordingly, for the Defence of the Kingdom, together with the King's own Money; which he would not do upon Pretence.

Again, The King is *Pater Patrie*, therefore, by the Law of Nature he is intrusted with the Defence of the Kingdom: and this Power to tax his People, is but a Consequence of that.

To say, in time of extraordinary Danger and Necessity, *Boni viri sunt sibi leges*, I say, for every Man to be his own Judge, is for every Man to

do what he listeth. Mr. *Holborne* tells you, That if it rests in the King's Power thus to tax the Subjects, whereas Mr. *Hampden* is now taxed 20 s. he may the next Year be taxed at 20 l. for, saith he, "If the King may tax when he will, then he may what he will." It's an ill Consequence you make of it; you magnify Parliaments, great Reason we have for it; let us do so of Kings: let none think dishonourably of Kings; no question they will regard the Laws of God; and to make such Objections, is not handsomely handled.

Now we come to Precedents, and Acts of Parliament. For Precedents, my Brother *Weston* hath taken Pains to repeat them, therefore I shall not.

Two Precedents the Defendant's Counsel have much relied on, *Rot. Parl. 2 Rich. II. pars 1.* I have here the Record; and in truth, it were a great Ease to the Judges, and to the Cause, to avouch them truly. This of *Richard II.* was in his Minority; and no Order being taken for the Defence of the Kingdom against the next Summer, nothing was found in the King's *Exchequer*: a Council was called, and for Conclusion, they say, They cannot remedy this Mischief without a Parliament: whereupon a Parliament was called; and in the mean time the King having Money's lent him, he gave Security to repay it.

Consider this, the King was at this Time but an Infant; it was in a very troublesome Time, many of those that were Parliament-Men made Default to attend, excusing themselves, that they had other Business. This then that was done was but a Resolution in troublesome Times; this is no such binding Business, that it should be made so much of.

And *Rot. Parl. 2 Hen. IV. M. 22.* a Commission went forth for the providing of Barges; and the Commons petitioned to avoid this Charge, and pray'd that the Commission might be repealed. And the King, upon this, calls in the Commission. Shall this be a Disclaimer of the King's Right? He saith, he will speak with his Lords. This is only a satisfactory Answer. Besides, the King was but an Usurper. Now to say this Answer of the King's is a Resolution in the Case, is a great Mistake.

He that will go thro' this Load of Precedents that have been vouched on both Sides, he had need to have more Time than Mr. *Holborne*, who spent four Days.

You have alledged Precedents both before the Conquest and since: that of the *Danegelt*, tho' it was a heavy Yoke, yet it was necessary to be borne: whether it was granted by Parliament or no, *non constat*. I say, it is a good Precedent, and I hold it good without Parliament.

Some distressed Kings, as King *John*, *Henry II.* and *Richard II.* they did indeed do that by borrowing, which they might have took of Right.

Now, to give an Answer to the Statutes of 25 *Ed. I.* and 14 *Ed. III.* and the Petition of Right 3 *Car.* Admit, I say, there were an express Act, That the King, were the Realm in never so much Danger, should not have Aid from his Subjects, but in Parliament, it is a void Act; will any Man say such an Act shall bind? This Power is as inseparable from the Crown, as the pronouncing of War and Peace is: such an Act is manifestly unreasonable, and not to be suffered; saith *Doctor and Student*, To follow the Words of the Law, were,

were, in some Cases, Injustice, and against the Good of the Commonwealth; wherefore, in some Cases, it is necessary to leave the Words of the Law, and to follow that which Reason and Justice requireth: and to that Intent Equity is ordained, which is no other but an Exception of the Law of God, or Law of Reason, from the general Rules of the Law of Man: Which Exception is tacitly understood, in every general Law. This Imposition without Parliament appertains to the King originally, and to the Successor *ipso facto*, if he be a Sovereign in Right of his Sovereignty from the Crown. You cannot have a King without these Royal Rights, no, not by Act of Parliament.

Again, These Acts bind not, for that a favourable Construction, in Case of the King, is to be had in all Cases, *Doctor and Student, fol. 27.* 'Tis not possible to make any general Rule in Law, but it shall fail in some particular Case: If a Law were made in a City, That no Man, under pain of Death, should open the Gates of the City before Sun-rising, yet if the Citizens, before that Hour, flying before their Enemies, came to the Gates of the City, and one, for saving the Citizens, open the Gates before the Hour appointed, yet he offendeth not the Law, for that Case of Necessity is excepted from the said general Law by Equity. So for the Statute in *Edward the Third's* Time, not to give any Relief to a sturdy Beggar, upon Pain of Imprisonment; yet if one relieves him with Clothes, in the Extremity of cold Winter, to save his Life, he shall be excused by the same Statute. By such an Exception of the Law of Reason and Equity, as aforesaid, is this Power reserved to the King.

Impossibilities are to be excepted out of all Laws: *Nemo tenetur ad impossibilia.* Poverty and Impossibilities, as one answered, were more mighty Goddesses than either Force or Love.

But now you will say, Where is this Danger? How doth this Necessity appear? If you would find it, you need not to enquire for it either by Sea or Land; but in this very Record, the Writ sheweth, and the most favourable Construction is to be had for the King; as in *Plowden's Comment. 336.* the Case of Mines of Gold and Copper.

Now all this while I have been in the General, and in a manner in Propositions; I come now to Application. Before I descend to it, I shall shew upon what Part of the Record I shall ground my self. Tho' in the *Mittimus* it be *Salus Regni periclitabatur*, which is said to be metaphorical, for that it asketh no great Answer; it is good enough, as in the Writ of *Oyer and Terminer, omnes qui habent damnum vel salvationem*, are bound to contribute. Will you bind the King to the Language of *J. S.*? May he not express himself in what legal Manner he pleaseth?

You say, That this Phrase of *Salus Regni* is too general: If it be alledged, and you demur upon it, you confess this for the most Advantage for the King; as in the Case of Mines. It is not alledged in the *Scir' Fac'*; this might have been made a good Question.

But without all these, I conceive the Writ *4 Aug.* containeth the Causes for this great Preparation, and expresseth them in particular. What if it were no more but this, Left we should lose the Dominion of the Seas? What is it to be called *Dominus Maris*, and not to maintain it, but to suffer this Princely Honour to perish, and others to become Masters of it? What Havock and

Confusion would follow? And this the true Intention of the issuing forth of this Writ.

Next, *Consideratis etiam periculis, &c.* that is, The Danger is so evident, and so great, in these warlike Times, that of Necessity Defence must be made, both by Sea and Land.

Next is great Oppression used at this Time, *Datum est nobis inielligi quod Prædones, &c.* that the Pirates do take and spoil our Merchants, carry our Men into Captivity: What will you say to this: Let them take our Men, and let us have a Parliament, and we will bring them home again: The Land was never without Thieves, nor the Seas without Robbers.

Next, *paratum periculum & præparans, &c.* now these Ships go for the Defence of the Sea against this Danger, *& vestrum & vestrorum.* The Writ saith the whole Kingdom is in Danger, both by Sea and Land; and you have confessed this by your Demurrer.

But you complain before you are hurt, because you have seven Months Liberty, a Parliament might be called in that Time: Now in this Time of imminent Danger, it is no Time to call a Parliament.

You say it hath continued for three Years. Put the Case the Danger continueth for three Years, and then ceaseth, and then the King ceaseth to lay a Charge, and the Danger begins again the next Year; what! Shall not the King require Aid as the Danger increaseth?

And now to conclude, without Repetition: It doth appear by this Record, that the whole Kingdom is in Danger, both by Sea and Land, of Ruin and Destruction, Dishonour and Oppression; and that the Danger is present, imminent and instant, and greater than the King can, without the Aid of his Subjects, well resist: Whether must the King resort to Parliaments? No. We see the Danger is instant, and admits of no Delay. Shall we go home, and sit together in careless Security? Not so. But let us resort to our pious and just King, whose Prerogative and Right of Sovereignty is to defend the Realm, and to maintain his Subjects Liberties. And so I give Judgment for the King.

The Argument of Sir Robert Berkley, Knt. One of the Justices of the Court of King's-Bench, Feb. 10. 13 Car. 1637. in the Exchequer-Chamber.

The Case.

IN *Aug. 11.* of the King's Reign, there issued out of the Court of *Chancery* his Majesty's Writ, directed to the Sheriff of the County of *Bucks*, and the head Officers of Villages and Boroughs in that County, *& probis hominibus*, that is, to all the King's good Subjects, *in omnibus Villis, Burgis, & aliis locis in Com' Bucks.*

I may call this Writ, a special Writ, or a Commission upon the Case. It is not a *sic volo*; it beginneth with divers weighty Reasons or Causes, *pro ratione* of the issuing of it; as,

1. His Majesty had Intelligence that certain Pirates, *& maris grassatores*, as well *Mahometans* as others, were *congregati* upon the Sea, *quod ab olim per gentem Anglicanam defendi consuevit*; and did daily rob and spoil the Ships and the Goods of the Subjects of the King, and of his Confederates, and did

did captivate the Persons of those whom they took.

2. His Majesty did *conspicere*, that those Men did *navigia indies præparare, ad mercatores ulterius molestandos, & ad Regnum gravand' nisi citius remedium ponatur.*

3. His Majesty did consider the Perils, *quæ undique illis guerrinis temporibus imminabant, ita quod regi & subditis suis defensionis maris & regni, omni festinatione, quâ poterit, conveniebat accelerare.*

4. His Majesty's Royal Resolution was, *Defensionis regni, tuitioni maris, securitati subditorum, & saluæ conductioni navium & merchandizarum providere.*

Maxime pro eo quod the King and his Progenitors Domini maris predicti' semper hæcenus extiterunt, & plurimum læderet Regem, si honor iste regius suis temporibus dispareat, aut in aliquo minuat.

5. Lastly, his Majesty called to mind a *Regula juris & rationis*; *Onus istud defensionis quod omnes tangit, per omnes debet supportari, prout per legem & consuetudinem Regni Angliæ fieri consuevit.*

Upon these solid Reasons, as upon a firm Foundation, the *Mandamus* of the Writ is grounded, and followeth in the next place.

The *Mandamus* is,

1. That all they to whom the Writ is directed, should among them, *providere unam navem de guerra*, of such a Burden, and with so many Men, and other Particulars, as are mentioned at large in the Writ.

2. That this Ship, so furnish'd, be ready at *Portsmouth* by the first of *March* then following, and from that Time, for 26 Weeks, to go with his Majesty's and other Subjects Ships, and to attend the Direction of those to whom his Majesty should then commit the Custody of the Seas, for Tuition of the Sea, and Defence of the Realm.

3. That all this be performed, *ad custagia* of themselves *tam in victualibus quam hominum salariis, & aliis ad guerram necessariis.*

After the *Mandamus*, an *Assignavimus*, or Commission to the Sheriff and the head Officers cometh, and then Directions to them.

The Commission to the Sheriff is *inter alia*.

That he shall make an Assessment *secundum facultates cujusque*, for Contribution to the Expence of the Provisions aforesaid, shall appoint Collectors, shall levy the Money to be assessed (if it be denied) *per distributiones aliosve modos debitos*, and shall *carceri mancipare* those who shall be *contrarii & rebelles*.

The Directions to the Sheriff begin with a Clause of *Nolumus*.

The King forbids that the Sheriff shall levy more than is necessary for the Expences: That any Money levied shall be appropriate to any other Use, *quovis quaesito colore*: And then, lastly, in case that more be collected than shall be useful, the King commands that Restitution be made of it.

After this Bill, 9 *Martii* 12 of the King (which is above a Year after the Ship should have been ready at *Portsmouth*) a Writ of *Certiorari* issued out of the *Chancery*, directed to the several Sheriffs *pro tempore* of *Buckinghamshire*.

That *Certiorari* recites the Writ of *August* 11.

And for that the King was informed, that some had not paid the Sums assessed upon them, but refused to do the same; the King commands the said Sheriffs respectively to certify into the *Chan-*

cery the Names of such Refusers, and the Sums assessed upon them.

The Sheriffs accordingly make Returns in a Schedule annexed to the *Certiorari*. In one of the Schedules there is, *inter alia*, *Stoke Mandevile*, Mr. *John Hampden* 11.

After this, by Writ of *Mittimus* out of the *Chancery*, tested in *May* last, the Tenure of the Writ of *Aug.* 11. with these Words, *quod quidem brev' pro eo quod regn' nostr' Angliæ & popul' nost' ejusdem periclitabatur emanari curavimus inter alia brev' ad hujusmodi provisionem, & assessament' faciend' per singulas comitatus Angliæ, &c.* And also this Record of the Writ of *Certiorari*, with the Return of it, and Schedule annex'd, are sent into the Court of *Exchequer*.

By that *Mittimus* the King commands the Lord Treasurer and Barons, *quod inspectis* those Records, they should *facere ulterius inde pro levatione, collectione & receptione* of the Sums unpaid, *prout de jure, & secundum legem & consuetudinem regni Angliæ fuerit faciend' & non aliter.*

By which (*prout*) but especially by the (*non aliter*) the King's Honour and Care of Justice are singularly eminent; for the levying the Money anew is not commanded, nay, it is forbidden, unless *Jus, Lex, & Consuetudo Angliæ* do warrant it.

After this, and in the same Month of *May* last, the Barons awarded a Writ of *Scir' Fac'* into *Buckinghamshire*, against those whose Names are in the Schedule aforesaid, thereby commanding the Sheriff to warn them to appear in the *Exchequer* by a Day, to shew Cause, if they can, why they should not be charged with the Payment of the Sums of Money assessed upon them and unpaid.

The *Scir' Fac'* is always a judicial Writ; and certainly the Barons have proceeded very judicially and gravely, in awarding of it. In weighty Cases, especially, if they be not of common Impression, proceeding *lento pede* is truly judicial.

Upon that *Scir' Fac'* Mr. *Hampden* is returned garnish'd.

He appearing, and having heard the several Writs and Records beforementioned, without taking the common or any other Protestation, hath demurred generally.

The Words of his Demurrer are,

That *materia contenta* in the same Records, *minus sufficiens in lege existit ad ipsum onerandum.*

He doth not say, that *materia* is *minus vera*; but, acknowledging the Matter contained in the Writ to be true, he putteth the Cause *de bono & malo*, upon Sufficiency or Insufficiency, in Point of the Law, for charging him.

Mr. Attorney for the King hath joined in Demurrer.

Upon this Demurrer, one main or grand Question, and some other inferior Questions have been started.

Because I have Time little enough for the grand Question, I will not trouble you with arguing, or so much as singling out the other inferior Questions. My Brother *Weston* hath spoken to some of them, I concur with him.

The grand Question is shortly this,

Whether, as this Case is, or in this special Case, (as it is upon the Pleading) the Charges imposed by the King upon his Subjects, for Provision of Shipping, without common Consent in Parliament, be good in Law, yea or no?

This is a Question of extraordinary Weight, of infinite Consequence, the greatest that every came before Judges of ordinary Courts of Justice.

Qui ad pauca respicit, facile pronunciat; but he that will determine in this Question, must *respicere ad multa, eaque magna & ardua*.

Upon the Debate of this Question at the Bar; elaborate, learned and strong Arguments have been made on either side.

And truly, for my part, I have laid the Question to my Heart.

All the Arguments which have been made in it, I have been present at, and specially heeded.

All the Records which have been brought to the Judges, on either side, I have read over as seriously as I could.

I have likewise considered of the Reasons and Authorities in Law, pertinent to this Case.

And upon my Pains, Deliberation and Study, I have concluded with myself, and in mine own Understanding am satisfied, and think I shall satisfy others, that as this Case standeth, upon the Records in the Pleading, or in this special Case; the Charge imposed is good in Law, and consequently that Judgment ought to be given against Mr. Hampden, *Quod oneretur*.

For my clear Delivery and Expression of my self, I divide all that I shall say into these four Heads.

I. *I will state the Case, and will settle the proper Question of it, as the Pleadings are.*

(The true stating and settling of a Case conduceth much to the right Answer of it.)

II. *I will consider the Policy and fundamental Rules of the common Law, applicable unto that which upon stating of the Case shall appear to be the proper Question.*

III. *I will consider the Acts of Parliament, the Answer to Petitions in Parliament, and the several Magna Charta's of the Liberties of England, which concern the King's Proceeding in this Case.*

IV. *I will answer the material Objections, which have been made on the other side.*

Upon my First General Head.

I Hope that none doth imagine, that it either is, or can be drawn by Consequence, to be any Part of the Question in this Case, Whether the King may at all times, and upon all Occasions, impose Charges upon his Subjects in general, without common Consent in Parliament? If that were made the Question, it is, questionless, That he may not.

The People of the Kingdom are Subjects, not Slaves, Freemen, not Villains, to be taxed *de alto & basso*.

Tho' the King of England hath a Monarchical Power, and hath *jura summæ majestatis*, and hath an absolute Trust settled in his Crown and Person, for Government of his Subjects; yet his Government is to be *secundum leges regni*.

It is one of the Questions in the *Juramentum Regis*, at his Coronation, (see the old *Magna Charta*, fol. 164.) *Concedis justa leges & consuetudines regni esse tuendas?* And the King is to answer, *Concedo*.

By those Laws the Subjects are not Tenants at the King's Will, of what they have.

They have in their Lands *Feodum simplex*, which by *Littleton's* Description, is, *hereditas legitima, vel pura*.

They have in their Goods a Property, a peculiar Interest, a *meum & tuum*.

They have a Birthright in the Laws of the Kingdom.

No new Laws can be put upon them; none of their Laws can be altered or abrogated without common Consent in Parliament.

Thus much I speak to avoid Misapprehensions and Misreports upon that which I shall say in this Case; not as if there were Cause of saying so much upon any thing challenged on the King's side.

We have in Print his Majesty's own most gracious Declaration, that it is his Maxim, That the Peoples Liberties strengthen the King's Prerogative, and that the King's Prerogative is to defend the Peoples Liberties.

Secondly, Tho' Mr. Hampden's Counsel have spent all their Powder in citing a Multitude of Records, beginning with one in King *Jobn's* Time, and so downwards, to prove,

That the King's Ministers have paid, that the Barons have been by Writs commanded sometimes to pay, sometimes to Make Allowances, } Out of the King's Moneys or Dues.

In Cases of } Foreign } Wars.
Auxiliary }
Voluntary }

In Cases of Particular or ordinary Defence of the Realm, as upon Rebellion of Subjects, or Inroads by Enemies, into Parts Marches, or Maritime; such Enemies I mean, as are not greatly formidable, as are apt to run away when they hear of any Force coming against them:

In Cases of setting forth Ships, for scouring the Seas from petty Pirates, so that Merchants may have safe Passage.

In Cases where Victuals, or other Provisions, were taken from particular Persons, by way of Purveyance, for Soldiers, or for the King's Army:

In Cases of borrowing of Money by the King's Officers, for War, or ordinary or extraordinary Defence:

In Cases of taking Money or Goods against the Owners Consent, by Warrant, for the King's Use, for War, or other Manner of Defence:

In Cases where particular Men's Ships, Horses, or Armour, were lost in the Wars:

In Cases where private Men's Houses were used in the King's Service:

Lastly, in Cases of general and extraordinary Defence, where the King had sufficient Aids for that Purpose granted to him in Parliament.

Altho' I confess it be true, that the King in all these cited Cases, must pay of his own, without imposing upon the Subject; yet I say that those Cases come not close to our Case: For every of those Cases hath a manifest, particular, and just Reason; but none of these Reasons are applicable to the Case now in question, as is easy to demonstrate, if a Man would enter into every of these Particulars; which I forbear, for saving of time.

And these Records being taken away, the Multitude of the Vouchers on Mr. Hampden's side will be greatly abated.

Thirdly, The Case of the antient Tribute called *Danegelt*, of which Mr. Hampden's Counsel hath spoken, tho' it come nearer than any of the former mentined Cases, yet it much differs from the Charge imposed in our Case.

It hath been said on Mr. Hampden's side,

1. That *Danegelt* was not imposed, but by common Assent of Parliament.

2. That after it was so imposed, it was released by *Edward* the Confessor.

3. That it hath been now so long uncollected, that it is scarce known what it was.

To the *First* I answer, That the Proof urged that it was created by Parliament, is at the best but a Conjecture. It hath been said, that the Words of *Leges Edw. Confessoris*, c. 12. are in one Place, *Statutum est Danegeldum annuatim reddi, &c.* And in another Place, *Danegeldi reductio primitus instituta est, &c.* And *Statutum* is a proper Word for an Act of Parliament, a Statute.

But in my Understanding it is apparent, that it had not Creation by common Assent in Parliament, but only by Regal Authority; or at the most by the King, with his great Lords Assents, which in those, and after Times, was frequent. My Reasons are,

1st, In *Tilburienfis*, or the black Book of the Exchequer, l. 1. c. 28. the Words are express, *Ad regibus Anglicis statutum est, &c.* no mention of any others who joined in that *Statutum*.

2^{dly}, It appears by the said *Leges Edw. Confess.* c. 12. that at the beginning of *Danegelt*, *omnis Ecclesia libera erat*; the Reason given, *quia magis confidebant Ecclesie orationibus, quam armorum defensionibus*: and yet in the Addition to the said *Leges*, it appears, that *William Rufus* imposed that Tribute upon the Church also, and that without common Assent. For the Words are, *Danegeldum concessum est ei a Baronibus, non lege statutum neque firmatum*, and certainly those Barons by whom it was *concessum*, were not all the Baronage, for it is plain, that the Bishops and mitred Abbots did not consent.

3^{dly}, In that Clause where *statutum est* is used, in *Leges Edw. Confess.* the *Danegelt* is said to be 12 *d.* *ex unaquaque hida*; and afterwards it doth appear that it was made 4 *s.* by *William Rufus*, *ex unaquaque hida, Ecclesia non excepta*; which Increase was most unjust, if no more but 12 *d.* was limited by common Assent at first.

To the *Second*, I answer, with *Sir Henry Spelman's* Distinction, There were two kinds of *Danegelt*; one, *ad pacandos Danos*; another, *ad arcendos Danos*, and other Pirates. It may be, that the Confessor released that *ad pacandos*, for the *Danes* troubled not this Kingdom in his Time, they had enough to do then at home, and so there was no Cause of Collection of any Taxes *ad pacandos Danos*: And tho' it was *de facto* exacted by the *Danish* Kings before *Edward* the Confessor, *viz.* *Canute*, *Harold*, *Harefoot*, and *Hardicanute*, it was unjustly taken by them, the Cause of Grant of it ceasing in their Time of Sovereignty here; and that might be the Cause of the Confessor's Dream, That he saw the Devil dancing upon the Money collected in his Time for *Danegelt*; which Supposition of a Vision occasioned him to release it, as it is written. But certainly the *Danegelt ad arcendos, &c.* was not released by *Edward* the Confessor: for it appears in *Tilburienfis*, before cited, that *Danegeldum sub indigenis regibus solvabatur usque ad tempus Willielmi primi*, if *sub indigenis Regibus*, then under the Confessor.

Again, it appears in *Leges H. I. c. 16.* that *Danegelt* was in that King's Time a Duty to the King: For the Words are, *Danegeldum si ad terminum non reddatur recta emendetur*; *ergo*, not released by his Predecessor *Edward* the Confessor.

I further find in *Ranulphus Cestrensis*, that *Stephanus Rex, Regnum iniens, Danegeldum, i. e. 2 s. ad bidam, quos antecessores sui singulis annis accipiebant, in æternum condonavit*: which (*condonavit*) shews that he, as a King *de facto*, had a Right to it, *ergo*, not formerly released. But for the Validity of such a Release by *K. Stephen*, a manifest Usurper, tending to the Diminution of the Crown especially if it were of a Tribute granted to the Crown by Act of Parliament, see *9 E. IV. f. 2.*

To the *Third* I answer, That it is true, it is obscure what the *Danegelt* was; you have heard by what has been cited, mention of 1 *s.* 2 *s.* and 4 *s.* to be the Sum of it; and truly, I think, it was more or less, according to the Occasion of Money for Defence: the Tribute *ad pacandos Danos*, I believe at first was but 12 *d.* out of every Hide, yet afterwards increas'd by the three successive Kings, *Danes* themselves, for I find it was at first but about 10000 *l. per Ann.* it after was raised to 30000 *l.* then to 40000 *l.* and, lastly, to near 50000 *l.* which huge Sum was in these times a Burden insupportable to the People. But however, the Uncertainty of the Sum (especially if you understand that which was collected *ad arcendos Danos*) is a clear Proof, that it was not created by Act of Parliament, for then the Sum thereby certain could not be mounted.

All Historians do agree, that the original Time of *Danegelt* was in *K. Ethelred's* Reign. I observe, that *K. Ethelred* shewed himself weak and improvident, in that he looked not to raise Means for Defence of his Realm against the *Danes* in time; but when the *Danes* were Masters, then he began to provide against them. And for that cause divers of our Historians write, that he was called by a Nick-name, *Ethelred the unready*. But, on the other Side, we the Subjects of *England*, who enjoy ourselves and what we have in Peace, thro' his Majesty's Royal Care and Providence, have Cause to yield to our Sovereign *K. Charles*, the honourable Name of *Charles the ready*, or, *Charles the provident*.

But, to return, The Differences between the ancient *Danegelt* and the Charge in our Case, are apparent and many; for the *Danegelt* was,

1. Annual: ours is due only in case of Necessity.
2. It was collected out of Hides of Land, and thence called *Hidage*: Ours is collected out of personal as well as real Estates.
3. It was a Tribute of Money: Ours a Provision of Shipping and Armour in kind.
4. It was against Pirates: Ours is for common Defence of Sea and Land.
5. It was not general; Clergy and Clergymen were originally exempt: Ours is general, upon all without Exception.

Lege the Words of the Authorities under written, from whence many Observations, and good Conclusions may be drawn touching *Danegelt*.

Leges Edw. Confess. c. 12. *Danegeldi redditio, propter Piratas primitus instituta est, patriam enim infestantes vastationi ejus pro posse suo insistebant; ad quorum insolentiam reprimendam statutum est Danegeldum annuatim reddi sc. 12 denarios ex unaquaque hida totius patrie, ad conducendum eos qui piratarum irruptioni resistendo obviarunt. De hoc quoque Danegeldo libera erat omnis Ecclesia, quia magis confidebant Ecclesie orationibus, quam armorum defensionibus.*

Hanc Libertatem tenuit Anglorum Ecclesia, usque ad tempus Willielmi junioris.

Danegeldum concessum est ei a Baronibus, non lege statutum, neque firmatum; sed habuit necessitatis causa ex unaquaque bida 4 solidos, Ecclesia non excepta.

The black Book of the Exchequer, written in King Henry II's Time, in that Part which is *Tilburien's* Work, or the *Magister ad Discipulus*, it is lib c. 28. not c. 11. as it is misprinted in learned Sir Henry Spelman's Glossary.

Ad Danos arcendos, a Regibus Anglicis statutum est, ut de singulis bidis jure quodam perpetuo duo solidi argentei solverentur in usus virorum fortium, qui perulstrantes maritima impetum hostium reprimerent.

Quia igitur principaliter pro Danis institutus est hic reditus, Danegeldum dicitur, hic sub indigenis regibus solvebatur usque ad tempora Regis Willielmi primi. ipso namq; regnante, tam Dan' quam ceter' terre marisq; prædon' hostiles cobibetur incursus. Cum ergo diu solvisset terra, sub ejusdem Regis imperio, noluit hoc ut annuatim solveretur, quod fuerat urgente necessitate bellicæ tempestatis exactum, nec tamen omnino propter inopinatos casus dimitti.

Raro igitur temporibus ejus vel successorum ipsius solutum est, hoc est cum ab exteris gentibus bella vel opiniones bellorum insurgebant.

Verum quocunq; tempore solvatur ab ipso, liberi sunt qui assident ad Scaccarium, ut dicitur, & vicecomites, &c.

Leges H. I. c. 16. *Danegeldum, i. e. 12 d. ex unaquaq; bida per annum, si ad terminum non redatur, vita emendetur.*

Fourthly, I affirm, with some clearness, under favour, That the Charge now demanded, is not within the antient Acceptation or Signification of the Words, Aids, Mises, Prizes, Taxes, or Talliages, which it is to be agreed cannot be exacted by the King, without Consent in Parliament. Neither is it within the Compass of the Word Subsidy, which may not be levied, but upon Grant of it in Parliament.

Aids, if you take the Word in a general Sense, they were of two kinds. 1. Such as were Aids and Services too, as *pur faire fitz Chevalier, pur fle marier*. That kind of Aid, common Persons, who had Seigniories, had right unto, as well as the King. No colour of comprehending this kind of Aids, within the Word (Aids) pertinent to this Question.

To the 2d kind of Aids, were Sums of Money from the Subject to the King, by way of Help, *ad agendo Regis*; as for making of Castles, building of Bridges, Helps for voluntary or auxiliary Wars, or for the King to do his Pleasure with, and the like.

See Parl. Roll 11 H. IV. n. 45. 20000 Marks granted to the King, by the Name of an Aid, *ent a fair son pleasure*. And Rot. Parl. 25 Ed. III. n. 12. where the Application of the Word Aid to such a Purpose, is distinguish'd from other Payment to the King.

Mises were Presentations in Kind of a Benevolence, upon a King's first coming to his Crown; such are yeilded at this Day in *Wales*, to a Prince of *Wales*.

Prises are taking of part of the Subjects Goods from them to the King's Use, without Pay, hence *Prisage of Wines* at this Day.

Taxes & Tallages, in Quinzim. B. 9: 34 H. VIII. Nota par exposition de ceux del Esthbecq; que tax et Tallage n'est auter, mes dismes, quinzim, ou auter Subsidie, grant' per Parliament. Et le Quinzim est des Lages, Et le Disime est de Clergie et est d'estre levy de

leur terr', Et le disime et le Quinzim de Lais est del biens, sc. decimam partem bonorum in Civitatibus et Burgis, et 15 partem bonorum des laies in priam que fuit levy in aucuns temps sur leur biens, viz. del aids sur leur terres què fuit vald' troublous, mes ors cest levy, secundum ratum terrarum suarum per verges de terr' et auter quantites, issuit que ore, tout science leur certenty in chun vill et pais par tout le realme mes il est encore levy in escuns lieux sur lors biens, mes in plusors lieux, sur lors ters.

Subsidies quid chun conust, sc. certaine some sur le pound del rat' de terr' ou biens, come app' in les Aits de Parliament de grant del subsidie.

Fifthly, It cannot be said, that the present Case is to be stated so, as unless the Charge commanded be obeyed, an assured infallible Ruin and Subversion of this Kingdom will happen, and that instantly. In such a Case, *Quid non* is lawful; and happy he who by doing any Exploit, can save the Ship from sinking, the Body from falling.

Sixthly, It is to be observ'd, That the principal Command in the Shipping-Writ, is not to levy Money, it is to provide a Ship; which Ship being to be provided at the Charge of a Multitude, in Regard the thing cannot be done any manner of way, but by the Means of that which is *mensura rerum*, namely, Money, therefore the Instructions in the Shipping-Writ, are not only apt, but necessary; that an Assessment be made, whereby proportionable Sums of Money may be collected, for the Provision of the Thing commanded: And thereupon it may be said, that the Sum assessed upon every one, and in our Case upon Mr. *Hampden*, is not a Debt *vi termini*, but is rather a Duty to be performed, as a Means conducing to the principal End: The Refusal of Performance of which Duty, is a Refusal to obey the principal thing commanded, *Qui negat Medium, d'fruit finem*.

And the principal thing commanded, being of a Kind concerning the Commonwealth; the King, who is the Head, the Sovereign of the Commonwealth, and who hath, as incident to his Regal Office, Power of Coercion, is by Law to exercise such his Power of Coercion, to inforce such as refuse to join with others in Performance of that which is commanded for the Commonwealth.

And this being the true State and Way of the Proceedings, in the present Case; it is apparent, that tho' the *Scir' Fac'* against Mr. *Hampden* be in the King's Name, yet it is not to have Execution as for the King's Money, or as for a Debt due to the King from Mr. *Hampden*: But as is manifest, if the whole Contexture of the Writ of *Scir' Fac'* be observed, it is nothing else, but to bring on a Declaratory Payment, That Mr. *Hampden* ought *onerari* to the Payment of the 20 s. assessed upon him. So that, with his 20 s. together with the other Money of *Buckinghamshire*-Men, assessed also upon every of them particularly, the Ship commanded from the County of *Buckingham* may be provided.

Seventhly, and lastly, Having declared of what Nature our Case is not, I come now to tell you what the State of it is.

The true State of our Question must be made out of the whole Record, or Pleading of the Case, the Matter of Fact wherein the Defendant hath confessed, (as I noted in the Beginning.)

In the Writ of *Aug. 11 Car.* and in the Writ of *Mittimus*, there are Causes expressed, of the issuing of the Writ of *Aug. 11.* or the Shipping-Writ; those Causes are several, but not to be severed, all of them are to be laid together into the Balance.

1. *Piratae congregati*, upon the *English Seas*.

2. *Piratae navigium indies preparantes, ad mercatores ulterius molestandos, & ad regnum gravandum.*

3. *Pericula are Undique regno Angliæ, in his guerrinis temporibus.*

Those *pericula* do *imminerè regno, nisi citius remedium ponatur*; where the Word *citius* is a comparative Word, relative to slow Ways of Remedy, amongst which Parliaments is one.

5. *Regi & subditis convenit, omni qua poterint festinatione accelerare, ad regni defensionem, maris tuitionem, & securitatem subditorum.*

Out of all those Positions it appears,

That there is in the Case real and manifest Peril; not *panicus terror*, Fear without Cause; *Tempora are de facto guerrina*, there is *de facto, navium congregatio*.

Again, we must observe, That in this Case,

1. The Command is, *ad proficiscendum cum navibus regis*: So the King himself is to join with the Subject in the common Defence: Here is not a *Quod tibi fieri non vis*: Here is rather a *Contributio*, than a *Tributio*.

2. The Ships and Arms to be provided are to continue the Subjects own in Property: The King doth not assume the Property of them to himself; he only commands them to be made and used for the common Defence. This appears by the Words (*ad proficiscendum cum navibus nostris.*) So the Writ sets a Distinction between *naves nostræ*, (that is, the King's) and the Ships to be provided. See the like of this *M. 28 & 29 Ed. I. Communia*, with the King's Remembrancer, for Gallies commanded upon the like Occasion; and *P. 5 E. II.* and *P. 13 E. II.* with the King's Remembrancer, *inter brevia directa Baronibus*.

3. The Subjects are commanded, in this Case, to be at the Expences, *tam in victualibus, quam hominum salariis ad guerram necessariis*. This I shall prove clearly anon, to be consonant to Law, and warranted by many Precedents, in the like Cases.

4. All the Counties of the Kingdom, that is, all the Kingdom in general, is charged, not any spared; the Clergy, the King himself, are to join in the Provisions.

5. The final End and Scope of all this Preparation is, *Defensio Regni, tuitio maris, retentio dominiis maris, securitas subditorum, salus Reipublicæ.*

But Mr. *Holborne* hath objected, That *Salus Reipublicæ periclitabatur* is not to be taken as part of this Case, because it is not in the Writ of *Aug. 11 Car.* but is inserted into the *Mittimus*, above two Years after; and he saith, That Mr. *Hampden* could not know *11 Car.* that at that time *salus Reipublicæ periclitabatur*; and therefore he is not to be blamed for refusing to pay his Assessiment, which was before the *Mittimus*, and grounded only upon the Writ of *Aug. 11 Car.*

He further observed, That in the subsequent Shipping-Writ, that Clause is expressly now put out. To this I answer,

1. It is true, that *Salus Regni* is not in express Terms, or in those identical Words, in the Writ of *Aug. 11.* but it is express'd in that Writ in Words equipollent.

2. If it were not contained in that Writ in Words equipollent, yet it enforces the Words in that Writ in Matter pertinent, or not new, or different from it; and so is out of the Rules of Departure, wherein if it were, it were a good Exception in strictness of Pleading.

3. That Clause in the *Mittimus* by way of Declaration or Signification to the Barons, what the Reason was, that moved the King to issue the first Writ; and the Barons are to take notice of it, as well as of the Clause in the *Mittimus*, whereby the King signifieth to them, that he had sent the like Writs as that of *Aug. 11.* to all the Counties of *England*: And this is a Declaration of that Meaning which the King had in the Beginning.

By *Dowman's Case*, *Co. 9.* after Assessiment executed, or a Fine levied, a Declaration may be made, to what Use that Fine or Assessiment was.

In a word, the State of our Case is thus:

Dominium maris, & salus reipublicæ periclitabatur, convenit Regi & subditis, omni qua poterint festinatione accelerare ad defensionem regni, tuitionem maris, & securitatem subditorum.

Now whether to set the Commonwealth free and in Safety from this Peril of Ruin and Destruction, the King may not, of his own Royal Authority, and without common Assent in Parliament, impose a Charge upon his Subjects in general, to provide such Shipping, as is necessary, in his Royal Judgment, to join with his Majesty's own Ships, and to attend them for such time as his Majesty in his Royal Wisdom shall think fit, and also to injoin them to be themselves at the Expences, *tam in victualibus quam hominum salariis, & aliis ad guerram necessariis?*

I would be loth to irritate any, differing in Opinion from me, with provoking or odious Terms; but I cannot more fully express my self, (and so I desire it may be taken as an Expression, and not as a Comparison) than in saying, That it is a dangerous Tenet, a kind of judaizing Opinion, to hold, That the Weal publick must be exposed to Peril of utter Ruin and Subversion, rather than such a Charge as this, which may secure the Commonwealth, may be imposed by the King upon the Subject, without common Consent in Parliament. So that the Security of the Commonwealth, for the very Subsistence of it, must stay and expect until a Parliament provide for it; in which Interim of Time, it is possible, nay, apparently probable, yea, in a Manner to be presumed, that all may be, yea, will be brought to final Period of Destruction and Desolation.

All know, that the Jews were so strict, that they would not use Means for Defence of themselves and their Country, upon their Sabbath. Their Enemies took the Advantage, and ruined their State.

The Second General Head.

I Now come to my *Second* General Head, wherein I proposed to consider of the fundamental Policy, and Maxims, and Rules of Law, for the Government of this Realm, and of the Reasons of Law pertinent to our Case, which are very many. I will briefly and severally point at those which make Impression in me.

1. It is plain, that as originally, even before the *Romans* Time, the Frame of this Kingdom was a Monarchical State, so for divers Hundreds of Years past, upon the *Romans* Desertion of it, and after the Heptarchy ended, it was, and continued, and still continueth Monarchical. And our gracious Sovereign is a Monarch, and the Rights of free Monarchy appertain unto him; and yet still with this, that he must *Leges & consuetudines regni*

regni servare, & præcipue leges & consuetudines & libertates a glorioso Rege Edwardo, that is, Edward the Confessor) clero populoque concessas; as appears in the old Magn. Chart. fol 164. tit. Juramentum Regis quando coronatur.

2. Where Mr. Holborne supposed a fundamental Policy in the Creation of the Frame of this Kingdom, that in case the Monarch of England should be inclined to exact from his Subjects at his pleasure, he should be restrained, for that he could have nothing from them, but upon a common Consent in Parliament.

He is utterly mistaken herein.

I agree the Parliament to be a most antient and supreme Court, where the King and Peers, as Judges, are in Person, and the whole Body of the Commons representatively. There Peers and Commons may, in a fitting Way, *parler leur ment*, and shew the Estate of every Part of the Kingdom; and, amongst other things, make known their Grievances (if there be any) to their Sovereign, and humbly petition him for Redress.

But the former fancied Policy I utterly deny.

The Law knows no such King-yokeing Policy.

The Law is of itself an old and trusty Servant of the King's; it is his Instrument or Means which he useth to govern his People by.

I never read nor heard, that *Lex was Rex*; but it is common and most true, that *Rex is Lex*, for he is *lex loquens*, a living, a speaking, an acting Law: and because the King is *lex loquens*, therefore it is said, that *Rex censetur habere omnia jura in scrinio pectoris sui*.

There are two Maxims of the Law of England, which plainly disprove Mr. Holborne's supposed Policy.

The first is, *That the King is a Person trusted with the State of the Commonwealth.*

The second of these Maxims is, *That the King cannot do Wrong.* Upon these two Maxims, the *Jura summe majestatis* are grounded, with which none but the King himself (not his High Court of Parliament without leave) hath to meddle, as namely, War and Peace, Value of Coin, Parliament at Pleasure, Power to dispense with Penal Laws, and divers others; amongst which I range these also, of Regal Power to command Provision (in case of Necessity) of Means from the Subjects, to be adjoined to the King's own Means for the Defence of the Commonwealth, for the Preservation of the *Salus Reip.* Otherwise I do not understand how the King's Majesty may be said to have the majestical Right, and Power of a free Monarch.

It is agreed, that the King is, by his Regal Office, bound to defend his People against foreign Enemies; our Books are so, *F. Na. fol. 118. Est a intendre que le roy doit de droit; s'aver et defendre son realme com' vers le meere, com' vers enemies.*

Juramentum Regis, cited before, *servabis Ecclesie Dei, Clero, & populo, pacem ex integro secundum vires tuas*; if (*ex integro*) then against all Disturbers of the general Peace amongst them, most chiefly, in my Judgment, against dangerous Foreigners.

Brañon and *Glanvill*, in the Front of their Books, published, That the King must have Arms as well as Laws; Arms and Strength against foreign Enemies, Laws for doing Justice at home. Certainly if he must have these two Necessaries,

he must be enabled with Means for them, and that of himself, not dependent *ex aliorum arbitrio*; for it is *Regula juris, Lex est, quando quis aliquid alicui concedit, concedit, & id sine quo res ipsa esse non potest.*

3. Tho' I have gone already very high, I shall go yet to a higher Contemplation of the fundamental Policy of our Laws: which is this,

That the King of mere Right ought to have, and the People of mere Duty are bound to yield unto the King, supply for the Defence of the Kingdom.

And when the Parliament itself doth grant Supply in that Case, it is not merely a Benevolence of the People, but therein they do an Act of Justice and Duty to the King.

I know the most solemn Form of Parliament, and of the humble Expression of the Commons, of their hearty Affection, and good Will to their King, in tendering to him their Bill of Subsidies or Fifteenths.

Rot. Parl. 9 Hen. IV. n. 7. There is a notable Record of the very Right of the Commons, in the Form of Grant by Parliament of Supply to the King: Archbishop *Arundel*, then Lord Chancellor, in his Speech to the Houses, took for his Theme (*Regem honorificate*) it being then a time of instant Necessity.

The Commons, in their Grievances, complained of the Default of Safeguard of the Sea, towards which they had granted a Subsidy before; *Et pour tant (Note this for the Reason, it was not spoken simply, as Mr. St. John urges) but pur tant que ils ne sont obliges a cel guerre susteyner, mes sont discharg de re exant*; and they petitioned, That accordingly it would please the King to discharge the Commons, but the King did not discharge them, *Quod nota.*

After this (the Record goeth) that there was a Conference between the King and Lords, of the State of the Realm, and of the Defence of it. And in that Conference, the King asking the Lords Advice, they answered, That a Tenth and half a Tenth was necessary from the Boroughs, and a Fifteenth and half from the rest of the People. This Conference and Advice being reported to the House of Commons, the Record is, *Its fuer grandement disturbe en dist' ceo destre en grand derogation de leur liberties.* The Disturbance was so great, that the King himself took pains to pacify them.

Upon this Record it appears, and I confess, that the Commons offering up of the Bill of Fifteenths, and so of Subsidies, to the King in Parliament, is a most material Form, and serves to make good and happy Expressions of Love and Unity, between the Head and Members, the King and his Subjects. But still I say, that it is the King's Right to have Supply; that Supply is a Duty, not merely a Benevolence from the People, in case of necessary Defence of the Kingdom.

And this is not my single Opinion.

19 *H. VI. 64 B. Hody Ch. Baron, Le roye est inherite*, that is, hath Right of Inheritance to have Fifteenths in his Court of Parliament: for the same Law which wills that the King defend his People, wills also, that the People grant to him of their Goods, in Aid of their Defence.

Besides, I prove mine Opinion (if any Man deny it) unanswerably, out of the very Writ of Summons of Parliament: in it, *Ardua & urgentia negotia, Regem statum, & defensionem regni Anglie & ecclesie concernentia*, are mentioned to be the Cause of Parliament.