

things ado with your Lordship that I was ignorant of, and could not in good manners inquire. I protest, said he, that is a business in all Men's Mouths about Court; and I wonder, said he, you have not heard of it. I have not truly, said I: And so we left that Theme, and drunk together, and within a quarter ane hour after I left that Town, and to one *Alexander Speir*, a Factor in it, a Packet to Mr. *Robert Bruce*; under whose Cover there is a Letter of the 27th of *June* to your Lordship, the Contents whereof I will not repeat here, but beseech your Lordship to have respect unto it, as well in so far as it beseecheth your Lordship to use your Talent for shortning my Troubles, as in the care I humbly beseech your Lordship to take to induce my Lord *Yeaster* to a Submission, without which there is no hope of any Conclusion with him. I will long to hear from your Lordship what posture this business works itself unto, and what success I may expect in the way I am contented be taken to end my Troubles, by their means that has occasioned them. Thus having nothing to say but what I have formerly written, and beseeching your Lordship not to be slow (slow) in writing to me, (under Cover to my Lord of *Auton*, *James Howstoun* or *James Wright* Merchants in *Amsterdam*, or to *Alexander Speir* in *Camphire*, or to *William Murehead* by the way of *London*) I crave leave, and rest,

My Lord,

Amsterdam, Your Lordship's most Respecting Servant,
July 1, 1634.

William Haig.

Directed to the Right Honourable my singular good Lord, my Lord Balmerino, These, at Barnetown.

The Third Letter.

My Lord,

I know that Repetition of my Desires exprest in my Letters to your Lordship from *Yarmouth*, *Camphire*, and *Amsterdam*, were enough to accuse me of Distrust of your Lordship's either Memory or Good-will to me-wards. Wherefore these are only to beseech your Lordship to let me know what posture that business is in, which occasioned my Voyage hither; and what Issue I may expect by your Lordship's means, and such others as I have written unto there, as well of the Troubles I am now under, as of that Business I prayed your Lordship to manage with my Lord *Yeaster*. I intend to fix about *Delft* before the 27th Instant, and stick there till I hear from *Scotland* or *England* what I may expect. So your Lordship may put all you write to me under Cover to Mr. *John Forbes* a Minister (tho' now silenced by Order from *Canterbury*) of the *English* that are about their Staple in that place, Mr. *Robert Bruce*, or Mr. *Alexander Colvill*, by *David Junken's* means; and otherwise also will get them sent to Mr. *Forbes*, and he will make them find me: so will *William Murehead*, if your Lordship please write that way too.

My Lord,

Croning, 10 Your Lordship's most Respecting Servant,
July 1634.

William Haig.

Directed, on the back thereof, to the Right Honourable my singular good Lord, my Lord Balmerino, These, at Barnetown.

The Fourth Letter.

My Lord,

I Send here to your Lordship my Lord *Jedburgh's* Discharge for the Crop 1633, and his Daughter *Mary's* Receipt for 100 *l.* with a Protection for my Lord *Jedburgh*, to be made use of, as your Lordship has occasion. His Lady was speaking to me to procure her a House near *Newbottle*, called *Bryankirk*; which cannot be, because my Lord of *Lotbian* has lent it to his Uncle Sir *John Murray*. But I intend to speak to *Mark Cass*, and try if he can spare *Cockpen*; which being near *Coal*, and out of *Tivotdale* way, I think were very convenient for my Lord *Jedburgh*, since he suits some House in *Lotbian*, to be free of the Importunity of his *Tivotdale* Creditors, and other Inconveniencies his dwelling at *Jedburgh* makes him obnoxious unto. There is also within this Packet Mr. *Lewis* his Discharge of 600 Marks to my Lord *Jedburgh*, and a Note of Mr. *Lewis* his Writings, with an Assignment to be subscribed by my Lord *Jedburgh*, for Recovery of some Moneys he paid for Mr. *John Home*: I intended it for Mrs. *Ann's* help, before your Lordship and I went to *Tivotdale*; and when his Brother Captain *Home* was assisting his Chief's Process, and was likely to have adventured to pay that Sum for Mr. *John*, if he had found him pressed (being then in *Edinburgh*) by some good Caption. It shall be well done to make the best use of it yet that can be. I have also inclosed in this Packet Mr. *Cornelius Anestie's* Discharge for 200 Marks for the Interest of his Money preceding *Whitsunday* last: I was not able to pay the Principal till the 7th of *June*, and then he refused; I hope to do it honestly at *Mertimas*, before which time I hope to return armed against all Inconveniencies that Cost or Power shall be able to put upon me, by evil interpreting what was well meant. I have left to my Nephew *Thomas Haliburton* the Key of my Chamber and Trunks, with direction to be given to your Lordship to be made use of during my absence; whereof I shall write to your Lordship the reason at more length by the first occasion. I rest,

My Lord,

Your Lordship's most Affectionate

and Respecting Servant,

William Haig.

Direction on the back, To the Right Honourable my singular good Lord, my Lord Balmerino, These, 1 August 1634.

Produced to the Lords Examinators by my Lord *Balmerino*.

9thly, Produces three Extracts of Parliament, whereof two containing the Names of the Earls and Lords present at Parliament 1633, together with the Names of the Articles at that same Parliament; of the which three Extracts, the Tenour follows.

The Names of the Lords of the Parliament.

Archbishops; *St. Andrews, Glasgow*. Bishops; *Dunkell, Murray, Rosse, Brechin, Galloway, Dumblaine, Caithness* by *Dunkell* his Proxy, *Isles, Argyle, Orkney*. Duke of *Lennox*. Marquiss of *Hadintoun*, Marquiss of *Huntley* by the Duke of *Lenox* his Proxy, Marquiss of *Douglafs*. Earls; *Argyle* by *Mortoun*

Mortoun his Proxy, *Erroll*, *Mareschall*, *Sutherland* by the Duke of *Lennox* his Proxy, *Mar* by *Hadingtoun* his Proxy, *Buchan* by the Marquiss of *Hadingtoun* his Proxy, *Rothes*, *Elingtoun*, *Cassiles*, *Glencairne* by *Rothes* his Proxy, *Murray* by *Lauderdale* his Proxy, *Nithsdale*, *Wintoun*, *Linlithgow*, *Perth*, *Dumfermling*, *Wigtoun*, *Kingborne*, *Abercorne*, *Tillebarne*, *Keille* by *Kinowll* his Proxy, *Galloway* by *Traquair* his Proxy, *Seaforth*, *Annandale*, *Lauderdale*, *Carrick* by *Traquair* his Proxy, *Lothian*. Viscounts; *Falkland* by *Stirling* his Proxy, *Dumbar* by *Traquair* his Proxy, *Stormount*, *Drumlanerk*. Lords; *Lindsay*, *Gray* by *Mortoun* his Proxy, *Yeaster*, *Semple*, *Sinclair*, *Herries*, *Elphinstoun* by *Balmerino* his Proxy, *Ogilvy*, *Torphichen*, *Spynie*, *Lindores*, *Loudon*, *Kinlofs* by *Mortoun* his Proxy, *Balmerinock*, *Burlie*, *Halyrood-houfe*, *Cowper*, *Cranstoun*, *Deskfoord* by *Cranstoun* his Proxy, *Melwill*, *Carneige*, *Ramsay*, *Naper*, *Cameron* by *Traquair* his Proxy, *Newburgh* by *Stirling* his Proxy, *Weemes*, *Corstorphin*, *Forfar*, *Rae* by Viscount of *Air* his Proxy, *Dalzell*.

Commissioners for the Burroughs; *Sir George Forrester* of *Corstorphin*, and *Mr. Patrick Hamiltoun* of *Little Prestoun*, for *Edinburgh*, Principal; *Sir Patrick Murray* of *Elebank*, and *Sir John Hamiltoun* of *Prestoun*, for *Hadingtoun*; *Sir Alexander Nisbet* of that Ilk, and *John Home* of *Rentoun*, for *Berwick*; *William Dowglafs* of *Cavers*, and *Sir Walter Riddell* of that Ilk, for *Roxburgh*; *James Murray* Fiar of *Philliphaugh*, and *James Pringle* of *Whitebank*, for *Selkirk*; *James Hay* of *Smithfield*, and *James Naswith* of *Posso*, for *Peebles*; *Sir James Lockhart* Younger of *Ley*, and *Gawin Hamiltoun* of *Raploch*, for *Lanerick*; *Sir Robert Grierson* of *Lagg*, and *Sir John Charters* of *Amisfield*, for *Dumfries*; *Sir Patrick Agnew* of *Lochnair* Knight Baronet, for *Wigtoun*; *Sir William Cunninghame* of *Cunninghamehead*, and *James Chalmers* of *Gaitgirth*, for *Air*; *Sir Lodovick Howstoun* of that Ilk, and *James Muribead* Younger of *Lachope*, for *Dumbarton*; *Hector Bannatyne* of *Keymes*, and *John Stewart* of *Escoke*, for *Bute*; *Sir Archibald Stewart* of *Blackball*, and *Patrick Fleeming* of *Barreichine*, for *Renfrew*; *Archibald Edmingstoun* of *Duntreath*, for *Stirling*; *Sir Walter Dundas* of that Ilk, and *William Drummond* of *Richartoun*, for *Linlithgow*; *Sir Archibald Ogilvie* of *Inchmarten*, for *Perth*; *Sir Robert Grabame* of *Morphie*, for *Kincarden*; *Sir Alexander Irvine* of *Drum*, and *Thomas Crombie* of *Kemno*, for *Aberdeen*; *Sir John Machenzie* of *Tarbit*, for *Inverness*; *John Campbell* Fiar of *Calder*, and *John Dunbar* of *Moyne*, for *Nairne*; *Sir Thomas Urquart* of *Cromartie*, for *Cromartie*; *Sir John Scrimger* of *Duddope*, and *Duncan Cambel* Fiar of *Anchinbreck*, for *Argyle*; *Sir Laughlane Maclane* of *Morvere*, for *Tarvet*; *Sir John Leslie* of *Newtoun*, and *Thomas Myretoun* of *Cambo*, for *Fyfe*; *Sir Harry Wood* of *Bonnitoun*, and *Sir William Grabame* of *Claverhouse*, for *Forfar*; *John Gordon* of *Innermarkie*, for *Bamff*; *Sir Patrick Macgie* of *Large*, for the Stewartry of *Kirkubright*.

Sic subs. J. Hay, Cl. Regist.

The Lords of the Articles.

Pro Clero; Archb. *St. Andrews*, Archb. *Glasgow*. Bishops, *Murray*, *Rosse*, *Dumblaine*, *Brechin*, *Iles*, *Argyle*. *Pro Nobilibus*; Duke of *Lennox*, Marquiss of *Hamilton*, Marquiss of *Dowglafs*, Earl of *Mareschal*, Earl of *Wintoun*, Earl of *Roxburgh*, Earl of *Lauderdale*, Viscount of *Air*. *Pro Baronibus*; *Sir George Forrester* of *Corstorphin*, *Sir Patrick Murray* of *Elebank*, *Sir Patrick Ogilvie* of *Inchmarten*, *Sir*

John Leslie of *Newtoun*, *William Dowglafs* of *Cavers*, *Sir James Lockhart* Younger of *Ley*, *Sir Robert Grierson* of *Lagg*, *Sir John Scrimger* of *Duddope*. *Pro Burgis*; *John Sinclair* and *Gilbert Kirkwood*, *Andrew Gray*, *Mr. Alexander Wedderburne*, *Paul Menzies*, *Gabriel Cunninghame*, *Mr. James Cockburne*, *Mr. John Hay*, *Andrew Bell*.

Sic subs. J. Hay, Cl. Regist.

And last produced ane Note of Articles in Parliament in annis 1600, 1606, 1607, 1617; and 1621. whereof the Tenour follows.

IN the Parliament held at *Edinburgh* the Year of God 1600 Years, the Noblemen after named were chosen to be of the Lords of the Articles, viz. The Duke of *Lennox*, the Earl of *Mareschal*, the Lord *Seaton*, the Lord *Newbottle*, the Earl of *Erroll*, the Earl of *Mar*, the Lord *Levinjtoun*, Lord *Fyvie*.

Sic subs. J. Hay, Cl. Regist.

IN the Parliament holden at *Edinburgh* in the Month of *June* 1606, the Noblemen after named were chosen to be of the Lords of the Articles, viz. Marquiss of *Hamiltoun*, Marquiss of *Huntley*, Earl of *Argyle*, Earl of *Erroll*, Earl of *Mar*, Earl of *Glancairne*, Earl of *Linlithgow*, Lord *Glames*.

Sic subs. J. Hay, Cl. Regist.

IN the Parliament holden at *Edinburgh* in the Month of *March* 1607, the Noblemen after named were chosen to be of the Lords of the Articles, viz. Earl of *Argyle*, Earl of *Angus*, Earl *Mareschal*, Earl of *Mar*, Earl of *Kingborne*, Earl of *Lothian*, Lord *Elphinstoun*, *Roxburgh*, *Blantyre*.

Sic subs. J. Hay, Cl. Regist.

IN the Parliament holden at *Edinburgh* in the Month of *May* 1617, the Noblemen after named were chosen to be of the Lords of the Articles, viz. Duke of *Lennox*, Marquiss of *Hamiltoun*, Marquiss of *Huntley*, Earl of *Argyle*, Earl of *Montross*, Lord *Ogilvy*, Lord *Sanquair*, Lord *Scoone*.

Sic subs. J. Hay, Cl. Regist.

IN the Parliament holden at *Edinburgh* in the Month of *June* 1621, the Noblemen after named were chosen to be Lords of the Articles, viz. the Earl of *Angus*, the Earl of *Mortoun*, the Earl of *Nithsdale*, the Earl of *Wigtoun*, the Earl of *Roxburgh*, the Earl of *Balcleugh*, Lord *Scoone*, Lord *Carnegy*.

Sic subs. J. Hay, Cler. Regist.

After the Production whereof, his Majesty's Advocat affirms, That the Writs now produced for Verification of the Dittay, the said Dittay is thereby verified in the hail Points thereof, referred to the Assize; and in respect thereof protests, if they cleange (clear) upon so clear Probation, for wilful Error.

Thereafter it was alledged by the Pannel, That the Earl of *Rothes*'s Deposition ought to be produced and read.

To the which it is answered by my Lord Advocat, That he uses not the same as a Point of his Probation.

To the whilk it is duplyed, That it will serve (being read and produced) for clearing of the Pannel's Innocency; and that by *Interloquitor* of before, the said Deposition was by the Justice's *Interloquitor* produced and given up to the Pannel; and therefore it is most necessary to be produced to the Assize, and cognosced by them.

Thereafter my Lord Advocat, for eschewing of Delays, did produce the Earl of *Rothes* his Deposition, with this Protestation, That he uses not the sament as a Verification of the Dittay, but only for satisfiing of the *Interloquitor* given out by the Justice before, and to cut off all occasion of Clamour that any part of the Procefs were withdrawn; and when the Pannel shall found any Alleadgance or Objection thereupon, he shall have a sufficient Answer. Of the which Deposition the Tenour follows.

At Edinburgh, the 3d of July, 1634.

THE which Day *John* Earl of *Rothes*, being sworn upon his great Oath, and the Libel being shewn to him, grants that this is the Libel that was shewn to him by or from my Lord *Balmerino*; which he took and read till about twenty Lines in the beginning, and no farther, in presence of the Earl of *Cassiles* and the Lord *Yeaster*, being with him in Coach, going to *Dalkeith*: who finding it of such a Strain, and having told them that his Majesty had given him an expresse Command to suppress all that was of that nature, the Deponer and they, all in one Voice, thought it should be suppress'd; and the Deponer did put it in his Pocket. And having occasion that same Day to meet his Majesty at *Dalkeith*, and his Majesty falling in Conference with him anent Information made to his Majesty against him, he purg'd himself clearly to his Majesty; and having received from his Majesty of before strait Commandment for suppressing all Petitions of the nature of that which was moved in the time of the Parliament, he shewed to his Majesty that he had faithfully done the same ever since, and added thir Words; *Sir, there is a Petition given me presently to be looked upon and considered, which I have in my Pocket, which I have according to your Majesty's Command suppress'd; if your Majesty be pleased to look upon it.* Which his Majesty answered, *It is no matter: I have no leisure: I am going to the Park.* And declares, that it remained in his Pocket unlooked upon by him, or any other, by the space of eight Days, or thereabouts: After the which he returned the same back again, inclosed in a Paper, which was sealed, to my Lord *Balmerino*, to whom before he had told his Judgment of it, that it was altogether to be suppress'd. And depones upon his great Oath, That he neither shewed it to any, nor gave any Copy thereof to any; but remembers before he sent it to my Lord *Balmerino*, he caused copy it by his own Servant, which is yet extant, uncommunicated to any, and whereof he had no memory at all, till he heard that Mr. *Peter Hay* of *Naughton* had shewn it to others; and then he searched the same, and found it out. *Item*, Being interrogat if he knew the Hand-writ of the Libel, or who was the Author or Penner thereof; depones, he knows not the Writer thereof, and knew not certainly who was the Author and Penner thereof, till he heard that Mr. *William Haig* was bruted, (*i. e.* named) for the penning thereof, of whom he had ever Suspicion, because he has ever been busy upon such idle and foolish Toys. And being asked if he gave his Ad-

vice anent the penning thereof to Mr. *William Haig*, or any other; depones upon his great Oath, that he neither gave his Advice to him, or any other, anent the penning thereof, but ever thought it fit to be suppress'd; and declares, that he never knew any Consultation either before or after anent the same. And the said Earl of *Rothes* promised with all diligence to send the Copy which he has inclosed to the Lords; and promised upon his Oath and Honour not to copy the same.

Sic subs. Rothes.

My Lord Advocat declares that he uses not the last Part of *Mark Cais* his Deposition.

It is objected and alledged by Mr. *Alex. Pearson* against the Probation of the Dittay adduced, First, To the Probation of the first Part thereof against the Pannel, as Author, Consultor, &c. that the Pannel's alledged Interlining does not prove him to be Consultor with Mr *Haig* in the penning and first drawing up thereof, because the alledged Interlining is long after, yea, after the Offer made thereof to his Majesty, to whom no Subject can be presumed to represent a Supplication interlined. And oppones to that Point of Dittay, the Pannel's Deposition the 16th of *June*, which bears the Interlining not to have been made while after the Earl of *Rothes*'s Redelivery of the Writing to the Pannel, which was more than six or seven Months after. Oppones also the other Copy of the Writing quarrelled, produced by my Lord Advocat, which wants the Interlining, and which evinces the Interlining not to have been at the penning and forming thereof, and consequently the alledged Interlining proves not the Pannel's Advice in the penning and first drawing up thereof.

Item, The alledged Interlining proves not the Pannel to be Consultor anent the scandalous Libel, because the said alledged Interlining is not of any matter of Reproach or Scandal, whereupon the said Libel is now challenged, or can be challenged, and so has no Accession thereto as scandalous; and therefore proves not the Pannel's Advice anent the scandalous Libel.

Item, The alledged Interlining proves not that Point of the Dittay, because by the Pannel's Deposition, 16 *June*, never Man saw it since the Interlining thereof; and therefore nothing can be enforced or concluded thereupon, and is alike as if the same had never been interlined: For even an infamous Libel found with a Party in secret, who did suppress the same, and never manifest it to another, does not make or prove him guilty of the infamous Libel.

That part of the Dittay, bearing, That by Letters sent by Mr. *Haig* to the Pannel, it is affirmed by Mr. *Haig* that he had the Allowance of the Pannel to the penning of the Writ quarrelled, is no ways proven by the missive Letter, nor by any of them. And where the said Missives, or any of them may seem to concern any purpose of Allowance of the Writing quarrelled, that is no ways of the Pannel's Allowance, nor can be so expounded; for the Letter from *Camshire*, dated 27 *June*, directed to the Pannel himself, and which speaks of their Allowance in the third Person, extends not to the Pannel, and makes not the Allowance therein mentioned (if any be) to be the Pannel's Allowance.

Farder,

Farder, Altho' the said Missive affirmed as the Dittay bears, yet the same can no ways be respected, nor make Faith against the Pannel for his Conviction; because Mr. *Haig* being guilty as Author, his alledged Declaration, if any be, (no ways granting the same) can be no Probation at all against the Pannel; because it is an undoubted Maxim in Law, *Quod socius aut particeps Criminis adversus alium fidem non facit*: Accomplice in a Crime's Declaration cannot make Probation against any other whom he alledges to be guilty.

To the first part of the Dittay, and Probation thereof, opposes the Dittay it self, which bears Mr. *Haig* to be Author, and which makes point of Dittay against the Pannel for not apprehending of Mr. *Haig*, Author thereof. Opposes also Mr. *Haig*'s Grant that he was Author and Penner thereof, contained in his missive Letter, 27 *June*. Opposes also Mr. *Haig* his fleeing furth of the Country for the same Cause; and since his Flight, his intreating of his Friends for procuring to him a Remission for it, as is reported in the Pannel's Depositions the 1st of *August*. Opposes also the Pannel's Oath and Declaration the 9th of *June*, wherein he has deponed, That Mr. *Haig* had no warrant from him, and that he knew nothing of the forming of it. Opposes also *Mark Cals* his Deposition, which bears Mr. *Haig* to have confessed to him that he was the Penner thereof.

It is alledged by Mr. *John Nisbet* against the Verification of the Dittay, That the Pannel's Depositions cannot be used to verify the Dittay, inferring capital Guilt and Punishment upon the Pannel, because the Pannel was induced to depon under Promise and Assurance of Impunity: And in Law, a Confession elicited upon Promise of Impunity, cannot enforce capital Guilt, as is abundantly abstracted in the Dispute. It is likewise alledged by him that *Dunmure*'s Deposition, *Dalgleish*'s Depositions, and *Haig*'s Letters, cannot be used against the Pannel, because they being all involved in the same Acts whereupon the Pannel is indicted, they cannot prove against the Pannel to disburden themselves; seeing in Law these with whom scandalous Pieces are found are presumed to be Authors, unless they condescend upon the Author or Deliverer of these Pieces to them.

It is alledged by Mr. *Alexander Pearson*, That the second Part of this Dittay against the Pannel, as guilty of hearing, concealing, not apprehending, divulging of an infamous Libel, &c. is not proven, because there is nothing adduced against the Pannel, to prove the Pannel's Knowledge of the Writing quarrelled to be scandalous or seditious, without which the Pannel is not, nor cannot be counted guilty of the Crimes libelled. And opposes thereto the just and probable Cause contained in the second Exception, and remanent Defences proponed for the Pannel, which the Pannel had moving him to think otherwise of the Writing quarrelled; to wit, The Writing it self in Title, Form, Strain, Beginning and Ending, and in all, an humble Supplication; the same being first deliver'd to the Pannel as a Supplication to be presented to his Majesty. [The Pannel's Deposition 9 *June*.] Next was deliver'd by the Pannel to the Earl of *Rothes* of purpose to be presented to his Majesty. [The Pannel's Deposition foresaid; and also affirmed by the Dittay it self.] Last it was offered by my Lord of *Rothes* to his Majesty; as the Earl of *Rothes*'s Deposition bears, 3 *July*:

Whilk Offer of my Lord of *Rothes* to his Majesty is acknowledged by my Lord Advocate, conform to his Lordship's Answer in the Defences proponed for the Pannel. Opposes also the Pannel's Quality, Life, and Conversation, which is in such a far distance from the Crimes libelled, that it excludes all Presumption and Probability thereof against the Pannel.

To that Point of the Dittay aggravating the Pannel's not apprehending Mr. *Haig*, by the Pannel's shewing to him the Warrant of his Citation before the Committee, and thereby giving him occasion to escape; opposes the Pannel's Deposition of the 16th of *June*, which bears that the Pannel knew nothing of Mr. *Haig* his going off the Country before the third Day after Mr. *Haig*'s Escape.

That Part of the Dittay bearing the Pannel to be guilty of divulging and dispersing of the alledged infamous Libel, is not proven. 1st, The Pannel his causing Mr. *Robert Dalgleish* his Servant copy the same, proves not the Pannel's dispersing thereof in publick; Mr. *Robert Dalgleish* being the Pannel's Household Servant, and he having copied the same *infra privatos parietes*, which proves not dispersing in publick. 2dly, The Delivery of the Writ quarrelled to the Earl of *Rothes* of purpose to be presented to his Majesty, proves no ways divulging of a scandalous Libel: But the Delivery thereof, qualified as said is, and followed with an real Offer thereof made to his Majesty, cuts away its being offer'd as a scandalous Libel, and divulging thereof; both because of his Majesty's sacred Person, which is far transcendent above all presumed Injuries, and also *quia calumnia est adversus absentem*. Farder, since in Law and Reason, Intention of Law and Reason differences Crimes by the Purpose of the Party, let the Purpose of the Pannel difference now this his Act, which does make the same to be presentation of a Supplication, and not divulging of an infamous Libel. 3dly, The Delivery of the Writ by the Pannel to Mr. *Dunmure* proves not divulging; and opposes thereto the Pannel's Deposition of the 9th of *June*, which bears that the Pannel gave the Writ to *Dunmure* to look upon to himself alone, and to shew it to no other, and that he never knew that *Dunmure* had copied the same, till *Dunmure* was called in question for it. Opposes likewise Mr. *Dunmure*'s Deposition, which bears in this same manner. Opposes also the Law *Quod in maleficiis voluntas spectatur, non exitus*; and that the Pannel's purpose is declared by his Deposition foresaid.

It is answered by my Lord Advocate, That the Interlining is not found relevant *per se*, but with the remanent Circumstances; and so far as Interlining is libelled, (which is indefinitely, without respect of time, whether before or after shewing of it to *Dunmure*) it is clearly proven by the Pannel's own Deposition, and by ocular Inspection of the scandalous Libel produced by the Pannel, which is interlined with his own Hand in two divers Places. And for proving the Pannel to be Author, Adviser, &c. his receiving it immediately from *Haig*, delivering it to the Earl of *Rothes*, interlining of it *quocunque tempore*, dispersing of it to *Dunmure*, and giving the Power of it to *Dalgleish* his own Man, is sufficient to verify that part of the Dittay. To the whilk is added *Haig* his Confession in his Letter, which in two Passages thereof bears, that it was allowed by them in whose Name the same was framed, of the which Number the Pannel was one. Where it is alledged that the not apprehending is

not verified, or concealing of *Haig*, &c. because it is not proven that the Pannel had Knowledge that it was a scandalous Libel; it is answered, That the Pannel knew *Haig* to be Author, which is proven by his Depositions; and the Justice by *Interloquitor* has found it to be a scandalous Libel, and there is no necessity to prove his Knowledge. And as to divulging, it is not found relevant *solo*, but being conjoined with any part of the Dittay; and it is proven *in terminis*, as it is libelled by the Pannel's Depositions. And as to the Pannel's Intention, it is not a Part of the Dittay, the Pannel being verified to have been Author or Deviser, not Apprehender of *Haig*, or Concealer of him, or Divulger of the scandalous Libel; which is clearly proven by the Writs produced. And therefore alledges that the Assize, notwithstanding of their Objections proponed, ought to find the Dittay clearly proven; otherwise, protests for wilful Error and Remeid of Law.

It is duplyed by Mr. *John Nisbet* for the Pannel, Whereas it is replied by my Lord Advocat, that the Receipt of the Piece from the Author immediately after compiling of it, joined with Interlineation, and the Author's Testimony of the Pannel's approving of it, verifies the Pannel's Concourse with the Author in framing the Piece found scandalous; we oppone the Pannel's reiterat Depositions, bearing that he had no Accession in the framing, and gave no previous Warrant to the Framer, and disclaiming Knowledge of the framing of it, which must elide all the Presumptions adduced by my Lord Advocat; seeing it is in contraverted in Law, that a qualified Confession cannot be disjoined, as is clearly proven in my Dispute, chiefly since the Pannel has deponed so ingenuously, without any Obligation in Law, and upon Assurance foresaid.

Whereas it is replied by my Lord Advocat, That the Pannel intrusting of his Man Mr. *Robert Dalgleish* with the Piece, his imparting of it to *Dunmure*, and to my Lord of *Rothies*, verifies divulging, oppones our Dispute, and the Authorities of the Laws cited by us, requiring a publick Exposing, and a fraudulent Intention to defame. And we oppone the Condition of the Pannel's Delivery of it to *Dunmure*, that it should be *illi soli*; *Dunmure's* copying of it without the Pannel's Knowledge; then of the Pannel's Delivery of it to *Dunmure*, to found his Opinion in Judgment; all clearly verified by *Dunmure's* Deposition.

Where it is replied by my Lord Advocat, That *Haig's* Evasion, the Pannel's Knowledge that he was Author of the Piece now found scandalous, verifies the Point of not apprehending the Author; and that it is not necessary to prove the Pannel's Knowledge of the Piece: It is duplyed, That we oppone the uncontraverted Practick of all Countries where apprehending of Parties is enjoined, and resetting is prohibit; that Declarator should precede, as in Authors of heretical Books, forbidden to be received by the Law; because every Man is not able to discern those Pieces, which are debated and contraverted amongst the learnedest. And we oppone the Pannel's own Depositions, bearing that he knew not assuredly *Haig* to be Author thereof, but thought only he was Author; and therefore not obliged to apprehend summarly and abruptly. In respect hereof the Assize can no ways find the

Pannel guilty of the Dittay, and alledged Crime specified therein.

The Assize, by Plurality of Votes, elects and choises *John* Earl of *Traquair* Chancellor, (Foreman.)

Whilks Persons of Assize being received, sworn, and admitted, after Accusation of the said *John* Lord *Balmerino* by Dittay of the Crimes forelaids, mentioned and set down therein, and Production, and reading judicially of the Writs, and Probation used and produced by his Majesty's Advocat for verifying thereof, they removed all together, furth of Court to the Council-House of *Edinburgh*; where first, by Plurality of Votes, they elected and chused the said *John* Earl of *Traquair* Chancellor. Thereafter received and voted upon the hail Points of the said Dittay; and being riply and at length advised therewith, and with the Writs and Probation used and produced by his Majesty's Advocat for instructing of the same, and with the Objections made by the Pannel and his Procurators thereagainst, and Answers made by his Majesty's Advocat to the said Objections, all read in their Presence, and Audience re-enter'd again in Court; where they by Report and judicial Declaration of the said *John* Earl of *Traquair*, Chancellor of the said Assize, found, pronounced, and declared the said *John* Lord of *Balmerino* to be cleared and acquit of the first part of the said Dittay, wherein he is indicted as Author, Deviser, Consulter, Adviser, Airt and Part of the forming and penning of the infamous or scandalous Libel mention'd therein: As also of not apprehending of Mr. *William Haig*, whom he affirms in his Deposition to have been Author of the said Libel: And likewise to be cleared, assoilzed, and acquit of the divulging and dispersing of the said scandalous Libel amongst our sovereign Lord's Subjects, in manner specified in the said Dittay. And last, found, pronounced, and declared the said *John* Lord of *Balmerino* to be allenarly filed and convict of the Hearing of the said infamous Libel, Concealing and not Revealing of the said Mr. *William Haig*, affirmed by him to be the Author thereof.

The Justice-General upon consideration of the said *John* Lord *Balmerino* his Conviction by the fore-named Persons of Assize of the foresaid Point of Dittay, anent the Hearing of the infamous Libel therein contained, Concealing and not Revealing of Mr. *William Haig*, Author and Penner thereof, found and declared, by Advice of his Lordship's Assessors, That the said *John* Lord of *Balmerino* has therethrough incurred the Pain of Death contained in the Acts of Parliament; suspending always the Execution thereof, until the Time his Majesty's gracious Will and Pleasure be shown and declared thereanent: to whose sacred Majesty the Manner, Time, and Place of the Execution of the said Sentence is remitted by the Justice; and the said *John* Lord of *Balmerino* ordained in the mean time to be returned to Ward within the Castle of *Edinburgh*, to remain therein while his Majesty's Pleasure be signified*.

The King being informed hereof, was pleased to grant him a Pardon.

* Rush. Col. Vol. II. Pag. 281.



XXXVI. Proceedings in the Star-Chamber against Dr. John Bastwick, Mr. Henry Burton, and William Prynne Esq; * for several Libels, the 14th of June 1637. 13. Car. I. Wrote by their Friends.

AN Information was exhibited in the Star-Chamber by the Attorney-General, against *John Bastwick* Doctor in Physick †, *Henry Burton* Batchelor of Divinity, and *William Prynne* Barrister at Law, Defendants, for writing and publishing seditious, schismatical and libellous Books against the Hierarchy. They prepared their Answers, but the Counsel being backward for fear of offending the Court, they petition'd they might sign their Answers themselves, which was denied; and the 28th of *April* the Court order'd them to put in their Answers by *Monday* sevensnight under their Counsels hands, or else the matters of the Information to be taken *pro confesso*. Mr. Prynne, *May* 5. again petition'd them, that having been for above a Week debar'd access to his Counsel, and his Servant who should sollicit for him being detain'd close Prisoner in a Messenger's Hands, and it being difficult to get his Counsel to repair to him during the Term; he having been a Barrister at Law, pray'd he might (according to former Precedents in that Court) have liberty to put in his Answer by the Day prefix'd, under his own Hand, and not under his Counsels, who refused it out of Fear and Cowardice; for which he alledg'd these Reasons.

1. *Cloze*, Dr. *Layton*, and others, had been allow'd this, and there is but one Precedent against it; where, upon a special Reason, and in case of a Woman, not of a Man, much less of a Lawyer, it was denied.

2. Upon an *ore tenus* in this Court, in many Cases at the Council-Table, in Parliament, and in the King's-Bench upon Indictments and Informations (especially in Cases of Felony or Treason) the Defendants make their Defence without Counsel.

3. Counsel is allow'd not of Necessity but Favour, as a Help to the Defendants; but when they find them no help, but that they advise them to their prejudice, why may they not answer without them?

4. Every Answer in the Eye of the Law, is the Defendant's, not the Counsel's;

5. Shall an innocent Man suffer without Conviction, thro' the Want, Fear, Neglect, Ignorance, Diversity of Opinions, or Treachery of Counsel?

6. The Law of Nature teacheth every Creature, Man especially, to defend himself, and in the present Case the Defendant's Answer resteth upon Books, matters of Divinity, and other Points, wherein Counsel have little Skill: How can they defend him in a Cause they understand not?

7. At the General Day of Judgment, every Man shall be allow'd to make Answer for himself, much more should earthly Judges allow the same, where others will not or dare not.

8. By the judicial Law among the *Jews*, and by the civil Law among the *Pagan Romans*, every one might answer for themselves: *Naboth*, *Susanna*, *Christ*, and others, tho' unjustly condemn'd, yet were not condemn'd as guilty for not answering by Counsel.

9. *St. Paul* when he was slandered and accused by *Ananias* the High-Priest and *Tertullus*, and several times before *Felix*, *Festus*, and King *Agrippa* (three Heathen Magistrates) was suffered to speak for himself without any Counsel assign'd.

The Defendant therefore hopes, he being accused in this Court, by the *English* Prelates and High Priests Instigations, of Sedition and other such like Crimes, as *St. Paul* was, shall enjoy the same Privilege and Freedom before *Christian* Judges, as *St. Paul* had among *Pagans*; which his Adversaries will not be against, unless they will be deemed more unreasonable than *Ananias* himself: especially the Defendant having been a Barrister and Counsellor at Law formerly, and admitted in this Court to put in Answers under his Hand in other Men's Cases.

Upon reading this and a Petition from Dr. *Bastwick* to the same purpose, alledging his Counsel refused to sign his Answer, the Court adher'd to their former Order, that they should by *Monday* put in their Answers under Counsels hands, or else to be taken *pro confesso*. *Prynne* and *Bastwick* thereupon left their Answers under their own Hands at the Office, and tender'd another Draught thereof to the Court.

Before this Petition of Mr. *Prynne*, he and the two other Defendants put in a Cross-Bill under all their Hands, against the Archbishop of *Canterbury* and others of the Prelates, wherein they charg'd them with usurping upon his Majesty's Prerogative Royal, with Innovations, licensing Popish and Arminian Books, &c. and set forth the Substance of their Answers. The Bill being ingross'd and sign'd by them, Mr. *Prynne* tender'd it to my Lord Keeper, praying it might be accepted without Counsels Hands, who durst not sign it: The Lord Keeper upon reading the Cross-Bill refused to admit it, but delivered it to the King's Attorney. The Archbishop nettled thereat, demanded the Opinion of the Judges, whether they could not be punish'd as Libellers; who all but one answer'd negatively: for it was tender'd in a legal way, and the King's Courts

* Clar. Hist. Vol. 1. p. 73, 158.

† Russ. Col. Vol. 2. p. 380.

are open to all Men. The Archbishop then apply'd to the Court of Star-Chamber, and inform'd them, That in some Books and Pamphlets lately published, his Grace and the other Bishops are said to have usurped upon the King's Prerogative, and proceeded in their Courts contrary to Law. He pray'd the Court would require the Judges to give their Opinions therein; and the Court accordingly desir'd their Opinions in the Points following:

1. Whether Process may not issue out of the Ecclesiastical Courts in the Names of the Bishops? The Judges answered affirmatively.

2. Whether a Patent under the Great Seal be necessary for keeping Ecclesiastical Courts, and for Citations, Suspensions, Excommunications and other Censures? Whether Citations must be in the King's Name, and under his Seal of Arms? The like for Institutions, Inductions, and Corrections of Ecclesiastical Offences? They answer'd that a Patent under the Great Seal is not necessary in any of these Cases; nor is it necessary that Summons, Citations, or other Process Ecclesiastical, or Institutions, Inductions, or Corrections of Ecclesiastical Offences should be in the King's Name, or with his Stile, or under his Seal, or that their Seals of Office have in them the King's Arms, the Statute of 1 *Edw. 6. Ch. 2.* being not now in Force.

3. Whether Bishops, Arch-Deacons, &c. may keep any Visitation, without Commission under the Great Seal? They answer'd they may. Which Opinion of the Judges being certified into the Star-Chamber under the Hands of eleven of the twelve, the Court, at the Prayer of the Attorney-General, order'd the said Certificate to be recorded there, and in the other Courts at *Westminster*, the High-Commission and other Ecclesiastical Courts; and afterwards the original Certificate to be deliver'd to the Archbishop of *Canterbury*, to be preserv'd among the Records of his Court.

Dr. *Bastwick* having left his Answer at the Office as aforesaid, the Court taking notice that it was five Skins and a half of Parchment close written, and (as was alledg'd) contained much scandalous defamatory matter, order'd, That all the Matters of the Information, wherewith he was charged, should be taken *pro confesso*. Dr. *Bastwick* notwithstanding petition'd again, that his Answer might be accepted under his own Hand, but to no purpose: And Mr. *Prynn* in a second Petition desiring of the Court not to require Impossibilities of him, his Counsels Hands not being at his Command (for thus the most innocent Man may be betray'd and condemn'd, through the unfaithfulness, wilfulness, fear, corruption, or default of Counsel) he pray'd them to deal with him as they would be dealt with themselves, were they (which God forbid) in his Condition, and as they would have Christ proceed with them at the Day of Judgment. He craved only so much Favour and Justice as Christ found before *Pilate*, and *Paul* before *Felix*, *Festus*, and *Agrippa*, or as every Traytor or Felon enjoys in the Court of Justice, to answer for himself, when his Counsel will not, cannot, or dare not; especially in this weighty Cause highly concerning his Majesty's Royal Prerogative, the Safety of Religion, and the Good of the whole Realm. He pray'd the Cross-Bill and Answers of him and the other Defendants against the Prelates late dangerous Encroachments, Innovations, Practices and Oppressions, may be accepted under the Defendants own Hands; and the Pe-

titioner (upon granting his Petition) should ever pray for their Lordships, &c. The Court hereupon commanded Mr. *Holt*, one of Mr. *Prynn*'s Counsel, to repair to him in the *Tower*, and take Instructions for his Answer; and the Lieutenant of the *Tower* was sent for and check'd by the Lords for suffering Mr. *Prynn* to dictate such a Petition; and one *Gardener* who writ it from his Mouth by the Lieutenant's Licence, was the same Evening, by a Warrant from the Archbishop and others, apprehended by a Pursuivant, detain'd about fourteen Days, and not released till he had given Bond to appear when call'd.

Mr. *Prynn* upon Mr. *Holt*'s repairing to him, gave him his Fee, and Instructions for drawing his Answer; and the same being agreed on and settled by Mr. *Holt*, and *Tomlins* his other Counsel, Mr. *Holt*'s Clerk ingross'd it, but *Holt* then refused to sign it, saying he had express Order to the contrary, and would not do it for 100 *l.* and in the mean time *Tomlins* went into the Country. Mr. *Prynn* thus deluded, requested the Lord Keeper, the Chief Judge of that Court, to command Mr. *Holt* who had drawn it, to sign it; but the Lord Keeper answer'd, he had no Power to command Counsel to sign an Answer. And the Court *May 19*, positively ordered that for their Contempt in not putting in their Answers, the matters against *Bastwick* and *Prynn* should be taken *pro confesso*, and the Cause against them should be heard the first Sitting of the next Term. As for Mr. *Burton*'s Answer, it was sign'd by Mr. *Holt*; but after it had been near three Weeks in Court, upon Mr. Attorney's suggestion that it was scandalous, the Court refer'd it to the two Chief Justices *Bramston* and *Finch*. The latter revil'd *Holt* exceedingly, and told him he deserv'd to have his Gown pull'd over his Ears for drawing it: *Holt* reply'd, it was only a Confession or Explanation of the Charge in the Bill, and a Recital of Acts of Parliament, and how that could be scandalous or impertinent he could not conceive. But the two Justices certified it to be all scandalous and impertinent, except the usual Words in the beginning, *The said Defendant by Protestation not confessing*, &c. and the Words in the latter end, containing his Plea of *Not Guilty*, the common Averment that he was ready to prove the matters of Answer, his Prayer of a favourable Interpretation, and to be dismissed. So all the Body of his Answer, containing about 40 Sheets of Paper, was expung'd, and nothing but the Head and Feet remain'd: And by his Plea of *Not Guilty* to all, he was made to deny what he had confess'd, and justified in his Answer: And the Examiner coming to him afterwards to the Fleet, with Interrogatories grounded on his Answer, he refused to be examin'd unless his Answer might be admitted as it was put in, or he permitted to put in a new one. The Court order'd the Examiner to repair to him a second time with the Interrogatories, but he persisting in his Refusal to be examin'd, for that the Answer now in Court was none of his, the Court order'd the matter of the Information and Interrogatories to be taken against him *pro confesso*; and on the 13th of *June* the Court order'd the Cause against all the three Defendants to be heard the next Day, and that in the mean time they should have Liberty with their Keepers to attend their Counsel. This was look'd upon as short warning by some, who affirm'd, that by the Course of the Court, a *Subpœna ad audiendum judicium* should

should have been serv'd upon them fifteen Days at least before the Day of hearing, which was not done. However Mr. Pryn made use of his Liberty, and repair'd to Mr. Tomlins (then newly return'd) with his Answer newly drawn up and ingross'd as aforesaid, who sign'd it, but Mr. Holt said he durst not; then Mr. Pryn tender'd it thus sign'd to Mr. Goad at the Office, but he utterly refused to take it.

Mr. Burton in his Answer, set forth the Substance of his Sermon which he preach'd the fifth of November in his Parish Church in Friday-street, touching the Innovations brought into the Church.

Dr. Bastwick in his Answer term'd the Prelates Invaders of the King's Prerogative, Contemners of the Scriptures, Advancers of Popery, Superstition, Idolatry, Profaneness, Oppression of the King's Subjects, in the impious performance whereof they ihew'd neither Wit nor Honesty; Enemies of God and the King, and Servants of the Devil.

Mr. Pryn's Answer was much against the Hierarchy, but in more moderate and cautious Expressions.

June 14, The Lords being set in their Places in the Star-Chamber, and the three Defendants brought to the Bar, to receive their Sentences, the Lord Chief Justice Finch looking earnestly on Mr. Pryn, said, I had thought Mr. Pryn had no Ears, but methinks he hath Ears; which caused many of the Lords to take the stricter View of him, and for their better Satisfaction, the Usher of the Court was commanded to turn up his Hair, and shew his Ears: Upon the sight whereof the Lords were displeas'd they had been formerly no more cut off, and cast out some disgraceful Words of him. To which Mr. Pryn reply'd, My Lords, there is never a one of your Honours, but would be sorry to have your Ears as mine are.

L. Keeper. In good faith he is somewhat saucy.

Mr. Pryn. I hope your Honours will not be offended, pray God give you Ears to hear.

L. Keeper. The Business of the Day is to proceed on the Prisoners at the Bar.

Mr. Pryn then humbly desir'd of the Court to give him leave to make a Motion or two, which being granted, he moved,

Mr. Pryn. First, That their Honours would be pleas'd to accept of a Cross-Bill against the Prelates, signed with their own Hands, being that which stands with the Justice of the Court, which he humbly craves; and so tender'd it.

L. Keeper. As for your Cross-Bill, it is not the Business of the Day; hereafter if the Court shall see just Cause, and that it favours not of libelling, we may accept of it: for my part I have not seen it, but have heard somewhat of it.

Mr. Pryn. I hope your Honours will not refuse it, being it is on his Majesty's behalf. We are his Majesty's Subjects, and therefore require the Justice of the Court.

L. Keeper. But this is not the Business of the Day.

Mr. Pryn. Why then, my Lords, I have a second Motion, which I humbly pray your Honours to grant; which is, that your Lordships will be pleas'd to dismiss the Prelates here now sitting, from having any Voice in the Censure of this Cause (being generally known to be Adver-

saries) as being no way agreeable with Equity or Reason, that they who are our Adversaries, should be our Judges. Therefore we humbly crave they may be expung'd out of the Court.

L. Keeper. In good faith, it is a sweet Motion, is it not? Herein you are become libellous. And if you should thus libel all the Lords and Reverend Judges, as you do the most Reverend Prelates, by this your Plea, you would have none to pass Sentence upon you for your Libelling, because they are Parties.

Mr. Pryn. Under Correction, my Lord, this doth not hold, the Case is not alike, for here are only one or two Members of the Court, who are said to be libelled against, and your Lordship yourself in your Case against Norton, absented yourself from the Hearing, because a Party, which is usually done by the Lords in like Cases. But this prevailed nothing.

Mr. Pryn. Then I have a third Motion, which is, that your Lordships will receive my Answer to the Information sign'd, with one Counsel's Hand, which as soon as I could get sign'd, I tender'd at the Office, but it was refus'd.

L. Keeper. Your Answer comes now too late, proceed to the Business of the Day. Read the Information, which was read, being very large, and having these five Books thereto annexed, Dr. Bastwick's Latin Apology, his Litany, Mr. Burton's Book, intitled, *An Apology for an Appeal to the King's most Excellent Majesty, with two Sermons for God and the King*, preached on the 5th of November last: *The News from Ipswich, and the Divine Tragedy, recording God's fearful Judgments against Sabbath-Breakers*. The King's Counsel being five, took each of them a several Book.

Mr. Attorney began with Dr. Bastwick's Latin Apology; next unto the Attorney, Serjeant Whitfield falls upon Mr. Burton's Book, saying, In good faith, my Lords, there is never a Page in this Book, but deserves a heavier and deeper Censure than this Court can put upon him.

Next followed the Archbishop, who in like manner descanted on the News from Ipswich, charging it to be full of pernicious Lyes; and especially vindicating the honour of Matthew Wren, Bishop of Norwich, as being a Learned, Pious, and Reverend Father of the Church.

Next followed the King's * Solicitor, who descanted upon the Di- * Mr. Littleton. vine Tragedy; to which part of it concerning God's Judgments on Sabbath-Breakers, he said, That they sat in the Seat of God, who judged these Accidents which fell out upon Persons suddenly struck, to be the Judgments of God for Sabbath-breaking. He enlarg'd himself upon that Passage which reflected upon his Majesty's late Attorney-General, Mr. William Noy, who, (he said) was most shamefully abused by a Slander laid upon him, as if God's Judgment fell upon him, for so eagerly prosecuting Mr. Pryn for his *Histrionastix*, which Judgment was this; that he laughing at Mr. Pryn, while he was suffering upon the Pillory, was struck with an Issue of Blood in his Privy Parts, which could never be stop'd till the Day of his Death, which follow'd soon after: but the Truth of this, my Lords, you shall find to be as probable as the rest, for we have here three or four Gentlemen of good Credit and Rank, to testify upon Oath that he had that Issue long before. And the Solicitor call'd out for Room to

be made for the Gentlemen to come in, but none such appear'd.

Lastly follow'd Mr. *Herbert*, who descanting upon Dr. *Bastwick's* Litany, concluded jointly with the rest, that it deserved a heavy Censure.

L. Keeper. You hear, Gentlemen, wherewith you are charg'd, and now lest you should say you cannot have Liberty to speak for yourselves, the Court gives you leave to speak what you can, with these Conditions.

First, That you speak within the Bounds of Modesty.

Secondly, That your Speeches be not libellous.

They all three answer'd, they hoped so to order their Speech, as to be free from any immodest or libellous speaking.

L. Keeper. Then speak in God's Name, and shew Cause why the Court should not proceed in Censure (as taking the Cause *pro confesso*.)

Mr. *Prynn*. I expected some particular Charge to be proved against me: Dr. *Bastwick* and Mr. *Burton* are charged with particular Books to the Information annex'd, but none of the Books are laid to me; my sole Offence, for which the Information must be taken *pro confesso*, is my not putting in my Answer under Counsel's Hand by a Day prefix'd; whereas I enter'd my Appearance, and took out a Copy of the Information, which being taken out, I endeavoured to draw up my Answer; but being shut up close Prisoner, I was deserted of all means by which I should have done it: for I was no sooner serv'd with the *Subpena*, but I was shortly after shut up close Prisoner, prohibited of Pen, Ink and Paper, and so disabled to draw up my Answer, or Instructions for Counsel; my Servant who should solicit for me was in Prison, without being admitted to Bail, my Friends deny'd Access, and my Chamber twice search'd; and after I had drawn some Instructions, and part of my Answer (having then obtain'd Liberty of Pen and Ink) they were taken away by Mr. *Nicolas*, Clerk of the Council; your Lordships refus'd to let me put in my Answer under my own Hand, tho' a Counsellor at Law, contrary to former Precedents; your Lordships did at last assign me Counsel, but they neglected to come to me, and when by order of the Court Mr. *Holt* came to me in the *Tower*, I gave him my Fee and Instructions, and afterwards Mr. *Holt* and my other Counsel agreed upon my Answer, caus'd it to be ingross'd, and promis'd to sign it, but Mr. *Holt* refused to do it then; afterwards Mr. *Tomlins* signed it, and it was carry'd to the Office, but they refused it. Here it is, I tender it upon my Oath, which your Lordships cannot deny with the Justice of the Court.

L. Keeper. We can give you a Precedent, that this Court hath proceeded and taken a Cause *pro confesso*, for not putting in an Answer in six Days; you have had a great deal of Favour shew'd you, in affording you longer time, and therefore the Court is free from all Calumny or Aspersions for rejecting your Answer, not sign'd with Counsels Hands.

Mr. *Prynn*. But one Word or two, my Lords, I desire your Honours to hear me; I put a Case in Law, If an Award be made that *A* shall together with *B* and *C* enter into a Bond of 100*l.* to *S*, the Award is void, because *A* hath no Power to compel *B* and *C* to enter into such a Bond; my Case is the same, The Court order'd

me to put in my Answer under Counsels Hands; I endeavour'd it, they refused to sign it, I had no Power to compel them, and desir'd the Court to order them to sign it; but the Court reply'd they had no Power to force them; how then could I, a close Prisoner, compel them, if the Court could not? By this means the most innocent Person in the World may be made guilty of what Crimes you please. I appeal to Mr. *Holt*, if I have not used all my Endeavours to get him to sign my Answer.

Mr. *Holt*. There was so long time spent ere I could do any thing after I was assign'd his Counsel, that it was impossible his Answer could be drawn up in so short a time as was allotted; for after long expectation, seeing he came not to me, I went to him, where I found him shut up close Prisoner, so that I could not have Access to him; whereupon I motioned to the Lieutenant of the *Tower* to have free Liberty of Speech with him concerning his Answer, which being granted me, I found him very willing and desirous to have it drawn up; whereupon I did move in this Court for Pen and Paper, which was granted, the which he no sooner had gotten but he set himself to draw up Instructions, and in a short time sent me 40 Sheets, and soon after I received 40 more; but I found the Answer so long, and of such a nature, that I durst not set my Hand to it, for fear of giving your Honours distaste.

Mr. *Prynn*. My Lords, I did nothing but according to the Directions of my Counsel, only I spake my own Words: my Answer was drawn up by his Consent, it was his own Act, and he did approve of it; and if he will be so base a Coward; to do that in private which he dares not acknowledge in publick, I will not have such a Sin lie on my Conscience, let it rest with him. Here is my Answer, which tho' it be not sign'd with their Hands, yet here I tender it upon my Oath, which you cannot in Justice deny.

L. Keeper. Your Case is good Law, but ill apply'd; the Court desires no such long Answer, but whether you are Guilty or not Guilty.

Mr. *Prynn*. By the Statutes of *Phil.* and *Mar.* and of *Eliz.* in the Case of Libelling the King or Queen, the Party's Confession, or two Witnesses Face to Face are required, else no Conviction, and here is neither; nor is there in all the Information one Clause that doth particularly fall on me, but only in general. There is no Book laid to my Charge, and shall I be condemn'd for a particular Act, when no Accusation of any particular Act can be brought against me? This were most unjust and wicked. Here I tender my Answer to the Information upon my Oath; my Lord, you do impose Impossibilities upon me, I could do no more than I did.

L. Keeper. Well, hold your peace, your Answer comes too late: What say you, Dr. *Bastwick*?

Dr. *Bastwick*. My Honourable Lords, methinks you look like an Assembly of Gods, and sit in the place of God: Ye are called the Sons of God; and since I have compared you to Gods, give me leave a little to parallel the one with the other, to see whether the Comparison between God and you doth hold in this noble and righteous Cause. This was the Carriage of Almighty God in the Cause of *Sodom*, before he would pronounce Sentence, or execute Judgment, he would first come down, and see whether the Crime was altogether according to the Cry that was come up. And with whom doth

doth the Lord consult, when he came down? With his Servant *Abraham*, and he gives the Reason; for I know (saith he) that *Abraham* will command his Children and Household after him, that they shall keep the way of the Lord to do Justice and Judgment. My good Lords, thus stands the Case between your Honours and us this Day: there is a great Cry come up into your Ears against us from the King's Attorney; why now be you pleased to descend and see if the Crime be according to the Cry, and consult (with God) (not the Prelates, being the Adversary part; who, as it is apparent to all the World, do proudly set themselves against the ways of God, and from whom none can expect Justice or Judgment) but with righteous Men, that will be impartial on either side, before you proceed to Censure, which Censure you cannot pass on us without great Injustice before you hear our Answers read. Here is my Answer, which I here tender upon my Oath: My good Lords, give us leave to speak in our own Defence. We are not conscious to ourselves, of any thing we have done that deserves a Censure this Day in this Honourable Court, but that we have ever laboured to maintain the Honour, Dignity, and Prerogative Royal of our Sovereign Lord the King; let my Lord the King live for ever. Had I a thousand Lives, I should think them all too little to spend for the maintenance of his Majesty's Royal Prerogative. My good Lords, can you proceed to Censure before you know my Cause? I dare undertake, that scarce any one of your Lordships have read my Books: and can you then Censure me for what you know not, and before I have made my Defence? O my Noble Lords! is this righteous Judgment? This were against the Law of God and Man, to condemn a Man before you know his Crime: The Governour before whom *St. Paul* was carried (who was a very Heathen) would first hear his Cause before he would pass any Censure upon him; and doth it beseem so Noble and Christian Assembly to condemn me before my Answer be perused, and my Cause known? Men, Brethren, and Fathers, into what an Age are we fallen? I desire your Honours to lay aside your Censure for this Day, to inquire into my Cause, and hear my Answer read; which if you refuse to do, I here profess, I will clothe it in *Roman Buff*, and send it abroad unto the View of all the World, to clear mine Innocency, and shew your great Injustice in this Cause.

L. Keeper. But this is not the Business of the Day; why brought you not in your Answer in due time?

Dr. Bastw. My Lord, a long time since I tender'd it to your Honour, I failed not in any one particular: And if my Counsel be so base and cowardly, that they dare not sign it for fear of the Prelates (as I can make it appear) therefore have I no Answer? My Lord, here is my Answer, which tho' my Counsel out of a base Spirit dare not set their Hands unto, yet I tender it upon my Oath.

L. Keeper. But, Mr. Doctor, you should have been brief; you tender'd in too large an Answer, which (as I heard) is as libellous as your Books.

Dr. Bastw. No, my Lord, it is not libellous tho' large; I have none to answer for me but my self, and being left to my self, I must plead my Conscience in answer to every Circumstance of the Information.

L. Keeper. What say you, Mr. Doctor, are you Guilty, or not Guilty? answer yea, or no: you needed not to have troubled yourself so much about so large an Answer.

Dr. Bastw. I know none of your Honours have read my Book; and can you with the Justice of the Court, condemn me before you know what is written in my Books?

L. Keeper. What say you to that was read to you even now?

Dr. Bastw. My Lord, he that read it did so murder the Sense of it, that had I not known, what I had written, I could not tell what to have made of it.

L. Keeper. What say you to the other Sentence read to you?

Dr. Bastw. That was none of mine, I will not father that which was none of my own.

L. Dorset. Did not you send that Book, as now it is, to a Nobleman's House, together with a Letter directed to him?

Dr. Bastw. Yea, my Lord, I did so, but withal you may see in my Epistle set before the Book, I did at first disclaim what was not mine. I sent my Book over by a *Dutch Merchant*, who it was that wrote the Addition I do not know, but my Epistle set to my Book, made manifest what was mine, and what was not; and I cannot justly suffer for what was none of mine.

L. Arund. My Lord, you hear by his own Speech the Cause is taken *pro confesso*.

L. Keeper. Yea, you say true, my Lord.

Dr. Bastw. My Noble Lord of *Arundel*, I know you are a Noble Prince in *Israel*, and a great Peer of this Realm; there are some honourable Lords in this Court, that have been forced out as Combatants in a single Duel; it is between the Prelates and us, at this time, as between two that have appointed the Field. The one being a Coward goes to the Magistrate, and by virtue of his Authority disarms the other of his Weapons, and gives him a Bullrush, and then challenges him to fight. If this be not base Cowardice, I know not what belongs to a Soldier. This is the Case between the Prelates and us, they take away our Weapons (our Answers) by virtue of your Authority, by which we should defend ourselves, and yet they bid us fight. My Lord, doth not this favour of a base cowardly Spirit? I know, my Lord, there is a Decree gone forth (for my Sentence was passed long since) to cut off our Ears.

L. Keeper. Who shall know our Censure, before the Court pass it? Do you prophesy of yourselves?

Dr. Bastw. My Lord, I am able to prove it, and that from the Mouth of the Prelates own Servants, that in *August* last it was decreed, that *Dr. Bastwick* should lose his Ears. O my Noble Lords! is this righteous Judgment? I may say, as the Apostle once said, What whip a *Roman*! I have been a Soldier able to lead an Army into the Field, to fight valiantly for the Honour of their Prince: Now I am a Physician, able to cure Nobles, Kings, Princes and Emperors; and to curtalize a *Roman's* Ears like a Cur, O my honourable Lords! is it not too base an Act for so noble an Assembly, and for so righteous and honourable a Cause? The Cause, my Lords, is great, it concerns the Glory of God, the Honour of our King, whose Prerogative we labour to maintain and to set up in a high manner, in which your Honours Liberties are engaged:

And

And doth not such a Cause deserve your Lordships Consideration, before you proceed to censure? Your Honours may be pleased to consider, that in the last Cause heard and censured in this Court, between Sir *James Bagg* and the Lord *Mobun*, wherein your Lordships took a great deal of Pains, with a great deal of Patience, to hear the Bills on both sides, with all the Answers and Depositions largely laid open before you; which Cause when you had fully heard, some of your Honours now sitting in Court, said, you could not in Conscience proceed to Censure, till you had taken some time to recollect yourselves. If in a Cause of that nature, you could spend so much time, and afterwards recollect yourselves before you would pass Censure; how much more should it move your Honours to take some time in a Cause wherein the Glory of God, the Prerogative of his Majesty, your Honours Dignity, and the Subjects Liberty is so largely engaged? My good Lords, it may fall out to be any of your Lordships Cases to stand as Delinquents at this Bar, as we now do: It is not unknown to your Honours, the next Cause that is to succeed ours, is touching a Person that sometimes hath been in greatest Power in this Court: And if the Mutations and Revolutions of Persons and Times be such, then I do most humbly beseech your Honours to look on us, as it may befall yourselves. But if all this will not prevail with your Honours, to peruse my Books, and hear my Answer read, which here I tender upon the Word and Oath of a Soldier, a Gentleman, a Scholar, and a Physician, I will clothe them (as I said before) in *Roman Buff*, and disperse them throughout the Christian World, that future Generations may see the Innocency of this Cause, and your Honours unjust Proceedings in it; all which I will do, tho' it cost me my Life.

L. Keeper. Mr. Doctor, I thought you would be angry.

Dr. Bastw. No, my Lord, you are mistaken, I am not angry or passionate; all that I do press, is, that you would be pleased to peruse my Answer.

L. Keeper. Well, hold your peace. Mr. *Burton*, what say you?

Mr. Burton. My good Lords, your Honours (it should seem) do determine to censure us, and take our Cause *pro Confesso*, although we have laboured to give your Honours Satisfaction in all Things. My Lords, what you have to say against my Book, I confess I did write it, yet did I not anything out of Intent of Commotion or Sedition: I delivered nothing but what my Text led me to, being chosen to suit with the Day, namely the 5th of *November*; the Words were these, &c.

L. Keeper. Mr. *Burton*, I pray stand not naming Texts of Scripture now; we do not send for you to preach, but to answer to those things that are objected against you.

Mr. Burton. My Lord, I have drawn up my Answer to my great Pains and Charges, which Answer was signed with my Counsels Hands, and received into the Court, according to the Rule and Order thereof. And I did not think to have been called this Day to a Censure, but have had a legal proceeding by way of Bill and Answer.

L. Keeper. Your Answer was impertinent.

Mr. Burton. My Answer (after it was entered into the Court) was referred to the Judges, but by what means I do not know. Whether it be impertinent, and what Cause your Lordships had to cast it out, I know not; but after it was approved of,

and received, it was cast out as an impertinent Answer.

L. Finch. The Judges did you a good Turn to make it impertinent, for it was as libellous as your Book, so that your Answer deserved a Censure alone.

L. Keeper. What say you, Mr. *Burton*, are you Guilty, or not?

Mr. Burton. My Lord, I desire you not only to peruse my Book here and there, but every Passage of it.

L. Keeper. Mr. *Burton*, Time is short, are you Guilty, or not Guilty? What say you to that which was read? Doth it become a Minister to deliver himself in such a railing and scanda'ous way?

Mr. Burton. In my Judgment, and as I can prove it, it was neither railing nor scanda'ous; I conceive that a Minister hath a larger Liberty than always to go in a mild strain: I being the Paster of my People, whom I had in charge, and was to instruct, I supposed it was my Duty to inform them of these Innovations that are crept into the Church, as likewise of the Danger and ill Consequence of them: As for my Answer, ye blotted out what ye would, and then the rest which made best for your own Ends, you would have to stand; and now for me to tender only what will serve for your own Turns, and renounce the rest, were to desert my Cause, which before I will do, or desert my Conscience, I will rather desert my Body, and deliver it up to your Lordships to do with it what you will.

L. Keeper. This is a Place where you should crave Mercy and Favour, Mr. *Burton*, and not stand upon such Terms as you do.

Mr. Burton. There wherein I have offended through human Frailty, I crave of God and Man Pardon: And I pray God, that in your Sentence, you may so censure us, that you may not sin against the Lord.

Thus the Prisoners desiring to speak a little more for themselves, were commanded to Silence. And so the Lords proceeded to Censure.

L. Cottington. I condemn these three Men to lose their Ears in the *Palace-yard* at *Westminster*; to be fined five Thousand Pounds a Man to his Majesty; and to perpetual Imprisonment in three remote Places of the Kingdom; namely, the Castles of *Carnarvan*, *Cornwal*, and *Lancaster*.

L. Finch. I condemn Mr. *Prym* to be stigmatiz'd in the Cheeks with two Letters (*S & L*) for a seditious Libeller. To which all the Lords agreed. And so the Lord Keeper concluded the Censure.

Archbishop Laud's Speech.

My Lords,

I Shall not need to speak of the infamous Course of libelling in any kind:

Nor of the Punishment of it, which in some Cases was capital by the *Imperial Laws*.

As appears:

Cod. l. 9. T. 36.

Nor how patiently some great Men, very great Men indeed, have borne *animo civili* (that's *Suetonius's* Word) *laceratam estimationem*, the tearing and rending of their Credit and Reputation, with a gentle, nay, a generous Mind.

In Jul. c. 75.

But of all *Libels*, they are most odious which pretend *Religion*; as if that of all things did desire to be defended by a Mouth that is like an open Sepulchre,

Sepulchre, or by a Pen that is made of a sick and a loathsome Quill.

There were Times when *Persecutions* were great in the Church, even to exceed *Barbarity* itself: Did any *Martyr* or *Confessor*, in those Times, libel the *Governours*? Surely no; not one of them to my best *Remembrance*: yet these complain of *Persecution* without all shew of Cause, and in the mean time libel and rail without all measure. So little of kin are they to those which suffer for Christ, or the least part of *Christian Religion*.

My Lords, It is not every Man's Spirit to hold up against the *Venom* which *Libellers* spit. For *St. Ambrose*, who was a stout and worthy Prelate, tells us, not that himself, but that a far greater Man than he, that's King *David*, had found out (so it seems in his *Judgment* 'twas no matter of ordinary Ability) *grande inventum*, a great and mighty Invention, how to swallow and put off

those bitter *Contumelies* of the *Tongue*; and those of the *Pen* are no whit less, and spread farther. And it was a great one indeed, and well beseeemed the Greatness of *David*. But I think it will be far better for me to look upward, and practise it, than to look downward, and discourse upon it.

In the mean time I shall remember what an *Antient* under the Name of *St. Jerome* tells me, *Indignum est & preposterum*, 'tis unworthy in it-

self and preposterous in demeanour, for a Man to be ashamed for doing good, because other Men glory in speaking ill.

And I can say it clearly and truly, as in the *Presence of God*, I have done nothing, as a *Prelate*, to the uttermost of what I am conscious, but with a *single Heart*, and with a *sincere Intention* for the good *Government* and *Honour* of the *Church*, and the Maintenance of the *orthodox Truth* and *Religion* of *Christ* professed, established, and maintained in this *Church of England*.

For my *Care of this Church*, the reducing of it into *Order*, the upholding of the *external Worship of God* in it, and the settling of it to the *Rules* of its *first Reformation*, are the *Causes* (and the sole Causes, whatever are pretended) of all this malicious *Storm*, which hath loured so black upon Me, and some of my *Brethren*. And in the mean time, they which are the only, or the chief *Innovators* of the *Christian World*, having nothing to say, accuse us of *Innovation*; they themselves and their *Complices*, in the mean time, being the greatest *Innovators* that the *Christian World* hath almost ever known. I deny not but others have spread more dangerous *Errors* in the *Church of Christ*; but no Men, in any Age of it, have been more guilty of *Innovation* than they, while themselves cry out against it: *Quis tulerit Gracchos?*

And I said well, *Quis tulerit Gracchos?* for 'tis most apparent to any Man that will not wink, that the *Intention* of these Men, and their *Abettors*, was, and is, to raise a *Sedition*; being as great *Incediaries* in the *State* (where they get power) as they have ever been in the *Church*; *Novatian* himself hardly greater.

Our main *Crime* is (would they all speak out, as some of them do) that we are *Bishops*; were we not so, some of us might be as passable as other Men.

And a great *Trouble* 'tis to them, that we maintain that our *Calling of Bishops* is *Jure Divino*, by divine Right; of this I have said enough, and

in this Place, in *Leighton's Case*; nor will I repeat. Only this I will say, and abide by it, that the *Calling of Bishops* is *Jure Divino*, by divine Right, tho' not all *Adjuncts* to their *Calling*. And this I say in as direct *Opposition* to the *Church of Rome*, as to the *Puritan Humour*.

And I say farther: That from the *Apostles Times*, in all Ages, in all Places, the *Church of Christ* was governed by *Bishops*; and *Lay-Elders* never heard of till *Calvin's* new-fangled Device at *Geneva*.

Now this is made by these Men, as if it were *contra Regem*, against the King, in Right or in Power.

But that's a mere *ignorant Shift*; for our being *Bishops*, *Jure Divino*, by divine Right, takes nothing from the *King's Right or Power over us*. For tho' our *Office* be from *God* and *Christ immediately*, yet may we not exercise that *Power*, either of *Order* or *Jurisdiction*, but as *God* hath appointed us, that is, not in his *Majesty's*, or any *Christian King's Kingdoms*; but by and under the *Power of the King* given us so to do.

And were this a good *Argument* against us, as *Bishops*, it must needs be good against *Priests* and *Ministers* too; for themselves grant that their *Calling* is *Jure Divino*, by divine Right; and yet I hope they will not say, that to be *Priests* and *Ministers* is against the *King*, or any his *royal Prerogatives*.

Next, suppose our *Callings*, as *Bishops*, could not be made good *Jure Divino*, by divine Right; yet *Jure Ecclesiastico*, by ecclesiastical Right, it cannot be denied. And here in *England* the *Bishops* are confirmed, both in their *Power* and *Means*, by *Act of Parliament*. So that here we stand in as good Case, as the present *Laws* of the *Realm* can make us. And so we must stand, till the *Laws* shall be repealed by the same *Power* that made them.

Now then, suppose we had no other String to hold by (I say suppose this, but I grant it not) yet no Man can libel against our *Calling* (as these Men do) be it in *Pulpit*, *Print*, or otherwise, but he libels against the *King* and the *State*, by whose *Laws* we are established. Therefore, all these *Libels*, so far forth as they are against our *Calling*, are against the *King* and the *Law*, and can have no other Purpose than to stir up *Sedition* among the *People*.

If these Men had any other *Intention*, or if they had any christian or charitable Desire to reform any thing amiss; why did they not modestly petition his *Majesty* about it, that in his princely *Wisdom* he might set all things right, in a just and orderly manner? But this was neither their *Intention*, nor *Way*: for one clamours out of his *Pulpit*, and all of them from the *Press*, and in a most virulent and *unchristian* manner set themselves to make a *Heat* among the *People*; and so by *Mutiny*, to effect that, which by *Law* they cannot; and by most false and unjust *Calumnies* to defame both our *Callings* and *Persons*. But for my part, as I pity their Rage, so I heartily pray *God* to forgive their Malice.

No *Nation* hath ever appeared more jealous of *Religion*, than the *People of England* have ever been. And their *Zeal to God's Glory* hath been, and at this Day is a great *Honour* to them. But this *Zeal* of theirs, hath not been at all times and in all Persons, alike guided by *Knowledge*. Now *Zeal*, as it is of excellent Use where it sees its Way,

Way, it is so very *dangerous* Company where it goes on in the *dark**: And these Men, knowing the *Disposition* of the People, have laboured nothing more than to misinform their *Knowledge*, and misguide their *Zeal*, and so to fire that into a *Sedition*, in hope that they, whom they causelessly hate, might miscarry in it.

For the *main Scope* of these *Libels* is, to kindle a *Jealousy* in Men's Minds, that there are some great Plots in hand, *dangerous Plots* (so says Mr. Burton expressly) to change the *Orthodox Religion* established in *England*; and to bring in I know not what, *Romish Superstition* in the room of it. As if the *external decent Worship of God* could not be upheld in this *Kingdom*, without bringing in of *Popery*.

Now by this *Art* of theirs, give me leave to tell you that the *King* is most desperately abused and wounded in the Minds of his *People*; and the *Prelates* shamefully.

The *King* most desperately: for there is not a more cunning Trick in the World, to withdraw the People's Hearts from their *Sovereign*, than to persuade them that he is changing *true Religion*, and about to bring in gross *Superstition* upon them.

And the *Prelates* shamefully: for they are charged to seduce, and lay the Plot, and be the *Instruments*.

For his Majesty first. This I know, and upon this *Occasion* take it my *Duty* to speak: there is no *Prince* in *Christendom* more sincere in his *Religion*, nor more constant to it, than the *King*. And he gave such a Testimony of this at his being in *Spain*, as I much doubt whether the best of that *Faction* durst have done half so much as his Majesty did, in the face of that *Kingdom*. And this, you, my *Lord*, the *Earl of Holland*, and other Persons of *Honour*, were Eye and Ear Witnesses of, having the Happiness to attend him there. And at this Day, as his Majesty (by *God's* great Blessing both on him and us) knows more, so is he more settled and more confirmed, both in the *Truth* of the *Religion* here established, and in *Resolution* to maintain it.

And for the *Prelates*: I assure my self, they cannot be so base as to live *Prelates* in the Church of *England*, and labour to bring in the *Superstitions* of the Church of *Rome* upon themselves and it. And if any should be so foul, I do not only leave him to *God's* Judgment, but (if these *Libellers*, or any other, can discover that his base and *irreligious* Falshood) to *Shame* also, and severe *Punishment* from the *State*: and in any just way, no Man's Hand shall be more, or sooner against him, than mine shall be.

And for my self: To pass by all the scandalous *Reproaches* which they have most injuriously cast upon me, I shall say this only;

First, I know of no Plot, nor *Purpose* of altering the *Religion* established.

Secondly, I have ever been far from attempting any thing that may truly be said to tend that way in the least Degree: And to these two I here offer my *Oath*.

Thirdly, If the *King* had a mind to change *Religion*, which I know he hath not, and *God* for-

bid he should ever have) he must seek for other *Instruments*. For basely as these Men conceive of me, yet, I thank *God*, I know my *Duty* well both to *God* and the *King*: and I know that all the *Duty* I owe to the *King*, is under *God*. And my great Happiness it is (tho' not mine alone, but your *Lordships* and all his Subjects with me) that we live under a *gracious* and *religious* *King*, that will ever give us leave to serve *God* first, and him next. But were the Days otherwise, I thank *Christ* for it, I yet know not how to serve any Man against the *Truth* of *God*, and I hope I shall never learn it.

But to return to the *Business*: What is their *Art* to make the World believe a *Change of Religion* is endeavoured? What? why, *forsooth*, they say, there are great *Innovations* brought in by the *Prelates*; and such as tend to the advancing of *Popery*.

Now that the *Vanity* and *Falshood* of this may appear, I shall humbly desire your *Lordships* to give me leave to recite briefly all the *Innovations* charged upon us, be they of less or greater *moment*; and as briefly to answer them. And then you shall clearly see, whether any *Cause* hath been given of these unfavoury *Libels*; and withal, whether there be any shew of *Cause* to fear a *change of Religion*. And I will take these great pretended *Innovations* in order as I meet with them.

First, I begin with the *News* from *Ipswich*.

Where the first *Innovation* is, that the last Year's *Fast* was enjoyed to be without *Sermons* in *London*, the *Suburbs*, and other infected *Places*, contrary to the *Orders* for other *Fasts* in former *Times*: whereas *Sermons* are the only *Means* to humble Men, &c. Page 2.

To this I say, 1st. That an *After-age* may, without *Offence*, learn to avoid any visible *Inconvenience* observed in the former. And there was visible *Inconvenience* observed in Men's former flocking to *Sermons* in infected *Places*.

Secondly, This was no particular *Act* of the *Prelates*; but the *Business* was debated at the *Council-Table*, being a matter of *State*, as well as of *Religion*. And it was concluded for no *Sermons* in those infected *Places*, upon this *Reason*; that infected *Persons* or *Families*, known in their own *Parishes*, might not take occasion upon those *by-days* to run to other *Churches*, where they were not known, as many use to do, to hear some *humorous* Men preach; for on the *Sundays*, when they better kept their own *Churches*, the *Danger* is not so great altogether.

Nor, 3dly, is that true, that *Sermons* are the only means to humble Men. For tho' the *preaching of God's Word*, where it is performed according to his *Ordinance*, be a great means of many good effects in the *Souls* of Men; yet no *Sermons* are the only means to humble Men. And some of their *Sermons* are fitter a great deal for other *Operations*: namely, to stir up *Sedition*, as you may see by Mr. *Burton's*; for this his printed *Libel* was a *Sermon* first, and a *Libel* too. And 'tis the best part of a *Fast* to abstain from such *Sermons*.

* You may see it in the Example of *St. Paul* himself, whose very *Zeal* in the darkness of his Understanding, which he then had, made him persecute *Christ* and his Church, *Act. xxii. 3, 4.* And he was very dangerous Company then; for he breathed out Threatnings against the *Disciples*, *Act. ix. 1.* So true is that of *St. Greg. Naz. Orat. 21. Zelus Iracundiam acuit: All Zeal puts an Edge to Anger it self.* And that must needs be dangerous in the dark.

2. *The second Innovation is, That Wednesday was appointed for the Fast-day, and that this was done with this Intention, by the Example of this Fast without preaching, to suppress all the Wednesday Lectures in London.*

To this I answer, *1st*, That the appointing of *Wednesday* for the *Fast-day* was no *Innovation*; for it was the *Day* in the *last Fast* before this: and *I my self* remember it so, above forty Years since, more than once.

Secondly, If there had been any *Innovation* in it, the Prelates named not the *Day*: My Lord-Keeper, I must appeal to your Lordship; the *Day* was first named by your Lordship, as the *usual* and *fittest* *Day*: And yet I dare say, and swear too, that your Lordship had no aim to bring in *Papery*; nor to suppress all, or any the *Wednesday-Lectures* in *London*. Besides, these Men live to see the *Fast* ended, and no one *Wednesday-Lecture* suppressed.

3. *The third Innovation is, that the Prayer for seasonable Weather was purged out of this last Fast-book, which was (say they) one cause of Shipwrecks and tempestuous Weather.*

To this I say, *first* in the general; this *Fast-book*, and all that have formerly been made, have been both made and published by the Command of the King, in whose sole power it is to call a *Fast*. And the Archbishop and Bishops to whom the ordering of the *Book* is committed, have power under the King to put in, or leave out, whatsoever they think fit for the present *Occasion*; as their Predecessors have ever done before them. Provided that nothing be in contrary to the *Doctrine* or *Discipline* of the *Church of England*.

And this may serve in the general for all *Alterations*, in that or any other *Fast-book*, or Books of Devotion upon any particular Occasions, which may and ought to vary with several times; and we may, and do, and will justify, under his Majesty's Power, all such *Alterations* made therein.

Secondly, For the *Particular*, When this *last Book* was set out the Weather was very *seasonable*; and it is not the Custom of the Church, nor fit in itself, to pray for *seasonable* Weather when we have it, but when we want it. When the *former Book* was set out the Weather was extreme ill, and the Harvest in *danger*; now the Harvest was in, and the Weather good.

Thirdly, 'Tis most *inconsequent* to say, that the leaving that Prayer out of the *Book of Devotions*, caused the *Shipwrecks* and the *Tempests* which followed. And as bold as they are with *God Almighty*, in saying it was the *Cause*, sure I am, God never told them that was the *Cause*. And if God never revealed it, they cannot come to know it: yet had the *Bishops* been *Prophets*, and foreseen these *Accidents*, they would certainly have prayed against them.

Fourthly, Had any Minister found it *necessary* to use this *Prayer* at any one time during the *Fast*, he might with ease, and without danger, have supplied that want, by using that *Prayer* to the same purpose which is in the ordinary *Liturgy*.

Fifthly, I humbly desire your Lordships to weigh well the *Consequence* of this great and dangerous *Innovation*. The Prayer for fair Weather was left out of the *Book for the Fast*; therefore the Prelates intend to bring in *Papery*. An excellent *Consequence*, were there any shew of Reason in it.

4. *The fourth Innovation is, That there is one very useful Collect left out, and Clause omitted in another.* Page 3.

To this I answer, *first*, as before: It was *lawful* for us to alter what we thought fit.

And *secondly*, Since that *Collect* made mention of *Preaching*, and the *Act of State* forbid Sermons on the *Fast-days in infected Places*; we thought it fit, in pursuance of that *Order*, to leave out that *Collect*.

And *thirdly*, For the Branch in the other, which is the *first Collect*, tho' God did deliver our Forefathers out of *Romish Superstition*, yet (God be blessed for it) we were never in. And therefore that *Clause* being *unfittingly* expressed, we thought fit to pass it over.

5. *The fifth Innovation is, That in the sixth Order for the Fast, there is a Passage left out concerning the Abuse of Fasting in relation to Merit.* Page 3.

To this I answer, That he to whom the ordering of that *Book* to the Press was committed, did therefore leave it out, because in this Age and Kingdom there is little Opinion of *meriting by Fasting*.

Nay, on the contrary, the contempt and scorn of all *Fasting* (save what *humourous* Men call for of themselves) is so rank, that it would grieve any Christian Man to see the necessary *Orders* of the *Church* concerning *Fasting*, both in *Lent*, and at other set times, so vilified as they are.

6. *The sixth Innovation is, That the Lady Elizabeth and her princely Children are dashed (that's their Phrase) out of the new Collect, whereas they were in the Collect of the former Book.* Page 3.

For this *first*, The *Author* of the *News* knows full well that they are left out of the *Collect* in the latter Editions of the *Common Prayer-book*, as well as in the *Book for the Fast*. And this was done according to the *Course* of the *Church*, which *ordinarily* names none in the *Prayer*, but the *right Line descending*. Yet this was not done till the King himself commanded it; as I have to shew under his Majesty's Hand.

Secondly, I beseech your Lordships to consider what must be the *Consequence* here: The *Queen of Bohemia* and her Children are left out of the *Collect*, therefore the Prelates intend to bring in *Papery*; for that (you know) they say is the end of all these *Innovations*. Now if this be the End and the *Consequence*, truly the *Libellers* have done very dutifully to the King, to poison his People with this Conceit, that the *Lady Elizabeth* and her *Children* would keep *Papery* out of this Kingdom, but the King and his *Children* will not. And many, as good *Offices* as these have they done the King quite thorow these *Libels*, and quite thorow his Kingdoms. For my part, I honour the *Queen of Bohemia*, and her *Line*, as much as any Man whatsoever, and shall be as ready to serve them; but I know not how to depart from my *Allegiance*, as I doubt these Men have done.

7. *The seventh Innovation is, That these Words (who art the Father of thine Elect and of their Seed) are changed in the Preface of that Collect, which is for the Prince and the King's Children.* Page 3.

And with a most spiteful Inference, that

this was done by the Prelates to exclude the King's Children out of the number of God's Elect. And they call it an intolerable Impiety, and horrid Treason.

To this I answer, first, That this Alteration was made in my Predecessor's time before I had any Authority to meddle with these things, farther than I was called upon by him.

Secondly, This is not therefore to lay any Asper- sion upon my Predecessor, for he did in that but his Duty; for his Majesty acknowledges it was done by his special Direction, as having then no Children to pray for.

And thirdly, this Collect could not be very old, for it had no Being in the Common Prayer-book all Queen Elizabeth's time, she having no Issue.

The truth is, it was made at the coming in of King James; and must of necessity be changed over and over again, *pro ratione temporum*, as Times and Persons vary. And this is the intolerable Impiety and horrid Treason they charge upon us.

In this Method the Innovations are set down in the News from Ipswich. But then in Mr. Burton's News from Friday-street (called his Apology) they are in another Order, and more are added. Therefore with your Lordship's leave I will not repeat any of these, but go on to the rest, which Mr. Burton adds.

Burton's Apology, Pag. 2. 8. The eighth Innovation is, That in the Epistle the Sunday before Easter, we have put out In, and made it, At the Name of Jesus every Knee shall bow: which Alteration, he saith, is directly against the Act of Parliament.

Here give me leave to tell you, 'tis At the name of Jesus, in the late learned Translation made in King James's time. About which many learned Men of best note in the Kingdom were employed, besides some Prelates.

But to this I answer: first, 'Tis true, the Common Prayer-book was confirmed by Act of Parliament, and so all things contained in it, at the passing of that Act. But I hope if any thing were false printed then, the Parliament did not intend to pass those Slips for current.

Secondly, I am not of opinion, that if one word be put in for another, so they bear both the same Sense, that there is any great matter done against the Act of Parliament.

Thirdly, This can make no Innovation. For In the Name, and At the Name of Jesus, can make no essential Difference here. And Mr. Pryn (whose darling business it hath long been to cry down the Honour due to the Son of God, at the mentioning of his saving Name Jesus) knows the Grammar Rule well, In a place, or at a place, &c.

Fourthly, If there were any Error in the change of In into At, I do here solemnly protest to you, I know not how It came: for Authority from the Prelates, the Printers had none; and such a Word is easily changed in such a negligent Press as we have in England. Or if any altered it purposely, for aught I know, they did it to gratify the precisers; for therein they followed the Geneva Translation, and printed at Geneva 1557*. where

* In Octavo. the words are, At the Name of Jesus. And that is eighty years ago; and therefore no Innovation made by us.

Fifthly, This I find in the Queen's Injunctions, without either word, In or At, Whenever the Name of Jesus shall be in any Lesson, Sermon, or otherwise pronounced in the Church ('tis enjoined) that due Reverence be made of all Persons, young and old, with lowliness of Courisy, and uncovering of the Heads of the Menkind, as thereunto doth necessarily belong, and heretofore hath been accustomed. So here is Necessity laid upon it, and Custom for it, and both expressed by Authority in the very beginning of the Reformation; and is therefore no Innovation now.

9. The ninth Innovation is, That two places are changed in the Prayers set forth for the fifth of November; and ordered to be read (they say) by Act of Parliament. The first place is changed thus, From, Root out that Babylonish and Antichristian Sect which say of Jerusalem, &c. Into this form of Words; Root out that Babylonish and Antichristian Sect, (of them) which say, &c. The second place went thus in the old: Cut off those Workers of Iniquity, whose Religion is Rebellion. But in the Book printed 1635, 'tis thus altered: Cut off those Workers of Iniquity, who turn Religion into Rebellion, &c.

To this I say First, 'Tis a notorious untruth, that this Book was ordered to be read by Act of Parliament. The Act of Parliament indeed is printed before it; and therein is a Command for Prayers and Thanksgivings every fifth of November, but not one word or syllable for the Form of Prayer. That's left to the Church, therefore here's no Innovation against that Act of Parliament.

Secondly, The Alteration first mentioned, that is, That Sect, or that Sect of them; is of so small consequence, as it is not worth the speaking of. Besides, if there be any thing of moment in it, 'tis answered in the next.

Thirdly, Both for that and the second place, which seems of more moment; and so for the rest not only in that Book, but that other also for his Majesty's Coronation; his Majesty expressly commanded Me to make the Alterations, and see them printed. And here are both the Books with his Majesty's Warrant to each of them. So that herein I conceive I did not offend, unless it were that I gave not these Men notice of it, or asked them leave to obey the King.

Against this there can be but two Objections, should Malice it self go to work. The one is, that I moved his Majesty to command the change. And the other, that now, when I saw my self challeng'd for it, I procured his Majesty's Hand for my security.

To these I answer clearly; First, That I did not move the King, directly, or indirectly, to make this change.

And Secondly, That I had his Majesty's Hand to the Book, not now, but then, and before ever I caused them to be printed, as now they are. And that both these are true, I here again freely offer my self to my Oath.

And yet Thirdly, That you may see his Gracious Majesty used not his Power only in commanding this change, but his Wisdom also; I shall adventure to give you my Reasons, such as they are, why this Alteration was most fit, if not necessary.

My first Reason is, In the Litany of Henry VIII.† and also under Edward VI. ‡ there was this Clause; From the Tyranny of the Bishop of Rome, and all

† It was put into the Litany of Henry VIII. his Time, as appears in his Primer, with his Injunction before it.

‡ And 'tis in both the Service-Books of Edw. VI. both that which was printed, 1549; and in that which was after, An. 1552.

his detestable Enormities, from all false Doctrine, &c. Good Lord deliver us. But in the Litany in Queen Elizabeth's time this Clause about the Pope was left out, and it seems of purpose, for avoiding of Scandal: And yet the Prelates for that were not accounted Innovators, or Introducers of Popery. Now 'tis a far greater Scandal to call their Religion Rebellion, than it is to call their chief Bishop Tyrant.

And this Reason is drawn from Scandal, which must ever be avoided as much as it may.

My second Reason is, That the Learned make but three Religions to have been of old in the World, Paganism, Judaism, and Christianity. And now they have added a fourth, which is Turcism, and is an absurd mixture of the other three. Now if this ground of theirs be true (as it is generally received) perhaps it will be of dangerous consequence sadly to avow, that the Popish Religion is Rebellion. That some Opinions of theirs teach Rebellion, that's apparently true, the other would be thought on, to say no more. And this Reason well weighed, is taken from the very Foundations of Religion itself.

My third Reason is, Because if you make their Religion to be Rebellion, then you make their Religion and Rebellion to be all one. And that is against the ground both of State, and the Law. For when divers Romish Priests and Jesuits have deservedly suffered death for Treason, is it not the constant and just Profession of the State, that they never put any Man to death for Religion, but for Rebellion and Treason only? Doth not the State truly affirm, that there was never any Law made against the Life of a Papist, quatenus a Papist only? And is not all this stark false, if their very Religion be Rebellion? For if their Religion be Rebellion, it is not only false, but impossible, that the same Man in the same Act should suffer for his Rebellion, and not for his Religion.

And this King James of ever blessed Memory understood passing well, when (in his Page 336. *Premotion to all Christian Monarchs*) he saith, *I do constantly maintain that no Papist either in my Time, or in the Time of the late Queen, ever died for his Conscience.* Therefore he did not think, their very Religion was Rebellion. Tho' this Clause passed through Inadvertency in his Time: And this Reason is grounded both upon the Practice and the Justice of the Law.

Which of these Reasons, or whether any other better, were in his Majesty's Thoughts, when he commanded the Alteration of this Clause, I know not. But I took it my Duty to lay it before you, that the King had not only Power, but Reason to command it.

10. The Tenth Innovation is, That the Prayer for the Navy is left out of the late Book for the Fast.

To this I say, there is great Reason it should. For the King had no declared Enemy then, nor (God be thanked) hath he now. Nor had he then any Navy at Sea; for almost all the Ships were come in, before the Fast-book was set out.

But howsoever, an excellent Consequence it is, if you mark it; the Prayer for the Navy was left out of the Book for the Fast, therefore by that, and such like Innovations, the Prelates intend to bring in Popery. Indeed, if that were a piece of the Prelates Plots to bring in Popery from beyond Sea, then they were mightily overseen that they left out the Prayer for the Navy. But else what

Reason or Consequence is in it, I know not, unless perhaps Mr. Burton intended to befriend Dr. Bastwick, and in the Navy bring hither the Whore of Babylon to be ready for his Christening, as he most profanely scoffs.

Well; I pray God the time come not upon this Kingdom, in which it will be found, that no one thing hath advanced or ushered in Popery so fast, as the gross Absurdities even in the Worship of God, which these Men, and their like, maintain both in Opinion and Practice.

11. The 11th Innovation is, The reading of the second Service at the Communion-Table, or the Altar. P. 105.

To this first I can truly say, That since my own Memory, this was in use in very many Places, as being most proper (for those Prayers are then read which both precede and follow the Communion) and by little and little this ancient Custom was altered, and in those Places first where the Emissaries of this Faction came to preach. And now if any in Authority offer to reduce it; this ancient Course of the Church is by and by called an Innovation.

Secondly, With this the Rubricks of the Common Prayer-book agree: for the first Rubrick after the Communion tells us, that upon Holy-days, tho' there be no Communion, yet all else that's appointed at the Communion shall be read. *Shall be read?* That's true, but where? Why, the last Rubrick before the Communion tells us, that the Priest, standing at the North side of the holy Table, shall say the Lord's Prayer, with that which follows. So that not only the Communion, but the Prayers which accompany the Communion (which are commonly called the second Service) are to be read at the Communion-Table. Therefore if this be an Innovation, 'tis made by the Rubrick, not by the Prelates; and Mr. Burton's Scoff that this second Service must be served in for Dainties, favours too much of Belly and Profanation.

12. One thing sticks much in their Stomachs, and they call it an Innovation too. And that is, bowing, or doing Reverence at our first coming into the Church, or at our nearer Approaches to the holy Table, or the Altar, (call it whether you will) in which they will needs have it, that we worship the holy Table, or God knows what.

To this I answer, first, That God forbid we should worship any thing but God himself.

Secondly, That if to worship God when we enter into his House, or approach his Altar, be an Innovation, 'tis a very old one.

For Moses did Reverence at the very Door of the Tabernacle; Hezekiab, and all that were present with him, when they had made an end of Offering, bowed and worshipped; David calls the People to it with a Venite, O come let us worship and fall down, and kneel before the Lord our Maker: And in all these Places (I pray mark it) 'tis bodily Worship

Nor can they say, that this was Judaical Worship, and now not to be imitated. For long before Judaism began, Bethel, the House of God, was a place of Reverence, there-fore certainly, of, and to God.

Page 105.
[Then the second Service, as Dainties, must be said there.]
Page 105.

Num. xx.]
6.

2 Chron. xxix. 29.
Psal. xcvi. 6.

Gen. xxviii. 17, &c.

And after *Judaical Worship* ended, *Venite, Adoremus*, as far upwards as there is any Track of a *Liturgy*, was the *Introitus* of the *Priest* all the *Latin Church* over.

And in the daily *Prayers* of the *Church of England*, this was retained at the *Reformation*; and that *Psalm*, in which is *Venite, Adoremus*, is commanded to begin the *Morning Service* every Day. And for aught I know, the *Priest* may as well leave out the *Venite*, as the *Adoremus*; the calling the *People* to their *Duty*, as the *Duty* itself, when they are come.

Therefore even according to the *Service-book* of the *Church of England*, the *Priest* and the *People* both are called upon, for *external* and *bodily Reverence* and *Worship* of *God* in his *Church*. Therefore they which do it, do not *innovate*. And yet the *Government* is so moderate (*God* grant it be not too loose there while) that no *Man* is constrained, no *Man* questioned, only religiously called upon, *Venite, Adoremus, Coræ, let us worship*.

For my own part, I take myself bound to worship with *Body*, as well as in *Soul*, whenever I come where *God* is worshipped. And were this *Kingdom* such as would allow no *holy Table* standing in its proper place (and such places some there are) yet I would worship *God* when I came into his *House*. And were the *Times* such as should beat down *Churches*, and all the *curious carved Work*

thereof, with *Axes*, and *Hammers*, *Psal. lxxiv. 6.* (and such *Times* have been) yet would I worship in what Place soever I came to pray, tho' there were not so much as a *Stone* laid for *Bethel*. But this is the *Misery*; 'tis *Superstition* now-a-days for any *Man* to come with more *Reverence* into a *Church*, than a *Tinker* and his *Bitch* come into an *Ale-house*; the *Comparison* is too *homely*, but my just *Indignation* at the *Profaneness* of the *Times*, makes me speak it.

And you, my *honourable Lords* of the *Garber*, in your great *Solemnities*, you do your *Reverence*, and to *Almighty God*, I doubt not, but yet it is *Versus Altare*, towards his *Altar*, as the greatest *Place* of *God's Residence* upon *Earth*. (I say the greatest, yea greater than the *Pulpit*; for there 'tis *Hoc est corpus meum*, This is my *Body*; but in the *Pulpit*, 'tis at most but, *Hoc est Verbum meum*, This is my *Word*. And a greater *Reverence* (no doubt) is due to the *Body*, than to the *Word* of our *Lord*. And so, in relation, answerably to the *Throne*, where his *Body* is usually present, than to the *Seat*, whence his *Word* useth to be proclaimed. And *God* hold it there as his *Word*; for as too many *Men* use the *Matter*, 'tis *Hoc est verbum Diaboli*. This is the *Word* of the *Devil*, in too many *Places*; (witness *Sedition*, and the like to it.) And this *Reverence* ye do when ye enter the *Chapel*, and when you approach nearer to offer. And this is no *Innovation*, for you are bound to it by your *Order*, and that's not new.

And *Idolatry* it is not, to worship *God* towards his *holy Table*; for if it had been *Idolatry*, I presume *Queen Elizabeth* and *King James* would not have practised it, no not in those *Solemnities*. And being not *Idolatry*, but true *divine Worship*, you will, I hope, give a poor *Priest* leave to worship *God*, as yourselves do: for if it be *God's Worship*, I ought to do it as well as you; and if it be *Idolatry*, you ought not to do it more than I.

I say again, I hope a poor *Priest* may worship *God* with as lowly *Reverence* as you do, since you are bound by your *Order*, and by your *Oath*, ac-

ording to a *Constitution* of *Henry the fifth*, (as appears) to give due *Honour* and *Reverence*, *Domino Deo, & altari ejus, in modum virorum ecclesiasticorum*; that is, to the *Lord your God*, and to his *Altar* (for there is a *Reverence* due to that too, tho' such as comes far short of *divine Worship*) and this in the *Manner*, as *ecclesiastical Persons* both worship and do reverence.

In Libro Negro Wundeworci. p. 65.

The *Story* which led in this *Decree* is this: *King Henry the fifth*, that noble and victorious *Prince*, returning gloriously out of *France*, sat at this *Solemnity*; and finding the *Knights of the Order* scarce bow to *God*, or but slightly, and then bow towards him and his *Seat*, startled at it (being a *Prince* then grown as religious as he was before victorious) and after asking the *Reason*, (for till then the *Knights of the Order* never bowed toward the *King* or his *Seat*) the *Duke of Bedford* answered, It was settled by a *Chapter Act* three Years before. Hereupon, that great *King* replied, No; I'll none of this, till you the *Knights* do it *Satis bene, well enough*, and with due *Performance* to *Almighty God*. And hereupon the fore-named *Act* proceeded, that they should do this *Duty* to *Almighty God*, not slightly, but *ad modum virorum ecclesiasticorum*, as low, as well, as decently as *Clergymen* use to do it.

Now if you will turn this off, and say, it was the *Superstition* of that *Age* so to do; *Bishop Jewel* will come in to help me there. For where *Harding* names divers *Ceremonies*, and particularly bowing themselves, and Adoring at the *Sacrament*, I say, Adoring at the *Sacrament*, not adoring the *Sacrament*; there *Bishop Jewel* (that learned, painful, and reverend *Prelate*) approves all both the *Kneeling* and the *Bowing*, and the *Standing up* at the *Gospel* (which as ancient as it is in the *Church*, and a common *Custom*, is yet fondly made another of their *Innovations*;) And further the *Bishop* adds, That they are all commendable *Gestures*, and *Tokens of Devotion*, so long as the *People* understand what they mean, and apply them unto *God*. Now with us the *People* did ever understand them fully, and apply them to *God*, and to none but *God*, till these factious *Spirits*, and their like, to the great *Disservice* of *God* and his *Church*, went about to persuade them that they are *superstitious*, if not *idolatrous Gestures*: as they make every thing else to be, where *God* is not served slovenly.

Bp. Jewel's Reply to Harding's Answer, Art. 3. Div. 29.

13. The thirteenth *Innovation* is, The placing of the *holy Table* altarwise, at the upper end of the *Chancel*; that is, the setting of it *North* and *South*, and placing a *Rail* before it, to keep it from *Profanation*, which, *Mr. Burton* says, is done to advance and usher in *Popery*. P. 4, 5, 105.

To this I answer, That 'tis no *Popery* to set a *Rail* to keep *Profanation* from that *holy Table*: nor is it any *Innovation* to place it at the upper end of the *Chancel* as the *Altar* stood. And this appears both by the *Practice* and by the *Command* and *Canon* of the *Church of England*.

First, By the *Practice* of the *Church of England*. For in the *King's Royal Chapels*, and divers *Cathedrals*, the *holy Table* hath ever since the *Reformation* stood at the upper end of the *Choir*, with the large or full side towards the *People*.

And tho' it stood in most *Parish Churches* the other way, yet whether there be not more *Reason*, the

the *Parish Churches* should be made conformable to the *Cathedral and Mother Churches*, than the *Cathedrals* to them, I leave to any reasonable Man to judge.

And yet here is nothing done either by *Violence* or *Command*, to take off the *Indifferency* of the standing of the *holy Table* either way, but only by laying it fairly before Men, how fit it is there should be *Order and Uniformity*; I say, still reserving the *Indifferency* of the Standing.

But howsoever I would fain know, how any *discreet moderate* Man dares say, that the placing of the *holy Table* *Altar-wise* (since they will needs call it so) is done either to *advance* or *usher in Popery*? For did *Queen Elizabeth* banish *Popery*, and yet did she all along her *Reign*, from *first* to *last* leave the *Communion-Table* so standing in her own *Chapel Royal*, in *St. Paul's* and *Westminster*, and other Places; and all this of *purpose* to *advance* or *usher in* that *Popery* which she had driven out?

And since her *Death* have two *gracious Kings* kept out *Popery* all their *Times*, and yet left the *holy Table* standing as it did in the *Queen's Time*, and all of *purpose* to *advance* or *usher in Popery* which they kept out?

Or what's the Matter? May the *holy Table* stand this way in the *King's Chapel* or *Cathedrals*, or *Bishops Chapels*, and not elsewhere? Surely, if it be decent and fit for *God's Service*, it may stand so (if *Authority* please) in any *Church*. But if it *advance* or *usher in* any *Superstition* and *Popery*, it ought to stand so in none.

Nor hath any *King's Chapel* any *Prerogative* (if that may be called one) above any *ordinary Church* to *differve* *God* in by any *superstitious Rites*. Where, give me leave to tell you, that the *King* and his *Chapel* are most *jeeringly* and with *Scorn* abused, in the last Leaf of *Mr. Burton's* *mutinous Appeal*; for such it is.

Secondly, This appears by the *Canon* or *Rule* of the *Church of England* too; for 'tis plain in the last *Injunction* of the *Queen*, That the *holy Table* ought to stand at the *upper end* of the *Quire*, *North and South*, or *Altar-wise*. For the Words of the *Queen's Injunctions* are these:

The *holy Table* in every *Church* (mark it I pray, not in the *Royal Chapel* or *Cathedrals* only, but in every *Church*) shall be decently made and set in the Place where the *Altar* stood. Now the *Altar* stood at the *upper end* of the *Quire*, *North and South*, as appears before by the *Practice* of the *Church*. And there to set it otherwise, is to set it *cross* the Place, not *In* the Place where the *Altar* stood: and so *Stulti dum vitant vitia*—weak Men, as these *Libellers* are, run into one *Superstition* while they would avoid another; for they run upon the *Superstition* of the *Cross*, while they seek to avoid the *Superstition* of the *Altar*. So you see here's neither *Popery* nor *Innovation* in all the *Practice* of *Queen Elizabeth*, or since.

These Words of the *Injunction* are so plain, as that they can admit of no Shift.

And give me leave to tell you, that a very learned *Prelate* of this *Church*, and one whom, I think, these Men will not *accuse*, as a Man like to *advance* or *usher in Popery*, is of the same *Opinion*: 'Tis my Lord the *Bishop of Salisbury*.

Some Difference was lately rising about placing the *Communion-Table* in a *Parish Church* of his *Diocese*. The *Bishop* carefully to prevent all *Dif-*

order, sends his *Injunction* under his *Hand* and *Seal* to the *Curate* and *Church-Wardens*, to settle that *Business*: In which he hath these two Passages remarkable. I have seen and read the *Order*. May 17. 1637.

The first Passage is this: By the *Injunction* of *Queen Elizabeth* (saith he) and by *Can. 82.* under *King James*, the *Communion-Table* should ordinarily be set and stand with the side to the *East-Wall* of the *Chancel*. Therefore this is no *Innovation*, since there is *Injunction* and *Canon* for it.

The other Passage is this: 'Tis *Ignorance* (saith that learned *Bishop*) to think that the standing of the *holy Table* there relishes of *Popery*. Therefore, if it do not so much as *relish* of *Popery*, it can neither *advance* it, nor *usher it in*. And therefore this is a most odious *Slander* and *Scandal* cast upon Us.

So here's enough both for the *Practice* and *Rule* of the *Church of England* since the *Reformation*. Now before that *Time*, both in this and other *Churches* of *Christendom*, in the *East* and *West*, ordinarily the *holy Table* or *Altar* stood so: against this *Mr. Burton* says little.

But the *Lincolnshire Minister* comes in to play the *Puritan* for that. Concerning which *Book* (falling thus in my way) and the *nameless Author* of it, I shall only say these two things.

The one is, That the *Author* *prvaricates* from the first Word to the last in the *Book*; for he takes on him both for the *Name* and for the *Placing* of the *holy Table*, and the like, to prove that generally and universally, and ordinarily in the whole *Catholick Church*, both *East* and *West*, the *holy Table* did not stand at the *upper end* of the *Quire* or *Chancel*. And this he must prove, or he doth nothing.

Now when he comes to make his *Proofs*, they are almost all of them *particular*, few or none general and *concludent*; for he neither brings *Testimonies* out of the general and received *Rituals* of the *Eastern* and *Western Churches*, nor of *Fathers* and *Histories* of the *Church*, which speak in general Terms of all, but where they speak of *particular Churches* only.

So that suppose the most that can be, that is, suppose his *Quotations* be all truly alledged, and true too in the *Sense* that the *Minister* takes them (tho' in very truth, the *Places*, most of them, are neither truly alledged, nor sensed) yet they are but *Exceptions* of, and *Exemptions* from the general *Practice*. And you know both in *Law* and *Reason*, *Exceptio firmat Regulam in non exceptis*. So that upon the sudden I am not able to resolve, whether this *Minister* hath done more wrong to himself or his *Readers*, for he hath abused both.

The other is, That in the *Judgment* of very many learned Men, which have perused this *Book*, the *Author* is clearly conceived to want a great deal of that *Learning* to which he pretends; or else to have written this *Book* wholly, and resolvedly against both his *Science* and his *Conscience*.

And for my own Part, I am fully of *Opinion*, this *Book* was thrust now to the *Press*, both to countenance these *Libellers*, and, as much as in him lay, to fire both *Church* and *State*.

And tho' I wonder not at the *Minister*, yet I should wonder at the *Bishop* of the *Diocese* (a Man of *Learning* and *Experience*) that he should give *Testimony* to such a *Business*, and in such *Times* as these.

And *once more*, before I leave the *holy Table*, *Name*, and *Thing*, give me leave to put you in mind, that there is *no danger* at all in the *Altar*, *Name*, or *Thing*. For at the *Beginning* of the *Reformation*, tho' there were a *Law* for the taking down of the *Altars*, and setting up of *holy Tables* in the room of them; yet in some Places the *Altars* were *not suddenly removed*. And what says the *Queen* in her *Injunction* to this?

Injunct. ultim. Why she says, *That there seems no Matter of great Moment in this, saving for Uniformity, and the better Imitation of the Law in that behalf.* Therefore for any *Danger* or *Hurt* that was in the *Altars*, *Name*, or *Thing*, they might even then have been left standing, *but for Uniformity, and the Imitation of the Law.*

But howsoever, it follows in the same *Injunction*, that when the *Altar* is taken down, the *holy Table* shall be set In, (not cross) the *Place* where the *Altar* stood; which (as is aforesaid) must needs be *Altar-wise*.

14. The *fourteenth* and *last Innovation* comes with a *mighty Charge*, and 'tis taken out of an *Epistle* to the *Temporal Lords* of his *Majesty's Privy Council*. Of which *Epistle* we got one *Sheet*, and so (for aught I yet know) that *Impression* staid: In that *Sheet* is this *Charge*; the *Words* are,

The Prelates, to justify their Proceedings, have forged a new Article of Religion brought from Rome, which gives them full Power to alter the Doctrine and Discipline of our Church at a Blow, (as they interpret it) and have foisted it (such is their Language) into the beginning of the twentieth Article of our Church. And this is in the last Edition of the Articles, Anno 1628. in Affront of his Majesty's Declaration before them, &c.

The *Clause* (which they say is *forged* by us) is this: *The Church* (that is, the *Bishops*, as they expound it) *hath Power* to decree *Rites* and *Ceremonies*, and *Authority* in *Matters of Faith*. (The *Word* is *Controversies of Faith*, by their leave.) *This Clause* (say they) *is a Forgery fit to be examined, and deeply censured in the Star-Chamber.* For 'tis *not to be found* in the *Latin* or *English Articles* of *Edward VI.* or *Queen Elizabeth*, ratified by *Parliament*.

And then in the *Margent* thus, *If to forge a Will or Writing be censurable in the Star-chamber; which is but a Wrong to a private Man, how much more the Forgery of an Article of Religion, to wrong the whole Church, and overturn Religion, which concerns all our Souls?*

This is a *heavy Charge*, my *Lords*, but I thank *God* the *Answer's* easy.

And truly I grant, that to *forge* an *Article* of *Religion* in *Whole* or in *Part*, and then to thrust it upon the *Church*, is a most *heinous Crime*, far worse than the *forging of a Deed*; and is certainly *very deeply censurable* in this *Court*. And I would have humbly besought you, that a *deep Censure* might have been laid upon it, but that this *Sheet* was found after, and so is not annexed to the *Information*, nor in *Judgment* at this present before you.

But then, *My Lords*, I must tell you, I hope to make it as *clear* as the *Day*, that this *Forgery* was not, *that* this *Clause* mentioned was added by the *Prelates* to the *Article*, to gain *Power* to the *Church*, and so to serve *our Turns*. But that that *Clause* in the *beginning* of the *Article* was by these

Men, or at least by some of their *Faction*, *raised out*, and this to weaken the *just Power* of the *Church* to serve *their Turns*.

They say (to justify their *Charge*) that this *Clause* is not to be found in the *Articles*, *English* or *Latin*, of either *Edw. VI.* or *Queen Elizabeth*.

I answer, The *Articles* of *Edw. VI.* and those made under *Queen Elizabeth* differ very much. And those of *Edw. VI.* are not now *binding*. So whether the *Clause* be in or out of them, 'tis not much *material*.

But for the *Articles* of the *Church of England*, made in the *Queen's Time*, and now in *Force*, that this *Clause* for the *Power* of the *Church* to decree *Ceremonies*, and to have *Authority* in *Controversies of Faith*, should not be found in *English* or *Latin Copies*, till the *Year 1628*, that it was set forth with the *King's Declaration* before it, is to me a *Miracle*; but your *Lordships* shall see the *falsehood* and *boldness* of these *Men*.

What? Is this *affirmative Clause* in no *Copy*, *English* or *Latin*, till the *Year 1628*? *Strange!* Why, my *Lords*, I have a *Copy* of the *Articles* in *English*, of the *Year 1612.* and of the *Year 1605.* and of the *Year 1593.* and in *Latin* of the *Year 1563.* which was one of the *first printed Copies*, if not the *first of all.* For the *Articles* were agreed on but the *29th Day* of *January.*

Anno 1563. } According to the *English Account.*
 } According to the *Julian Account.*

And in all these, this *affirmative Clause* for the *Church's Power* is in. And is not this *strange boldness* then to *abuse* the *World*, and *falsely* to say 'tis in no *Copy*, when I *my self*, out of my own *Store*, am able to shew it in so many, and so *authentically*?

But, *My Lords*, I shall make it plainer yet: For 'tis not fit concerning an *Article* of *Religion*, and an *Article* of such *Consequence* for the *Order*, *Truth*, and *Peace* of this *Church*, you should *rely* upon my *Copies*, be they never so many or never so *antient*.

Therefore I sent to the *publick Records* in my *Office*; and here under my *Officer's Hand*, who is a *publick Notary*, is returned me the *twentieth Article* with this *affirmative Clause* in it. And there is also the whole *Body* of the *Articles* to be seen.

By this your *Lordships* see how free the *Prelates* are from *forging* this part of the *Article*. Now let these *Men* quit themselves and their *Faction*, as they can, for their *Index Expurgatorius* and their *foul Rasure* in leaving out this part of the *Article*. For to leave out of an *Article* is as great a *Crime* as to put in; and a *main Rasure* is as *censurable* in this *Court* as a *Forgery*.

Why, but then, my *Lords*, what is this *Mystery of Iniquity*?

Truly, I cannot certainly tell; but as far as I can, I'll tell you.

The *Articles* you see were *fully* and *fairly* agreed to, and *subscribed* in the *Year 1563*. But after this, in the *Year 1571*, there were some that *refused* to *subscribe*; but why they did so, is not *recorded*. Whether it were about this *Article* or any other, I know not. But in *Fact* this is manifest, that in that *Year 1571*, the *Articles* were *printed* both in *Latin* and *English*, and this *Clause* for the *Church* left out of both. And certainly this could not be done, but by the *malicious Cunning* of that *opposite Faction*. And tho' I shall spare *dead Mens Names* where I have not *certainty*; yet if you be *pleased* to look *back* and *consider* who they were that *governed* *Businesses* in *1571*, and *rid* the *Church* almost at their

their Pleasure, and how potent the Ancestors of these Libellers began then to grow, you will think it no hard matter to have the Articles printed, and this Clause left out.

And yet 'tis plain, That, after the stir about Subscription in the Year 1571, the Articles were settled and subscribed unto at last, as in the Year 1562, with this Clause in them for the Church: For looking farther into the Records which are in mine own Hands, I have found the Book of 1562, subscribed by all the Lower House of Convocation, in this very Year of Contradiction, 1571. Dr. John Elmar (who was after Lord Bishop of London) being then Prolocutor: Alexander Nowel Dean of St. Paul's, having been Prolocutor in 1562, and yet living, and present and subscribing in 1571. Therefore, I do here openly in Star-Chamber charge upon that pure Set this foul Corruption of falsifying the Articles of the Church of England; let them take it off as they can.

I have now done, and 'tis time I should, with the Innovations charged upon the Prelates, and fit to be answered here.

Some few more there are, but they belong to matter of Doctrine, which shall presently be answered, *Justo Volumine*, at large, to satisfy all well-minded People. But when Mr. Burton's Book, which is the main one, is answered, (I mean his Book, not his Railing) neither Prynne, nor Bastwick nor any Attendants upon Rabsbake shall by me or my Care be answered. If this Court find not a way to stop these Libellers Mouths and Pens, for me they shall rail on till they be weary.

Yet one thing more, I beseech you, give me leave to add. 'Tis Master Burton's Charge upon the Prelates, That the Censures formerly laid upon Malefactors, are now put upon God's Ministers for their Virtue and Piety.

A heavy Charge this too. But if he, or any Man else, can shew that any Man hath been punished in the High Commission, or elsewhere, by the Prelates, for Virtue and Piety, there is all the reason in the World we should be severely punished our selves. But the truth is, the Virtue and Piety for which these Ministers are punished, is for preaching Schism and Sedition, many of their Sermons being as bad as their Libels; as Burton's Libel was one of his Sermons first. But whether this stuff have any affinity with Virtue and Piety, I submit to any Christian Reader.

And yet Mr. Burton is so confident of his Innocency, even in this Cause wherein he hath so foully carried himself, that he breaks forth into these words; I never so much as once dreamed, that Impiety and Impudency it self, in such a Christian Sate as this is, and under such a gracious Prince, durst ever thus publicly have called me in question, and that upon the open Stage, &c.

You see the boldness of the Man, and in as bad a Cause, as (I think) in this kind ever any Man had.

I shall end all with a Passage out of St. Cyprian; when he, then Bishop of Carthage, was bitterly railed upon by a pack of Schismatics, his Answer was, and 'tis now mine: They have railed both bitterly and falsely upon me, and yet *Non oportet me paria cum illis facere*; it becomes not me to answer them with the like, either Levities or Revilings, but to speak and write that only which becomes *Sacerdotem Dei*, a Priest of God.

Neither shall I in this give way (tho' I have been extremely vilified) to either Grief or Passion to speak, remembering that of the Psalmist, *Fret not thy self, else shalt thou be moved to do evil.* Psal. 37. 8.

Neither yet by God's Grace shall the Reproaches of such Men as these, make me faint or start aside, either from the right Way in matter of Practice (they are St. Cyprian's words again) or à certâ regulâ, from the certain Rule of *Ib. p. 10. Faith.*

And since in former Times, some spared not to call the Master of the House Beelzebub, how much more will they be bold with them of his Household, as it is in St. Matthew. And so bold have these Men been; but the next words of our Saviour are, *Fear them not.* St. Mat. 10. 25.

I humbly crave pardon of your Lordships for this my necessary length, and give you all hearty Thanks for your noble Patience, and your just and honourable Censure upon these Men, and your unanimous dislike of them, and defence of the Church.

But because the Business hath some Reflection upon my self, I shall forbear to Censure them, and leave them to God's Mercy, and the King's Justice.

On the 30th of June following, the Sentence was executed, when Dr. Bastwick, Mr. Prynne, and Mr. Burton were convey'd to the Pillory in the Palace-yard, Westminster.

DR. Bastwick and Mr. Burton first meeting, they did close one in the other's Arms three times, with as much Expressions of Love as might be, rejoicing that they met at such a place, upon such an occasion, and that God had so highly honoured them, as to call them forth to suffer for his glorious Truth.

Then immediately after, Mr. Prynne came, the Doctor and he saluting each other, as Mr. Burton and he did before. The Doctor then went up first on the Scaffold, and his Wife immediately following came up to him, and saluted each Ear with a Kiss, and then his Mouth. Her Husband desired her not to be in the least manner dismayed at his Sufferings: And so for a while they parted, she using these words, Farewel my dearest, be of good comfort, I am nothing dismayed. And then the Doctor began to speak these words.

Dr. Bastwick. There are many that are this Day Spectators of our standing here, as Delinquents, tho' not Delinquents, we bless God for it. I am not conscious to my self wherein I have committed the least Trespas (to take this outward shame) either against my God, or my King. And I do the rather speak it, that you that are now Beholders may take notice, how far Innocency will preserve you in such a Day as this is; for we come here in the strength of our God, who hath mightily supported us, and filled our Hearts with greater Comfort than our Shame or Contempt can be. The first occasion of my Trouble was by the Prelates, for writing a Book against the Pope, and the Pope of Canterbury said I wrote against him, and therefore questioned me: but if the Presses were as open to us as formerly they have been, we would shatter his Kingdom about his Ears: But be ye not deterred by their Power, neither be affrighted at our Sufferings; let none determine to turn from the Ways

of the Lord, but go on, fight courageously against *Gog* and *Magog*. I know there be many here who have set many days apart for our Behalf (let the Prelates take notice of it) and they have sent up strong Prayers to Heaven for us, we feel the Strength and Benefit of them at this time; I would have you to take notice of it, we have felt the Strength and Benefit of your Prayers all along this Cause. In a word, so far I am from base Fear, or caring for any thing that they can do, or cast upon me, that had I as much Blood as would swell the *Thames*, I would shed it every Drop in this Cause; therefore be not any of you discouraged, be not daunted at their Power; ever labouring to preserve Innocency, and keep Peace within, go on in the strength of your God, and he will never fail you in such a Day as this: As I said before, so I say again, had I as many Lives as I have Hairs on my Head, or Drops of Blood in my Veins, I would give them all up for this Cause. This Plot of sending us to those remote Places, was first consulted and agitated by the Jesuits, as I can make it plainly appear. O see what Times we are fallen into, that the Lords must sit to act the Jesuits Plots! For our own parts, we owe no Malice to the Persons of any of the Prelates, but would lay our Necks under their Feet to do them good as they are Men, but against the Usurpation of their Power, as they are Bishops, we do profess ourselves Enemies till Dooms-day.

Mr. *Prym* shaking the Doctor by the Hand, desired him that he might speak a word or two. With all my heart, said the Doctor.

The Cause (said Mr. *Prym*) of my standing here, is for not bringing in my Answer, for which my Cause is taken *pro confesso* against me. What Endeavours I used for the bringing in thereof, that God and my own Conscience, and my Counsel knows, whose Cowardice stands upon Record to all Ages. For rather than I will have my Cause a leading Cause, to deprive the Subjects of that Liberty which I seek to maintain, I rather expose my Person to a leading Example, to bear this Punishment: And I beseech you all to take notice of their Proceedings in this Cause. When I was served with a *Subpoena* into this Court, I was shut up close Prisoner, that I could have no access to Counsel, nor admitted Pen, Ink or Paper to draw up my Answer by my Instructions, for which I see'd them twice (tho' to no purpose) yet when all was done, my Answer would not be accepted into the Court, tho' I tender'd it upon my Oath. I appeal to all the World, if this were a legal or just Proceeding. Our Accusation is in point of Libel (but supposedly) against the Prelates; to clear this now, I will give you a little Light what the Law is in point of Libel (of which Profession I have sometimes been, and still profess myself to have some Knowledge in.) You shall find in case of Libel, two Statutes: The one in the second of Queen *Mary*, the other in the seventh of Queen *Elizabeth*. That in the second of Queen *Mary*, the Extremity and Height of it runs thus, That if a Libeller doth go so far and so high as to libel against King or Queen by Denomination, the Height and Extremity of the Law is, that they lay no greater Fine on him than an hundred Pounds, with a Month's Imprisonment, and no corporal Punishment, except he doth refuse to pay his Fine; and then to inflict some Punishment in lieu of that Fine at the Month's end. Neither was this Censure to be passed on him, except it were

fully proved by two Witnesses, who were to produce a Certificate of their good Demeanor for the credit of their Report, or else confessed by the Libeller. You shall find in that Statute 7 *Eliz.* some further Addition to the former of 2 *Mariae*, and that only in point of Fine and Punishment, and it must still reach as high as the Person of the King or Queen. Here this Statute doth set a Fine of two hundred Pounds; the other but one: This sets three Months Imprisonment, the former but one: So that therein only they differ. But in this they both agree, namely at the end of his Imprisonment to pay his Fine, and so to go free without any further question: But if he refuse to pay his Fine, then the Court is to inflict some Punishment on him correspondent to his Fine. Now see the Disparity between those Times of theirs and ours. A Libeller in Queen *Mary's* time was fined but an hundred Pounds, in Queen *Elizabeth's* time two hundred: In Queen *Mary's* days but a Month's Imprisonment; in Queen *Elizabeth's* three Months, and not so great a Fine if they libelled against King or Queen. Formerly the greatest Fine was but two hundred Pounds, tho' against King or Queen: now five thousand Pounds, tho' but against the Prelates, and that but supposedly, which cannot be proved: Formerly, but three Months Imprisonment; now perpetual Imprisonment: Then, upon paying the Fine, no corporal Punishment was to be inflicted; but now, infamous Punishment with the loss of Blood, and a'l other Circumstances that may aggravate it. See now what Times we are fallen into, when that libelling, if it were so, against Prelates only, shall fall higher than if it touched Kings and Princes.

That which I have to speak of next, is this: The Prelates find themselves exceedingly aggrieved and vexed against what we have written concerning the Usurpation of their Calling, where indeed we declare their Call not to be *Jure Divino*. I make no doubt, but there are some Intelligencers or Abettors within the Hearing, whom I would have well to know and take notice of what I now say. I here in this place make this Offer to them, That if I may be admitted a fair Dispute, on fair Terms, for my Cause; that I will maintain, and do here make the Challenge against all the Prelates in the King's Dominions, and against all the Prelates in Christendom, (let them take in the Pope, and all to help them) that their Calling is not *Jure Divino*. I will speak it again, I make the Challenge against all the Prelates in the King's Dominions, and all Christendom to maintain, that their Calling is not *Jure Divino*. If I make it not good, let me be hanged up at the Hall Gate: Whereupon the People gave a great Shout.

The next thing that I am to speak of, is this: The Prelates find themselves exceedingly aggrieved and vexed against what I have written in point of Law, concerning their Writs and Process, That the sending forth of Writs and Process in their own Name, is against all Law and Justice, and doth intrench on his Majesty's Prerogative Royal, and the Subjects Liberties. And here now I make a second Challenge against all the Lawyers in the Kingdom, in way of fair Dispute, that I will maintain, the Prelates sending forth of Writs and Process in their own Names, to be against all Law and Justice, and intrencheth on his Majesty's Prerogative Royal, and Subjects Liberty. Lest it should be forgotten, I speak it again, I here challenge all

the whole Society of the Law, upon a fair Dispute, to maintain, that the sending forth of Writs and Process in the Prelates own Names, to be against all Law and Justice, and intrencheth on the King's Prerogative Royal, and the Subjects Liberty. If I be not able to make it good, let me be put to the tormentingest Death they can devise.

We praise the Lord, we fear none but God and the King: Had we respected our Liberties, we had not stood here at this time: it was for the general Good and Liberties of you all that we have now thus far engaged our own Liberties in this Cause. For did you know how deeply they have intrenched on your Liberties in point of Popery; if you knew but into what Times you are cast, it would make you look about you: and if you did but see what Changes and Revolutions of Persons, Causes and Actions, have been made by one Man, you would more narrowly look into your Privileges, and see how far your Liberty did lawfully extend, and so maintain it.

This is the second time that I have been brought to this Place; who hath been the Author of it, I

think you all well know: For the first
7 Feb. 1633. time, if I could have had leave given me, I could easily have cleared my self of that which was then laid to my Charge; as also I could have done now, if I might have been permitted to speak: that Book for which I

suffered formerly, especially for some
Hypocriticks. particular Words therein written, which I quoted out of God's Word and ancient Fathers, for which notwithstanding they passed Censure on me; that same Book was twice licensed by publick Authority, and the same Words I then suffered for, they are again made use of, and applied in the same Sense by *Heylin*, in his Book lately printed and dedicated to the King, and no Exceptions taken against them, but are very well taken.

Dr. Bastwick. And there is another Book of his licensed, wherein he rails against us three at his pleasure, and against the Martyrs that suffered in Queen *Mary's* days, calling them Schismatical Hereticks; and there is another Book of
Atore
Christianum. *Pocklington's* licensed: they be as full of Lyes as Dogs be full of Fleas; but were the Presses as open to us as they are to them, we would pay them, and their great Master that upholds them, and charge them with notorious Blasphemy.

Mr. Prynne. You all at this present see there be no degrees of Men exempted from suffering: Here is a reverend Divine for the Soul, a Physician for the Body, and a Lawyer for the Estate: I had thought they would have let alone their own Society, and not have meddled with any of them. And the next (for aught I know) may be a Bishop. You see they spare none of what Society or Calling soever, none are exempted that cross their own Ends. Gentlemen, look to your selves; if all the Martyrs that suffered in Queen *Mary's* days are accounted and called schismatical Hereticks and factious Fellows; * what shall we look for? Yet so they are called in a Book lately come forth under Authority. And such factious Fellows are we, for discovering a Plot of Popery. Alas poor *England*,

what will become of thee, if thou look not the sooner into thine own Privileges, and maintaineest not thine own lawful Liberty? Christian People, I beseech you all, stand firm, and be zealous for the Cause of God, and his true Religion, to the shedding of your dearest Blood, otherwise you will bring your selves, and all your Posterities, into perpetual Bondage and Slavery.

Now the Executioner being come to fear him and cut off his Ears, *Mr. Prynne* spake these Words to him: Come Friend, come, burn me, cut me, I fear not. I have learned to fear the Fire of Hell, and not what Man can do unto me: Come fear, fear me, I shall bear in my Body the Marks of the Lord Jesus: Which the Executioner performed with extraordinary Cruelty, heating his Iron twice to burn one Cheek; and cut one of his Ears so close, that he cut off a piece of his Cheek. He said, *The more I am beaten down, the more am I lift up.*

Upon the day for Execution, *Mr. Burton* being brought into the *Palace-yard*, unto a Chamber that looked into the Yard, where he viewed three Pillories there set up: Methinks (said he) I see *Mount Calvary*, where the three Crosses (one for Christ, and the other two for the two Thieves) were pitched: And if Christ were number'd among Thieves, shall a Christian (for Christ's Cause) think much to be numbered among Rogues, such as we are condemned to be? Surely, if I be a Rogue, I am Christ's Rogue, and no Man's. And a little after, looking out at the Casement towards the Pillory, he said, I see no difference between looking out of this square Window and yonder round Hole. Pointing towards the Pillory, he said, It is no matter of difference to an honest Man. And a little after that, looking somewhat wishly upon his Wife, to see how she did take it, she seemed to him to be something sad; to whom he thus spake: Wife, why art thou so sad? To whom she made answer, Sweetheart, I am not sad. No, said he? See thou be not, for I would not have thee to dishonour the Day, by shedding one Tear, or fetching one Sigh, for behold there, for thy Comfort, my triumphant Chariot, on which I must ride for the honour of my Lord and Master: And never was Wedding-day so welcome and joyful a Day as this Day is; and so much the more, because I have such a noble Captain and Leader, who hath gone before me with such undauntedness of Spirit, that he faith of himself, I gave my Back to the Smiters, my Cheeks to the Nippers, they pluck'd off the Hair, I hid not my Face from Shame and Spitting, for the Lord God will help me, therefore shall I not be confounded: therefore have I set my Face like a Flint, and I know I shall not be ashamed. At length being carried toward the Pillory, he met *Dr. Bastwick* at the foot of the Pillory, where they lovingly saluted and embraced each other; and parting a little from him, he returned and most affectionately embraced him the second time, being heartily sorry he missed *Mr. Prynne*, who was not yet come before he was gone up to his Pillory, which stood alone next the Star-Chamber, and about half a Stone's Cast from the other double Pillory, wherein the other two stood; so as all their Faces looked Southward, the bright

* *The Archbishop of Canterbury being informed by his Spies what Mr. Prynne said, moved the Lords then sitting in the Star-Chamber, that he might be gagged, and have some further Censure presently executed upon him; but that Motion did not succeed.*

Sun all the while, for the space of two Hours, shining upon them. Being ready to be put into the Pillory, standing upon the Scaffold, he spied Mr. *Prym* new come to the Pillory, and Dr. *Bastwick* in the Pillory, who then hasted off his Band, and called for a Handkerchief, saying, What shall I be last, or shall I be ashamed of a Pillory for Christ, who was not ashamed of a Cross for me? Then being put into the Pillory, he said, Good People, I am brought hither to be a Spectacle to the World, to Angels, and Men; and howsoever I stand here to undergo the Punishment of a Rogue, yet except to be a faithful Servant to Christ, and a loyal Subject to the King, be the Property of a Rogue, I am no Rogue. But yet if to be Christ's faithful Servant, and the King's loyal Subject, deserve the Punishment of a Rogue, I glory in it, and I bless my God, my Conscience is clear, and is not stained with the Guilt of any such Crime as I have been charged with, tho' otherwise I confess myself to be a Man subject to many Frailties and human Infirmities. Indeed that Book intitled, *An Apology for an Appeal, with sundry Epistles and two Sermons, for God and the King*, charged against me in the Information, I have and do acknowledge (the misprinting excepted) to be mine, and will by God's Grace never disclaim it whilst I have Breath within me. After a while, he having a Nosegay in his hand, a Bee came and pitched on the Nosegay, and began to suck the Flowers, which he beholding, and well observing, said, Do ye not see this poor Bee? She hath found out this very place to suck Sweetness from these Flowers; and cannot I suck Sweetness in this very place from Christ? The Bee sucking all this while, and so took her Flight. By and by, he took occasion from the shining of the Sun, to say, You see how the Sun shines upon us, but that shines as well upon the Evil as the Good, upon the Just and Unjust, but that the Sun of Righteousness (Jesus Christ, who hath healing under his Wings) shines upon the Souls and Consciences of every true Believer only, and no Cloud can hide him from us, to make him ashamed of us, no not of our most shameful Sufferings for his sake: And why should we be ashamed to suffer for his sake who hath suffered for us? All our Sufferings be but Fleabittings to that he endured: he endured the Cross and despised the Shame, and is set on the right Hand of God. He is a most excellent Pattern for us to look upon, that treading his Steps, and suffering with him, we may be glorified with him. And what can we suffer, wherein he hath not gone before us even in the same kind? Was he not degraded, when they scornfully put on him a Purple Robe, a Reed into his Hand, a thorny Crown upon his Head, saluting him with, *Hail King of the Jews*, and so disrobed him again? Was not he deprived when they smote the Shepherd, and the Sheep were scattered? Was not Violence offered to his sacred Person, when he was buffeted and scourged, his Hands and his Feet pierced, his Head pricked with Thorns, his Side goared with a Spear, &c? Was not the Cross more shameful, ye and more painful than a Pillory? Was not he stript of all he had, when he was left stark naked upon the Cross, the Soldiers dividing his Garments, and casting Lots upon his Vesture? And was he not confined to perpetual close Imprisonment in Man's Imagination, when his Body was laid in a Tomb, and the Tomb sealed, lest he should break Prison, or his Disciples steal him away? And yet did he not rise a-

gain, and thereby brought Deliverance and Victory to us all, so as we are more than Conquerors thro' him that loved us? Here then we have an excellent Pattern indeed.

One said unto Mr. *Burton*, Christ will not be ashamed of you at the last day. He replied, He knew whom he had believed, and that Christ was able to keep that he had committed to him against that Day. One asked him how he did? He said, never better, I bless God, who hath accounted me worthy thus to suffer. The Keeper keeping off the People from pressing near the Pillory; he said, Let them come and spare not, that they may learn to suffer. The same Keeper being weary, and sitting him down, asked Mr. *Burton* if he were well, and bad him be of good Comfort. To whom he replied, Are you well? If you be well, I am much more, and full of Comfort, I bless God. Some asked him if the Pillory were not uneasy for his Neck and Shoulders? He answered: How can Christ's Yoke be uneasy? This is Christ's Yoke, and he bears the heavier end of it, and I the lighter; and if mine were too heavy, he would bear that too. O good People, Christ is a good and sweet Master, and worth the suffering for! And if the World did but know his Goodness, and had tasted of his Sweetness, all would come and be his Servants; and did they but know what a blessed thing it were to bear his Yoke, O who would not bear it? The Keeper going about to ease the Pillory by putting a Stone or a Brickbat between, Mr. *Burton* said, Trouble not your self, I am at very good Ease, and feel no Weariness at all: And espying a young Man at the Foot of the Pillory, and perceiving him to look pale on him, he said, Son, Son, what is the matter you look so pale? I have as much Comfort as my Heart can hold, and if I had need of more, I should have it. One asked him a while after, if he would drink some *Aqua Vitæ*. To whom he replied, that he needed it not; for I have, said he, (laying his Hand upon his Breast) the true Water of Life, which like a Well doth spring up to eternal Life. Pausing a while, he said with a most cheerful and grave Countenance, I was never in such a Pulpit before, but little do you know (speaking to them that stood about him) what Fruits God is able to produce from this dry Tree. They looking stedfastly upon him, he said, Mark my Words, and remember them well, I say, Little do you know what Fruits God is able to produce from this dry Tree; I say, remember it well, for this Day will never be forgotten; and thro' these Holes (pointing to the Pillory) God can bring Light to his Church. The Keeper going about again to mend the Pillory, he said, Do not trouble yourself so much: But indeed we are the Troublers of the World. By and by, some of them offering him a Cup of Wine; he thanked them, telling them he had the Wine of Consolation within him, and the Joys of Christ in Possession, which the World could not take away from him, neither could it give them unto him. Then he looked towards the other Pillory, and making a sign with his Hand, cheerfully called to Dr. *Bastwick*, and Mr. *Prym*, asking them how they did? Who answered, Very well. A Woman said unto him, Sir, every Christian is not worthy this Honour, which the Lord hath cast upon you this Day. Alas (said he) who is worthy of the least Mercy? But it is his gracious Favour and free Gift, to account us worthy in the Behalf of Christ to suffer any thing for his

his sake? Another Woman said, There are many hundreds which by God's Assistance would willingly suffer, for the Cause you suffer for this Day. To whom he said, Christ exalts all of us that are ready to suffer Afflictions for his Name with Meekness and Patience; but Christ's military Discipline in the use of his spiritual Warfare, in point of Suffering is quite forgotten, and we have in a manner lost the Power of Religion, in not denying ourselves, and following Christ as well in suffering as in doing. After a while Mr. *Burton* calling to one of his Friends for a Handkerchief, returned it again, saying, It is hot, but Christ bore the Burden in the Heat of the Day; let us always labour to approve ourselves to God in all things, and unto Christ, for therein stands our Happiness, come of it what will in this World.

One said to Mr. *Burton*, The Lord strengthen you. To whom he replied, I thank you, and I bless his Name he strengthens me. For tho' I am a poor sinful Wretch, yet I bless God for my innocent Conscience in any such Crime as is laid against me; and were not my Cause good, and my Conscience sound, I could not enjoy so much unspeakable Comfort in this my Suffering, as I do, I bless my God. Mrs. *Burton* sending Commendation to him by a Friend: He returned the like to her, saying, Commend my Love to my Wife, and tell her I am heartily chearful, and bid her remember what I said to her in the Morning; namely, That she should not blemish the Glory of this Day with one Tear, or so much as one Sigh. She returned Answer, That she was glad to hear him so chearful; and that she was more chearful of this Day than of her Wedding-day. This Answer exceedingly rejoiced his Heart, who thereupon blessed God for her, and said of her, she is but a young Soldier of Christ's, but she hath already endured many a sharp Brunt, but the Lord will strengthen her unto the end: And he having on a pair of new Gloves, shewed them to his Friends thereabout him, saying, My Wife yesterday of her own accord bought me these Wedding-Gloves, for this is my Wedding-Day.

One said to him, Sir, by this Sermon (your Suffering) God may convert many unto him. He answered, God is able to do it indeed. And then he called again to Dr. *Bastwick* and Mr. *Pryn*, asking them how they did; who answered as before. Some speaking to him concerning that Suffering of shedding his Blood: He answered, What is my Blood to Christ's Blood? Christ's Blood is a purging Blood, but mine is corrupted and polluted with Sin. One Friend asked another standing near Mr. *Burton*, if there should be any thing more done unto him? Mr. *Burton* over-hearing him answered, Why should there be no more done? For what God will have done must be accomplished. One desiring Mr. *Burton* to be of good cheer: He thus replied, If you knew my Cheer, you would be glad to be Partaker with me; for I am not alone, neither hath God left me alone in all my Sufferings and close Imprisonment since first I was apprehended. The Halberd-men standing round about, one of them had an old rusty Halberd, the Iron whereof was tacked to the Staff with an old crooked Nail; which one observing, and saying, What an old rusty Halberd is that? Mr. *Burton* said, This seems to me to be one of those Halberds which accompanied *Judas* when he went to betray and apprehend his Master. Mr. *Burton* said again, I am persuaded that Christ

my Advocate, is now pleading my Cause at the Father's Right Hand, and will judge my Cause tho' none be found here to plead it; and will bring forth my Righteousness as the Light at Noon-day, and clear my Innocency in due time. A Friend asked Mr. *Burton*, if he would have been without this particular Suffering? To whom he said, No, not for a World. Moreover, he said that his Conscience in the Discharge of his ministerial Duty and Function, in admonishing his People to beware of the creeping in of Popery and Superstition, exhorting them to stick close unto God and the King in Duties of Obedience, was that which first occasioned his Sufferings; and he said, As for this Truth I have preached, I am ready to seal it with my Blood, for this is my Crown both here and hereafter. I am jealous of God's Honour, and the Lord keep us that we may do nothing that may dishonour him, either in doing or suffering; God can bring Light out of Darkness, and Glory out of Shame: And what shall I say more; I am like a Bottle which is so full of Liquor, that it cannot run out freely; so I am so full of Joy, that I am not able to express it.

In conclusion, some told him of the Approach of the Executioner, and prayed God to strengthen him. He said, I trust he will, why should I fear to follow my Master Christ, who said, I gave my Back to the Smiters, and my Cheek to the Nippers that plucked off my Hair; I hid not my Face from Shame and Spitting, for the Lord God will help me, therefore shall I not be confounded; therefore have I set my Face like a Flint, and I know that I shall not be ashamed.

When the Executioner had cut off one Ear, which he had cut deep and close to the Head in an extraordinary cruel manner; yet he never once moved and stirred for it, tho' he had cut an Artery, so as the Blood ran streaming down upon the Scaffold, which divers Persons standing about the Pillory seeing, dipped their Handkerchiefs in, as a thing most precious, the People giving a mournful Shout, and crying for the Surgeon, whom the Croud and other impediments for a time kept off, so that he could not come to stop the Blood; he all the while held up his Hands, said, Be content, it is well, blessed be God. The other Ear being cut no less deep, he then was freed from the Pillory, and came down, where the Surgeon waiting for him, presently applied remedy for stopping the Blood after a large Effusion thereof, yet for all this he fainted not, in the least manner, tho' through expence of much Blood he waxed pale. And one offering him a little Wormwood-water, he said, It needs not; yet through Importunity he only tasted of it, and no more, saying, His Master, Christ, was not so well used, for they gave him Gall and Vinegar, but you give me good strong Water to refresh me, blessed be God. His Head being bound up, two Friends led him away to an House provided him in *King-street*, where being set down, and bid to speak little, yet he said after a Pause, This is too hot to hold long: Now left they in the Room, or his Wife should mistake, and think he spake of himself concerning his Pain, he said, I speak not this of myself; for that which I have suffered is nothing to that my Saviour suffered for me, who had his Hands and Feet nailed to the Cross: and lying still a while, he took Mr. *Pryn*'s Sufferings much to heart, and asked the People how he did, for, said he, his Sufferings have been great. He asked also how Dr. *Bastwick* did,

did; with much Compassion and Grief, that himself (being the first that was executed) could not stay to see how they two faired after him.

Soon after the Execution of the Sentence, they were severally sent Prisoners to the respective Castles of *Carnarvan*, *Launceston* in *Cornwal*, and *Lancaster*, and afterwards on the 27th of *August* following, it was ordered by the King and Council, That *Dr. Bastwick* should be removed to the Castle or Fort of the Isles of *Scilly*, *Mr. Burton* to the Isle of *Guernsey*, and *Mr. Pryn* to which of the two Castles of the Isle of *Jersey* the Governor should think fit; and that none be admitted to have Conference with them, or to have Access to them, but whom the Captains of the said Castles or their Deputies should appoint; they not to be allowed Pen, Paper, or Ink, nor any Books, but the Bible and Common-Prayer-Book, and other Books of Devotion, consonant to the Doctrine and Discipline of the Church of *England*; no Letters or Writings to be brought them, but what shall be open'd, nor any to be sent from them: that the Wives of *Bastwick* and *Burton* should not land or abide in any of the said Islands; and if they did, they should be detain'd in Prison till further Order from the Board; and the Conductors of the said three Prisoners, either by Sea or Land, to suffer none but themselves to speak to them in their Passage. Accordingly they were sent to the said three Islands, where they remained till the beginning of the Long Parliament 1641. when upon their respective Petitions they were sent for up, discharged and restored. Their Petitions were as follow.

To the Honourable the Knights, Citizens, and Burgeses of the Commons House of Parliament;

The humble Petition of William Pryn, late Exile and close Prisoner in the Isle of Jersey,

In all humbleness sheweth,

THAT your Petitioner, tho' not conscientious to himself of any voluntary or apparent Offence against the Laws of the Realm, (to which he ever studied to conform himself) thro' the malicious Practices and Persecutions of some Prelates and Church-men, (especially the now Archbishop of *Canterbury*; and *Peter Heylin*, Doctor in Divinity) whose Errors and Innovations, contrary to the Doctrine and Discipline of the Church of *England*, and Extravagancies in the High Commission, and other Ecclesiastical Courts, your Petitioner for his own relief, being there unjustly prosecuted, (had to his weak power oppugned) hath within eight Years last past, undergone two heavy Censures in the Star-Chamber Court.

The first upon an Information there exhibited against your Petitioner, by *Mr. Noy* deceased, then Attorney General, for some misconstrued Passages, inoffensive in themselves, and in your Petitioner's true Intention, being for the most part the words of other approved Authors, comprised in a Book, stiled *Histrionastix*, written by the Petitioner, against common Interludes, and licensed for the Press by *Mr. Thomas Buckner*, Household Chaplain to the then Archbishop of *Canterbury*, authorized by the State to license Books, and by him exactly perused, and approved both in the written and printed Copy, before its

Publication, and so confessed the Information; for which authorized Book and Passages, your Petitioner, before the hearing of the Cause, was not only imprisoned in the Tower of *London*, without Bail or Mainprize, for a whole Year's space, denied access to his Counsel, convenient time to examine Witnesses, and make Breviats to instruct his Counsel (the Information being general, and reciting no particular Clauses of the Book excepted against) the only means of his Defence illegally suppressed, some of his Counsel tampered with to make no Justification, contrary to your Petitioner's Instructions and Desire, whereby his Cause was miscarried; but also at the Hearing, by reason of those malicious and perverse Glosses on the said Passages, which the said *Heylin* had collected and presented to his Majesty's learned Counsel, who repeated his Instructions only, your Petitioner was fined 3000 Pounds to his Majesty, expelled the University of *Oxford*, and *Lincolns-Inn*, degraded from his Profession of the Law, wherein he never offended, set in the Pillory in the *Palace-Yard* at *Westminster*, where he lost one of his Ears, and two days after on the Pillory in *Cheapside*, where he lost the other Ear: and had his said Licensed Books there publickly burnt before his Face, by the *Hangman*, in a most disgraceful manner; and adjudged after to remain a Prisoner during his Life.

That after the said Censure, to defame and injure your Petitioner the more, he was charged wrongfully in the Decree, as censured for Perjury, (tho' not taxed for it by the Court) and between his Sufferings in the Pillory, the Books of his Study (twice surveyed, and restored to him by Order from the Lords) before any Fine estreated, by a Warrant out of the High Commission, signed by the said Archbishop and others, were seized on by *Cross* a Messenger, who carried them to his House; with which Warrant your Petitioner charging the said Archbishop upon occasion, in the open Court of Star-Chamber; he there publickly disavowed the same (tho' your Petitioner can yet produce it under his own Hand) promising withal, that the Books should be restored forthwith; which notwithstanding were all still detained by his Means, till they were extended and sold for your Petitioner's Fine: who shortly after, by an Order out of the said Court sent to the Tower to be executed, was there shut up close Prisoner, and *Dr. Reeves* sent thither to search his Chamber for the Pamphlet, which the said Archbishop would wrongfully have fathered upon your Petitioner, whose Friends have been unjustly prosecuted in the Exchequer, and elsewhere, sundry Years, for his Fine aforesaid.

And your Petitioner further saith, that about *Easter* was three Years, during his Imprisonment in the Tower, by means of the said Archbishop, a new Information was exhibited in the said Court against your Petitioner, and others, with certain Books thereto annexed; *Denying the Prelates Jurisdiction over other Ministers, to be Jure Divino. Charging them with many Errors and Innovations in Religion, Usurpation upon his Majesty's Prerogative, and Subjects Liberty*, Abuses, and Extortions, in the High Commission, and other Ecclesiastical Courts, suppressing Preaching, and painful Ministers without a Cause; Licencing *Popish, Arminian*, and other erroneous Books against the Sabbath; setting up Altars, Images, and Crucifixes; removing and railing in Communion Tables, and

bowing

bowing down to them; altering the Book of Common Prayer, the Books for the Gunpowder-Treason, and late Fast, in some material Passages in favour of Popery and Papists. Which things, (tho' very notorious, and oft complained against by this Honourable House, in former and late Parliaments) were yet reputed scandalous. And tho' neither of the said Books was particularly charged on your Petitioner, in the said Information, nor any Witness produced to prove him either Author, or Disposer of any of them; yet by denying your Petitioner liberty to draw up his own Answer, (tho' once a Barrister at Law) when as his assigned Counsel refused to do it, by close imprisoning your Petitioner, and his Servant, by debarring him Pen, Ink, and Paper, whereby to answer, or instruct his Counsel; searching his Chamber, and taking away part of his Answer there found; denying him access to his Counsel, and conference with his Co-defendants, even at Counsel, tho' jointly charged with him; rejecting the Cross-Bill exhibited by him for his Defence; threatening Master *Holt*; one of your Petitioner's assigned Counsel, sent by the then Lord Keeper to the *Tower*, to draw up your Petitioner's Answer, and commanding him not to sign it, after it was engrossed, whereupon he refused to subscribe it, contrary to his Promise to your Petitioner; and by refusing to accept your Petitioner's Answers to the said Information, signed with his own, and Master *Tomlins*, the other of his Counsel's Hands, tho' tendered by your Petitioner, both at the Star-Chamber Office, and in the open Court at the Hearing; the said Information, for default of Answer (tho' two Answers were thereto tendered by your Petitioner) was taken *pro confesso* against your Petitioner, and he thereupon *Fin'd five thousand Pounds to his Majesty, Pilloried, Stigmatized on both Cheeks, Mutilated and Dismember'd, in a most barbarous manner, and the small remainder of his Ears, left after his first Execution, cut off, to the hazard of his Hearing, and Life; and adjudged to perpetual close Imprisonment in the Goal of Carnarvon Castle in North-Wales, a nasty Dog-hole, far remote from your Petitioner's Friends.* Which Sentence was unduly drawn up and executed upon your Petitioner, as his Attorney's Clerk informed, before it was entered into the Book, or your Petitioner could get any Copy of it, to except against the same, as he had just Cause.

That immediately after the Execution of the same Sentence, your Petitioner sent to the said Archbishop to desire him to release or bail his Servant (who was detained close Prisoner for ten Weeks space in the Messenger's Hands, and oft examined and sollicitated, by fair Promises and Threatnings, causelessly to accuse your Petitioner against whom they wanted Evidence) that so he might attend him during his Sores, which the said Archbishop out of his Grace and Charity utterly refused; saying that he intended to proceed against his said Servant in the High Commission, where he hath ever since vexed, censured, and banded him from Prison to Prison, only for refusing to accuse and betray your Petitioner.

That after the said heavy Sentence, your Petitioner by an Order in the said Court (by way of Addition to the said Censure) was inhibited the use of Pen, Ink, and Paper, and all Books; except the Bible, and the Book of Common-Prayer, and some few Books for private Devotion; and before his Wounds were perfectly cured, he was by order remov'd from the *Tower* to *Carnarvon*; and some

of his Friends in *Chester*, who visited him there in his Passage, in the Presence of his Conductors, who had no order to restrain any Person from resorting to him, were for this very cause sent for by a Messenger, to appear before the Lords of the Privy-Council, and likewise cited into the High Commission at *York*; where they were imprisoned and fined, to the ruin of their Estates, and enjoined to make a publick Recantation in the Cathedral Church; and in the Town-Hall of *Chester*: The said Commissioners further decreeing, that three Pictures of your Petitioner found in *Chester*, should be publicly burnt at the High Cross there, which was done accordingly.

That your Petitioner; since his said Sentence, hath been publicly reviled at, and libelled against; both by the High Commissioners at *York*, and in sundry Churches, both at *Chester* and elsewhere, and in divers licensed printed Books, compiled by the said *Heylin*, and published by the Archbishop's Privy or Command; and that sundry of his Friends Houses, Studies, Books, and Writings have been violently broken up, ransacked and taken away, and themselves prosecuted in the High Commission, out of Malice, for the relation they had to your Petitioner.

That after your Petitioner had continued some ten Weeks space close Prisoner in *Carnarvon*, he was about three Years since, by a Warrant from the Lords of the Council, made in the Summer Vacation, (to which the said Archbishop's Hand was first subscribed) order'd by way of Exile, to be embarked and transported with all privacy into one of the Castles in the Isle of *Jersey*, and his Conductors thereby charged not to admit any Person whatsoever, but themselves only, to speak with your Petitioner in his Passage: Whereupon, after some Injuries there receiv'd by Mr. *Griffith*, the King's Attorney in those Parts, who endeavoured to seize upon the Furniture of his Chamber for his own use, your Petitioner was embarked among Papists, in a bruised shipwreck'd Vessel, full of Leaks, and after fourteen Weeks Voyage in the Winter Season, through dangerous Storms and Seas; which spoiled most of his Stuff and Bedding, and threatening often Shipwreck to him; he arrived at the said Isle, and was conveyed close Prisoner into Mount *Orgatille* Castle there, where the Lieutenant-Governour, by another extra-judicial Order, to which the said Archbishop's Name was first, was ordered to keep your Petitioner close Prisoner in a Chamber, suffer none but his Keepers to speak with him, to intercept all Letters to him; to permit him neither Pen, Ink, nor Paper, either to write to his Friends for Necessaries, or to petition for Relief, and to permit him no Book but the Bible, and those aforementioned Books, without giving any order for his Diet there: so that being deprived of his Calling and Estate, exiled and shut up close Prisoner among Strangers, remote from all his Friends, denied all Address to him by Person or Letters, he had certainly perished in his almost three Years close Imprisonment there, had not the extraordinary Providence and Goodness of God, which he shall ever adore, and the noble Charity of those under whose Custody he did remain, furnished him with such Diet and Necessaries; as preserved him both in Health and Life, in this his close Imprisonment and Exile.

May it therefore please this Honourable House, to take these your Petitioner's almost eight Years tragical Grievances; of new and dangerous Exam-
ple;

ple, into your most sad and just Considerations, that so they may not become Precedents to the prejudice of Posterity; to grant him Liberty to send for and examine all necessary Witnesses: to order all Clerks, Registers, and other Officers of the Star-Chamber, or elsewhere, speedily and freely to grant him the Copies of such Orders, Decrees, and Writings, as his Cause shall require, to release him upon Bail (being now but a Prisoner only upon an extrajudicial Order of the Lords, and not by Virtue of any Sentence or Decree in Court) to grant him Liberty to plead and prosecute his own Cause, since Counsel hath so often failed him, and to give him such Satisfaction and Relief as the Justice and Equity of his Cause shall merit.

And your Petitioner shall ever pray for your Sefeties;

William Prynne.

To the Honourable the Knights, Citizens, and Burgeses of the Commons House of Parliament;

The humble Petition of John Bastwick, Doctor in Physick, lately retained close Prisoner and Exile, in the Island of Scilly;

Most humbly sheweth,

THAT your Petitioner having about six Years since set out a Book in *Latin*, called *Elenchus Religionis Pcpisticæ*, with an Addition thereunto called *Flagellum Pontificis, & Episcoporum Latialium*; being thereunto provoked by one *Richard Short*, a Papist that maintained the Pope's Supremacy, the Mass, and papal Religion: In which Book your Petitioner (for preventing all Misinterpretations of his pious and good Intentions therein) in his Epistle to the Reader, fully declared himself, That your Petitioner meant nothing against such Bishops as acknowledged their Authority from Kings and Emperors; yet, because your Petitioner (the better to shew the papal Usurpation over other Princes) therein only maintained by way of Argument (as other orthodox Writers of that Subject have done) a Parity of the said Bishop of *Rome*, or all other Bishops or Presbyters, by the Word of God, denying his and their Supremacy over other Ministers to be by the Divine Institution:

Thereupon a Pursuivant, by Authority from the High Commission Court, came into your Petitioner's House at *Colchester* in *Effex*, in his Absence, and the said Pursuivant, assisted with the then Bailiffs and Constables of *Colchester*, aforesaid, ransacked his said House, together with his Chests and Trunks, and with great Violence broke open your Petitioner's Study, which was in his Apothecary's House, and took and carried away divers of your Petitioner's Books, Writings, Letters, and what else the Pursuivant pleased, without making of Restitution of them to your Petitioner.

And then your Petitioner was prosecuted in the said High Commission Court, principally for his said Book; where, after a long and chargeable Prosecution, he was the 12th of *February* 1634, fined 100*l.* to the King, excommunicated, debarred to practise Physick, the chiefest Means of his livelihood; his said Book ordered to be burnt; that he should pay costs of Suit, and be imprisoned till he should make a Recantation. The which heavy Censure was only for the said Book, wherein your Petitioner maintained the Prerogative of a King against the Papacy. Whereas one *Thomas*

Chawney, of *Effex*, lately wrote a Book in Maintenance of the papal Religion, and in Defence of the Church of *Rome*, and avers it to be a true Church; the which Book is dedicated to the Archbishop of *Canterbury*, and was and is patronized and defended by the said Archbishop, and the said *Chawney* never troubled for it. After which Censure declared as aforesaid, all the Bishops that were then present, denied openly that they held their Jurisdiction from his Majesty; and affirmed, that they had it from God only. And the Archbishop of *Canterbury*, among other erroneous Sayings uttered by him, maintained the said *Chawney's* Book; and maintained that the Church of *Rome* was a true Church, and that it erred not in Fundamentals: And he, and other the said Bishops, there defamed the holy Scriptures, and abused reverend Master *Calvin*. In regard whereof, and for the vindicating of your Petitioner's Innocency in the Matters for which he was most unjustly censured, as aforesaid, your Petitioner published in Print another Book in *Latin*, intitled, *Apologeticus ad Præsules Anglicanos*, expressing the Truth of his Proceedings, and Speeches of his said Censure. For which last mentioned Book, and his Book called the *Litany*, not then in Print, an Information was exhibited against him and others in the Star-Chamber, to which your Petitioner's Answer being drawn and engrossed, was only subscribed by himself, because he could get no Counsel to set their Hands to it; your Petitioner tendered the said Answer first at the Star-Chamber Office, and after in open Court at the Star-Chamber Bar, but it would not be accepted for want of Counsellors Hands to it; contrary to former Precedents. But the Court of Star-Chamber took the said Information *pro confesso*, and censured your Petitioner 500*l.* Five to the King, to stand in the Pillory, and to lose both his Ears, and to be close Prisoner in *Launceston Castle* in *Cornwal*. All which hath been executed upon him with great Extremity, to the Peril of his Life. After all which Extremity, your Petitioner (by what Order he knoweth not, it being no part of his Censure in Star-Chamber) was transported from the said Castle to the Island of *Scilly*, a Place so barren that it affords not ordinary Necessaries; where he hath been in close Durance for three Years or more, and not suffered to have any of his Friends come at him, his very Wife being prohibited, by the Lords of the Council's Order, under pain of Imprisonment, not to set her Foot upon any part of the said Island to enquire of his Welfare. So that your Petitioner hath been exiled from his Wife and divers small Children three Years and more; besides the great Straits and Miseries which he hath sustained during the said Time. All which is contrary to the Law of God and Man, and the Liberties of a free Subject; and to the utter undoing of your Petitioner, his Wife, and Children.

May it therefore please this honourable Assembly, to take these pressing Grievances of your Petitioner into your Considerations, and to afford him such Relief therein, as in your grave Wisedoms shall seem consonant to Justice and Equity; and to assign him for Counsel, Mr. *Atkins*, Mr. *Ludbore*, Mr. *Tomlins*, Mr. *Gurdon*, and Mr. *Randal*, to assist him in this his Complaint; and to order that your Petitioner may take out *gratis*, such Copies of the said Censures, Warrants, and Orders, and other the Proceedings in the said several

veral Courts, as shall or may any way concern this his sad, yet most just Complaint, with Warrant from this honourable House, to bring in his Witnesses.

And your Petitioner, as in Duty bound, shall ever pray for your Prosperities.

John Bastwick.

The humble Petition of Henry Burton, late Exile, and close Prisoner in Castle-Cornet, in the Isle of Guernsey,

In all humbleness sheweth,

THAT whereas your Petitioner, on the 5th of November 1636, did preach two Sermons in his own Parish Church in St. Matthew Friday-street, London, for the which he was, in December then next following, summoned to appear before Dr. Duck, one of the Commissioners for Causes Ecclesiastical, at Chiswick in the County of Middlesex; where (with the Register of the High Commission Court) the said Dr. Duck tendred to the Petitioner the Oath *ex Officio*, to answer to certain Artickes there presented: Which Oath the Petitioner refusing to take, did then and there appeal from the said Court unto the King's Majesty; which Appeal the said Dr. Duck did admit, and the said Register, by Dr. Duck's Direction, did then and there enter in Writing.

Notwithstanding which said Appeal, a special High Commission Court was shortly after called at London, consisting of four or five Doctors; where the said Commissioners proceeded illegally to suspend the Petitioner in his Absence; by means whereof, as of the Threatnings of the said Commissioners, he was enforced to keep his House, until a Sergeant at Arms, with divers Pursuivants, and other armed Officers, assisted by Alderman Abell, then Sheriff of London, beset the Petitioner's House at eleven o'Clock at Night, and violently broke open his Doors with Iron Crows, and the like, and surprized him in his House; he making no Resistance at all. Where having first searched his Study, and taken away such Books as they pleased, they carried your Petitioner to Prison; whence, the next Day, being the second of February, by a pretended Order from the Lords of the Council, he was conveyed to the Fleet, and there kept close Prisoner.

During which Imprisonment, an Information was exhibited against the Petitioner and others, in his Majesty's Court of Star-chamber; whereby he was charged, *inter alia*, with the publishing of a certain Book, containing, *An Apology for an Appeal*, with his said two Sermons, intitled, *God and the King*. Wherein he taught Subjects to yield all manner of due Obedience to their lawful King, and reprov'd all lawless Innovations in Religion, &c. Which Information the Petitioner upon his Oath under the Hand of M. Holt, being then of his Counsel, assigned by special Order from the said Court, did put in his Answer; wherein he alledged such things only as his said Counsel conceived to be material, and pertinent to his just Defence in publishing the said Book; but denied all other Matters in the said Information contained. Which said Answer being admitted and received in Court, the Petitioner (being then a close Prisoner) not only attended the exhibiting of Interrogatories, according to the Custom of that Court, but withal, after some universal Delay, did write unto the King's At-

torney to hasten them; but before the Examiner came, the Petitioner heard that his said Answer was referred to Sir John Bramston Kt. Lord Chief Justice of the King's-Bench, Sir John Finch, then Chief Justice of the Common Pleas, and was by them wholly expunged as impertinent and scandalous, save only the not Guilty. And the Petitioner understanding the Answer he was to make to the Interrogatories was to be reckoned as a Part of his Answer, admitted in Court, but afterwards expunged as impertinent and scandalous, as aforesaid: so as if he should then have answered the Interrogatories, he should thereby have assented to the said Act of the said Judges, and so the Condemnation of his Cause before the Hearing; whereby he should have contradicted his former Oath, that his said Answer was a true Answer; and so should justly have brought himself under the Guilt of wilful Perjury, and his Cause under just Censure. For that very Reason he held himself not bound, as he conceived, to answer the Interrogatories; for that his said Answer was so expunged, and the (*Not Guilty*) as the Foot so tied to the Head without the main Body, and that in the Judge's own Words, as the Petitioner could not in any sort take or acknowledge it now for other than the Judge's own Answer; as may appear upon Record in the same Court.

Nevertheless, the Court taking the same Information *pro Confesso*, and refusing to permit a Copy of the Petitioner's own true Answer, as also of his Reasons of not answering the Interrogatories, both which at his Censure he tendered to the Court, desiring they might be then and there publicly read the 14th of June, 13 *Caroli Regis*, proceeded to Censure; whereby your Petitioner was censured *in a Fine of 5000 l. to his Majesty, to be deprived of his ecclesiastical Benefice, degraded from his ministerial Function and Degrees in the University, and ordered to be set on the Pillory, where both his Ears were to be cut off; confined to perpetual close Imprisonment in Lancaster-Castle, debarred the Access of his Wife or any other to come to him but only his Keeper, and denied the Use of Pen, Ink, and Paper.* All which, except the Fine, was executed accordingly. And after his close Imprisonment for twelve Weeks in the common Jail in the said Castle, he was, by what extrajudicial Order he knows not, transported by the Conduct of one Brian Burton, appointed by the High Sheriff of Lancaster, who used your Petitioner very basely and deceitfully, in that his Transportation, which was in the Winter Season through dangerous Seas, to the apparent Hazard both of his Health and Life, to the said Castle of Guernsey, where he hath remained a close Prisoner and Exile almost three whole Years; his Wife utterly prohibited, upon pain of Imprisonment, to set her Foot upon any part of the Island where she might but inquire how her Husband did; contrary to the Laws of God and the Liberties of this Kingdom.

May it therefore please this honourable House, to take the Petitioner's sad Cause into Consideration; and for the better Manifestation of his Grievance in this Cause, to assign him for Counsel Mr. Sergeant Atkins, Mr. Tomlins, and Mr. Gordon, to assist him in his Cause, and to command that he may take out such Copies *gratis* out of the said several Courts as do or may concern his Cause.

And your Petitioner, as in Duty bound, shall daily pray for your Prosperities.

Henry Burton,

Thiele

These Petitions being read, they were refer'd to the Committee appointed for inquiring into the Proceedings of the Star-Chamber and High Commission Court, and upon their Report the House came to the following Resolutions.

As to Dr. Bastwick, Feb. 22, 1640.

1. *Resolved*, That the Precept made by the Archbishop of *Canterbury* and others, High Commissioners for Causes Ecclesiastical within the Realm of *England*, for the apprehending the Body of *Dr. Bastwick*, and searching for and seizing his Books; and the Messengers Actings thereupon in searching *Dr. Bastwick's* House, and seizing his Books and Papers, are against Law and the Liberty of the Subject.

2. *Resolved*, That the Sentence given against *Dr. Bastwick* by the High Commissioners, and the Proceedings whereupon that Sentence is grounded, and the Execution of that Sentence, are against Law; and that the Sentence is void, and that *Dr. Bastwick* ought to be restored to the Exercise and Practice of Physick, and to have Reparation and Recompence for his Damage and Loss sustained by the said Sentence and Execution.

3. *Resolved*, That all those several Commissioners of the High Commission Court which voted against *Dr. Bastwick*, in the Sentence pronounced against him, ought to give Satisfaction to *Dr. Bastwick*.

The House afterwards resumed the Debate concerning *Dr. Bastwick*. Whereupon it was farther,

4. *Resolved*, That the Proceedings against *Dr. Bastwick*, are against the Law and Liberty of the Subject, as also the Sentence against him ought to be reversed, the Fine of 5000*l.* discharged, and he have Reparation for his Losses and Sufferings.

5. *Resolved*, That the Orders and Warrants from the Council Board for *Dr. Bastwick's* Exile, and transferring him from the Castle of *Launceston* to the Isle of *Scilly*, and his Imprisonment there, are against the Law and Liberty of the Subject, and that he ought to have Reparation for his Losses and Damages sustain'd by those Orders, and that Imprisonment.

Present at the Sentence in the Star-Chamber these Lords and Privy-Counsellors following :

<i>The Lord Keeper,</i>	<i>Earl Moreton,</i>
<i>Duke of Lenox,</i>	<i>Lord Newburgh,</i>
<i>Earl of Pembroke,</i>	<i>Mr. Secretary Coke,</i>
<i>Earl of Holland,</i>	<i>Lord Privy Seal,</i>
<i>Lord Cottington,</i>	<i>E. of Arundel and Surry,</i>
<i>Sir Thomas Jermin,</i>	<i>Earl of Bridgwater,</i>
<i>Lord Treasurer,</i>	<i>Viscount Wimbleton,</i>
<i>Marquis Hamilton,</i>	<i>Sir Henry Vane,</i>
<i>Earl of Dorset,</i>	<i>Mr. Secreat. Windebank.</i>

As to Mr. Burton ;

1. *Resolved*, That the four Commissioners, *Dr. Duck*, *Dr. Worrall*, *Dr. Sams*, and *Dr. Wood*, proceeded unjustly and illegally in suspending *Mr. Burton ab Officio & Beneficio*, for not appearing upon the Summons in the first Process.

2. *Resolved*, That the breaking open *Mr. Burton's* House, and arresting his Person without any Cause shewed, and before any Suit depending against him in the Star-Chamber, and his close Imprisonment thereupon, are against the Law and Liberty of the Subject.

3. *Resolved*, That *John Wragg* hath offended in searching and seizing the Books and Papers of *Mr. Burton*, by colour of a general Warrant dormant from the High Commissioners, and that the said Warrant is against Law and the Liberty of the Subject; and that Serjeant *Dendy* and Alderman *Abel* have offended in breaking open the House of *Mr. Burton*, and ought respectively to make him Reparations for the same.

4. *Resolved*, That *Mr. Burton* ought to have Reparation and Recompence for Damages sustain'd by the aforesaid Proceedings from *Dr. Duck*, &c.

5. *Resolved*, That the Warrant from the Council-Board, dated at *Whitehall Feb. 2. 1636.* for the committing *Mr. Burton* close Prisoner, and the Commitment thereupon, is illegal, and contrary to the Liberty of the Subject.

6. *Resolved*, That the Archbishop of *Canterbury*, Bishop of *London*, and the Earl of *Arundel*, the Earl of *Pembroke*, *Sir Henry Vane*, Secretary *Cooke*, and Secretary *Windebank*, do make Reparation to *Mr. Burton* for his Damages sustain'd by his Imprisonment.

As to Mr. Pryn ;

1. *Resolved*, That the Sentence given against *Mr. Pryn* in the Star-Chamber *February 17. 9 Car.* is illegal, and given without just Cause, and ought to be reversed; and that *Mr. Pryn* ought to be discharged of the Fine of 5000*l.* imposed by the said Sentence, and of all Extents thereupon, and of his Imprisonment decreed by that Sentence.

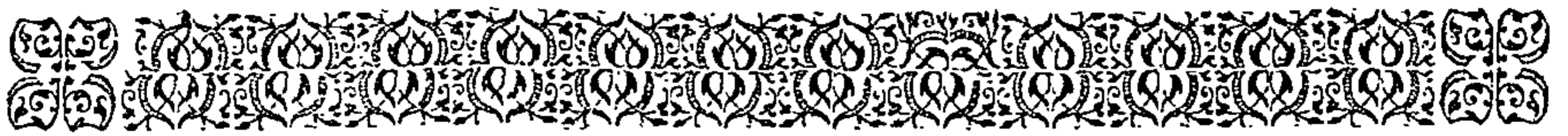
2. *Resolved*, That *Mr. Pryn* ought to be restored to his Degrees in the University of *Oxford*, and to the Society of *Lincolns-Inn*, and to the Exercise of his Profession of an Utter Barrister at Law, and to his Chamber again at *Lincolns-Inn*.

3. *Resolved*, That *Mr. Pryn* ought to have Reparation for such Damages and Prejudice as he hath sustained by the said Sentence and Proceedings.

4. *Resolved*, That the Sentence given against *Mr. Pryn* in the Star-Chamber, *14 Junii 1637. 13 Car.* is illegal, and given without any just Cause, and therefore ought to be reversed; and that he ought to be discharged of the Fine and Imprisonment thereby decreed, and that he ought to have Reparation and Recompence for the Damages sustained by that Sentence, and the Execution thereof.

That the Warrant dated *27 Aug. 13 Car.* for the Transportation of *Mr. Pryn* from *Carnarvan-Castle* to the Isle of *Jersey*, and his Imprisonment there, and other Restraints therein mentioned, are against the Law and Liberty of the Subject, and that he ought to be discharged of that Imprisonment, and to have Reparations for his Damages sustained thereby.


5. *Resolved*, That the Imprisonment of *Mr. Pryn*, by a Warrant dated the *1st of Feb. 1632.* under the Hands of *Thomas Lord Coventry*, Lord Keeper of the Great Seal of *England*; *Richard Lord Archbishop of York*, *Henry Earl of Manchester*, *Edward Earl of Dorset*; *Henry Lord Viscount Falkland*, *William Lord Bishop of London*, *Edward Lord Newburgh*, and *Sir Thomas Jermin*, is unjust and illegal, and that they ought to give *Mr. Pryn* Satisfaction for the Damages sustain'd by his Imprisonment.



XXXVII. *Proceedings in the Case of SHIP-MONEY, between the King and JOHN HAMPDEN* Esq; in the Exchequer, 1637. 13 Car. I.*

The Speech of Thomas Lord Coventry, Lord Keeper of the Great Seal of England; by Command from his Majesty, to all the Judges of Assize of England, in the Star-Chamber, June 17. 1635.

My Lords the Judges,

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

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

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

And because the Time of Assize is very short, and expireth in a few Days, it is necessary that you afford as much Time as may be unto those Businesses that are most general, and most concern the Publick; the Trials of *Nisi prius*, and particular Causes, they are in the Number of those

things that are not to be left undone: but those things that concern the general and publick Good, you are to account them as the weightier Matters of the Law; and therefore you are to take them into your prime and chief Care and Cogitation. Now among those, I shall commend unto you in the first place, The presenting and convicting of Recusants; for as it concerneth Religion, so it hath relation to his Majesty's Profits, which are two great Motives, to which you may add a third, because the King hath many Years since assigned these Forfeitures to the Publick Defence.

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

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

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

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

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

I could wish that this were made known unto the Country, that the Lords, and those that choose them, were answerable for their Defaults.

Now for bringing loose People in Order, the House of Correction hath need to be looked unto, and be put in readiness, that those that are idle may not want Work. *Ducere volentes, trahere nolentes*. And for the Houses of Correction, as it is in some Countries, it were convenient they were placed near the Jail; that not idle Persons only, but the Prisoners of the Jail also might be made to work, and eat the Labour of their own Hands: this, as it hath been formerly, so it is now commended by his Majesty to see it effected so soon as may be.

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

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

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

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

The

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

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

This is the Substance of all that which I received in Commandment from his Majesty; there are many Things else that concern the Publick, but your Judgments are well versed in them. These are the Particulars I had command to men-

tion unto you, so I will trouble you no further, but leave them to your grave Considerations.

The Speech of Thomas Lord Coventry, Lord-Keeper of the Great-Seal of England, to all the Judges of Assize of England, by Command from the King in the Star-Chamber, Feb. 14. 1636.

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

My Lords the Judges,

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

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

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

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

Now before all Things, the Advancement of Religion and Piety towards God, the Peace of the Church, and the Execution of those Laws that tend to those Ends, ought to have the first Place. As oft as I have had occasion to speak to you

here, I have seldom spared to give you a Charge of the Laws against Recusants; and I must reiterate it now: for if you convict them not in the Country, there is likely to be little Reformation, or Profit to his Majesty; and whosoever they be that will not be found in the Church, it behoveth you that you take order they be found in the *Exchequer*.

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

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

Now in respect the publick Service dependeth much upon the Justices of the Peace in the County, it will be necessary that you cast your Eye upon them, that they give due Attendance at the Assizes: it is their Duty to do it, and yours to enforce it upon them. An Assize lasteth but a few Days, but the Instructions that they may receive from you in that short time, may be of great use for the County for the whole Year: Also that you examine whether they give due Attendance at the Quarter-Sessions. Altho' there is an express Article in their Oath that they should give it; I hear many neglect it: Therefore it is a Thing very fitting, and well worthy your Labour, that at the Beginning of every Assize, you trust not to the

Clerk of the Peace his Information, but that your selves do cast an Eye upon his Book, and command him to return the Names of such Justices of Peace as you find by his Book were absent at the Quarter-Sessions. Fit it will be that you let them know, that to prefer a Riding, or Bowling, or Hunting-match, before their Attendance at the Quarter-Sessions, is little less than Perjury; and if your Admonition will not serve the turn, a Remedy shall be taken. In the third place, it is necessary for you to inquire how they attend the Monthly Meetings, or other times of publick Service; for this I am sure of, they are all within one Commission, and have the same Oath, and the same Attendance is imposed upon all; and why the greatest Number exempt themselves, and leave the publick Service upon a few, I know not; but if I may know the particular Men (of which I hope I shall henceforward by your Lordships) I shall rid them out of Commission, and put others in their Places.

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

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

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

Secondly, The whole Kingdom is concerned in point of Honour: for it is one of the most ancient and honourable Rights of the Crown of *England*, even the Dominion of the Sea. And all Records do shew, how the Kings and People of *England* have ever been careful that this Honour should never perish: and certainly the whole Kingdom is concerned in point of Trade and Profit; for the Traffick does not only enrich the Maritime Parts, but the Inland Towns; and if Trading fail, the Inland Places will find it in the fall of the Prices of Wool, Lead, and other Staple Commodities. This Experience sheweth daily, when upon every Stop of the vent of Cloth, there come such Out-

cries

* See the particular Taxation in Rush. Col. Vol. 2. p. 453.

cries by the Weaver, the Fuller, the Spinner and Wool-growers themselves; and the Authority of the Law sheweth the same: 43. in the Book of Affize, which your Lordships know better than I, it appears that certain Men went into the Country, and cast out a Fame, that for that Year no Wool should be transported beyond the Seas; presently upon this the price of Wool fell, and those Men were called in question, and were adjudged in a Fine for it. Now if a Rumour did so much abate the Trade in the Heart of the Kingdom, what would the Loss of the Dominion of the Sea do, which exposeth us, and all our Trade, to the Mercy of our Neighbours? Therefore since the whole Kingdom is concerned in point of Honour, Safety, and Profit, what Reason is there but that all should contribute to the Maintenance of it? This, or to the like Effect, I did formerly declare to you the Judges, by his Majesty's Command; and his Majesty received Satisfaction, in that you made a full Declaration thereof in your Circuits: and this I may say, for the most part the Subjects have shewed themselves most dutiful and obedient in this Service of his Majesty; and this Year the Sum imposed upon the County of *York*, being twelve thousand Pounds, is brought in already by the Sheriff, and so is most part of *Lancashire*, and other Shires: but when his Majesty heard of some Refusals, tho' he had Cause to be sensible of it, yet he was far from being transported with Passion, but thought good to resort to the Advice of you his Judges, who are sworn to give him faithful and true Counsel in that which pertaineth to the Law; and this his Majesty, as well for the Direction of his own Course, as for the Satisfaction of his Subjects, required you to deliver your Opinions herein, to which you returned an Answer under your Hands. And because the Command which you received from the King, is expressed in a princely Letter under his own Signature, I shall not take upon me to repeat it, you shall hear it read.

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

CAROLUS Rex,

TRUSTY and Well-beloved, we greet you well. Taking into our Princely Consideration, that the Honour and Safety of this our Realm of *England*, the Preservation whereof is only intrusted to our Care, was, and is now more nearly concerned than in former Times, as well by divers Counsels and Attempts, to take from us the Dominion of the Sea, of which we are sole Lord and rightful Owner; the Loss whereof would be of greatest Danger and Peril to this Kingdom, and other our Dominions: We, for avoiding these and the like Dangers, well weighing with ourselves, that where the Good and Safety of the Kingdom in general is concerned, and the whole Kingdom in danger, there the Charge and Defence ought to be borne by all the Realm in general; did, for prevention of so publick a Mischief, resolve with our selves to have a royal Navy provided, that might be of Force and Power, with Almighty God's Blessing and Assistance, to protect and defend this our Realm and our Subjects therein, from all such Perils and Dangers; and for that purpose We issued forth Writs under our Great Seal of *England*, and directed to all our Sheriffs of all our several

Counties of *England* and *Wales*, commanding thereby all our said Subjects, in every City, Town and Village, to provide such a Number of Ships, well-furnished, as might serve for this our Royal Purpose; and which might be done with the greatest Equality that could be. In Performance whereof, tho' generally throughout all the Counties of this our Realm, we have found in our Subjects, great Chearfulness and Alacrity, which we graciously interpret as a Testimony, as well of their dutiful Affections unto us, and to our Service, as the Respect they have to the Publick, which well becometh every good Subject; nevertheless finding that some few, haply out of Ignorance what the Laws and Customs of this our Realm are, or out of a Desire to be eased and freed in their Particulars, (how general soever the Charge ought to be) have not yet paid and contributed the several Rates and Assessments that were set upon them, and foreseeing, in our Princely Wisdom, that from hence divers Suits and Actions are not unlikely to be commenced and prosecuted in our several Courts at *Westminster*: We, desirous to avoid such Inconveniencies, and out of our Princely Love and Affection to all our Subjects, being willing to prevent such Errors as any of our loving Subjects may happen to run into, have thought fit, in a Case of this Nature to advise with our Judges, who we doubt not are all well studied and informed in the Right of our Sovereignty. And because the Trials in our several Courts, by the Formality in Pleading, will require a long Protraction, we have thought it expedient, by this our Letter directed to you all, to require your Judgments in the Case, as it is set down in the inclosed Paper, which will not only gain Time, but also be of more Authority to over-rule any prejudicate Opinions of others in the Point.

Given under our Signet at our Court at White-hall, the Second Day of February, in the Twelfth Year of Our Reign. 1636.

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

CAROLUS Rex,

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

The Judges Answer.

May it please Your Most Excellent Majesty,

WE have, according to your Majesty's Command, every Man by himself, and all of us together, taken into Consideration, the Case

and

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

<i>Jo. Brampton,</i>	<i>Rich. Hutton,</i>	<i>Geo. Vernon,</i>
<i>Jo. Finch,</i>	<i>W. Jones,</i>	<i>Fra. Crawley</i>
<i>Hump. Davenport,</i>	<i>Geo. Crooke,</i>	<i>Rob. Berkley,</i>
<i>Jo. Denham,</i>	<i>Tho. Trevor,</i>	<i>Fra. Weston.</i>

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

My Lords,

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

unto their Proceedings, that they may not be surprized.

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

By Writ. Of the Term of the holy Trinity, in the 13th Year of King Charles.

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

Charles by the Grace of God, of *England*, *Scotland*, *France* and *Ireland* King, Defender of the Faith, &c. To the Sheriff of *Bucks* greeting. Whereas several and divers Sums of Money, specified in the Schedule to this Writ annexed, by virtue of our Writ under our Seal of *England*, bearing Date the fourth Day of *August* in the eleventh Year of our Reign, were assessed and charged upon several Persons in the said Schedule named, for and towards the providing of a Ship of War, together with the Rigging and other things thereunto belonging, in the said Writ particularly mentioned; which said several Sums of Money being so assessed and charged, and unpaid and not satisfied, the Names of the said several Persons, together with the several Sums of Money charged upon them, were certified into the Court of our *Chancery* by our Writ of *Certiorari*, bearing Date the ninth Day of *March* in the 12th Year of our Reign, issuing under our great Seal aforesaid: And by our Writ of *Mittimus* under the said Seal, bearing Date the 5th Day of the Month of *May* Instant, were sent into our *Exchequer* for further Process thereupon to be had, as by the Tenor of the said Writ, bearing Date the 4th Day of *August* in the 11th Year of our Reign, and by the Writ of *Certiorari*, and Certificates thereupon made, sent into our said *Exchequer*, and there of Record, remaining in the Custody of our Remembrancer, more fully doth appear: We command you, that you do not, by reason of any Liberty, omit entering thereupon; and by good and lawful Men of your Bailiwick, make known to the several Persons aforesaid, named and specified in the said Schedule, that they appear before the Barons of the *Exchequer* at *Westminster* on the *Octave* of the Holy Trinity ensuing; to shew and propose, if they have or know any thing to say for themselves, why they ought not to be charged with the aforesaid several Sums of Money upon them assessed in manner and form aforesaid, and not paid, in the said Schedule specified, and to satisfy the same; and further, to do and receive in the Premises, what our Court shall then there think fit to be ordered; and there bring then this Writ, and the Names of those by whom you have so made known unto them. Witness *Humphry Davenport*, Knt. at *Westminster*, the 22d Day of *May*, in the 13th Year of our Reign. *By the Roll.*

Memorandum of the same Year of the King in the Record Roll of this *Easter*, and by the Barons *Fenshaw*, and the Tenour of the aforesaid Schedule in the aforesaid Writ mentioned as touching *John Hampden*, followeth in these words, *viz.* A Schedule of the Names of certain Persons in the County of *Bucks*, and of certain Sums of Money upon them assessed, and charged for and towards the providing of a Ship of War, together with the Rigging and other things thereunto belonging; by the virtue of a certain Writ under the Great Seal of *England*, bearing Date the 4th Day of *August* in the 11th Year of *Charles* our now Lord the King, and certified into the Court of *Chancery* of our said Lord the King to be unpaid, by virtue of a Writ of *Certiorari*, issuing out under the Seal aforesaid, bearing Date the 9th Day of *March* in the 12th Year of his Reign; and by Writ of *Mittimus* under the said Seal sent into the *Exchequer* of our said now Lord the King, for further Process thereupon to be made, as by the Tenour of the aforesaid Writ, bearing Date the 4th Day of *August* in the above said 11th Year of our said now Lord the King, and by the Writ of *Certiorari*, and the Certificates thereupon made sent into the said *Exchequer*, and there of Record remaining in the Custody of the Remembrancer of our Lord the King, more fully doth appear: *ff. Stoake Mandivile, ff. J. Hampden Esq; 1 l.* At which Day *Anthony Chester* Bart. Sheriff of the County aforesaid, as touching the aforesaid *John Hampden*, returned, that he by *Nicholas Aris, Robert Alexander, Richard Harrison, and William Heyborne*, good and lawful Men of his Bailiwick, made known to the aforesaid *John Hampden* amongst other things, that he appear before the Barons within written, at the Day and Place within contained; to shew and propose, if he hath or knoweth of any thing to say for himself, why he ought not to be charged with the aforesaid Sum upon him assessed, and not paid, in the said Schedule specified, and to satisfy the same, as it is further commanded him. And now, that is to say, from the Day of the Holy Trinity, upon three Weeks the aforesaid *John Hampden* in the aforesaid Schedule named, here cometh in his proper Person, and prayeth *Oyer* of the Writ of *Scire Facias* aforesaid, the Return of the same, and the Schedule unto the same annexed, and they are read unto him. He likewise prayeth *Oyer* of the aforesaid Writ, bearing Date the 4th Day of *August* in the 11th Year of *Charles* our said now Lord the King in the Writ of *Scire Facias* mentioned, and it is read unto him in these Words, *ff. Charles, by the Grace of God, of England, Scotland, France and Ireland King, Defender of the Faith, &c.* To the Sheriff of our County of *Bucks*, the Bailiff and Burgessees of the Burrough and Parish of *Buckingham*, the Mayor, Bailiff, and Burgessees of the Burrough of *Chipping Wiccombe* alias *Wiccombe*, and the good Men in the said Burroughs, Parish, and their said Members; and in the Towns of *Agmondesham, Wendover, and Great Marlowe*, and in all other Burroughs, Villages, Hamlets, and other Places in the said County of *Bucks*, greeting. Because we are given to understand, that certain Thieves, Pirates, and Sea-Robbers, as well *Turks*, Enemies of Christianity, as others confederated together, wickedly take away and despoil the Ships, Goods, and Merchandizes,

not only of our Subjects, but also of the Subjects of our Allies upon the Sea, which of old used to be defended by the *English* Nation; and at their pleasure have carried away the Men therein, enslaving them in a most wretched Captivity: And whereas we see them daily preparing Shipping further to annoy our Subjects, and to aggrieve the Kingdom, unless a more speedy Remedy be applied, and their Endeavours more vigorously obviated: Considering also the Dangers which every where in these Times of War hang over us; so that it behoves us and our Subjects to hasten the Defence of the Sea and Kingdom with all possible Expedition: We being willing by the help of God, in the highest degree to provide for the Defence of the Kingdom, the Protection of the Sea, the Security of our Subjects, the safe Convoy of Shipping and Merchandize coming to our Kingdom of *England*, and going from the said Kingdom to foreign Parts: And since we and our Progenitors, Kings of *England*, have hitherto been Lords of the Sea aforesaid; and it would in the highest manner concern us, if this Royal Honour should in our days be lost, or any ways diminished; since also this Burden of Defence which touches all, ought to be born by all, as hath been accustomed to be done by the Law and Custom of the Kingdom of *England*: We firmly enjoin and command you the aforesaid Sheriff, Bailiffs, Burgessees, Mayor, good Men, and all others whomsoever above-mentioned, in the Burroughs, Towns, Villages, Hamlets and Places aforesaid, and their Members, in the Faith and Allegiance whereby you are bound to us, and as you love us and our Honour, as also under the forfeiture of all things you can possibly forfeit to us, that you cause to be fitted out one Ship of War of the Burden of four hundred and fifty Tuns, with Men, as well skillful Officers as able and experienced Mariners, a hundred and fourscore at least; as also with a sufficient quantity of Cannon, Muskets, Gunpowder, Pikes and Spears, and other Arms necessary for War, with double Tackling; as also with competent Victuals for so many Men, until the 1st Day of *March* now next ensuing; and from thence for six and twenty Weeks at your Costs, as well in Victuals, as the Men's Wages, and other things necessary for War by that time, on account of defending the Sea at our Command in Company with the Admiral; to whom we shall before the aforesaid first Day of *March*, commit the Custody of the Sea, to be and remain where he on our behalf shall appoint; and that you cause the same to be brought into the Port of *Portsmouth* before the said first Day of *March*, so that they may be there that Day at farthest; thence to proceed with our Ships, and the Ships of other loyal Subjects for the Protection of the Sea, the Defence of you and yours, to repel and vanquish all those whosoever they are, that endeavour to molest and annoy on the Sea our Merchants and other loyal Subjects aforesaid, coming into our Dominions on account of Traffick, or returning thence to their own Country. We have also appointed you the Sheriff of our County of *Bucks*, the Bailiff and Mayor of the Burroughs and Parish aforesaid, or any two or more of you, of whom our Will is, that you the aforesaid Sheriff of our County of *Bucks* be one, within thirty days after the Receipt of this Writ,

to assess as much of the Charges aforesaid upon
 the aforesaid Burroughs of *Buckingham* and *Chipping
 Wiccombe* alias *Wiccombe* with their Members,
 as ought severally to be laid on or assessed. And
 if such Assessment within the aforesaid thirty
 days shall not happen to be made by you, two
 or more of you; then we have appointed you
 the aforesaid Sheriff of our County of *Bucks*, to
 make such Assessment upon the aforesaid Bur-
 roughs, and Parish, and Members, as you shall
 see reasonable to be done. And our Will is,
 that of your so doing, you the aforesaid Sheriff
 of *Bucks*, wholly certify under your Seal the
 Mayor and Bailiffs aforesaid. We have also ap-
 pointed you the aforesaid Bailiff of the Burrough
 and Parish of *Buckingham*, to assess every Man
 in the said Burrough and Parish, and in the
 Members thereof, and the Land-Tenants in the
 same, not having the Ship aforesaid, or any Share
 thereof, or not serving therein, to contribute to the
 Expences about Provision of the necessary Premis-
 ses; and to assess and lay upon the aforesaid Bur-
 rough and Parish with the Members thereof, so as
 aforesaid, that is to say, every one of them ac-
 cording to their Estate, Goods, and Employ-
 ment, and the Portions on them assessed by
 Distresses, or other due Ways and Means to
 levy, and Collectors in that behalf to nominate
 and appoint; and all those whom you shall find
 rebellious and refractory in the Premises to im-
 prison, there to remain till for their Delivery
 we shall further think fit to direct. We have
 also appointed you the aforesaid Mayor of the
 Burrough of *Chipping Wiccombe* alias *Wiccombe*,
 to assess every Man in the same Burrough, and
 in the Members thereof, and the Land-Tenants
 in the same, not having the Ship aforesaid, or
 any Share thereof, or not serving therein, to
 contribute to the Expences about Provision of
 the necessary Premises; and to assess and lay
 upon the aforesaid Burrough with the Members
 thereof, so as aforesaid, that is to say, every
 one of them according to their Estate and
 Goods, or Employment, and the Portions on
 them assessed by Distresses, or other due Ways
 and Means to levy, and Collectors in that be-
 half to nominate and appoint; and all those
 whom you shall find rebellious and refractory
 in the Premises to imprison, there to re-
 main till for their Delivery we shall fur-
 ther think fit to order and direct. And
 moreover, we have appointed you the aforesaid
 Sheriff of our County of *Bucks*, to assess every
 Man in the aforesaid Towns of *Agmondesham*,
Wendover, and *Great Marlow*, and in the Mem-
 bers thereof, and in all the other Towns, Villages,
 Burroughs, Hamlets, and other Places in the
 aforesaid County of *Bucks*, and the Land-Ten-
 nants in the same not having the Ship aforesaid
 or any Share thereof, or not serving in the same;
 to contribute to the Expences about the Provi-
 sion of the necessary Premises, and to assess and
 lay upon the said Towns, Villages, Burroughs,
 Hamlets and Places, with the Members thereof,
 so as aforesaid, that is to say, every one of them
 according to their Estate and Goods, or Employ-
 ment; and the Portions on them assessed by Dis-
 tresses or other due Ways and Means to levy,
 and Collectors in that Behalf to nominate and
 appoint, and all those whom you shall find rebel-
 lious and refractory in the Premises to imprison,
 there to remain till for their Delivery we shall

further think fit to order and direct. And fur-
 ther, we command you all, that you diligently
 apply your selves to the Premises, and effectual-
 ly do and execute the same, as you shall answer
 the contrary at your Peril. But our Will and
 Pleasure is, not that under Colour of our Man-
 date aforesaid, you cause to be levied from the
 said Persons more than shall suffice for the necessa-
 ry Expences of the Premises; or that any one
 who shall levy any Money of the Contributors
 to the Charges aforesaid, detain the same or any
 Part thereof in his own Possession, or presume to
 appropriate it to other Uses under any Pretence
 or Colour whatsoever. It being our Will, that
 if more shall be collected than is sufficient, that
 the same be paid back again to those who shall
 have so paid the same, according to every Man's
 respective Share and Proportion. Witness my
 self at *Westminster* the 4th Day of *August* in the
 11th Year of our Reign. He prayeth also Oyer
 of the aforesaid Writ of *Scire facias* above men-
 tioned, and it is in like manner read unto him.
 ff. *Charles*, by the Grace of God, of *England*,
Scotland, *France* and *Ireland* King, Defender of
 the Faith, &c. To those who were Sheriffs of
 our County of *Bucks* between the 4th Day of
August, in the 11th Year of our Reign, and the
 first Day of *March* then next ensuing, to those
 who were Bailiffs of the Burrough and Parish of
Buckingham, and the Mayor and Bailiffs of the
 Burrough of *Chipping Wiccombe* alias *Wiccombe*,
 in the said County of *Bucks* within the time aforesaid,
 greeting. Whereas by our Writ made un-
 der our Great Seal of *England*, bearing Date the
 aforesaid 4th Day of *August* in the 11th Year a-
 bovesaid, for the Defence of the Kingdom, the
 Protection of the Sea, the Security of our Sub-
 jects, and the safe Convoy of the Ships and Mer-
 chandize coming to our Kingdom and passing
 thence to foreign Parts; we commanded the
 Sheriff of our County of *Bucks*, the Bailiff of the
 Burrough and Parish of *Buckingham*, as also the
 Burgessees of the said Burrough, the Mayor and
 Bailiffs of *Chipping Wiccombe* alias *Wiccombe*, as
 also the Burgessees of the said Burrough, and the
 good Men in the said Burroughs and Parish, and
 in the said Burroughs and Parish and Members
 of the same, and in the Towns of *Agmondesham*,
Wendover, and *Great Marlow*, and in all other
 Places, Towns, Burroughs, Villages, Hamlets,
 and other Places in the said County of *Bucks*,
 that you should cause to be fitted out one Ship
 of War of the Burden of four hundred and fifty
 Tuns, with Men, as well skilful Officers, as able
 and experienced Mariners a hundred and four-
 score at least, as also with a sufficient Quantity
 of Cannons, Muskets, Pikes and Spears, Gun-
 powder, and other Arms necessary for War, with
 double Tackling, as also with competent Victu-
 als for so many Men, at a certain Day in the
 said Writ contained, and from thence for six and
 twenty Weeks at the Costs of the Men and Land-
 Tenants of the Burroughs, Parish, Towns, Vil-
 lages, Hamlets, and other Places above men-
 tioned in the said County of *Bucks*, as well in
 Victuals, as the Men's Wages, and other things
 necessary for War, by that time, for defending
 the Sea; and that you should cause the same to
 be brought into the Port of *Portsmouth* within
 the time in the said Writ limited. And whereas
 by the said Writ, we appointed the Sheriff of our
 County of *Bucks* aforesaid, the Bailiff of the Bur-
 rough

rough and Parish of *Buckingham* aforesaid, and the Mayor of the Burrough of *Chipping-Wiccombe* alias *Wiccombe* aforesaid, or any two or more of them, of whom our Will was that the Sheriff of our said County of *Bucks* should be one, to assess as much of the Coſts aforesaid, upon the aforesaid Burrough and Parish of *Buckingham*, and upon the aforesaid Burrough of *Chipping-Wiccombe* alias *Wiccombe*, with their Members, as ought severally to be laid on, or assessed. And whereas we appointed the Bailiff of the Burrough and Parish of *Buckingham*, and the Mayor of the Burrough of *Chipping-Wiccombe* alias *Wiccombe*, severally and respectively to assess every Man in the said several Burroughs and Parish, and the Members thereof, and the Land-Tenants in the same, not having the Ship aforesaid or any Share thereof, or not serving therein, to contribute to the Expences about the Provision of the necessary Premises: And upon the aforesaid Burrough and Parish of *Buckingham*, and upon the aforesaid Burrough of *Chipping-Wiccombe* alias *Wiccombe*, so as aforesaid, then to be severally and distinctly laid, that is to say, every one of them according to their Estate and Goods, or Employment, and the Portions upon them assessed by Distresses, or other due Ways and Means to levy, and Collectors in that behalf to nominate and appoint, in Manner and Form as in the said Writ was commanded. And whereas, by our said Writ we moreover appointed the Sheriff of our said County of *Bucks*, to assess every Man in the aforesaid Towns of *Agmondesham*, *Wendover*, *Great Marlowe*, and in the Members thereof, and in all the other Towns, Villages, Burroughs, Hamlets, and other Places in the aforesaid County of *Bucks*, and the Land-Tenants in the same, to contribute to the Expences about the Provision of the necessary Premises, and the other things to do and execute in Manner and Form as by the said Writ was commanded. And because some Men and Land-Tenants in the said County, Burroughs, Parish, Towns, Villages, Hamlets, and other Places, by several Taxations, and Sums of Money, by you upon them respectively laid and assessed towards the Contribution of the Burden aforesaid, according to the Exigency of the Writ aforesaid, have not yet paid and satisfied the same, but have refused and yet gainsay to pay the same, as we are informed. And whereas our late Will was to be certified as well of the Names of the Men and Land-Tenants who had been assessed towards the Contribution of the Expences aforesaid, and had not paid the Money so assessed, as also of the several Portions or Sums of Money laid upon them. You nevertheless in contempt of us, have sent nothing upon the Return of our Writ limited. We therefore command you, the late Sheriff of our County of *Bucks*, as we heretofore have commanded you, that you certify to us, as well of the Names of the Men, and Land-Tenants, in the aforesaid County, by virtue of our said Writ by you respectively assessed, as the Sums of Money on them so assessed, which they have not yet paid, nor satisfied, but refuse to pay the same; as also of the several Portions and Sums of Money, by you the aforesaid late Sheriff of our County of *Bucks* upon them assessed, reduced into Writing, with all things touching the same, into our Chancery, distinctly and openly, under your Seals,

without delay, or at farthest before the six and twentieth Day of *April* next ensuing, wherefore ever you shall then be, together with this Writ. And we command you the aforesaid late Bailiff of the Burrough and Parish of *Buckingham*, and the Mayor of the Burrough of *Chipping-Wiccombe* alias *Wiccombe*, as we heretofore have commanded you, that you severally certify us, as well of the Names of the aforesaid Men and Land-Tenants in the Burrough and Parish of *Buckingham*, and Burrough of *Chipping-Wiccombe* alias *Wiccombe*, by virtue of our said Writ first above mentioned by you respectively assessed, as the Sums of Money on them so assessed, which they have not yet paid, nor satisfied, but refuse to pay the same; as also of the several Portions and Sums of Money by you upon them respectively assessed, reduced in like manner into Writing, with all things touching the same, into our Chancery aforesaid, distinctly and openly without delay, or at farthest before the six and twentieth Day of *April* next ensuing, wherefore ever you shall then be, together with this Writ. Witness my self at *Westminster*, the ninth Day of *March*, in the twelfth Year of our Reign. *ETRE.* At which Day, *Peter Temple* and *Heneage Proby* return'd the aforesaid Writ, by Indorsement, thus, *ff.* The Execution of this Writ appears in certain Schedules to this Writ annexed. The Tenor of which Schedules as to the aforesaid *John Hampden* return'd by the aforesaid *Peter Temple*, follows in these Words. *ff. Bucks, ff. I* *Peter Temple* Knight and Baronet, who was Sheriff of the County of *Bucks*, that is to say, between the 4th day of *August*, in the eleventh Year of the Reign of our Lord *Charles* now King of *England*, &c. and the twenty second Day of *February* then next following; on which Day I went out of my Office of Sheriff of the County of *Bucks* aforesaid; by virtue of the said Writ of our Lord the King to this Schedule annexed, do certify unto our said Lord the King into his Chancery, that by virtue, and according to the Exigency of the Writ of our said Lord the King issued out of his Chancery, and there inrolled of Record, and, amongst others, directed to the Sheriff of the said County of *Bucks*, bearing Date the fourth Day of *August*, in the eleventh Year aforesaid; have assessed upon several Men and Land-Tenants of the County of *Bucks* aforesaid, whose Names are underwritten, the several Portions and Sums of Money at their particulars placed below, to contribute to the Expences about the providing of the Ship in the said Writ mentioned; which said Portions and Sums of Money, or any parcel thereof, before my going out of my Office of Sheriff of the County aforesaid, the said Men and Land-Tenants, or any of them whose Names are under-written, have not paid, but have refused to pay the same to my Hands, or the Hands of the Collector by me in that behalf appointed, by virtue of the Writ last mentioned, *viz. Stoake Mandiville, ff. Mr. John Hampden, Esq; 1 l.* And the Tenure of the other Schedule by the aforesaid *Heneage Proby* in like manner returned, and to the said Writ annexed also, follows in these Words: *ff. There is to be accompted upon by the Assessors, High Constables, Petty Constables within the said County in general, which cannot be accompted for by Sir Peter Temple, being as it is conceived short four Pounds.*

I *Heneage Proby* Esq; who was Sheriff of the County of *Bucks*, between the twenty-second Day of *February*, in the eleventh Year of the Reign of our Lord *Charles* now King of *England*, &c. and from the said Day and Year, to the first Day of *March* then next following; by virtue of the Writ of our said Lord the King to this Schedule annexed, do certify unto our said Lord the King into his *Chancery*, that the Men and Land-Tenants of the County of *Bucks* aforesaid, or any one of them whose Names are expressed in certain Schedules to this Writ annexed, who were assessed by Sir *Peter Temple* Knight and Baronet, late Sheriff of the County of *Bucks* aforesaid, whilst he was in the Office of Sheriff of the County aforesaid, in the several Portions and Sums of Money placed at their several Names above, to contribute to the Expences about the providing of the Ship; by virtue, and according to the Exigency of the Writ of our said Lord the King, issued out of his *Chancery*, and there inrolled of Record, directed amongst others to the Sheriff of the said County of *Bucks*, bearing Date the fourth Day of *August*, in the eleventh Year aforesaid, have not paid, but have refused to pay the same to *Heneage Proby* being Sheriff of the said County of *Bucks*, next after the going out of Sir *Peter Temple* Knight and Baronet, from the Office of Sheriff of the said County, or to the Hands of the Collector in that behalf appointed by virtue of the Writ last mentioned. And further, the aforesaid *John Hampden* in like manner prayeth Oyer of the aforesaid Writ of *Mittimus*, of which mention is made in the Writ of *Sciri Facias* aforesaid, and it is read unto him in these Words: *ff Charles* by the Grace of God, of *England*, *Scotland*, *France* and *Ireland* King, Defender of the Faith, &c. To the Treasurer and Barons of his *Exchequer*, Greeting: By the tenor of a certain Writ of ours made under our Great Seal of *England*, bearing Date the fourth Day of *August*, in the eleventh Year of our Reign, inrolled in the Rolls of our *Chancery*; by which we commanded the Sheriff of our County of *Bucks*, the Bailiff and Burgeses of the Burrough and Parish of *Buckingham*, the Mayor or Bailiff and Burgeses of the Burrough of *Chipping-Wiccombe* alias *Wiccombe*, and the good Men in the said Burroughs, Parish, and the Members thereof, and in the Towns of *Agmondesham*, *Wendover*, and *Great Marlow*; and in all other Burroughs, Towns, Villages, Hamlets, and other Places in the said County of *Bucks*; that for the Defence of the Kingdom, the Protection of the Sea, the Security of the Subjects, and safe Convoy of the Ships and Merchandize coming to our Kingdom of *England*, and thence going to foreign Parts, they should fit out one Ship of War of the Burden of four hundred and fifty Tuns, with Men, as well skilful Officers, as able and experienc'd Mariners a hundred and fourscore at least: as also with a sufficient Quantity of Cannons, Muskets, Gunpowder, Pikes and Spears, with other Arms necessary for War, and with double Tackling; as also with competent Victuals for so many Men, at a certain Day, and from thence for six and twenty Weeks at the Costs of the Men and Land-Tenants of the Burroughs, Parish, Towns, Villages, Hamlets, and other Places above mentioned in the said County of *Bucks*, as well in Victuals as the

Men's Wages, and other things necessary for War for that time, on account of the Defence of the Sea under our Command, in Company of the Admiral to be and remain; and that they should cause the same to be brought into the Port of *Portsmouth* about the time limited in the said Writ; and that they should respectively assess every Man in the said Burrough and Parish of *Buckingham*, and Burrough of *Chipping-Wiccombe* alias *Wiccombe*, and in the rest of the Burroughs, Towns, Villages, Hamlets, and other Places in the said County of *Bucks*, and the Members thereof, and the Land-Tenants in the same, to contribute to the Expences about the Provision of the necessary Premises, and other things to do and execute in Manner and Form as was commanded by the said Writ: We send to you being present the inclosed Writ; for that the Safety of our Kingdom of *England*, and our People thereof were in Danger, which we have taken care to have issued out of our *Chancery* amongst other Writs to make such Provision and Assessment thro' every County, City, Burrough, Town, Village, Hamlet, and Places of our Kingdom of *England*, and of *Wales*, and the Members thereof, out of our *Chancery* aforesaid lately issuing, and there in like manner inrolled. And also a certain other Writ of ours to certify us into our *Chancery*, as well of the Names of the Men and Land-Tenants in the aforesaid Burrough and Parish of *Buckingham*, and Burrough of *Chipping-Wiccombe* alias *Wiccombe*, and in the rest of the Burroughs, Towns, Villages, Hamlets, and Places of the said County of *Bucks*, who by our Command aforesaid were assessed to contribute towards the Provision of the Premises, and have not paid the Sums of Money upon them so assessed; as also of the several Portions and Sums of Money so charged and laid upon the said Men and Land-Tenants; as likewise certain Certificates by virtue of the said Writ reduced in writing, and sent into our *Chancery*. We also send you being present the inclosed, commanding you, that having inspected the Writs and Certificates aforesaid, you further cause to be done thereupon for the levying, collecting, and receiving all and singular the aforesaid Sums of Money of the aforesaid Contribution as yet unpaid, as by Right, and according to the Law and Custom of our Kingdom of *England* hath been used to be done. Witness myself at *Westminster* the fifth Day of *May*, in the thirteenth Year of our Reign. *ET R E.* As in the said Writs and Schedules thereunto annexed, certified into the *Exchequer* of our said Lord the King, and there in the Custody of the Remembrancer of our said Lord the King remaining of Record, more fully is contained. Which being read, heard, and by him understood, the said *John Hampden* complaineth, that by colour of the several Writs, their Returns and Schedules to them annexed, he hath been grievously vexed and disquieted, and that unjustly; because he saith, that the aforesaid several Writs above mentioned, their Returns and Schedules to them annexed, and the Matter in them contained, are not sufficient in the Law to charge the said *John Hampden* on or with the payment of the aforesaid Sum of twenty Shillings on him in the Schedule aforesaid, in the manner and form aforesaid taxed and assessed, or any Parcel thereof; to which he hath no necessity,

or is obliged by the Law of the Land to make Answer: Whereupon by reason of the Insufficiency of the aforesaid several Writs above-mentioned, their Returns, the Schedules to them annexed, and the Matter in the said Writs and Schedules contained, he the said *John Hampden* prayeth Judgment, If our said now Lord the King ought, or is willing further to assess or charge him with the aforesaid twenty Shillings, or any Parcel thereof.

ROB. HOLBORNE.

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

JOHN BANKS.

The First Day's Argument of Mr. St. John, on the Behalf of Mr. Hampden, before all the Judges in the Exchequer-Chamber, in the great Case of Ship-Money.

May it please your Lordships,

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

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

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

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

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

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

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

Then it is further inferred, that every Man, even by his Allegiance, is bound to contribute to this Charge, the Command being *in fide & legiâcia quibus nobis tenemini*. Of these Parts the Writ consists, which all being put together, in brief declare the Scope and End of the issuing forth thereof to be the Defence and Safety of the Kingdom; a thing so necessary, that it must needs be legal: For it is too near and too narrow a Conceit of the Wisdom and Policy of the Law to think, that whilst the Care thereof should be confined only to the Preservation of the general Members of the Body Politick from the Wrongs and Pressures that might be offered from others to the Fellow-Members, that in the mean time it will leave the Whole to the Violence and Will of Enemies: so that whilst each Subject, considered as a Part of the Whole, hath a known and sure Estate in Lands, and real Property in his Goods, not to be impeached by any whatsoever within the Realm; yet considered all together as they make the *Unum Compositum*, they should have in them only *precariam Possessionem*, or Tenancy at Will in regard of Foreigners. My Lords, this cannot be; for the Law is so careful herein, that even afar off it foresees and prevents all Dangers in this kind; and that is the Reason that an Alien, tho' a Friend, hath not Capacity to purchase any Land in the Realm. And if the Law be so quick-sighted, as that to prevent but Possibility of Danger, it keeps such Strangers from having any Land within the Realm, which desire

to come by it peaceably and for valuable Considerations; by this we may easily see the great Care it hath to prevent apparent Dangers, which usually proceed from open Force and Violence. Which further appears by the Greatness of the Punishment which the Law inflicts upon Offenders in this Kind, which is High-Treason, of all other the greatest. 13 *Eliz. Dyer* 298. *Story* conspired beyond Sea with a foreign State to invade the Realm; and tho' nothing was attempted, yet it was adjudged High-Treason. And 21 *Ed. 3. fo. 23.* and 45 *Ed. 3. 24.* a Man killed a Captain that was going with twenty Men at Arms to the King in his Wars, and it was adjudged to be High-Treason. And so by some Opinions in Print it is, to burn or sink any of the King's Ships. By the Greatness of the Punishment for the Breach of the negative part of the Law, we might understand the Peremptoriness and Force of the affirmative part. So that, my Lords, in this Case the Question is not *de Re*, for by the Law the Safety of the Realm is to be provided for; *Salus Populi suprema lex*: Neither is the Question *de Personis*, either in respect of the Persons who are to bear the Charge of it, or of the Persons whom the Law hath intrusted with the Care and Power of this common Defence.

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

Neither, *Thirdly*, is there any Question to be made, but the Law hath intrusted the Person of his Royal Majesty with the Care of this Defence. The Defence and Protection which we have in our Bodies, Lands, and Goods, against any within the Realm, we know it is from him; for all Jurisdiction legal, both Ecclesiastical and Civil, which defends us in them, is wholly in his Majesty. The same it is in case of Foreign Defence, even by the *Jus Gentium*, as appears in the Text, by the Peoples desiring that they might be like

other Nations, by having a King that might go in and out before them, and fight their Battles. That the King, and that legally, calleth the Kingdom *Regnum nostrum*, and every City and great Town *Civitatem & Villam nostram*: *Quoad Proprietatem* it cannot be, because they are the several Land-Owners; it must be so therefore principally in this respect, *Quoad Protectionem & Defensionem*. Neither hath the Law invested the Crown with this Height of Sovereignty only as a *Honorarium*, for the greater Splendor of it, but likewise as a Duty of the Crown, or *Pars Ministerii*, for the Good and Safety of the Realm, which in many of the ancient Commissions of Sewers, before the Statute of 28 *Hen. VIII.* is thus expressed, The King *rati-one Regiæ Dignitatis & per Juramentum est astrictus ad providendum Salvationi Regni undiquaque*; so that both in Honour, and by his Oath he is bound to provide for the Safety of the Realm, and that *circumquaque*.

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

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

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

My Lords, not to burn Day-light longer, it must needs be granted that in this Business of Defence, the *Suprema Potestas* is inherent in his Majesty, as part of his Crown and kingly Dignity. So that as the Care and Provision of the Law of *England* extends, in the first place, to Foreign Defence; and, secondly, lays the Burden upon all; and, for aught I have to say against it, it maketh the Quantity of each Man's Estate the Rule whereby this Burden is to be equally proportioned upon each Person: So likewise hath it,

in the third Place, made his Majesty sole Judge of Dangers from Foreigners, and when and how the same are to be prevented; and, to come nearer, hath given him Power by Writ under the Great Seal of *England*, to command the Inhabitants of each County to provide Shipping for the Defence of the Kingdom, and may by Law compel the doing thereof.

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

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

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

And as without the Assistance of his Judges, who are his settled Council at Law, his Majesty

applies not his Laws and Justice in many Cases; neither is this sufficient to do it without the Assistance of his great Council in Parliament. If an erroneous Judgment was given before the Statute of 27 Eliz. in the *King's-Bench*, the King could not relieve his grieved Subject any way but by Writ of Error in Parliament: neither can he out of Parliament alter the old Laws, or make new, or make any Naturalizations or Legitimations, nor do some other things: And yet is the Parliament his Majesty's Court too, as well as other his Courts of Justice: It's his Majesty that gives Life and Being to it, for he only summons, continues and dissolves it, and he by his *le Veut* enlivens all the Actions in it; and after the Dissolution of it, by supporting his Courts of Justice, he keeps them still alive, by putting them in execution. And altho' in the Writ of Waste, and in some other Writs, it is called *Commune Concilium Regni*, in respect that the whole Kingdom is representatively there; and, secondly, that the whole Kingdom have Access thither in all things that concern them, other Courts affording Relief but in special Cases; and, thirdly, in respect that the whole Kingdom is interested in, and receives Benefit by the Laws and Things there passed: Yet it is *Concilium Regni* no otherwise than the Common Law is *Lex Terræ*, that is, *per modum Regis*, whose it is, if I may so term it, in a great Part, even in point of Interest, as he is the Head of the Commonwealth, and whose it is wholly in Trust for the Good of the whole Body of the Realm; for he alone is trusted with the Execution of it. The Parliament is the King's Court, and therefore in the Summons the King calls it *Parliamentum nostrum*. So the Returns of the Knights and Burgesses, *Quod sint ad Parliamentum Domini Regis. Fleta Lib. 2. Cap. 2. Habet Rex curiam suam in concilio suo in Parliamentis suis*; and therefore the Pleadings there anciently were usually wont to begin for the most part, *Queritur Domino Regi*; of Petitions by private Persons, *Supplicavit Domino Regi*, tho' for Relief against others. Inquisitions and *Venire fac'* returnable there sometimes *Coram Domino Rege & Concilio suo*, as appears by infinite Precedents in the Parliament-Pleas of *Edward* the First and *Edward* the Second's Time, both in the *Tower*, and many Cases adjourned into the *King's-Bench*.

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

My Lords, to apply all to the Case in question: By the Cases before cited it appears, that what was done in Parliament by the Law Phrase and Dialect, is said to be done by the King; for as the Civilians say of the Senate, that it is *Pars Corporis Cesaris*, so we of the Parliament, that it is *Pars Corporis Regis*. The Maxim of *Justinian*, *Quod Principi placet legis vim habet*, is agreed by *Bracton* and all the Civilians. And yet both he and many of them say, that those must pass the Senate, and tho' done in the Senate, yet they be *Placita Principis*.

cipis. So it is, altho' when we speak *ut Vulgus*, we say Fines are said to be set by the King's Court; yet the Law, when it saith that they be done and set, saith they be done and set by the King. By the same Reason therefore, tho' when we speak *ut Vulgus*, we say such a Thing is done by the Parliament, yet in the legal Account these are done by the King; the *Medium*, or way of doing of them, is with the Assistance or Consent of his great Council in Parliament.

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

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

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

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

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

The Question being concerning the Validity of the Command in the Writs, which extends so far as to the altering of the Property of the Subjects Goods without their Consent; and yet this

being for a Thing so necessary as the Defence of the Kingdom both at Land and Sea; for the Ends of issuing forth of the Writ are, *Pro Defensione Regni, Tutitione Maris, Securitate Subditorum, salva Conduetione navium*, both outward and inward.

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

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

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

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

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

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

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

But it may be objected, that in respect these Services are reserved by the King, that therefore they were not instituted only for the Defence of the Realm, but may be exacted for foreign Wars, or other-where for his Majesty's peculiar Service, as he shall think fit: which may be inferred both from the Name which our old Books and Deeds style

style this Service by, when due to the Crown, that is, *forinsecum servitium*; and, secondly, from the Use thereof, it having been performed in *Normandy, Gascoyne, Tholouse, and Ireland*, as appears by the *Red Book*, and many Cases put together in the *Institutes*, in the Chapter of *Escuage*.

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

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

My Lords, That this Service was instituted for the Defence of the Realm, appears by the Care the Law hath always taken for the Increase and Preservation of these Services; so that if the Lord purchase part of the Land, yet the whole Service remains; which being entire, and to be done by the Body of a Man, in that of being a Steward or Bailiff, or other private Service, makes an Extinguishment of the Whole. The Authorities in Point are many; the Statute of *Mortmaine 7 Ed. I.*

the Mischief by conveying Lands to Houses of Religion is there expressed to be, *Quod servitia quæ ex hujusmodi feodis debentur, & quæ ad defensionem Regni ab initio provisa fuerunt, indebite subtrabantur*. And besides the Declaration that they are for the Defence of the Realm, that Statute likewise promises for the Increase of them; for if the Lord enters not within a Year and a Day after the Feoffment, the King is to enter; and as the Words of the Statute are *alios inde feoffavimus per certa servitia nobis inde ad defensionem Regni nostri facienda*, the Words are observable, *per servitia nobis inde facienda*; for tho' the Service be to be done to the King, it is to be done *ad defensionem Regni*. This explains the Charter of *Hen. I.* inrolled in the *Red Book* in the *Exchequer*, and cited in *Mat. Paris*, in the first Leaf of *Hen. I's* Reign; where the King frees Knights-Service Lands from all Gelds and Taxes; that being eased of this Burden, *apti & parati sint ad Servitium meum, & ad defensionem Regni mei*. In the *Black Book* in the *Exchequer, fo. 3.* Scutage is thus defined, *ut inveniende in Regnum hostium machinatione*, it is then due: see *Bracton* in his second Book *fol. 36 and 37.* that they are so, *Propter exercitum & Patriæ tuitionem*, and to be performed *certis temporibus cum casus & necessitas evenerit*. *Bract. fol. 162. Les Fees de chartre fuerunt purveans ad defence de notre Realme.* The Books are express, the *35 Hen. VI. 41. 8 R. fol. 105. Talbot's Case, 6 Rep. fol. 2. Bruerton's Case, Institut. pl. 103. Co. Preface to the ninth Report.*

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

And first, a little further to prosecute the Land-Service, because the Tenure by Knights-Service ties the Tenant only to forty Days Service, and that for the Defence of the Realm only in general; they therefore reserved divers other Tenures for particular and certain Services; as Grand Serjeanties, some whereof, as in the *Institutes, fol. 106.* is observed were for Service of Honour in times of Peace; and some for Military Service, of which last sort, as appears in the Book of Serjeanties in the *Exchequer*, and many Rolls of them in the *Tally-Office*, were very many; some whereof were to carry the King's Banner, some to summons the Tenants *ad exercitum*, some to be of the Vanguard, some of the Rear; some to serve in *Wales*, some in *Scotland*, some *infra quatuor maria*, some *infra Cinque Portus Angliæ*. Of these are Services of all sorts necessary for an Army; and in respect of the Multitude of these Military Serjeanties over others, as forgetting them, *Brit. fol. 164.* in his

Definition of Grand-Serjeanty, faith, that they are *Pur defence del Royalme*; and *Fleta lib. 3. cap. 16. Magna Serjeantia Regem tantum respiciunt & Patriæ defensionem*. Besides the Grand-Serjeanties, of this nature likewise are the Tenure of Cornage, to give warning of the Enemies coming into the Kingdom, and the Tenures by *Castle-Guard*: These by *Littleton* were eleven Thousand, to defend the Castles when the Enemy enters the Realm, within Forts and Bulwarks of the Realm. Mr. *Camden* p. 515. observes, there were 1115 in *Henry II's* Time, whereof a great part, and especially such as were upon the Sea-Coasts and Frontiers of *Scotland* and *Wales*, the Places of greatest danger, were the King's. And besides these Grand-Serjeanties that were to be perform'd by the Bodies of Men, there are Petty-Serjeanties for finding of Armour of all sorts for the War.

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

Whence, my Lords, when we come to the Marches of *Wales*, there we find another County Palatine, I mean that of *Chester*, and the Care of *Chester* and his Barons to oppose the *Welsh* Invasions upon these Marches; besides the like Services, as upon the Borders of *Scotland*, there were likewise many Lords Marchers of several Baronies, who had Administration of all Justice within themselves, *secundum legem Marchiæ*: and for their Service to be done against the *Welsh*, they had two special Privileges, that is, the third Penny of all the Spoils in the War, as was adjudged in Parliament, the 20 *Edw. I. Banc. Regis Rot. 123.* in that great Case between the Earls of *Glocester* and *Hereford*, and in the Parliament Book, 20 *Edw. I.* And, Secondly, all the Prisoners that they took in the Wars, *per consuetudinem Marchiæ*, belonged to the Takers of them. *Trin. 25 Edw. I. Rot. 28. Co.* Roger de Kownwell, in *partibus Montgomery, in guerra Wallie*, 23 *Edw. I.* had taken three *Welsh* Prisoners; and because, by the King's Command, they were released of their Imprisonment, it is there adjudged, that the King should pay him forty Pounds in recompense thereof. And so it was adjudged, *Com' Hill. 25 Edw. I. Rot. 11. dorf.*

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

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

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

That the Tenures of this kind after the Conqueror's Time, continued in use, and were well known

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

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

I have now done with the Service in kind; and because these which immediately tend to Action alone, were not sufficient to defend the Real; and this in the Frame and first Constitution of the

Commonwealth, being foreseen, and that the Land, or Fundus Regni, the most visible and constant Supplier of our Wants, was best able to supply this likewise; therefore besides them, there were divers other Tenures created for that Purpose. Those which I am next to speak of, are such as supply his Majesty with Money for that Purpose.

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

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

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

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

the Statute 1 *Ed. II. de militibus*, for such Land and ancient Demefn, no Man is compellable to take the Order of Knighthood. Much more might be brought in Proof of this, which I omit.

My Lords, all our Books agree, the Tenants in ancient Demefn, were to plow and manure the King's Lands, being his Demefn. In a Manuscript that I have feen, the Author faith, that he hath an ancient Manuscript which faith, "That the Corn, and other Victuals, arifing hereby, was to ftore the King's Garifons and Castles; and confidering the Numbers of thofe Garifons, there being above a Thoufand of them in the King's Hand at the Conqueft, as appears by *Doomfday-Book*, and that thofe Mannors for the moft part are great, and the greateft Part of the Socage-Tenures, till *Henry II's* Time, as appears by the *Black Book*, lib. 1. cap. 23. were to find Victuals of all Sorts, in kind, for the Provision of the King's Houfhold, and were in his Time turned into Rents." Altho' this may feem probable, yet becaufe I have not feen the Manuscript, I will infift no more upon it.

That for which thefe, and the Tenures of Burgage in the King's Cities and Burroughs, were mentioned in the raifing of Monies for the neceffary Affairs of the State; that thefe were anciently talliable without their Consent in Parliament, is fo plain and frequent in the *Exchequer* Rolls, as that I intend to cite nothing in Proof thereof; it will be admitted by them that argue on the other Side. That which I fhall endeavour to prove is, that thefe were not talliable at the King's Will and Pleafure, but only for the Defence and other Neceffities of State, *Na. Br.* fo. 15. 49 *Ed. III.* 22. They be not talliable, *de haut & bas*, as Villains are; and therefore *Brañon*, fo. 209. calls them *villanos Privilegiatos*, lib. Parl. fo. 112. *talliare & rationabile auxilium dare pro neceffitate.* *Na. Br.* 14. talliable *pur grand Cause.* *Rot. Parl.* 6 *Edw. III.* Comiffions to tax Cities and Burroughs, and ancient Demefne, upon Petitions of the Commons revoked, and Writs in due Form to be fent; and for the time to come, the King fhall not affefs, but in fuch a manner, *come ad efre fait en temps de feux Anceftors & come il denera pur reason.* The Occafion not requiring it, I fhall fay nothing of it, when thefe Taxes were difufed. My Lords, I have now done with the Tenures, the firft Way whereby the Law hath provided for the Safety of this Realm; which of themfelves not enabling the Kings intrufted therewithal fufficiently to do it, the Law therefore, befides the Honours, Castles, Mannors, and other conftant Revenues of the Crown, for the Supportation of the ordinary Charges thereof, hath appointed unto it divers Prerogatives, for the Extraordinary, and for this of the Defence of the Realm, as one of the chiefeft of them; thefe Prerogatives then have an Influence into the States of all the Subjects in the Realm, and are fo many, that, to gain Time, I will omit to mention any of them.

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

In his Majesty there is a double Capacity, Natural and Politick. All his Prerogatives are *Jure Coronæ*, and of all fuch Things he is feifed *Jure Coronæ*; and therefore, as in other Corporations, fuch Things are *Patrimonia & bona publica*, to be employed for the common Good, fo likewise by

the fame Reason here. The Reason why the King hath Treasure Trove, and Gold and Silver Mines in the Earth in the Cafe of Mines, is declared to be, becaufe the King is hereby to defend the Kingdom: and in the *Inftitute*, in the Title of *Socage* fo. 28. 137. the Reason of many of the reft, *Quia thefaurus Regis eft fundamentum belli & Firmamentum Pacis*: This I conceive to be the Reason, that by the Statute 14 *Ed. 3. cap. 1.* Efcheats, Wardfhips, Customs, and Profits arifing of the Realm of *England* fhould be declared to be fpent for the Safeguard of the Realm, more than the Profits of the King's Mannors and Lands; and of the Difference made in the *Comm' M. 3. Rich 2. London*, between *Reftas promiffiones Regni*, which by the Advice of the Lords of the Council were to be fpent in the Houfhold, and the other Profits of the Crown to be fpent *Circa falvationem & defenfionem Regni.* In the Parliament Roll. 6 *Rich. N. 42.* the Commons petition that the King will live of his own Revenues; and that Wards, Marriages, Releases, Efcheats, Forfeitures, and other Profits of the Crown, may be kept to be fpent upon the Wars for the Defence of the Kingdom: which fheweth, that there was always a Difference made between the Profits arifing of the King's Mannors and Lands, and that which rofe by the Prerogative, casual and accidental Ways. My Lords, I have now done with thefe.

The third Way the Law hath provided for the Defence of the Kingdom, is particular Supplies of Money for the Defence of the Sea alone in times of Danger, both ordinary and extraordinary; for befides the Supplies of Money before-mentioned, which are to be employed for the Good and Defence of the Realm in general, as in the other Cafes where the Law putteth the King to any particular Charge for the Protection of the Subject, it always inables him thereunto, and yields him particular Supplies of Money for the Maintenance of the Charge; fo here the Courts of Juftice, for the Prefervation of us in our Rights, are fupported at his Charge; and that is the Reason why he hath all Fines and Amerciaments, the Goods of Outlaw'd Men in perfonal Actions, *Brañ. Lib. 3. cap. 13. fol. 129.* and Fines for purchafing of Original Writs, *& pro licentiis concordandi*, which in Suppofition of Law, are paid for not proceeding, and Troubling the Court without Caufe. The King's Juftices who are maintained in their Places at the King's Charge, thefe are the *veftigal Jufticiar*. The Defence of the Realm extends it felf to many Particulars of the Church, and of Religion; and therefore in the Summons of Parliament, the Caufe of the calling the Parliament is always declared to be *Pro defenfione Ecclefie Angliæ* in particular, as well as *Totius Regni.* His Majesty therefore hath the Temporalities of Bifhopricks, *Sede vacante*, a great Prerogative, and that which Patrons have not; with an Addition of the Firft-Fruits and Tenths of them, and all other Ecclefiaftical Promotions and Benefices in *Henry the Eighth's* Time, and likewise the Tithes of all Lands which lie not within any Parifh.

For Defence of the Land alone, befides thofe Military Services before-mentioned, the Profits of Wards and Marriages, which, as I have read, no other Christian Prince hath as a Fruit of them, are received for that Purpose. So it is for the Sea, in *Rot. Sco. 10 Ed. 3. M. 16.* it is faid that the King and his Anceftors are *Domini Maris Anglicani & Defensores contra hoftium invafiones ante hoc tempus exiftentes.* For the fupporting of this Charge

Charge therefore, they have not only had the Grand Customs of the Mark and Demy-Mark upon the Wool, Wool-Fells and Leather, and the Prifage; that is, one Tun of Wine before the Mast, and another abaft the Mast of every Ship, which were even due by the Common Law, as appears by the Book of my Lord Dyer, 1 Eliz. 165. and Sir John Davies Reports, fo. 8, & 9. and implied by *Mag. Char. cap. 30.* that Merchants may trade *per Reetas & antiquas Consuetudines*; but likewise divers other Things were afterwards granted by Act of Parliament in Addition to them. As First, the Petty-Customs began 31 Ed. I. and were made Perpetual by the Statute of 27 Ed. 3. cap. 26. and likewise divers Aids and Subsidies, which are an Increase of Custom upon the Staple Commodities of Wool, Wool-Fells, &c. Leather, and Tonnage upon Wines, and Poundage, and Increase upon all other things either imported or exported, either by Denizens or Aliens. That which in this kind was taken by his Majesty in the 11th Year of his Reign, when this Writ issued forth, was three hundred thousand Pounds and upwards. The Aids and Subsidies, and likewise the Tonnage and Poundage anciently granted upon particular Occasions only, and afterwards to the late Kings and Queens for their Lives by Act of Parliament; and now taken by his Majesty, and likewise the new Imposition, altogether makes up the aforesaid Sum of three hundred thousand Pounds. Of the Legality thereof I intend not to speak, for in case his Majesty may impose upon Merchandize what himself pleaseth, there will be less Cause to tax the Inland Counties; and in case he cannot do it, it will be strongly presumed, that he can much less tax them. The proving these two things herein will serve my turn:

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

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

For the second, that the Grant of Custom is principally for Protection of Merchants at Sea against the Enemies of the Realm, and Pirates, the common Enemies of all Nations, Sir John Davies Reports, fo. 9, & 12; and that those, and likewise the Impositions are for that purpose, was held by many of the Judges in the Argument of *Bell's Case 7 Jac.* in the *Exchequer*, in the Case of Impositions upon Currants, and likewise by the King's Council, when the same Case afterwards came to be debated in Parliament, and was one of the main Reasons urged by them for the Maintenance of that Judgment. That the Aids and Subsidies, and likewise Tonnage and Poundage, before they were granted for Life, were not only for the Protection of Merchants, and the ordinary Defence of the Sea, but also for the Defence thereof in times of extraordinary Danger, and from Invasion from Enemies, appears by the several Grants of them in the Parliament Rolls. *Rot. Parl. 1 Rich. II. pars 2. M. 9, & 27.* the Kingdom being in Point to be lost by the Enemies of *Spain* and *France*, and divers others there men-

tioned, who made War against us both at Land and Sea, a Subsidy upon the grand Customs was granted, as the Words are, *pur le defence & rescous del Kingdome*; this was for two Years, and Persons assigned to receive and expend the Money. *Comm' Mich. 3. Rich. II. London: William Wallworth and John Philpot, Citizens of London,* appointed the Treasurers of it, upon their Account, shew the Particulars how this Money was expended, *circa salvationem & defensionem Regni*, and were discharged. *Rot. Parl. 3 Rich. II. M. 16, & 17.* The same Cause continuing, Enemies intended to blot out the Name of the *English* from under Heaven, the Subsidy continued for a Year longer. *Rot. Parl. 5 Rich. II. pars 2. M. 14, & 15.* Tonnage and Poundage granted *assint pre fait apply sur safeguard del Mers*, and the King at the Petition of the Commons appoints Receivers. 6 *Rich. II. M. 13.* the Commons complain, that notwithstanding the Grant of Tonnage and Poundage, the Sea is not kept, and therefore Persons named and assigned in Parliament to receive the Money, and to do it. 10 *Rich. II. M. 1.* Tonnage and Poundage for a Year. 11 *Rich. II. M. 6, & 12.* Tonnage and Poundage and Subsidy for a Year. 12 *Rich. II. M. 20.* both for a Year. 14 *Rich. II. M. 16.* both for a Year. 17 *Rich. II. M. 12.* both for three Years. 20 *Rich. II. M. 28.* Subsidy for five Years, and Tonnage and Poundage for three Years. 2 *Hen. IV. M. 9.* both for two Years. 6 *Hen. IV. M. 9, & 10.* both for two Years, upon Condition to cease if the King before *St. Hilary* provide not a sufficient Army for the Sea. 8 *Hen. IV. M. 9.* and 9 *Hen. IV. M. 16.* both for two Years for the common Commodity and Defence of the Realm. 13 *Hen. IV. M. 10, & 11.* for one Year, so as the same be confessed to proceed out of their own Good Will, and not out of Duty. 5 *Hen. V.* for four Years, upon many Conditions. 1 *Hen. VI. M. 9.* for two Years. 3 *Hen. VI. M. 17.* Subsidy for three Years, Tonnage and Poundage for one Year. 4 *Hen. VI. M. 22.* 6 *Hen. VI. M. 11.* for two Years Tonnage and Poundage; and 6s. 8d. upon every Man within a Parish-Church that hath twenty Nobles, and 6s. 8d. upon every Knights-Fee held immediately of the King. 8 *Hen. VI. M. 15.* Tonnage and Poundage to continue until the next Parliament. 9 *Hen. VI. M. 14.* both, and for two Years. 10 *Hen. VI. M. 21.* for two Years. 23 *Hen. VI. M. 16.* for four Years, and double upon Strangers. 27 *Hen. VI. M. 20, & 23.* for five Years. 37 *Hen. VI. M. 8, & 42.* Tonnage and Poundage first granted for Life; and *M. 41.* assigned into the Subjects Hands for three Years for the good of the Seas.

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

My Lords, his Majesty is in Possession of them, and was pleased by his Proclamation printed 1626, declaring the Cause of the Dissolution of the last Parliament, as appears *Page 17,* to declare that they were always granted to his Progenitors, for

the guarding of the Seas, and Safety and Defence of the Realm; and Page 18, is graciously pleased in these words, to declare that he doth, and must still pursue those Ends, and undergo that Charge for which they were first granted to the Crown; and Page 44, that he receives them for the guarding of the Seas, and Defence of the Realm.

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

My Lords, I shall now proceed to the stating of the Question. *Bracton* in the Beginning of his Book saith, That *in Rege necessaria sunt hec duo, Arma & Leges quibus utrumque tempus Bellorum & Pacis recte possit gubernare.* *Glanvill*, in the Beginning of his Book, saith, *Reg' Majestatem Armis contra gentes sibi regnoque insurgentes oportet esse decorat'* His Majesty, as he is Lord of Sea and Land, so by that which hath been said, it appears that he is armed for the Defence of both.

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

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

For Land, in case either the Statute of *Winchester*, or 5 *Hen. IV.* be on foot, then in Words that of finding Arms, *juxta quantitatem terrarum & bonorum.* So, Secondly, in respect of the Tenures, by Knights-Service, by the Wards, Marriages and Reliefs; these, I confess, concern the

Tenant only; but those other Tenures *in Capite* and *Grand Serjeanty*, these concern all others, in respect of the Licenses of Alienation, and of the Wardships of Lands, held of other Lords, and that all the Tenants are become hereby wardable. And, Thirdly, in respect of the Prerogatives before mentioned; for the greater the Subject's Estate is, the greater Influence they have into it, and proportionably raise more Profit out of it.

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

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

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

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

Allegiance we owe as an Act of Reciprocation; for as it binds the Subject to Tribute and Subjection, so therefore the King to the Charge of Protection by the Expence of these, *Rex ad tutelam corporum & bonorum creatus.* The Supplies he hath, for these Purposes, tie him to the Supportation of the Laws, and the Execution of Justice. 20 *Ed. I.* in the Case before mentioned between the Earls of *Glocester* and *Hereford*, it is said, that *Dominus Rex est omnibus & singulis de regno suo Justitie debitor*; which that he is so, even in point of Charge, appears in his Majesty's Supportation of the Courts of Justice, and the Salaries not only to your Lordships, and other the inferior Ministers of Justice, and anciently to the Sheriffs, but likewise many other

other Ways. 4. *Hen. VII. cap. 12.* the King shall not let for any Favour of Charge, but that he shall see his Laws fully executed. *Parl. 23 Ed. I. Rot. 12 Exchequer,* A Clerk that attended a Committee of Grievances recover'd Salary from the King, altho' the Commission was for the Relief of that County. This I conceive to be the Reason of the Declaration in the Statute of 14 *Ed. III. cap. 1.* and other Statutes, That Aids, tho' granted in Parliament, for Defence, shall not be brought into Example; in that it might be conceived, that the Commons were to bear that Charge which principally belonged to the King. *Pat. 48 Hen. VII. M. 8.* it is recited, That whereas a late Parliament in *Articulo necessitatis pro defensione regni contra hostilem adventum alienigenarum,* the Commons granted him a large Subsidy, *ultra quam retroactis temporibus facere consueverant;* now the King *eorum iudempnitati prospicere volens,* grants, that *non cedat in præjudicium nec in posterum trabatur in consuetudinem.* In *Wifeman's Case,* in the second Report, *fo. 15.* it's resolv'd that a Covenant to stand seized to the Use of Queen *Elizabeth,* that she is the Head of the Commonwealth, and hath the Care of repelling foreign Hostility, is not good, because, saith the Book, the King is bound to do that, *ex Officio. Com. 315.* One Reason why the King is to have Royal Mines, alledged by all that argued for the King, is, because he is at his own Charge to provide for the Defence of the Realm, which he cannot do without Money. In the Earl of *Devon's Case, Co. 11. 91. 6 Institut. fo. 28, & 131. Thesaurus Regis* is called *Nervus Belli.* For the Practice, the Proof of the particular Charges, the several Kings have been at for Defences of all sorts, would be so tedious, that I will omit the citing of any thing in this kind. Sir *John Davies Reports, fo. 12.* many Authorities, and in the Treatise *de Regalibus, pag. 81. Principes totam Navigationem pro vectigalibus præstare coguntur.*

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

If that in the Writ, that the Sea *per Gentem Anglicanum ab olim defenſi consuevit,* be not answer'd by the *Scottish Roll* of 10 *Ed. III.* before recited, which says, that the King and his Ancestors *Maris Anglicani defensores antebac constitierunt,* nor by what is now said, if it be admitted, yet that even the Charge of this Defence is born *per gentem Anglicanam,* is before proved.

The next, and one of the main things whereupon I shall state my Question, is this. His Majesty is in the actual Possession, not only of the Service in kind, for the Defence of the Land, by taking of the Benefit of the Wardships, Marriages, Reliefs, Fines, and Licences of Alienations, and *primer Seisin,* and of the Prerogatives before-mentioned, but likewise of the Services of the *Cinque Ports,* unless they be released since 7 *Hen. VII.* (for then their Services were summoned) and of the Tonnage and Poundage, and other Duties, for the Defence of the Sea: It appears not by any part of the Writ, nor by any thing in the Record, that either the Services of the *Cinque Ports* were summoned, or that any Money at all of his Majesty's was expended, either for this Service, or at any other time for the Defence of the Sea. My

Lords, I desire to be understood, I do not affirm that none was expended; only this appears not to your Lordships and the Court: All that can be infer'd from the Writ to this Purpose is, that this Ship for *Bucks,* is commanded to be at *Portsmouth* by such a Day *ad proficiscend' exinde cum Navibus dicti Domini Regis & Navibus alior' fidelium subditorum suorum.* By this it appears not to the Court, that tho' the Ships are the King's, that they are to be set forth at the King's Charge; for the Charge may be born by the Subject for ought appears.

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

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

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

First,