there was a Treaty of Peace between Babel and Ed. the First, he refrained to acknowledge the Signory of England; and there the Parliament resolves he should rather have a War than lose this. So fee Selden upon Fortescue. War in Scotland, not foreign War, but like to that in Wales; and so was it ever since hence, since the Conquest, to be within the Signory of England. By the Statute of 12 Ed. I. and by the Statute of Hin. VIII. it appears to be within the Fee of England, and a War against one another, cannot be called a foreign War; as in the War to Scotland, Wales, and elsewhere, which is not meant of foreign Parts; for then it would have been expreisse where, as well as Goffeigne. And by the Hilithies of thofe Times, we shall find there were Armies carried to no other Place. Nay, to shew this elsewhere is meant in England, fee the 1 Ed. III. Parliament-Roll before this Parliament. The State invaded England, as appeares by a Writ of Ed. III. where is mention of an Invasion, and thereupon requires Aid. If there be Wars in Goffeigne, and if occasioons to Scotland, and in England too where the Scots are charged to Incite. Forth for the Wars of Scotland, if that should be called a foreign War; if the King should go thither and make a War, yet by the Rules of the King’s Council, if a War in foreign Parts is but to prevent a War at home, this War is not foreign, but for Defence.

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

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

Perhaps it may be asked, why should not the Subject pay? Is not the Kingdom in Danger? Are they not to defend it, poffes? They are so in their Countries; and if they go out, the Law hath provided a Supply. Parliament-Roll 13 Ed. III. there was a Time when there were known Enemies, actual Wars in France; they intended to divert the War by bringing it home to our own Doors: The Enemies threatened much, nay, did much Hurt; yet did not Ed. III. command theSubjects Suppliers this Way, but called a Parliament, and there Confidertation was had in Parliament for Supply, and that the Kingdom has Ships enough, if they were willing; and this was in way of Defence.

From all this I conceive that it is strongly inferred that he could not force them: And when the Lords and Commons did meet, to take: Con- fideration for the Wars against France and Scotland, the Commons laid the whole Charge on the Cinque Ports, they declin’d to have any thing to do with it. And for the Land-Service, they said, let there be every County to defray there, but no Charge on the Subject in pursuance of this. Conf. 13 Ed. III. M. 11, 14. Def. The Town of Bodmin don’t shew the Execution of this Judgment; it being agreed, that the Sea-Towns, and bordering Shores, should look unto it.

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

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

True, they were in part granted, some for the Wars in France, and part allo for Defence on this Side. And where there is no Diffinction, why not for the one as well as the other? It must, under favour, be conceived for either, or both. And between this Time of 14 Ed. III. and 25 Ed. III. you have Letters from Mr. de St. Tubbs, former Commissaries in Parliament, for charging the Counties with Hobblers, and going out of their Countries, which are not only complex, only for Proportion, in regard of their Success, but also for the Thing itself.

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

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

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

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

Yea, faith Mr. Sollictor, the Subject is not charged to go out of the Country, that is, upon Summons, ad Exercitum; for Summons is twofold. Fih, a Summons ad Exercitum, and then a general Summons. By the Summons ad Exercitum, only those were to go that did hold by Tenure, and they say it is encounter dextris, to be charged out of their Countries.

It is true, about this time there are some Records of 16 and 18 Ed. III. in the Exchequer, where Charges are laid on the Subject for Hobblers, and such things: But you shall find in the Exchequer, that the Money came thence, which was before
before the Statute; these things were the Grievances complained of. So the Practice there will not expand the Statute, for the contrary Practice did beget the Statute. But the laft of thefe, in 24 Ed. III. who was an active Prince, and maintained Wars, and fo had great Occasions for Moneys, and fo charged the People higher than they would endure; for which the Statute the next Parliament renewed, and defined to be permitted; and therefore there were divers Impofitions on Merchants; all which I pass over, only this out of the Roll, 50 Ed. III. M. 25. It is the Lord Latimer's Cafe, a Privy-Council and Chamberlain to the King; there was a Complaint in Parliament againft him for divers things, whereof one was for laying an Impofition upon Merchandize. In his Jufification he pleads the Command of the King; and for that Particular he was fentenced, imprisoned, fined and ranfomed; fo carefull were they to revive that Law. And that Sentence of his, 2 Ric. II. made the great Lords fowilling to talk of the Defence without Parliament.

And so I come to that of a 2 Ric. II. upon which I am at prefent, for that it is of great Weight. It doth appear, as well by the Conuflation itfelf, as by History, that the Realm was in great Danger from several Parts; as from France, Scotland, Etc. and that the Danger was fo inftant, that it could not flay for a Parliamentary Supply: Therefore the Council of the King were to confider of it, they know not what to advise; they meet together, they had no Time to call a Parliament; but the Lords, both Temporal and Spiritual, and Sages of the Realm, confidered what to do, when the Safety of the Kingdom layd fo at the Stake. The Resolution of thefe Lords and Sages, who were, as I conceive, the Judges, proper excelfionem, conclude that there was no way but by Parliament; and all this was for Defence, and againft an inftant Danger, which could not expect Summons of Parliament. And the Lords themfelves rather leade Money out of their own Purfe, than adventure what which Latimer did; which indeed was the Ground which made them wary.

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

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

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

I come now to Henry the Seventh's Time, that which hath been prefixed, is the 13 Hen. VII. c. 11. Provision that the King's Servants that were to attend upon him in the Wars out of the Counties, should be paid; then if they were to have it, then a fortiori, they that were not to attend. This fews that the King is to be at the Charge, and not the Subject.

The Anwer is, this extends to foreign Wars, and then no Reafon but that they should be paid; and for this the King will not give the Peoples Good Will.

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

Now I come to Hen. VIII. who was as unwilling to beg, as powerful to command. 13 Hen. VIII. cap. 20. the King defines for some Necelity of Government, and against an incontinent Occasion, to have Power to make a Proclamation for Government, and to do it under Penalties. A Law faconable for that time, tho' it continued in Ed. VI.'s Time.

As he would have Liberty, which he could not have without Parliament, to lay these kinds of Penalties on Men; so the Parliament was as careful to give him no Liberty to lay any Charge upon their Elates, Lands, or Goods. So as, tho' for the natural Government they leave him a Power to lay Penalties upon others; yet to lay any thing upon their Goods, that is meus & tuum, he had no Liberty, which is a Declaration of the Opinion of the Parliament, that by the Common Law he could not do it.

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

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

Yet,
Yea, the Act was that the King could not charge the Lands nor Goods; but there is no such thing in our Cafe. It is true, there is no immediate Charge laid upon the Lands or Goods, but in Substantie and Consequence there is a Charge. It is all one to me in Substantie, where my Life and Benefit is the same in either Way. And if I am taxed scientem statuae facturn, I must pay the Money out of my Estate; and in the penning of an Act non littigat de versibus sed de intentione. And if I am charged and pay not, my Goods are taken away and sold; so it is all one to me, as if it had been laid upon my Goods.

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

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

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

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

It hath been said, that mention is made of supply for the Palatinate, and to send Aids to Denmark. True, it is so; but that of the Palatinate, and that of Denmark, do upon the matter concern us for that War being upon our Resolutions, there was a kind of Engagement laid upon us.

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

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

And as the Petition looks back to those things that are taken off their Hands, I look forward and provides, that no such things should be taken hence to the feet of the King alone, although upon matter of Necessity. And all this was a Petition not of Favour merely, but in point of Right, according to our Laws and Statutes, which are the Statute 25 Ed. I. the Statute de Tallegio non concedendo, and Magna Charta the ground of all. And to all these his Majesty promiseth such things should be done no more. And they not content with this, his Majesty gives this Answer, Sunt dextra fata.

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

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

That the Laws the Petition went on, whether the Saving would stand with those Laws. My Lords, it appears that the first Answer was, that the Laws should be put in Execution; yet in the Clode there is put in a Saving of the Prerogative, but this Answer did not satisfy; and therefore there was a general Answer, Sunt dextra fata. But now what was granted by the last Answer more than by the former, only that the Law was left more absolute.

As to that Commission of Advice for consideration of Means to raise Supplies, and it was for Defence, and a necessary Defence, and that did not bear delays, that Commission was laid down by his Majesty; yet in that there was no more than this Consideration, how Supplies might infensibly be raised which could not induce delays by Impositions or otherwise, that is still lawful ways. If there had been any to lay a Charge on the Subject by way of Loan, then that Commission had not been excepted against; yet his Majesty was pleased to lay down this upon the desire of the House.
The King against John Hampden, Esq; 13 Car. I.

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

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

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

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

May it please your Lordships,

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

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

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

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

Edward the Confessor he laid it down. At the Conquest, still they go on with the Dagenets. It was part of the Terms made by the People with several Kings, that it should be laid down, and King Stephen did promise to lay it down, tho' nor withstanding they did now and then take it up. In Henry II. Time yet still more Complaints, and that was left out of the Charter of King John.

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

When Dagenet was thus laid down for the time of King John, Hen. III. and Ed. I. in which Times Practice for Shipping will not be material, for in all those times the very Shipping itself was decreed. Part 25 Ed. I. there the very Charges of the Subjects for Shipping were the Complaint, the Complaint is the thing I am upon. After the 25 Ed. I. and the Statute of Yaldinge non concedunt, the course of those Proceedings did alter; for before, in James I. Writs under a great Penalty, and 29 Ed. M. 10. he contracts for his Ships, and they go at his Charges. P. 76. Ed. I. Rot. 35. Reginald de Grey when the Scots entered the Kingdom, he was commanded to bring Sceats out of their Counties, and he durst not withdraw Money; and thereupon he had Money out of the Exchequer.

But the Answer was, this was for Scotland. For that no doubt this War was at Home, for in the 26 the Scots had entered the Kingdom. Br. Tin. 32 Ed. I. Rot. 12.

I come now to Ed. II. Time, there is not much against us, but for us. This I shall observe, that the full Writ that went out was 9 Ed. II. It is true, a Mandamus went out for Shipping, and against an Enemy, and for Defence of the Kingdom, but how? Not a Mandamus for tan juris- gentes, nor fabrane forisfactores, but a Mandamus regulare, and the means of compelling quantum hancem nostrum & Sollucionem vobrum diligentiam. So you see how the Course of the Law altered in that time.

I come to Ed. III. for I will but touch upon every Time, and offer but one Thing to shew the Practice in it. As I find a Statute in the beginning
ning of his Reign, concerning Provision made for Wars, fo I find an Execution. *Ret. Scro. 1 Ed. III.* M. 8. there went out two Writs, and they were concerning rating of Shipping, and in respect of the Scots entering that Year. This is that I put it for, to shew that upon that Occasion 1 Ed. III. Soldiers were paid, altho' for the Wars in Scatland. It doth recite that the Scots had entered the Land that Year, and did make serious Preparations; and if they could not have their Peace on their own Terms, they would proceed. *Condivolvatis etiam portulis,* for it was in articulo necessitatis; he gave him a Command that there should be Ships, but it is a *Mandamus vagenme,* nothing at all by Compulsion or Forfeiture in the Write, *Scoti bonovi nam ingrano.* It appears by the Write, that he said, he sent Money at that time for the Victuals for the Soldiers; and this very Write was *pro Salvatione Regni,* and that we could not be safe without Shipping; and this was in a pure and innocent Time. I will not say, that in all the Actions of Ed. III. he never broke this Rule: your Lordships know what Wars he had, and what Necessities, and what those Defeats brought him to; but he was so far from justifying of himself, as it appears by Daniel's History, that he sent to the Archbishop of Canterbury, to pray for him, and defied the People not to think ill of him for laying those Charges upon them in Cafe of Necessity. 12 Ed. III. Ret. *Atu.* Your Lordships shall fee upon that Acknowledgment, how he began to alter his Course. Parliament Roll, 13 Ed. III. tho' he laid Charges before now, he calls a Parliament, and defies Supplies for Shipping that way; and that Acknowledgment 12, will answer home that famous Year of 10 Ed. III.

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

I come now to the Time of Richard II. for his Time I shall remember but one, *Tr. 7. Rich. II. M. 15. de contribuendo ad Coffidiam Marii,* there is a Recital of *Danoget,* and that the Subsidies that the King had were not sufficient, and therefore commanded an Aid, but to do it gratuitus.

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

For the Time of Hen. IV. 2 Hen. IV. Parliament Roll. A Complaint of the Commons, of a Commission for breathing our Valleys for Defence: And their Complaint was, that it was done without Consent of Parliament, which ought not to be done, and this Commission is repealed. This shews the decreeing of the Subject, and that the Practice hath been, that the Defence was at the Charge of the King.

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

Next for the positive Part, that the Charge is in Caes ordinary and extraordinary lies on the Kings, and that by the Common-Law; and that the King hath Provision and Confederation for it.

My Lords, for Provisions regularly, whatsoever Etate is in the King in the Politick Capacity, is in him as Rex, and not in him in his natural Capacity; and what is in him so, is for the Benefit of the Kingdom: and that hath ever been the Ground of the Acts of Refimation, and some of Refimation made by Hen. VII. where Lands were aliened by him, he made a Refimation; and those many Privileges that the King hath in him, are as Rex in his Politick Capacity. All which Caes are put together in *Coke's* Cafe in the 44th Report, and not only in England, but in all Caes. All Estates are Princes are held for the Benefit of the Kingdom, as well as for themselves; and that is not denied by King *Jason* in his Anvers to *Perugia,* he would have it absolutely to be to that purpose. All that is to the Advantage and Honour of the King, is for the Benefit of the Kingdom.

My Lords, from the Consideration of the Intereft of the Kingdom in the Etate of the Prince, the Parliament have fo often offered their Service to the King: And the Parliament in former Times did require a Hand in the naming of a Trafier, they called it *antiquus Mons.* And it was 5 Ed. III. in a Parliament, but repealed 13 Ed. III. And for antient Lands of the Crown they were not do-visible out for that Reason; and that none should buy the Land of the Crown, for it was not aterable in that Time.

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

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

Mr.
Mr. Solicitor did give an Answer, that all those came out of the Elthey, what was that Charge to the Publick? It is true, if the King had that for himself originally, he said well; but if it was in him originally pro Regno as well as for himself, then it is otherwise.

But it hath been said, what are a few Men, or one Ship? But it appears in Desmunday's Book, the King hath a great Navy. There were fifty thousand Knights Fees in the Conqueror's Time; and the divers Serjeants are turned into Rents, yet the Revenue is the same. I hold for this, that there was a Provision made in the Institution of our Frame of Government, but for the guarding of the Sea more particularly.

The King for the guarding of the Seas hath all the natural Profits thereof; as all great fisheries, Whales, Sturgeons, &c. and all other Profits of the Sea, if the King would take them; and the Letters of Marque: and tho' some of them are got into the Subject's Hands, yet originally they did belong to the King. So the old Customs by the Common Law, antiquo confunctis: and to hold them Sir John Davies in the Customs of Ireland. So Prizes and Impositions are for the Defence of the Sea. So Tonnage and Poundage, which was originally granted for ordinary, but oftentimes upon emergent Occasions it appears it was granted pro Salvatoris Regni, and not granted among other things, but by idem. But in latter Times, when it was fettle upon the Prince for Life, then it was for extraordinary Defence, and to have Money in readines for an infant Occasion: for it is said, in the very Grant to King John, that the King must not be without Money; and therefore, towards his Charges upon an infant he must have it. And tho' it was granted on particular Occasions, yet that is enough that it was granted on great Occasions; and this was granted out of their Love to him. The Words of the Act 7 Geo. speak of a sudden Invasion; now whether this is by Sea or Land, it is general.

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

My Lords, I shall go on to the Answer of Mr. Solicitor; I have made a Reply to all his Answers to our positive Part. It remains I should offer an Answer to his positive Part. First, I shall give a general Answer to his whole Argument, for if the Caff be, as we conceive it is, that the Point of Salut Regni is not in question, the Argument will fall off.

How far Salut Regni is in the Caff, notwithstanding, I shall argue over, and examine the nature of his Proofs. I am sure he had none from Parliament, either Act or Declaration of both Houses; what there is, is against him. The Answer of the King, with the Judgment of both Houses, is a main thing in point of Right. I did not receive any legal material Record, but that of the Abbots of Robertsbridge, not any Book-Caftes in Point, where it is said the King shall charge, but the Books 13 Ed. IV. I shall answer these first, Practice next, and Reasons left.

To begin with the Cafe of the Abbots of Robertsbridge, which was opened by both Sides. It was 125 Ed. I. the Abbots had Land agist ad Confessi-"mum Missouri, and in an Action brought, the Abbots plead that he had found a Horle for the same Land. Here is an Argument, that the Abbots much admitted that the King might agist ad Confessi-"mum Missouri, if that it were of any Authority after your Judgments, I shall leave it. The Abbots Counsell did no more than a discreet Counsell would have done. If an Action be brought for Words, and it appears the Action will not lie, what then? If the Abbots had a Plea that he was agist ad to find a Horle, what Reason had he to put himself on Matter of Law with the King? So the Authority can be nothing against us; and at the best the Cafe did rest there, and went no further.

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

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

Next, the Toll is not so much a Charge, it is quit pro quo: in the 5th Report it is said there, that it is no Charge for the Benefit in the thing itself will quight the Charge. Again, Toll is but inter minimum, this of Weight; and tho' an Argument will hold a nous ad sejas in the Negative, because a Man cannot do a left, therefore not a greater, but not in Affirmatives, because he can lay to, therefore greater, non sequitur.

Next, for Toll; no Man is forced to pay Toll, because no Man is compelled to come to the Market; if he will come voluntarily and receive the Benefit, then there is Reason he should pay it; but this is not our Cafe. Lastly, The Law doth allow in this Necessity, in case of Toll, to the King a Power to grant, yet the Law doth not leave a King absolute Judge of the quantum: for if the Toll be not proportionable to the Benefit, the Patent is to be avoided, as in case of a Fine uncertain. Now, my Lords, in our Cafe here is no Judge of the Proportion but the King; so the Argument is thus:

If the Law admit not the King to charge but in common Necessity, then not in Cafes that may happen but seldom or never; if in small things, then not in greater.
I come now to Practice: And for Practice, where there is no Opinion, either for Records or Books to warrant it, it is something weak, especially when there is no urgent Occasion.

For the Practice, I shall give this general Answer: If I can satisfy your Lordships by Authorities of Parliament, how the Law demandeth; the contrary Practice, either before or after, is not material; and for that, I must leave it to your Lordships. Your Lordships have heard us read the Words of the Acts of Parliament, and explain our Meaning thereon, and we have brought them home to our Cafe: It will be hard to make an Exception if the Act be general.

For, my Lords, the Practice, it consists of two Parts. First, Arrays of Men. Secondly, Of Shipping, and for Shipping; de Novibus congregatis, oruminendi and inventendi.

For Practice of Arrays, I shall lay them by, and give them a general Answer: for there were very few if any that went from the Beginning of Rich. II. but only to see if they be armed, 23 and proved, and that it made by the Statute of Winchester. It is one thing to see that they be armed and in readiness; and another thing, at whose Charge they shall go: that appears not out of those Arrays. There is no doubt but the Subject, on the Statute of Winchester, ought to be ready with Arms, and in his County to make Defence; and upon Occasion he ought to go out of his County, but at whose Charge, that is the Question. And if those Writs of Array were the fame with the Commissions now to the Lieutenant, yet I know not how; this is my Argument in the Cafe: and so your Lordships see that a great Number of the Arrays falls off. This is not the same. If Arrays had been, and at the Subject's Charge, yet against the Statute; I leave it to your Lordships to judge, how far Practice shall be an Argument.

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

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

But, my Lords, to examine on those Grounds, whereby a Practice must make a Law: If this charge be within the Words of the Law, no Practice can take this out of the way of Exception. The Practice must either thaw that was the Common Law, and so Generalis Conuenta, or must declare the Meaning of a Statute by contrary Confect; which must be of that cloth could content, and that cloth which did not express a Different.

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

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

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

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

First, For Hen. III. to 23 Ed. I. Here the Subject, as before the Complaints, which begot the Charter of King John, was upon the Charges imposed on the Subjects; and so afterwards, until the 25 Ed. I. the Law of the Liberty of the Subject was not fetted: For the King John did grant his Charter, yet the Pope did dispute with him, and he broke it, and so it refuted till 9 Hen. III. So all this time, the Subjects of England were under Power; and what in that Time he might do by Durels, was not by Content.

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

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

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

And for Ed. I.'s Time, all the main ones considerable were immediately before the making of that Statute; if rightly apprehended, they did particularly occasion that Statute; so the Subject did deny it, and it is a Divinities. After 28 Ed. I. little considerable; and Ed. I. when it was made 28 Ed. I. when the Charters were confirmed, yet he had his Salus Juris Coronae, which did not please the Subject: And afterwards, notwithstanding he made some Grants in Parliament, yet sometimes he did revoke. Your Lordships know what a great Renunciation he made; but as some of our Historians observe, when he had Occasions for Moneys he did grant, but otherwise did not; so that in all his Time the Subjects did
did not consent, but as much as they could, did dissent: and in the 24th, you see how the Practice did alter for commanding of Ships.

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

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

That of Ed. III. he confided that he had laid too heavy Charges on the Subject, and did ask Forgivness: so here was no Consent, but a few Dillet by their several Complaints. And if I take off all the three Kings, I take off all the force of Practice concerning Shipping: for from that time afterwards you will find very little, for what comes afterwards is but for Matters of Armies.

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

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

And for the Rest: if Practice make a Law, it must be general through the whole Kingdom; for the whole Cafe, we are in an Inland Country; and observe how few Writs we have that went over the whole Kingdom: Nay, have you any that prove it indeed? That they went to some Inland Countries it is true, but that they went to all throughout the Kingdom, you knew not.

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

Next, my Lords, admit' that the Practice had been constant from King Job's Time down to Hen. III's, so to this Day; under favour, as the Cafe fandeth, your Lordships could not find such a Practice as could now introduce a Law. The Custom, which must be of a Manors, you must not show the Beginning of it, that within Time of Memory the Thing was not so. True, if the Time had been long, and I cannot shew when it hath not been, that is Time out of mind.

To examine this upon the Rule; it hath been said, that from the Time of Hen. II. Danegelt was taken: True, it was taken, de falsa, but not de jure. The Subject was not at that Time charged both with Danegelt and Shipping too. Then our Course of charging the Subject to find Shipping must begin since that Time. But before it can be said, as Sir Henry Spelman in his Glosqery, that when Danegelt went down, this other came in. And peradventure it will be said, this is enough to shew this began, tho' but in Memory; then it is but to see upon what Warrant of Law this began.

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

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

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

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

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

For though the King be Lord both of Sea and Land, and hath in them both the sole Dominions yet in the Sea he hath the whole Property, and in a manner all the considerable Profit and Privilege; the Subject hath the Palsie of the Sea, and the Minstrel to take Fifth, not considerable in point of Benefit: But for the Land, that is our own, and the Land of the Kingdom is the House of the Kingdom. As for the Charge of the Land
Land to find Shipping, there will be a great deal of difference between Sea-Towns and Inland Towns: As those that live in Sea-Towns are in more Danger from the Sea, so they have more Profit and Privileges; and that is the Reason that in the Parliament 13 Ed. III. the Sea-Towns should do it in regard of their Profit and Privileges.

And for the Command to find Ships, the positive Law is to make those to find Ships which are chargeable, as your Sea-Towns; and for Inland Towns to find Arms; because both are not fited alike, there is no Reason that they should be charged alike. Upon this Reason is the Cafe of 29 Ric. II. where the Complaint is, that they are charged for Shipping, being a dry Town; they say they were charged inobservably. To Ed. III. Shoreham, they plead they never found Arms, but Shipping, and a good Discharge. And in Mat. Paris, upon Wars with France, the Sea-Towns complain, and desire Help; so that the Burden lies on them if on any. My Lords, I have gone over in a general Way, as well as I can, and endeavour'd to answer the Practice; to have gone over all in particular would have required longer Time than your Lordships can spare. The Reisons now rest to be examined; for if no full Authority, nor full Practice, Reason alone will not argue against a general Rule: for we are not now to examine on Reason what is fit, and what not, but to see what is the Truth.

The first is, that Salus Populi suprema Lex: the Question is not what we are to do by Necessity, but what is the positive Law of the Land? The Question must now be as before; What Power is in the King, and did our Forefathers in that Time of Peace and Government leave in the Crown, not in Cafe of Necesity and publick Danger; when with them, Salus Populi was suprema Lex, and upon that they did ground the Rule of Government? In this Cafe, whether or not the Council of the crown did conceive for the publick Good, to leave the Power in the King or not, to lay a Charge on the People; there the Rule came in, Salus Reipublicae suprema Lex: And that which they looked on most, was the Benefit of the Multitude. So that now, my Lords, it is not to dispute, whether it be better or worse, but that it was.

And to the true there was no such great Necesity as can counteract the Possibility of Prejudice the other way: If there do come such a Danger, then the Subject is at that time under a Law of Preservation of Life; and all which makes the Subject as willing to obey, as to submit to Government not the Creation. This Law is of an higher Force than the positive Law can be.

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

Th' no positive Law doth charge, yet in cafe of imminent Danger, if I should lay my private Property be become publick, it is no Michief, for so it is in some Cafes: for in this Time of imminent Danger, the King and Subjects are under a Law of absolute Necesity, and publick Safety. In all human Reason, when the Danger is in Proxime potentia, we may prevent it; thus if another Man's House be on Fire, mine may be pulled down to stop it: so that we may see by what Grounds we do go in cafe of absolute Necesity. If the King doth command any thing concerning the Property of Goods, in respect of Danger, the Execution may not be by any positive Law merely, which in such Cafes do cease: in furore Belli; for those are acted by Fortuitalities, and inter Arma silent Leges. And in these Cafes, as the King may command my Property, so may the Subject command the Property of another: The Books are fo, 8 Ed. IV. for hindering the Landing of an Enemy, Bulwarks may be built on my Land without Consent. So the Power is not only in the King in these Cafes of Necesity, but in the Subject: and the Books say not that the Power is only in the King, but I can do it, and the Law of NECESITY is the Warrant.

Then, my Lords, it reflets considerably in this Cafe, what shall be said to be a Time of Necesity: I speak full by way of Admittance, for I grant nothing.

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

I am sure it is such a Danger, when this Power is of Necesity to be used, as in cafe of Fire, those must not only be Fear of Fire, for one House must be first actually on Fire, before the House can be pulled down, but withal such a Danger, that if this be not pulled down, the other will be left: And as in cafe of an Enemy, a Subject, out of Fear of an Enemy, cannot build a Bulwark on another Man's Land, but when he is a coming. So that none of these Cafes will match ours.

The Property yieldeth not in Fear of Danger; but such a Danger, as Help must come in auxilium. This Time is not when the King will think there is Occasion to exert this Power, as in the Cafe in 39. Tho' the Queen and State did command the burning of those Goods and Provisions, if an Enemy landed; which was a lawful Command, and justifiable to be done, so they did land; but could not command them to burn their Corn before an Enemy did come.

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

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

Now, whether or no you conceive all Laws of Liberty and Person cease in this time of Danger,
ger, when the Danger was but conceived and not actual, that I leave to your Lordships Judgments. And if that Rule be general, then why not the other?

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

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

There were divers other Reasons urged, (but those two of Salus populi suprema lex, and of private Property must yield to public Safety) whereat I have answered: the other were but a peri et a famili; and all those I shall pull over which were only for Convenience, as the granting of Toll, or a Corporation to make Ordinance for the Good of the Corporation: all these will not come home in the manner. My Lords, in all these Cafes a minore ad majus non valet, neglectum valet.

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

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

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

My Lords, there are in the Cafe two Points more which I shall move. Whether or no, admit the King could command the Subjects to find Ships, he can give Power to the Sheriffs to make the Affirmation as in the Writ? The Ground is upon this, that in all Cafes of politick Charges the Law takes an especial Care to make an Equality. In Parliament of old, they were always careful to provide that they should, as in our Equites and Subsidies. And in Danger they went such a Way as there could be no Inequality; they went by taxing of Hides. Now if the Law doth make this a Legal Way of charging, it allows the like Way for Affirmation that is allowed in other Cafes, such a Way as wherein there can be no Inconvenience. Now how a Sheriff hath that Knowledge to lay it on Mens Eftates and Lands, I cannot tell.

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

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

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

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

The Firft Day’s Argument of Sir John Banks, Knight, his Majestys Attorney-General, on behalf of his Majestys, before all the judges in the Exchequer-Chamber, in the great Cafe of Ship-Money.

May it please your Lordships,

Here was a St. In. brought against Mr. Hampden, and divers others, to have Caufe why those Sums of Money affiended upon them by the Sheriff of Bucks should not be paid and answered; it beareth Telfe the 22d of Mr, 13 Car. and a Seint Feci returned.

Mr. Hampden demanded Coyer of the Original Writ 4 Aug. 11 Car. and of the Certiorari, and the Minitius, and of their several Returns. The Writ 4 Aug. which went out to provide a Ship of 450 Tons, with Vicultus, Men, Ammunition, &c. that Writ giveth Power to the Sheriff to make Affirmation upon the County, and giveth Power of Diffre and Imprisonment in Cafe of Nonpayment. He demanded Coyer of the Certiorari, which consists of two Parts; the one to certify the Sums affiended, the other to certify the Names of the Defaulters. And the Names of those that made Defaults were returned, and Mr. Hampden amongt
amongst others. He doth demand Oyer of the
Micarittus, which doth recite the Tenor of the first
Writ. Anon Oyer of all thes, both of the Writ of
Aug. of the Cetrarsar, Micarittus, and Sci. &ca.
and their several Returns, Mr. Haukpled hath demurred
in Law.
The Cafe that risheth upon the Record is thus.
The King is Lord of the Sea (for that is part of
the Record) the Seas are invested by Pilates and
Turkys, which commit Depredations, and take
Goods and Money of Merchants, both of the King's
Subjests and others that traffick here, and carry
them away into Captivity. There is Preparation of
Shipping and imminent Danger, for to the Writ
restiteth: A Danger: that the King's Dominion
of the Sea should be lost, or at least diminished.
There was a further Danger, that Sates Reg. pericil-
loper, whether in this Cafe the King pro defensione Reg.
giveeth Juvatis & Juvatis conditum Navimit, may command the Subjects, that
per totam Angliam, Micarittus, and the Great Sea, to
provide Ships at their own Charge and Cost, and this
do, when the King in his own Judgment con-
temneth such a Danger, as doth necessarily require
that Aid? That under favour is the Question upon
the Record.
There is in this Record, whereof your Lord-
ships are Judges, four Writs. First, That of 4
Aug. 12 Car. which goeth out of the Calendar,
for letting forth this Ship of 450 Tons. Secondly,
the Cetrarsar 9 Martii 12 Car. Thirdly, the
Micarittus 5 Martii 13 Car. And Fourthly, that of
the 23 Mart. 13 Car. which is the Sci. Fo.
The Second and the Fourth Writ, which is the
Cetrarsar and Sci. Fo. they are returnable. The
First and the Third Writ, which is the Writ of
4 Aug. and the Micarittus, they have no Returns;
but they give Command, and require Execution
shall be done, prout de jure & secundum conju-
dictum Reg. Aegie fieri possit.
The Fifth Writ, which is the Ground of this
Business, it standeth upon two Parts: 1. A Pream-
ble, and the Body of the Writ. The Preamble
containeth: First, a Direction; and Second-
ly, the Causes and Motives of the issuing of this
Writ. The Body containeth Six Parts. First,
the Direction that is to the Sheriff of the County
of Bucks, nee uno unto the Bulliards and Baggesett of
the Borough of Buckingham, and Mayor and Bar-
gettes of Chipping-Buces, alias Wicescomb, and pro-
bus inominibus of all the County. Secondly, the
Motives and Reasons inducing this Writ, which
are nine in Number: 1. Niglo Piraus & Martis
Graffetnum. &c. That the commit Spots and
Depredations by Sea, and take the Goods of the
King's Subjects. 2. Because they carry the King's
Subjests into miserable Captivity. 3. Because of
the Preparation of Shipping that is made unaduque in
felt the Coasts. 4. Quia pericela inominatus, &c. 5.
Quia pro defensione Reg. tuitationis Meris, &c. 6.
Quia pro defensione aquarum inominatus jactantem, &c. 7.
Quia Procuratorem suyri Regis Anglie dicitur Martis
temporibus, &c. 8. Quia eos defension, &c. 9.
The mod praevale, Quia hoc in logica et conju-
dictum Anglie, &c. The Body of the Writ con-
tains also several Mandates to the Sheriffs and
Head Officers, quod fide & legiisacc, &c. & est
us & nozum inominatus diligere. The Mandates
are fixe. 1. To provide a Ship of 450 Tons
well manned and furnished with Provison, and
Vol. I. that was to be in readiness by the first of March,
to continue for the Space of fixt and twenty Weeks,
ad profectando cum Nauibus nubri, &c. pro
uatione Mavis, &c. 2. That the Sheriffs and
Head Officers meet within thirty Days, and set
down what shall be taxed upon the Incorporate
Towns. 3. A Command to the Head Officers of
Incorporate Towns, that within their Ball-
wick they make an Affilement upon particular Persons, and became them to pay the same.
In a Power to the Sheriffs to affix all the rest with-
in the County, juncta fatus & facultates. 4.
A Command for the levying of these Sums by Dif-
cre, & quos rebellis invictreti to impose upon their
Perfons. 6. That no Part of this Sum collected
shall be converted to any private Use; but if
any Money shall be remaining, it should be paid
inter favosus.
My Lords, the Reasons expressed in this Writ
might justly satisfy any Man's Judgment without
further Secrecy; but I shall clearly manifest
there is no Clause or Practice by this Writ, but
is verified by many Records, and is ficendum Le-
ge & Confidendum Anglie.
The Question that is made, is of a high tran-
scendental Nature; it concerneth the King, both
in his ordinary and ablolute Power. Whether
the King in thoese Writs, where he in his Royal
Judgment shall conceive a Necessity for the Defence of the Realm, may command Ships in this kind;
whether by his Royal Power he may do it, or
may command the Aid of common Consitution in the
Parliament. And I conceive his Majestie may do
it, not only by his Kingly Prerogative, but Jure
Majestatis.
This Power is not only inter Prerogatio Regis,
sed inter Jura sine infinite Majestatis. I find by many
Records, that these Writs have issued out in all
Succession of Times; in the Times of the Saxons
before the Conquest: But I never find that this
Power was judicially questioned in any Court
before now: Not that I do not see in this touching Affilements, whether they have been
equal, touching the Levyng, whether within the
Warrant of the Office; touching the Discharging of
some, by reason of a Grant of Exemption, but
to queneth the main Power, whether the
King by his Royal Power might command this
for the Defence of himself and the Kingdom,
was never disputed before now. But his gracious
Majestie, who hath declared himself, that he will
rule his People according to his Laws, for the
Satisfaction of the People, and to clear his Justice
and Judgment, doth further these Writs to go forth,
to which Mr. Haukpled hath demurred, and to
be questioned in this legal Way to be determined
by your Lordships, to which I hope you will give a
clear End.
My Position shall be thus, That the King, as
he is King of England, prodefensione Reg. tuitatione
Mavis, &c. when his Majesty in his Royal Judg-
ment conceiveth it a Time of such Danger, as doth
necessarily require the Aid commanded in this
Writ, that he may command and compel his Sub-
jects per totam Angliam to set forth Ships with Men
and Ammunition and double Equipage; and this
may be done, as well by the King's Writ under
the Great Seal, as by Consent in Parliament.
For the Proof of this Position, I shall reduce
what I have to say to these Heads. First, That
this Power is inter Jura sine infinite Majestatis, innate
4 F 2
in the Person of an absolute King, and in the
Perfons of the Kings of England. That this Power
is so inherent in the Person of the King, it is not
any ways derived from the People, but reffered
unto the King when positive Laws first began.
And that in this Cafe the King is sole Judge of
the Danger, and how this Danger is to be
prevented and avoided: this is my firft Ground.

The Second is this, that the Regal Power is
not confined to the Politick Advice, that the
King must be in Cathedra sitting in Parliament;
but that it hath been always done, either per fipiam
Regem, aut per Regem & Concilium, aut per Domi-
natos fust, aut per Regem, when he shall pleafe to
call a Confaluation of Merchants and Poftilmen
experienced in the Service.

My Lords, I shall prouent unto your Lordships,
that this Power is fo inherent in the King, that
during the Time of Parliament, and in those Years
when Parliament were fitting, thefe Writs iffued
out by a Regal Power, without any Aid or Power
from Parliament; and that Advice was not thought
neceffary in former Times.

3. I fhall alfo fhew unto your Lordships, that
this Power is implied out of the Sovereigne Ti-
tles given unto him by the Common Laws of
England.

4. And alfo I fhall infift upon Precedents; and
herein I fhall defire your Lordships to take notice
that thefe Writs have not iffued out at the firft
any fudden Advice; but that there was a great
Search made: Firft, by my Predecessor Mr. Ney,
A Man of great Learning and profound Judgment;
other Searches made by the King’s Counfel and
fome others; and a great Number of Records
were confidered of maturely before thefe Writs
iffued: fo nothing was done upon the fudden; and
we that are of the King’s Counfel, did think it fit
that moft of these Records should be cited in the
firft Argument by Mr. Solicitor, to the end that
the Counfel at the Bar might give an Anfwcr to
them in their Reply: many more have been added
by Mr. Solicitor, and many more I fhall cite which
have not been remember’d.

My Lords, in the vouching of these Rec-
ords, I fhall obferve eight Things. (1.) That
the Records we iffuit upon, are not grounded up-
on any private Curfion, or upon any Charity,
or upon a Charter, but upon the Laws of the
Kingdom; and there is not in any of these Records
any Recital that these Writs went out upon any of
these Grounds.

(2.) That in all Ages before the Conqueft, and
in the Time of William I. that thefe Writs have
iffued per fipiam Regem, per Regem & Concilium,
and did not iffuit upon any Advice of Parlia-
ment.

(3.) That thefe Records and Writs were fent
out, not in cafe of Hamball ad Partias, or an En-
emy discovered, or fudden Invasion; but upon
cafe of Rumours, and in that a Danger might
happen; fo not in approaching of an Enemy,
but in cafe of Preparacion to provide against an
Enemy.

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

(5.) That when great Subfides and Aids have
been given unto the King by Parliament pro defen-
sione Regi, in the fame Year that Writ went forth
for the Defence of the Kingdom.

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

(7.) That many times when thefe Writs iffued,
there have been no fich Caufes declared, as hath
been in this Writ. I fhall obfervc, that in many
of thefe Writs no Caufe at all is fet forth in them,
but only that they fhould repair to the Place of
Rendezvous, and they receive further Directions.

8. I fhall veryMy flock: thefe Writs by
many Precedents. A Mandamus, and not a Man-
damus Reguler, Shipping at the Charge of the
County, and Affiges made by the Sherifs, as
Commoners, and a Penalty greater, not only
Difficulties and Imprisonment, but Extent of Lands,
feizing of Goods, till the King was paid. These
are the Things I fhall obfervc out of the Prece-
denes, when I fhall come unto them.

My Lords, in the fifth Place, when I have laid
thefe Foundations, I fhall then dizep thefie Mifts
that have been raied, remove thofe Forces that
have been murther’d, and anfwcr the Objeftions of
thofe Gentlemen, that will not be fatisfi’d by the
King’s Writ under the Great Seal: And in the
fifth give a particular Anfwcr to the Acts of Par-
liament that they have cited, to the Records that
they have iffuit upon, and to the Reafons and
Authorities they have alluded.

In the feventh Place, I fhall anfwcr their Excep-
tions that have been taken unto thefe Writs,
Records, and Proceedings thereupon, that have
been produced by us.

And in the eighth Place, I fhall collect from
Conclusions and Reafons out of the Premises,
cite unto your Lordships fome Judicial Records,
that may fatisfy your Lordships in point of
Judgment. These are my Materials, I fhall pro-
ceed to the Building.

My Lords, my firft Ground was, that this
Power is innate in the Person of an Absolute
King. All Magiftracy it is of Nature, and Obe-
dience, and Subjeftion. It is of Nature. And
before any municipal Law was, People were
.govrn’d by the Law of Nature, and Practice
did rule according to natural Equity: This ap-
peared in the Reports of Sir Edw. Coke, written
by him, when he was Chief Juftice, 7 Rep. Paf.
12; a Man not taking the Confeftion to discurfe either
of the Law of Nature, which doth teach to love
our Country, and to defend it, to expoune the
Hand to Danger, rather than the Head should
suffer; nor of the Law of God, which command-
eith Obedience and Subjeftion to the Ordinance of
our Superiors; nor of the Law of Nations, which
doeth agree, that there must be Protection from
the King; and Obedience from the People; and with-
out Defence there can be no Protection; and with-
out Aid of the People there can be no Defence:
Nor of the Imperial Law, which faith, that in Cakes
pro communi utilitate, i.e. King may flainere alone.

My Lords, upon this Subject I will confine my
self to the Law of the Land, and iffuit upon fuch
Records, and fuch Precedents, and fuch Reafons,
and fuch Authorities, as I find both by Records
of former Times, and in our Books.

First, In the Original Government of this Nation,
I do not find that it was a Monarchy; I find the
contrary, that there was a great Number of petty
Regiments. And when Julianus Caesar invaded
this Realm, he wight there were Four Kings in
Kent; and Strabo faith the like, Lib. 4. of those
Times
Times will not be material. During the Domi-
nation of the Romans, which continued five hun-
dred Years, the Romans had their Prefects here in
England. No Man will doubt but that they might
command what they pleased, as Statuta utrurias,
ImperTY, Vol. 161. that in their Times there were
special Officers, called Comites, &c. Officers ap-
pointed by Sea, and other Officers by Land. Tho'fe
that succeeded the Romans were called Saxons; and
in their Times, both by ancient Grains, and by
Edicts of the Princes of those Times, it appears,
that their Naval Power was commanded by them for
the Defence of the Realm.

Frieth. To begin with King Int, A. D. 725, King of the
Wes-Saxons. This King in that Year made A Grant to the
Abbey of Glastonbury, Quod &c. aut quidem ab omnibus Regis excitationibus & egeribus, sed quidquid fidel, except Expediti, Aeterni, &c. Punio-
tionem confutationem facti in antiquos, &c. which
 dukedes, who was King of Kent in the Year 743, grunted unto his Church, and that it be in con-
mibus secularibus dominii, except expedite Pontium &c. in that Grant these Expeditions were ex-
sont. Ethelredus, King of the Mercians, Ane 749, granted Mungfieris de, &c. except ut supra.
As in those Times these Services were common, and
were done by a Dedit Regis. That the Churches
should be free from all Services, except these three,
Expeditions of building Castles, Bridges and Forts;
a quibus nulli unquam lusseri possint. Eggert, Annu. 840. commanded a great Navy to be pro-
voked; and that for the Defence of the Realm, and
Safety of Ships. Ethelward, in the Time of King of
the Wes-Saxons, Annu 854, granted to the Church,
that it should be free from all Service Temporal,
except Regalibus Tributis. In the Time of King
Ethelred, who was the first Monarch, and King of all
England; one who was a Privy-Counsellor in his
Time, and wrote the Story of that Time, he,
in the fifth Page of his Book, faith, Quod Rex
Alfredus nulsi Galleas longas Naves & Cymbas edificari, and agreeing with this, is the History of
Aethelweard, Florintus Wignysfrifi 316, and
Hastings 315. wherein your Lordships may
may be fee by the Record, it was done or excepto Regis
per totam Regnum. This King made a Law,
which is not remember'd by Lamberti in his Saxon
Laws, to this effect, That no Man, by Summons,
by the Horn or Word of Mouth, should sit still
in Matter of Theft, Bloodshed, or going to War,
even thro' his Expedition should require; and
there he doth mention it to be upon Pain of For-
feiture of Life.

King Edgar, who filied himself Angliae BoMil-
cus, he in the Year 999 provided a great Navy of
3600 Ships, as faith Wignysfrifi, and Matth. of
Wignysfrifi, and he cease Grantham, and if every
Year, at Eger, a Navy of three or four
Thousand should be set out, and divided into three
Parts, East, West and North : The Ships in
those Times were not so great as now they be.
The same Edgar, in the Year 973, granted to the
Abbey of Hortheg all manner of Immunities, and
that it should be free from all Services, except
those three of building Bridges, Castles and Forts.
And the same King, in his Charter to the Church of
War regenerated, graneth them to be free ab omnibus
contributis, except contributis Pontium, &c.

My Lords, by all these several Grants, and
what hath been done by those Kings, it doth ap-
pear that these three fundamental Services were
ever referred unto the Crown, saving the Grants
to two or three Abbeys, which had some particu-
lar Exemption. In the Year 1008, which was re-
member'd by Mr. Solicitor, there was then a great
Navy provided by King Ethelred. The Words
are thus: Rex Ethelredus per totam Anglian ex
310 Hides, Norum unus, &c. preparare facerat,
&c. that was for 310 Hides of Land to
build one Ship; and every eight Hides of Land to
find a Man and a Confort, and to meet at Sand-
wich for Defence against the Danes. This
appeareth in Huntingdon 360, Mathis. of Wignysfrifi
In this Record these Services are observable, Rav
parare facer, &c. Rex essu mittit; then per totam Angli-
England was to be charged. By the Glossery
of that Learned and Judicious Antiquary, Sir
Henry Spelman, it appears that Virginia terre con-
tinat 24 Acres, quator virgates continent omnem ha-
dam, & quattuor hides. Receipt and Creditude
up of it, it appeareth, that there be in Eng-
land 36500 Hides of Land; and every 310
Hides being to set out one Ship, the whole Num-
ber amounteth to divers Thousands, 110721; and
every eight Hides, to set forth a Soldier, amounts
to 45455 Men: but it is not the Number, but the
Matter that is done by the King's Command, per
totam Anglian.

In the thirteenth Year of King Ethelred, he
made an Edict, which Mr. Solicitor caus'd to be
read in Court, saying, he had it out of an old Book
in Cambridge, Quod infrangerat totum num
in Anglia. I read it to this Purpose, to shew that in the thirteenth Year of his Reign,
there was a Naval Expedition to be always ready at
Eger, and the Penal of such as did de-
part without Licence.

King Canutus, Lambert. Vol. 117. 118. ex fi-
pientum Concilii. &c. ordained a Command amongst
his Temporal Laws, Cap. 10. quod profilia hosti,
&c. commands Ships to be provided; and Vol.
113. a Penalty upon all those that refused to pay
1205. which was a great Sum in those Days.

What is the difference, there were these:
Frieth. That they were made by the King,
by the Advice of his Lords; that there were to be
yearly Preparations for Shipping; and those that
departed out of the Service without Licence, were
to incur the Forfeiture of all their Estates. If these
Edicts were Acts of Parliament, they stand unre-
pal; and if no Acts, then they stand by Com-
mand from the King's Power.

My Lords, I have shew you the Practice, as
it was before the Time of William the First:
He did not arrogate the former Laws, but was sworn
to perform the same. Nay, it was said, that in
that Time, there was a great Kington of king dom, in it a
Monarchy, it consists of Head and Members, the
King is the Head of this political Body; it con-
fists of Clergy and Laymen, and it is fur-
ished with entire Power and Jurisdiction, not only
to administer Justice in Cases criminal and
temporal unto his People, but likewise for Defence
of both; and he may command the Power both
of the one and the other. This Power I find to be mentioned in the Register of Original Writs, written before the Conquest. But 127 b. it reciteth, that the King confederated with Regis ducis stirpium maximo ad providandum Salvationis Regi’ ujri ir-
campus, ofringinimur. It appears by Stanf ord, in his Prerogat. Cap. 1. that as the King is the most excellent and worthiest Part of the Commonwealth, so is he also the Prefsifer, Nourisher, and De-
fender of his People. It find it in Forte jen, that they have citem; that a Commonwealth, without this Head, is but a Trunk, as the natural Body is a Cadever. I find it in Fru. Her. No. Br. Po. 73. or 173. that the King of Right ought to have and defend the Realm, as well against the Sea as a-
gainst the Enemies, that it be not surrounded nor wafted.

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

No, the Power of Defence is a Superintend-
ent Power in his Majesty, to authorize Sheriffs and Commissi
ers to see it done, but by his Power; yet at the Charge of the People. Register 127 b. it appere there, where the King commandeth the People by his Writs; the one directed to the Sheriff, and the other to Commissi-
ers, and in both writs he commandeth, quod distinguat A. B. & c., to distrain the Lands of all their, than may receive Damages and repair the Sea-Walls, as well as the Toe Town. This Writ was before any Statute concerning that, for the Register was before the Conquest; and the first Statute that concerneth Commissions of Sewers, was made 6 Hen. 6. So it is by the Power the King had at Common Law, and not upon any Statute: And this was to the Sheriff, as well as to Commissi-
ers; and that it was done at the Charge of the Coun-
try, and not at the King’s Charge. Patt. 33. Ed. I. M. 4. Def. agree with the Register: The King doth there recite, Quod ratione Dignitatis Regis, & pr. Summorum fœottit ad providandum Salvationis Regi’; and there he eth Power to direct so to different Persons to make Defence against the Sea, at their own Charges. Patt. 2. Ed. II. par. 2. M. 5. Def. in the Case of Wishaw. Rep. 2. Fol. 15. the King, ex officio, ought to govern his Subjects in Peace and Tranquility. 7 Rep. Fol. 9. Protection of the King is general over all the Kingdom, there is Reaon why it should be thus: For the King of England, he hath an entire Empire, he is an absolute Monarch; nothing can be given unto an absolute Prince, but is inherent in his Perfon, as may appear by Books, Records, and Acts of Parliament: Draft. Lib. 2. Fol. 55. & 56. Serwandum, & Dominus Rex super omnium pecuniam, & Cor-
ponsa present. This appears likewise in the Statu-
24. Hen. VIII. there it is declared that this Realm of England is an Empire, and hath been fo accepted in the World. Stat. 25. Hen. VIII. Cap. 21. 1. Eliz. Cap. 1. 2 Stat. Cap. 1. the Crown of England is affirmed to be an Imperial Crown; and Acts of Parliament are Proofs of the highest Na-
ture. 16 Ric. II. Cap. 5. that the King holdeth his Empire immediately of the God of Heaven, And at his Coronation, his Crown is elevated as a Signification thereof. This is likewise acknowledged in the Irish Reports, Fol. 66. Rex Aughre of absolution Monarcha in Regum sas. Per fide fel
faith, the King of England, as well as any other
King or Emperor, hath all the Liberties within this Kingdom in subje fio. The Law of Eng-
land makes the King of England, not as his Subjectes are, a Natural Body, but a Body Politi-
tick, freeth him from all Imperfection and Ini-
mity; he is immortal and never dies; the King ever liveth, Can. 177. 11. Rep. Fol. 7. 21 Ed. IV. and other Records.

My Lords, as he is an absolute Monarch, so all theirs, Juris fiumae Majestatis, are given unto his Perfon by the Common Law.

First, He hath supreme Dominion, both by Sea and Land, as is proved by the Mirror, the greatest Part whereof was writ before the Conquest; and things are added to it by H. Hume in the Reigns of Ed. IV, he holdeth, that the Sea, and all Jurisdiction, and all Dominion is de-
"1rd from the Crown: That whatsoever was
not granted from the Crown, remaineth in the
Perfon of the King. This Supremea dominion is
fo inherent in the King’s Perfon, that if the
King grants away his Lands, obig, obigenda red-
dente, yet the Tenure must still remain to the
King; 8 Hen. VII. 12. 30 Hen. VIII. 45 Dyer.
This Dominion is not only upon the Land, but it is upon the Sea. And lo the King he hath not only a Dominion at Sea, but he is Dominus Mar
ius Anglicus, he is both Owner of the Sea, and of the land under the Sea. And so it was re-
ferred to lately, by my Lord Chief Baron, and the
"nit of the Lords in the Exchonger, in the Cafe of
Sutton Mort, Mich. 15. 16. That the Soil of the
Land, so far as the Sea flowereth, is the King’s,
and the King is feised thereof, Juris Carolina,
vix. 46 Ed. III. Cas. 9. 6. That not only the
Dominion of the Sea, but the very Soil belonged
unto the King.

In the next place he hath, besides his Suprema
Dominium, a Sovereign Jurisdiction, and that ex-
steth both by Sea and Land.

Fifth, For Creation of all his great Officers and Judges; Creation of the Admiralty, time out of mind. 11 Hen. V. 7. 12 Hen. VI. 17. Power to make Judges could not be
granted; and all these Powers resumed in the
Statute, as inherent in the Crown. 13 Hen.
VII. Fol. 17. there it is said by Finch, that at the Be-
"inning all Administration of Justice was in one
Hand, that is, in the Crown. And surely this
Jurisdiction did not begin in the Time of Ric. I.
when those Laws were renewed by him at his
Return from the Holy Land; but there were Admi-
ralms in England, and the Admiral Law by Sea long before. 27 Ed. I. a famous Record in
the Tower, that the Commissioners for the Em-
peror, Spai and France, did appear before the King of France, and did acknowledge the
Soverignty of the King of England upon the
Sea, did belong unto him time out of mind.
And for further Proof of this, it likewise appeared
in that learned Book of Mr. Stedman’s, called More
Clanous.

My Lords, the next inherent Power of the
Crown are Paradons of Offences and condemn-
Perfon, and Restitutions, which none can do but the King himself, 1 Hen. IV. fol. 5. 20.
Hen. VII. 8.

The next is jus manum percutendi, a lanning of a Roya Stamp upon his Coin, the advancing of the Value of his Coin, and the debasing of it.
21 Ed. III. 6. That the King only can put a Va-
In the Case of Ship-Money.

That is the Reason of the Book, 7 Hen. VII. fol. 40. 10 Hen. VII. 28. Fina. Hr. No. Br. 120. fill. 3. for he cannot afflict for Error, nor shall be admitted to allure any thing contrary to the Office of a Judge; as to say, the Judge did not give right Judgment, or the Clerk did not make right Entries, M. 7. Ed. I. B. R. s. and that is the Reason why a Man of New comus merit in a Fine, and suffering of a Recovery, it shall not be affirmed for Error against the Acts of a Judge, 8 Rep. Dr. Tanner's Case. Records by a Judge; nor Justice of Peace, nor traversable. Good my Lords, then, if by the Laws of this Kingdom one shall not be admitted to receive an Averment against any Acts done by your Lordships the Judges, or against Acts done by inferior Judges; surely in this, where the King is absolute Judge, it shall not be allowed to say, there was no Caution of Danger, or that is done by the King which ought not to be done. Brut. Lib. I. cap. 24. fol. 24 in Coruna Regis faceris Justitiun. The King is absolutely trusted with this Defence, that a Subject cannot make a Port or Castle upon his own Freehold without the King's Licence, that appears in the old Mag. Char. f. 162. Inquiry made of those that do build Forts and Castles without the King's Licence, Rat Part. 45 Ed. III. M. 34. 6 Hen. IV. 19. and a Book of Long. 5 Ed. IV. fol. 139. that a Subject cannot make a Port or Castle without the King's Licence; not in his own Ground.

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

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

It hath been objected, that the King of Eng- land's suit is done, but how? It must be according to the Inflitution of the Laws of the Realm, there must be a concurrent Power, a Politick Advice in Parliament, and so it may be done. But the King, either by his ordinary Power or absolute, without the Allowance of the great Council, he cannot do it, as hath been objected:

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

Fifth, It is agreeable to Reason; for Kings were before Parliaments, and then surely they might have done it. As Justice doth flow from the Crown originally, as it was in Moses, so is it in the King of England, only in the King's Per- fon. But afterwards the King did depose his De-puties, and gave others Power; this is no Con-
exit of mine. 21 Hen. VII. Feb. 17. b. per Financ. there was a Time when there were no municipal Laws, when positive Laws were not established, when Kings did rule their People according to na
tural Equity; and then foremost the King might ord

Then the King and his Council may ordain, for that I find, 3. 4. Hen. III. Pich. Her. &c. Br. Dover 179. a Writ of Dover there brought by a French Woman. The Tenant of the Writ plead
ded, that there was no Ordinance of the King and Council, Quod autem de patriante Regis Franciae re

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pars 3. M. 5. it appeareth it was done. The King implored a certain Rate upon all Goods and Merchandise that came unto Kingstown upon Hall, and commanded this should be employed to the walling of the Town; this was de voluntate Regis; this appeareth Rot. Pat. 19 Ed. III. pars 1. M. 12. There was the same Command for other Towns, as Dover, &c. the said Roll, M. 2. Pat. 12. Ed. III. pars 3. M. 14. dorf. A Writ for the repairing of the Walls of Windesbergh at the Subjects Charge. Rot. 16. M. 15. The King by special Grant gave Power to the Mayor and Burgesses to affix the Inhabitants towards the making of the Wall, and the Defence of the Town. Clanc. 3. Ric. II. M. 12. Oxford was commanded by the King to be fortified at the Inhabitants Charge. Clanc. 12. Ed. III. pars 3. M. 32. The King commanded particular Subjects to fortify their Castles at their own Charges in Time of Danger. Pat. 18 Ed. III. M. 9. The King taketh the Castles of the Subjects in to his own Hands in Time of Danger, ad extenuandam danum & pericula que nobis evere passit. Clanc. 13 Ed. III. pars 1. M. 36. dorf. The King by Advice of his Council did ordain, that the Town of Southwark, pro fortification ejus, should build a Wall.

My Lords, if the King may command the Walling of a Town at the Charge of the Inhabitants, he may likewise command the Defence of the Kingdom by Sea; so for other Incidents of Defence, as for exciting Boats upon the Sea-Coasts. Rot. Pat. 11. 12. Ed. III. M. 29. de Conveniuntur in fregulis; Clanc. 1 Ric. II. M. 4. dorf. de Ordinacione pro Regin & Convenieniencia pro vigilitia fregiand. So likewise the King in all Ages hath commanded the imbarrowing the Ships for the Defence of the Realm, and for all publick Service; this appeareth Clanc. 14. Hen. III. M. 17. dorf. all Ships arrested that could carry 16 Hores. Rot. Sta. 10 Ed. III. M. 2. dorf. Omnes naves pro fregionem, & Rot. Alm. 12 Ed. III. M. 23. pars 1 & 13. for the imbarrowing of Ships for the Defence of the Realm.

Like wise the King commandeth and impartially that officers shall be Officers, who shall be Admirals of the Fleet, who shall be Captains Maritimes, as appears Pat. Ed. II. M. 7. dorf. and in the same Roll, M. 10. Pat. 15 Jnbonis M. 10. Pat. 48 Hen. III. M. 5. Clanc. 23 Ed. III. M. 5. dorf. and an infinite Number more.

Then that the Country paid the Charges of those who had Captains Maritime, that appears, Rot. Fin. 21 Ed. III. M. 31. dorf. Clanc. 13 Ed. III. pars 1. M. 14. dorf. The King when there was Caule he moderated the Expenes. Clanc. 25 Ed. III. M. 16. The King did order how much, and how long the County should pay for Wages; and commanded the same to be so ordered of those that could have been gone before their Time: and this appeareth Rot. 48. Hen. III. M. 4. Clanc. 48. Hen. III. M. 2. 3. dorf.

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

Sometimes the King out of his Royal Power hath been pleased to give Discharges to particular Men, to be discharged from this Captains Maritime, this appeareth Clanc. 23 Ed I. M. 5. dorf. Porfmann discharged, because their Ships were in the King's Service. Clanc. 8 Ric. II. M. 1 a Discharge for the Abbot of St. Alkmi. Pat. 12 Ed. III. pars 2. M. 8. Pat. 12 Ed. III. pars 1. M. 14. Discharges de Captis Mariti.

Then the Power of punishing those that should neglect those Commandes hath been always in the King, and to be punished by his Commissioners, or by his Writs, and that in a high manner. That there have been Commandes by Diffrets, by Impronunt, by Seizure of Lands, Goods, and Forciture of all that they had, this appeareth, Pat. 48 Hen. III. dorf. Clanc. 48 Hen. III. M. 3. and a great Number in the Times of Ed. II. and Ed. III.

The King hath so far reckled in this Business, that tho' it hath been the Money of the Country, yet the King hath appointed the Pay-Master, Clanc. 48 Hen. III. M. 20. Clanc. 16 Ed. II. M. 12.

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

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

My Lords, I promis upon this Head to make it good, that in these Times, and in these Years, wherein there were Parliaments, that tho' the Parliament did determine Matters concerning the Land Forces, and the going of the King's Army into Scotland, yet that fitting the Parliament, the King hath commanded the setting forth of Ships by his Writ; this was ever left to the Royal Power. For the Proof of this, there was the 24 Ed. I. a Parliament, as appears in the printed Books of that Year; and in that Year the King commanded Ships by his Writs at the Charge of the Subjects. Pat. 24 Ed. I. M. 17. Command to take up hundred Ships, and in Pat. 24 Ed. I. ever History of the Exchequer-Roll 22 Command pro Captis Mariti, 1. 9 Ed. II. a Parliament holden at Lincoln, and yet in the same Year Writs went out to provide Shipping, as appears by Rot. Pat. 9 Ed. II. pars 2. M. 26. I find there was a Parliament held 12 Ed. II. This appeareth in the Book of Statutes, Rot. Stat. 11 and 12. Ed. II. M. 8. the King recites certain Inroads made upon the Men in Northernberland, &c de communi conciit, held at York, ordinariis, &c. and affinns the Earl of Pembroke, and Bishop of Nor wax, ad requirend Norf & Suff justa diiferentiam sub jectis sub judicio fuerit per Notari, &c. per temp. ivori excell. iuventi. At this Time there was a Provision by Parliament for the King's Service by Land, and for his Armies to meet him at Newcastle; and for two Reasons why Novale Subsidium should be necessary. First, to hinder the bringing of any Victuals into Scotland. Secondly, for the free Intercourse of Trade. So as you see in this Year wherein a Parliament was holden, this Novale Subsidium was commanded by the King's Writ without an Act of Parliament; tho' this Writ was for Norfolk and Suffolk, yet the like was for Dorset, Somerset, &c. It appeareth likewise 10 and 11 Ed. II. which were those great Years of fending out of Writs, that then Parliaments were helden. And so it doth appear by the printed Book of Statutes; yet in that Year of 10 Ed. III. 4 G
Clanf. 10 Ed. III. M. 37 dorf. A Writ directed to the Mayor and Bailiff of Bristol, with a Command, that all Ships of 40 Tons &c. ultra, should be seized. 10 Ed. III. M. 21. dorf. Command that the Ships should be set forth for the preventing of Danger, and that no Foreigners Ships come in to aid the Scots, M. 21. dorf. The same Roll, Command to the City of London to set out Ships at their own Charge. See. 10 Ed. III. M. 21. dorf. Writs to the Sherif of Bucks to send Horsemen and Footmen to the County of Southampton: so there were Men drawn out of their County, and the Refusers there were called Rebels. Rot. 16. Writs de Nationibus pro defenfione Regni.

My Lords, there was something more observable in this Year of 10 Ed. III. for some of the Writs that went out bear Tefe 3 October 10 Ed. III. and mention a Parliament, but did not go out by any Ordinance of Parliament; yet that the awarding of these Writs 10 Ed. III. were fitting the Parliament, and by the Royal Power: which is a strong Argument, there needeth not Ail of Parliament for the King to command his Forces. 11 Ed. III. 12 Writs were issued by Parliament, and app

pduet in the printed Books of Statutes, yet Writs dated to 11 January 11 Ed. III. per ipsam Regn. Ships are commanded pro guerra super Mare. Rot. 12 Ed. III. M. 6. dorf. Proclamation to several Counties, that all Ships be in readiness. In the 12th Year of Ed. III. there was a Parliament at Northampton, Clanf. 12 Ed. III. pars 2. M. 1. the same Roll pars 2. Cl. 52. and yet the Year the King commanded Shipping at the Charge of the Counties, as appeareth Rot. Parl. 12 Ed. III. pars 1. M. 12. Clanf. 12 Ed. III. pars 3. M. 29. And in the 15th Year of Ed. III. there was likewise a Parliament held, as appeareth 12 Ed. III. M. 9. 10, but printed Statutes make no mention of a Parliament then.

My Lords, in this Record these Things are observable, cited, and made use of by the Defendant's Counsel; a strong Record as any can be against them! In that Parliament the King did pray the Advice of the Commons in Parliament touching his War with France, and the guarding of the Sea-Coasts; the Commons they make Answer, Preint le Commons que ils ve Conful diz ader au chofes de quel se pafs Comnune, &c. They say further, And they grant that the Maritime Towns ought to make the Guard upon the Sea without Wages, and the Inland Towns upon the Land.

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

the Guard of the Sea, and the Sea-Coasts, was done justas Ordinamentum nufarium: Order made by us and our Council. Rot. Alm. 13 Ed. III. M. 15. dorf. the King appointed the Archbishop of York, Hoghe de Percy & al for that purpose, &c.

So, my Lords, I have done with the second Ground, that is, that the King is the sole Judge of this without his Parliament: That the Commons in Parliament have declined; and to have any Cognizance of it: That in the same Year, when Parliaments were held, the same Year thed: Writs have if forced without Advice of Parliament.

The third Thing I did propose was that supreme Title, by which the Common Law of England giveth to the King, which may enforce this. Bract. lib. 2 cap. 24. Saith, that the King he is Vicarius Dei; his Power, as was agreed, is Juris Divina. God is the God of Laws, and the King is a Model of God himself, 40 Ed. III. fol. 18. The King is the chief Guardian of the Commonwealth. The Sheriff hath quadri continentes under the King, the King's Vicerege in the Country: And he hath this Power, not only for the Execution of legal Punis, but for the Defence of the Realm. 12 Hen. VII. fol. 7. This delegate Power of the Sheriff, is as well for Defence, as for the Execution of Processions. Shall the Sheriff do it, and not the King? 12 Hen. III. fol. 1. B. Hen. VII. fol. 1. The King is the Conserver of the Law. 20 Hen. VII. fol. 4. Rex de Capitolis jublatorem statu Angliae, he is not only to maintain Justice in the Courts of Justice, but to protect and defend his People. Stanford's Prerog. cap. 1. The King is the most worthy Part of the Body of the Commonwealth, the Preserver, Nourisher, and Defender of it: And by this they enjoy their Laws, Goods and Lands. 1 Rep. ffo. 90 b. Moderns-Collage's Cafe, Rex a Medicius Regni & Secundis Reipublie. It is the part of a good Physician, as well to prevent Diseases, as to cure them; and the Office of a good King, as well to prevent Danger, as to remedy it. Cas. ffo. 130. He is the Soul that animates the Body of the Commonwealth; and we ought to move as he moves. 11 Rep. fol. 72. The King is the Fountain of Common Right, therefore we have no Reason to flain the Fountain.

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

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

May it please your Lordship,

T O remember I thiew by Charters, Aids, and a great Number of Precedents, that this Royal Power was in the King of England before the Conquest: And that tho' some were exempted from the setting forth of Ships by Grant unto some particular Men, or some particular Churches; yet these three fundamental Services of Expedition, repairing of Cables, and making of Bridges, were always exempted.

Then I thiew, by a great Number of Precedents, that not only the Principal, but all other Necessities that concern the Defence of the Realm, both by Sea and Land, hath been always commanded by the King's Writ: for the fortifying of Towns
they are obliged to do the Service, yet upon other Occasion, the King took all their Ships, ultra fortissimrum debitrum. Claufr. 16. Ed. II. M. 13. dorf. The King writeth to divers Earlis, Barons and others in this Manner, Quod fuisset citius gestum potestis potarios patet, beyond yeours both in Arms and Armes, and come to our Town of Newcastle upon Tyne: So as this Writ was directed to all the Lords Spiritual and Temporal, and all the King's Subjects; not only with their due Service, but beyond their Service, to be at Newcastle. So your Lordships fee the Motives, and Grounds, and Reasons of these Writs are universal; they concern not a particular Part and Subject, but all the King's Subjects; and they are Legitimaturba dea. So that is the first Thing I would obverse to your Lordships, that these Writs and Precedents are grounded upon the Law of the Land, and not upon particular Culfum. The second Thing is this: That all these Writs have liified by the King's Mandate, either by the King only, or by the King and his Council, without Advice in Parliament; of which I have made a Collection: And it is better for me to attend your Lordships withal, than to cite them; because they are above five hundred, wherein I have diligentified what have been for Regina, and which per Regina et Concilium, and where the Advice of particular Merchants and Portmen were required, Stat. 11 Ed. III. M. 20. dorf. 19 Ed. III. 1. 26. dorf. And in these, the Advice of particular Men were called to assist the King and his Council.

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

That Precedents that are not against the Law, nor contrary to the Rules and Reactions of the Law, make a Law, this appears by 4 Ed. IV. fol. 43. The Lord-Chancellor sent forth a Writ of Error. The Judges took Exceptions against the Manner, and the Manner, faith the Book, because it hath been always fo: the Precedents make a Law. 36 Hen. VI. fol. 20. An abjured Return made by a Sheriff; yet because Precedents to warrant it, is a good Return. 2 Ric. II. fol. 7, where a Duty was to be paid to a Corporation of Mayor and Commonalty, the Duty to be paid to the Body, and an Acquitance to be had from them; but because it had been used the Mayor alone to give the Acquitance, a good Acquitance. 4 Rep. Haines's Cafe; the King shall not part with his Intereff with the Great Seal, but Yet a Leave for Years, under the Seal of the Exchequer, is good by Custom. 4 Rep. fol. 9, that the Precedents of the Court are good against the express Words of a Statute. Having so many Precedents, I will not trouble you any longer, tho' I have referred a speftal Place for anwering of Objeftions; yet fuch Objeftions, as fall materially in the way, I shall give an Anwfer to, tho' I relver the Anwfer to the main Objection to the fifth Place. It hath been said, by Mr. Holborn, that here hath been a Discontinuance of Time; and that since the Time of 50 Ed. III, none of these Writs have liified. Shall Discontinuance of Time take away the King's Right? If there have been no Ufe within the Time of the Memory of Man; yet if there have been an inherent Right in the Crown of England, shall the Crown loot it by Discontinuance of Vol. I.
Time, contrary to the Rule of the Law? {16 Hen. IV. fol. 6. Where the King is the Founder of a Bishoprick or Abbey, and is by common Right to have a Corby, tho' not used, and the King hath not demanded it in time of Memory, yet the King shall not lose it. Fitzz. Her. Na. br. fol. 5. A Writ of Right brought by the King, where you must show to explain the Seigny, will not bind the King to allege a Seigny in him and his Progenitors: for if once the King had a Seigny, Protracts of Time shall not discontinue it. 12 Hen. VII. fol. 20. The Statute of Marlomine confirmithe Lord to enter within a Year and a Day; but it shall not bind the King, for he may do it any time. 25 Hen. VI. fol. 26. If a Villain doth alien his Lands, it barreth not the King. Plenary after six Months, no Plea against the King. 6 Rep. no Discontinuance of Time, if the King hath a Right. 7 Ed. IV. 30. If an Alien and another Man purchase Lands together, and the Alien dies, the King shall not be prevented by Survivalship; and therefore it shall not bind the King for no Pre- cription against the King. 36 Hen. VI. fol. 27. There is no Man can pretend a Tithe to the King's Goods, for Waifs, Eldrays, or Wrecks; for no Prescription can invade the King's Profit.
But then they say the Precedents are not in all Times; for we have not flown, nor can fly that in all Times thes Writs have issu'd.
A Strange Objection, in all Times! My Lords, it is a casuall Service. In all Times, God be thanked, not that Occasion or Necessity of this Defence. Will you have us t'heu you Precedents for that? and therefore all Times? 7 Hen. VII. 10. If a Man hold to do Service to his Lord, to go with him into the War of the King, this is out of the Statute of Limitation; for it may happen not once in two or three hundred Years: therefore the Law doth not require we should have a Seigny, for this very Reafon, because it is casual. 33 Hen. Br. Feath. 15. That for Homage and Fealty, casual Service, they are out of the Statute of Limitations: so as now, by the same Reafon that they would tie us to Precedents where there was no Occasion, by the same Reafon the Tenants are to do to Rage, or go into the Wars when there was no Occasion.
But besides, he is much mistaken, these Precedents do not end with Ed. III. 7 Ric. II. M. 18. 13 Hen. VI. M. 10. 14 Hen. VI. part 1. M. 14, a great Number of Ships commanded then in the King's Service.
But it hath been said, that the People have al- ways petitioned against it, and there hath been a decrying by the People; and they have petitioned in Parliament against it. And these things, that must be made good by Culfon, must gather Strength by a Content. And further, that when Petitions have been preferred, the King hath not denied the Petition expressly.
My Lords, I shall shew, when I come to give a particular Anwser to those Records and Petitions that they have mentioned. That notwithstanding these Petitions, this Service hath been always continued: and for the Anwser that he spake of, that they have not been denied; there are the very Words of the Anwser, Le Roy fe aviseur. We know whether this be an express Denial or no. So tho' the King took time to advise of the Petition of his Commons, this is no Argument, but that it is a mannerly kind of Denial. Besides, in these very Years of 10, 11 & 12 Ed. III. the Writs went out for the Shipping Buiñefes, by the Royal Power.
Then it hath been said, that we can make no Precedents of thes; for no Writs have gone out, yet it doth not appear that thes Writs have been put in practice, or that any Execution of them have been done.
And therfore the Service hath been done, as doth appear by the Monuments of those Times. Then it doth appear by other Records, that the Wages of Ma- riners have been paid by the County. These very Years, Rot. Clau. 20 Ed. III. M. 6. 7. It doth appear, that some particular Men had particular Diñighages, either because they were in the King's Service, or in Gofseigne, or lived on the Sea-Coasts; that they pleaded their Diñighages, and had them allowed for that Reason, 23 Ed. III. M. 14.
So as, my Lords, upon this second Ground, that these Writs have gone forth thus constantly in sev- eral Ages; that there being such a Number of Precedents, the Discontinuance hath ever been when they were no Discontinuances. That the Precedents of the Courts of Juffice make a Law, and Discontinuance cannot take away the King's Title. This is the second Thing I do insist upon, that these Precedents make a Law.
The third Thing I shall observe upon these Pre-cedents is, That these Writs have gone forth, not only in Cales of an actual War, or in Cales of an Invasion, when the Enemies Fleet hath been upon the Sea; but by way of Preparation before-hand, when the Enemy meant to come; and in contin- gent Cales, when the King might conceive any Danger might influce: But in these Cales Writs hath been sent out. 29 Ed. III. M. 2. The Writs are here in Court. Caussâ effe ad defensionem Regis effe praepunctum, 8cl. Clau. 23 Ed. I. M. 5. There were several Writs directed to divers Earls, Bishops and others, de eypass. mar- rit. the Words are thus, Quam volumnus quod partes marit in Con. Eflic, &e. contra Sinimices diligenter eypass. forfan b in partes illas venire contingent. 24 Ed. I. Remembrancer in the Exche- quer; upon Information given, that there were 1000 Men in Floindors made Preparation to come unto Turinof to burn the Towns, Writs sent forth by the Treaforer and Barons, de effici, to be in readiness for an Invasion. Pat. 9 Ed. II. pars 2. M. 26. Writs directed to the Port-Towns between Southampton and Thames, to set Forth Ships at their own Charge, for the better Defence of the Kingdom; and against those that commit Depedations upon the Sea, as well to Men of this Kingdom, as to others coming to this Kingdom. Rot. Set. 11 & 12 Ed. II. M. 8. The King, by several Writs, directed to several Commissiories in several Counties, recited the Provision made for his Army at Land at the last Parliament, and faith, Nos conferendis ad expeditionem prael. ann. de impediment. Sciturs, quam pro expeditione, Meris, &c. and so commanded for that purpose, that Ships should be sent out from several Counties for these two Causes; the one to hinder Victuals from going to Scotland, the other for free Intercourse of Trade. It appeareth, 10 Ed. III. that the Ships of France were not upon our Sea-Coasts, but were in Brittan in France; and yet the King, upon Relation that they had an Intention to invade the Realm, did fend forth for the providing of Ships in most Parts of the Realm; this was only upon Information. Rot. Set. 10 Ed. III. M. 30. Ut audicious: M. 23. Ut intelleximus: M. 16.
in the Case of Ship-Money.

M. 16. 22. Quod audit. M. 18. dorf. 12. dorf. 5. dorf, in paribus trauismarinis. So by these Records, this Preparation of Shipping was only upon Information. Franc. 26 Ed. III. M. 5. Quia ungaris opini Regnum ubrain Angers invidiae, & Land. Rot. Franc. 28 Ed. 12. Quia, certe rursus quod Franc. infa breve tecum cas magnis Arum a Regnui invidiae, &c. commands the Custody of the Sea and Sea-Coasts. So as it doth appear, by these Records, that upon an Information, or Conceit of the King, he may send forth these Writs, and commanded his Subjects to be in readiness, in case that Danger might happen; better so, than to receive a Blow, and then to make Preparation for Defence; we should buy that Wit with Repentance. Prudentissima ratio,quia timerbelli, &c. praeparavi. And surely when the King fees those Preparations abroad, those great Armies in adjacent Countries, qui secere pacem, great Reform, that shall all the Time till then be a Difficult taken; No, he shall have his Monstruovm, Fitz-Her. Na. Br. 40 Ed. III. fol. 45, 46. and this only upon Verbal Demand or Service.

Shall then the Common Law of England secure the Subject not to fly till to a present Danger, but he shall have his Warrant to Comete, and Monsrourerunt before Dil Turkish; and shall not the Common Law provide for the King, that he, in his Expectation of Danger, may make his Preparation against it? So freely are precedents are according to Reason of Law. The next Thing that I did observe out of these Records was, that in these very Years, wherein there have been Aids granted to the Crown pro defensione Regni, in these very Years those Writs have issued out by the Royal Power. Clau. 48 Hen. III. M. 2, 3. dorf. There was then a Tenth granted by the Clergy pro defensione Regni; and yet in that Year he did command the Defence of the Realm, both by Sea and Land; and that appears, Pat. 48 Hen. III. M. 6. dorf; and Clau. 48 Hen. III. M. 30. In the 22 Ed. I. the King had given him in Parliament, pro fulgida guerre, a Tenth of all moveable Goods, which was to be collected in the 23 Year, as appears, Pat. 22 Ed. I. M. 2. My Lords, this very Year, when this was paid, he commanded a great Number of Shipping for the Defence of the Coasts, and that appears, Pat. 23 Ed. I. M. 6. Writs were directed to divers Counties, as Suffex, Southampton, Dorset, &c. commanding them to be aiding and affiling to William Thornton, in the taking of all the Ships in thofe Counties, Pat. 23 Ed. I. M. 7. a Com. Rodolpho de Salavuto ad pro- videntiam de Navibus, tAO quad prompti sunt quantaque mandamus. So to be in readiness with all Ships in those Parts, that were of 40 Tons. M. 8. Some Roll-Writs directed to most of the Sheriffs of England to be affiling to John de Borwicke, to the chusing and sending forth of Archers, ad predef- sionem cum Fleta tregga. So as they were not only brought out of their own Counties, but all the Counties of England, ad predefensionem. My Lords, this 23 Year, when this great Aid of Tents, and Parch. all the Moveables were granted, Pat. 23 Ed. I. M. 7. the Writs were written to all the Archbishops, Earls, and others, exciting, that he hath committed the Custody of the Sea to William de Stow, Ita quod idem Williamus us anno, naming the Archbishops, Bishops, Earls, &c. great necesse fuerit. So as you see the greatest Subject is not exempted from these Commands, but should be auxiliantes, respondentes & intendentes. Clau. 23 Ed. I. M. 5. dorf. The King commanded the Bishops of London and Norwich, for the Safeguard of the Sea-Coasts. Pat. 23 Ed. I. M. 1. A Command to all Archbishops, Bishops, Abbots, Earls, Barons, Knights, and others; commanding them to be aiding to Adam de G. Ita quod idem Adam compelleris pro questo. So Clau. 23 Ed. I. M. 5. dorf the like Command; So by my Lords, in those Times, which was 23 Ed. I. when there was an Aid granted by Parliament, it doth appear, those great Defences, both by Sea and Land, were commanded.

My Lords, to Ed. III. in a Parliament held at Nottingham, there was a Tenth granted to the King for three Years, and so it was recited in the Record. And it appeareth likewise, Pat. 12 Ed. III. M. 2. Pars 3. Clau. 12 Ed. III. M. 28. Pars 3, it appeareth, that a Tenth and Fifteenth were granted to the King in Parliament; and this was done pro defensione quern regni. The Prelates, and Lords and Commons at a Parliament held at Wiltshire, gave the King ten thousand Sacks of Wool, fail to be given pro defensione Regni, as appears Rot. Ann. 12 Ed. III. pars 1. M. 1. In the same Year there was granted like pro defensione Regni meditamentum lanaram, the Moity of all their Wool, M. 31, 32. In the same Year the Clergy, they gave the King in Parliament, meditamentum lanaram ujus, viginti mill. fascar. as appeareth, Rot. Clau. 12 Ed. III. Pars 3. M. 13. Rot. Clau. 12 Ed. III. Pars 2. M. 1. dorf. And in this Year the King collected a Tenth and Fif- teenth of the Moveables grants him by the Livery in Parliament for two Years; as appeareth, Clau. 12 Ed. III. M. 30. And besides all this, the Clergy gave the King a Tenth, Clau. 12 Ed. III. Pars 3. M. 30. These I cite the more particularly, because no Memory of them in the printed Statutes.

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

Now, my Lords, in this 12th Year, when all those great Aids were granted, Rot. Ann. 12 Ed. III. g. M. 13. Rol. de filis de ma, was appointed a General of the Fleet towards the North, and appointed Commissioners ad affiduam villas bonis & Catellis ad contrivedum, &c. and commanded all the Sheriffs and Officers to be aiding and affiling. So in this Record it doth appear, that in thefe 10, 11 and 12 Years, Ships and Forces were commanded. Clau. 12 Ed. III. Pars 1. M. 17. dorf. Command by the King, that the Men of Surrey and Suffolk should have their Goods feized, and Perkins im- prissoned, if they refused to contribute towards the Charge of Shipping. Rot. Ann. 12 Ed. III. Pars 1. M. 2. A Commission to William de B. and others, 92
ad effendandum omnes bonumias justa statum, et to feize
their Goods and Chattels, if they refused to con
tribute for the Wages of Mariners for the Ships.
So as your Lordships fee by these Records, tho' there
be Aids, Tents, Subsidies and Fifteenths, granted by the Clergy and Laity; yet in that very
Year, if an extraordinary Occasion comes, the
Ships not upon the Sea, the King hath command-
ed the Defence of the Sea and Land at the Charge
of the Counties. I have done with the fourth
Particular.
The fifth Particular is this. This Aid, and
these Contributions, they have not been required only from the Maritime Towns, but from the In-
land Counties, per totam Angliam. And this was
materially to be inflicted upon, because we are now
in an Inland County, in the County of Bucks.
My Lords, That this was done before the Con-
quells, your Lordships have heard. For Alfred,
the first Monarch, Anno 827. juxta GBneth, &gt;
Floren. 316. Huntington 351. That King Ethelred
did the like, in the Hundred of every part of Land to find one Ship. Floren. fol.
The Decree or Council, which was held at H.
about the 30th Year of King Ethelred, was that Ships
should be prepared against Eater. And tho'fe
Laws, which are remember'd in Lambert, were
before the Conquest, cap. 10. fol. 106. 2nd pra-
feldi. So it was general and universal through-
out the Conquest, concerning with those ancient
Precedents and Council, since the Time of William
the First. Glanv. 48 Hen. III. M. 5. For where a
Record is to be applied unto several Purposes, I
must mention that Record again. It appeared by
that Record, that Oxfordshire, which is an Inland
County, was charged with the Guard of the Sea-
coast, and paid for Wages: Same Roll, M. 3.
inter M. 2. dorf. Rutland, Oxfordshire, Dorseth-
fshire, Inland Counties charged for the same Service. Pat.
48 Hen. III. M. 7. Cambridgeshire and Huntingtontou-
shire charged for the like Service, and that they
should do prout per Consilium sufficientius ordinarii finitum. 34.
77. 78. 79. Title de affectando pro cujusvis. Martinis;
and Writs went out for Ships in divers Counties;
and amongst others to Bucks. Pat. 26 Ed. 1. M.
21. When there was a Complaint that the Subjects
did suffer upon that Service, the Commissions
that are directed for Enquiry thereof, are directed
to all the Counties of England, as well Inland
as Maritime. Rot. 23 Ed. I. M. 5. That Men,
to furnish a Fleet, were drawn and commanded from the
most parts of the Kingdom. Rot. Scot. 10 Ed.
III. M. 14. Inland Counties charged with Shipping
for the Defence of the Kingdom, as Cambridgeshire,
Huntingtontouire, Nottinghamshire, and Derbyshire.
Glanv. 13 Ed. III. Pars 3. M. 14. dorf. and there
Oxfordshire is charged with Cuthf. maritumn. Rot.
Scot. 12 Ed. III. M. 13. dorf. Belford, Bucks,
your County, and Dorsetshire were charged therewith the
same Dean. Glanv. 7 Ric. II. M. 3. The Com-
butions and Huntington were to provide a Barge at
their own Charge; and yet Seafaring Men there
were none. Writs were then also directed to Not-
ttingham, and Derby; tho' they had no Seamen, yet
they had Money and Means to provide them. Rot.
Franc. 7 Ric. II. M. 18. The King lends his Writs
to most Counties of England, as well Inland as
Maritime, reciting that the King of France was
gone with an Army into Flanders, and that Calais,
was in danger; and commandeth all Knights,
Esquires, and Archers, and every of them, accord-
ing to his Elate and Faculty, to be sufficiently
arrayed and armed, and come to the Port of Sand-
wich, ad proficiscendum. My Lords, in this Record
there was mention'd Bucks, Bedford, Huntingdon,
Cambridgeshire, Nottingham, Derby, Leicester, Rutland,
Northampton, and Warwick Counties. The Words of the Writ are: Quadam occurrent pro deplorato Regni, &c. Glanv. 9 Ed. III. M. 12.
vel 20. quad. &c. All and every of our Kingdom,
out of their Allegiance, to be ready to defend the
Realm. 13 Ed. III. dorf. a great Number of Ships.
By all which it doth appear, First, That the
Service was commanded from those Inland Coun-
ties. Secondly, That the fame Reafons which are
given to bind the Inland Counties, are given to
bind the Maritime Counties, Pat. 23 Ed. I. M. 6.
for the taking of Ships in Suff. Decon, Mid-
defex, and other Counties. If to be the Maritime
Counties, it must be a Statutable Clause, which
cannot be in Eslely. We are in an Inland County,
and the Entry of an Enemy upon any Part of it,
costs the Safety of us all. And by the Rule of
the Law, every one that is to receive a Benefic,
is to give a Contribution. As the Case of 16 Hou.
VII. fol. 13. all Foeces, whose Lands were liable to
a Statute, the one shall have Contribution against an-
other. If four or five Cognizors in a Cogni-
zation, all shall have Contribution one against an-
other. 40 Ed. I. 3. Parceners, upon whom a War-
nany is desisted, they shall be equally charged.
It's man bind himself and his Heirs in an Obli-
gation, having Lands partly by his Father's
and partly by his Mother, and they defend to several
Heirs, both shall be equally charged, as it is 3
So I go upon these Reafons, that it is consonant
to Reafon of Law, besides these Precedents, that
where a Danger is to all, and all receive a Benefit,
all are to be equally charged.
My Lords, to illustrate it by further Reafons,
that tho' the Inland Counties, and Maritime Coun-
ties be charged, I find that the Ports, by the Char-
ter of Ed. I. were to find 52 Ships. I find that when
the Necessity of the Service did require it, then
all their Ships were feized in the King's Service. I
find likewise, that when there hath been a Dis-
ability in the Ports to perform the Service, as now
they are, for then the main Part of the Trade
was in the Port Towns, but now it is gone from
there, and gone to London; and few Ports have the
Trade, but London, Newcastle, Bridgford, and
 Hull; and shall it not now be required of the
Inland Counties, since there is a Disability in the
Ports? Rot. Franc. 21 Ed. I. M. 23. I find there
that Plymouth, and some of the Port-Towns, did
bear more than London for Plymouth found 4
Ships, Dartmouth 6, Bridjford 4, Newcastle 3, Nor-
vich and Yarmouth 4, London 7, Harth-Pole 2,
Sandwich 2, Dover 6, Rye 3, Shoreham and Am-
well 2, and other Places found but one. It
appeared, Rot. Alia. 13 Ed. III. M. 5. dorf. that Yarn-
mouth furnished, at their own Costs, 4 Ships, King-
ston 2, Boflan 2, Lynne 2, Harwich 2, and Ipswich 2.
My Lords, are these Ports able to furnish the
King with so many Ships in their Days to do their
Service? The Wealth of one Portman in those
Days, was worth the Wealth of a whole Town
now.
Admit the Maritime Towns were bound to it; yet if there be a failing of their Ability, that they cannot do it, shall it not elsewhere be required? That it is agreeable to the Rule of the Law, before any Commission of Seamen, where particular Men are bound to defend the Seas, as yet before any Statute, in case: the Man was not able, Service was required from the County; for by it they might have either Gain or Loss. This appeared by the Rules of the Common Law, before any Statute; Regizf. fol. 123. Quod dis-tringens onus, &c. when one Man was to maintain the Banks against the Sea; if not able to do it, the aid that had Benefit by it, were to be disfrain- ed to do it, 5 Rep. fol. 90. 10 Rep. fol. 140, 141. the Cafe of the life of Ely agreeable to, that all that have Salutamentum & Donationes shall contribute.

To this Purpose are those two Records mention’d by Mr. Solicitor, Ret. Pat. 7 Hen. IV. M. 13, that where there was a Subsidy granted to the King for the Defence of the Realm, it was assigned to Merchants, yet with a Salvo, unless Royal Power came.

Ret. Franc. 6 Rich. II. M. 8. certain Merchants had the Custody of the Sea, except Regalum potestatem.

So the Conclusion is, if an extraordinary Defence, there may be no Caufe to go into the Island Counties; but if a Royal Power, or extraordinary Danger tho’ not imminent, the King may require an extraordinary Contribution, per tantam Anglianam, from all his Subjects.

But this hath been objected against, and some Records vouch’d; that is, say they, we will shew you many Precedents, wherein Natural Subsidium hath been required from Inland Counties, and they have been discharged thereof, as Pat. 2. Rich. II. Part 3. M. 42. dorse. The Town of Beverly petitioned, because they were to contribute, being an Inland Town, towards the finding of a Ship with the Town of Hull, and were discharged thereof. This is Truth, but not the whole Truth: for the Town of Beverly was discharged by reason of a Charter of Exemption granted unto them in bo- nariis t. Jefu, annis de Beverley, the King’s Countef; upon that Charter they were discharged.

They have objected likewise the Town of Dal- min, an Inland Town in Carnovall, was discharged a Comyn’s Motio: For this Claus. 13 Ed. III. Part 2. M. 12, was vouch’d for it, that the Town was discharged of this Contribution.

For answer to that, it will appear, that one Tyvel was then Admiral of the Fleet, and was by his Commission to be furnished from the Ports at their own Charge for three Months. My Lords, this appears, Ret. Claus. 13 Ed. III. Part 1. M. 35, and so that Town, an Inland Town, was to be discharged. My Lords, likewise there were other Discharges; upon this Reason Warmich was dis- charged from finding of Men for manning of Ships, because the Admiral’s Commission did not warrant it, Ret. Stat. 10 Ed. III. M. 15, for it only extended to the Ports: but yet Warmich was charg’d to find Ships, Claus. 13 Ed. III. Part 2. M. 14. So the Admiral was charge’d for finding of a Ship, but it was because they were not within the Words of the Writ, as appeareth, Ret. Claus. 13 Ed. III. Pars 1. M. 70. To tell your Lordships a Story of a great Number of Land Tenures, discharged & Confisc’d Maris, and not to give your Lordships the Reason, it is nothing to the Purpose.

So, my Lords, having verified these five Points by the Precedents, and justified them by the Rea- sons, and answered these Objections, I shall now come to the fifth Matter upon this Record; and that is, tho’ no Caufe be declared in the Writ, no Danger manifest, nor against what Enemies; that yet the King by his Writs have commanded Ships into the Defence of Sea and Land; and in the King’s Wishes the Danger has been referred in his Beauf, and not communicated to his People by his Writs.

First, I find that ancient Precedents have been so, that it hath been referred to the King himself, and those that he did depute to take care thereof; this appeareth, Ret. Claus. 14 Jebo. M. 2. the King directed his Writs to Herbert, with a Mandamus to make ready all Ships for our Service, when we shall command; not a Word of the Caufe declared, or an Enemy proclaimed. The same Roll, M. 6. the King by Writ, directed to several Parts, caufeth all Ships that could carry fix Horses or more to be sent unto Portsmouth; and the like Writs were directed to other Ports, Ret. Pat. 15. Jebo. M. 4. The King appoints a Guardian upon the Sea-Coasts, and commandeth all Men that they should be intended and others in the Writs that follow, directed into many Counties with a Mandamus, Claus. 17. Jebo. M. 7. dorf. Writs for taking of Ships, and bringing them into the Thames Mouth, without allowing any Caufe: All this was done in the Time of King Jebo. In the Time of Hen. III. Ret. Pat. 13 Hen. III. M. 5. a Writ commanding the Sheriff of Kent and Suffolk to arrest all Ships in those Counties to be at Portsmouth, to ready to go into that Service we shall command. And it appeareth from the Roll, that these Ships were able to carry fix Horses, Claus. 14 Ed. VIII. M. 13. To our Bailiff of Portsmouth, and Keeper of our Navy, to make ready one good Ship, and we are ready to go in our Service, whither and when we shall command. Ret. Claus. 23 Ed. I. M. 5. dorf. The King declares that he will have the Sea-Coasts in Ely guarded against the Enemy; and there commandeth them to be obedient to such an one, who had the Custody. Ret. Pat. 23 Ed. I. M. 2. The King writeth to all the Archbishops, Bishops, Sheriffs, Knights, and others, to be affilling unto William de S. who had the Custody of the Sea. So as by all these, it appeareth the King did give no Account to his Subjects, either of the Service, or the Time when Ret. Stat. 10 Ed. I. M. 13. Then the King commanded all Ships to be arrested, and Men and Mariners to be sent to the Admiral of the Fleet, ad prestatim. The same Roll, M. 5. dorf. A Matter fit for the Coun- cil, and not for the People to know. Same Roll M. 20. that they should do prout nobi, &c. the King oweth no Account to his Subjects of these things. 24 Ed. I. M. 19. The King having commanded E. S. to take up 100 Ships fit for his Service, commandeth the Sheriff of Northumberland and others to be affilling. Same Roll M. 17. A Command to the same E. S. that all Ships should be taken between Lynn and Berwick. It was 16 Days before the Time of Ed. II. Pat. 9 Ed. II. Pars 2. for Ships taken up at the Charge of the Inhabitants, to defend the Sea against Male- factors and Pirates. Ret. Claus. 12 Ed. I. M. 11. dorf. Writs directed to the Mayor and Bailiff of Gloucester, to make ready all Ships within their Port of 40 Tons, Inst, &c. that they be ready within three Days Warning to go, as we shall more fully declare; but the Service that was to be
37. The King against John Hampden, Esq. 13 Car. I.


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

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

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

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

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

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

Firſt, For the Direction: It is, as in this Writ, sometimes upon one, or prohibibus bonis of fuch a County, sometimes the Direction is to Commitmifiers; sometimes one way, and sometimes another: and of this of the Precedents themselves, when your Lordſhips come to fee them, I shall speak. They would have the King defend fo low, as to give them a Reaſon why he doth it: fome Reaſons are express'd in the Writ, as quia pericitium elemosina; quia pro defunfione Regnes, putatif Maritis, fenatores are fubluminis, fuper conditiores Nervorum, &c. By your Lords; all are express'd in the Record, 9 Ed III. M. 13. Stat. 10 Ed III. M. 29. Rat. Abā' 12 Ed III. M. 1. Rat. Abā' 13 Ed III. M. 13. I find in these Writs the fame Matter, Power of Affeftment, sometimes Levies by Differeſ and Imprifonment, nay, Ŝeize of Lands and Tenements, Goods and Chattels, that are express'd in former Writs: and that it was at the Charges of the Countys, both inland and Maritime, this appeared, Rat. Stat. 8 Ed II. M. 9. De Nonigio pravand. Rat. 9 Ed II. M. 26. Pars 2. De Nonigio pravand pro Officato Mariis. Many more of these, Stat. 10 Ed III. M. 3. That the Wages of the Men that went in the Ships, and guarded the Coafts, were at the Charge of the County; this appeared 10 Ed III. M. 2. dorf. 60. Men appointed and sent to Fentfoorth, and they refuse to go without Wages; but a Command came from the King, and commanded the Countys to pay them Wages. 10 Ed III. M. 21. dorf. And his Predeceſſors not to bear any Charge whatever, the pro defunfione. Rat. Abā' 12 Ed III. Pars 1. M. 2. Thoſe of Iam, who refused to contribute towards the large charge they were afflued by the Commissarios,
Commissurers) it is left to the Direction of the Sheriff or Commissaries, as occasion shall require, Reg. 10. 192. 16. partis, before any Statute was made concerning the same, that Wit went our generally to the Sheriff; so that in all Times and Ages it hath ever been in these Cases, where no Certainy, left to the Direction of the Sheriff and Commissaries for My Lords, for the Manner of the levyng per Diffinites, and by Impromption of tho' that do refuse: Is this new? It hath been so in all the Precedents that have been vouch'd, both by Difficuts and Impromption. For the Difficut: If the King makes a Corporation, and gives them Power to ordain for the Common Good of the Corporation; and if they make an Order for the Pay- ment of Money, and that tho' that do not pay the same, shall be disfratned; is this not such a good ordinariness? 5 Rep. fol. 64. Clarke's Cafe, Trin. 7 Hen. VII. Rot. 3. 5. There is a Benevolence granted to Ed. IV. for his Voyage into France, one T. R. did deny Payment, and he was disfratned for Disproportion. They except to the Penalty of the Wit. The Penalties of former Wits have gone higher. Intor Commissus in the Excequer, there was a Mandant to affit tho' that were employed in the Provision for Shipping; and the Mandantus was, fient nos & huerent nomen & salvacionem Reginae diligentis. In that Roll that is often remembered, Rat. Scot. 10 Ed. III. M. 11. dor. quod, &c. their Lands, Goods, and Chattels to remain seiz'd in our Hands. And M. 2. under Pain of Forfeiture of Life: 11 Ed. III. M. 2. to call them in Prifon that did refuit. Rat. Clauz. 12 Ed. III. M. 18. dor. Wits directed to Henry Heefer, and others, to punish them that refused to contribute; and to imprison them, and to seiz their Lands and Goods into the King's Hands. Clauz. 13 Ed. III. par. 1. M. 25. dor. to seize into their Hands the Lands and Tenemates of the Refusers. Rat. France. 21 Ed. III. par. 1. M. 11. the King commands Ships, under pain to lose Life, and all their Estate, Rat. France. 10 Rich. II. M. 25. to imprison those that are contrary, under forfeiture of all they had. So as your Lordships see Mr. Helborne was very fart mistaken. My Lords, in the next place, they have had hold on the Difficuts of Time! They say there was seven Months between the Tyme of the Writ, and the Time of the Rendezvous; that the King in that time might have called a Parliament, and there might have been an Aid granted, and the Service performed in a Parliamentary Way. But they may remember the 40 Days between the Tyme and the Return of the Writ for summoning a Parliament; then the time spent in preparing a Speech; the solemnity used before they begin their Grand Committee; their Reading of a Bill thrice, the Debate about Paving of it in both Houses before it be granted; and after all this be done, and the Parliament ended, a Time for the levyng of the Money must be had, and when it is levied, Time for the Return of it; and when it is returned, Time for the expending of the Money; and the Preparation will go slowly till the Money be returned. 24 Hen. III. M. 4. dor. There was a Command for guarding of the Sea-Coasts. Clauz. 23 Ed. I. M. 5. dor. The Port of Portsmouth commanded to find Ships for a certain Time, Rat. Scot. 11, 12, 13 Ed. II. They are put down in that Roll, M. S. that there was a Command for a Novelle Subsidium for three or four Months. So as, my Lords, for the Time of Preparation and for the Time of the Continuance, it hath ever been referred to the Will of the King. My Lords, for the Spaniel Invasion, that hath been so late in our Memory, I find by the Books that are kept in the Council-Chamber, that the Preparations were in Octob. 27, against the coming of the Spanish Fleet in Oct, which did not set forth till June: I find in Parliament called that Year. And by Letters and Orders from the Council-board, those Ships, and Defence that was made, was ad fuiturum of the Subject. So, My Lords, by this that hath been said, it doth appear to your Lordships, that there is not any Chanse in this Wit, either for the Direction, Motives, Manatches, or Penalties, but are warrant- ed by former Precedents in a higher Degree. My Lords, these are the Precedents that I have collected, and reduced to their several Heads. I shall now remember to your Lordships divers others. And in the first Place observe, that William I came not to abrogate any former Law, but to give a further definition and insight Anglican, that appeared in Lengden. 1. Ed. V. 54. The Man by this Law, that was, but a Confirmation of former Laws, must provide pro viribus & facultatibus.

I find by the Grant that William I made to his Abbey of Battle of his own Foundation, a Charter to be free from Danegeld & onus exuvius. If they had not been freezed, they had been subject. I find Pat. 7 Johns, M. 3, the King authorized Walter Scot and others, good enmes Nover, &c. which they should find, to arrest, and command all to affils, as they love us, and our Peace in our Realm, 14 Johns, M. 6. as your Lordships have heard, all the Ships were arrested, that could carry fix Hores, and to be at Portsmouth, M. 2. all the Ships in the Port were to go in his Service, without expressing for what, and unlade. Clauz. 12 Johns, M. 7. dor. commanded all Ships to be brought into the Thanes Mouth. So here was not a laying down, but a Continuance of it. Soin Hen. III's Time, Clauz. 14 Hen. III. M. 12. dor. all Ships taken that could carry fixe Hores. Clauz. 15 Hen. III. M. 17. dor. Command for the furnishing of Arms, Men with Victuals, and other Provisions for forty Days. And here was the like Command to Sheriffs in several Counties. Clauz. 26 Hen. III, the King commanded the Men of Yarmouth, to hand their Ships ready with Men and Arms; the same Roll, to find ten Ships to go to Pizcery. Pat. 48 Hen. III. M. 3, dor. Wits to the several Port-Towns, that no Ships should go Beyond Sea, but all to stay at home. M. 5. dor. Those that returned from guarding the Sea-Coasts without Leave, were punished, by seizure of Goods and Chattels. M. 4. Some Roll, dor. Provision to be made till further Orders be had it was not confined to Time, but Occasion, as need should require. And there be divers others in the Time of Hen. III. upon other Occasions, which I have remembered. In the Time of Ed. I. 21 Ed. I. M. 23. It appeareth that, the King and his Council, commanded every Ships one of them should set forth. Rat. For. 22 Ed. I. M. 11. dor. The King of England in that Wit filte himself Dominus Regni Scotiae, &c. And sends his Wit to the King of Scotland, to let him know, the King
of France had taken part of Gascoigne, an Inheritance of the Crown of England, that he should in fide & bonagia, be at London with Hore and Arms, &c. This Writ is very observable, the King of England's Superior Deiunum Scotiae. A part of Gascoigne was then lost. The King of Scotland was required by this Writ, as well as required, to give him Aid for the Recovery of those Grounds taken from him in Gascoigne. My Lords this Power is not confined only to England, but it is reacheth, as GREAT LORD, into Scotland. Alto into Ireland, Vizs. 22 Ed. I. M. 5. dorf. The King by his Writ commandeth divers Earls, and others, in England and Ireland, to do the like, to send Men to London with Hore and Arms. The same Roll, M. 13 dorf. All that claim to be of the Liberty of the Port so command'd. Pat. 23 Ed. I. M. 1, 5, 7. All Ships of 40 Tons were to be furnished and provided for the King's Service. Clasf. 23 Ed. I. M. 5. Every Man is compelled to contribute. The same Roll, M. 4, that do not inhabit in maritime Towns, yet if they had Lands there, they must contribute, reduct or not reduct, within or without the Liberty, all must contribute. My Lords, in that Writ, which is Clasf. 23 Ed. I. M. 5. dorf. I will observe these things: 1. A Command to all Bishops, Abbots, Lords Spiritual and Temporal, Quod fiat intindentes & spendentes ad ejusdem Maris. 2. In contiguous Cites; Confas, &c. 23. The Writ fault, quod emans ad arans, Quod fenandum fiatam, &c. ad transfraudum suos nobis; and Possession of Goods and Lands to be taken for the Customs of the Sea, as in former times they were accustomed: it is to be done in the manner as in Times past. 4. The Writ was directed to several Sheriffs, per capita, host, & terras, to disfain. Next 24 Ed. I. M. 15. the King commanded the Archbishops, Bishops, Barons, and all the Commons, to defend the maritime Parts. Clasf. 24 Ed. I. M. 19. pro ejusdem Maris. There was another of Symo de Spenser, which I remembered before 24 Ed. I. Rot. 76. Another of the like. Ext. Regm. Registr. 25 Ed. I. M. 16. dorf. the King commandeth to the Commons when the Dangereceath. Clasf. 25 Ed. I. M. 12. The King commandeth the Sheriffs of Severall Counties, and others, to bring all the Ships to be ready for our Service, when we command. M. 26. The like Command. De ejusdem Maris. Pat. 31 Ed. I. M. 20. Power given to Thomas de B. to rule Forces in Camberland to retiff the Scots, and those that did refuse, to seize their Goods. In the Time of Ed. II. Clasf. 2 Ed. II. M. 21. the King commandeth divers Towns to set to their Ships against the Scots, and after, by special Writs, some of those were discharged. Rot. Pat. 6 Ed. II. Part. 2. 6 Ed. II. Pat. 16. Ed. II. M. 11. A Writ directed to Sir Thomas Wetham, and others, to array all between 16 and 60, or to take their Lands and Goods, if they did refuse, Ps. 1. M. 7. of the same Roll, Clasf. 30 Ed. II. M. — the King doth there declare that those that stay at home ought to contribute to set forth Ships, and for the Wages of the Men employed. Clasf. 20 Ed. II. M. 6, Writs directed to the Scholars at Oxford, they were not exempted, but commanded to keep Santagiate safely. Rot. Vizjs. 18 Ed. II. M. 18. The King writeth to the Archbishop and others, commanding them to keep the Ships and Houses required as well shall require. For Time of Ed. III. Clasf. 2 Ed. III. M. 12, and M. 22, dorf. to Southamptoon, and to several other Towns, for their Shipping, a-bove 40 Tons. Pat. 3 Ed. III. Part 2. M. 6. The King commandeth the Sheriff of Cornwall to disfain Knights and others, that abide not upon their Lands in maritime Parts, and to imprison. Thence Years of 10, 11, 12 and 13 of Ed. III. having been remem-bered 21 Ed. III. The King concerning the Defence of the Sea and Sea-Coasts, gave special Rules to be observed, both for the Number of the Ships and Men, and the Place and Ground on which they shall, and for the Protection of their Wages; as appeareth, Pat. 21 Ed. III. Part 1. M. 26, 17, where there was special Order taken for the guarding of the Sea and Sea-Coasts at the Charge of the Inhabitants. Rot. Franc. 21 Ed. III. Part 1. M. 11. Command to the Sheriff of London to arrest all Ships in London to be sent to Calais, to refit the Enemies against us then about to come. Rot. Franc. 25 Ed. III. M. 9. The King recieveth, that France made a Preparation to invade the Realm, and gave a Power to fame to rule Forces; and commandeth the Sheriffs to raise the Paye Commissaries, to affiff the Commissioners. Pat. 16 Ed. III. Psrs 1. M. 7. The King, by his Writs to several Counties, commanded all Men between 16 and 60 to be in readiness to retiff the Scots. Rot. Franc. 25 Ed. I. M. 31. commanding all Officers and Ministers to affiff Andreus de Golpho, in the raising of Forces for Shipping. So as in that Roll likewise, your Lordships see that the Inland Counties were commanded for Shipping. Rot. Franc. 28 Ed. III. M. 6, the King appointed the Ro. Co. and Ro. A. to arrest all Ships of 20 Tons and upwards, between such a distance, and to bring them to Southampton, Rot. Sact. 29 Ed. III. M. 13. Several Writs were directed to the Bishops of Durham and Carlisle, and others, for the raising of Forces. Rot. Franc. 30 Ed. III. M. 27. The King first forth divers Writs, commanding, and, with all their Forces, they should affiff to the safe keeping of the Sea-Coasts, to retiff the Malice of the Enemies. Rot. Franc. 30 Ed. III. M. 27. dorf. Command to make Proclamation, that all that have Land upon the Sea-Coasts should repair thither with their Families. So in all Ages, and at all times Writs have lified both for the Defence of the Sea and Land by the King's Command. In the time of Rich. II. Rot. Part. 6 Rich. II. M. 27, that was objected as a Record against the King, but maketh them for him; Quod pro honoribus, ea Parliament, 99 deo de euvre de vns de aucateie du Corse car Ekebots Mariages & Forfets fait par le Defens uoile Reois. The King answes, La Roy veulet de faire en ce Conge come par de adusse des Seigisiers, &c. Your Lordships fee they desire the King, that he would live of his Revenues, that the Profts of Ekebots, Wards, &c. might be kept for the Defence of the Realm. The King gaveveth them this Answer, Thus he will do this in the Cale by the Advice of his Lords, as shall be most for his Honour and Prof-ite. So he will doe to make an Undertaking out of this Record, but that the Profts of Ekebots, Wards, &c., should go for the Defence, because the King maketh no absolute Denial unto it, saying, that he will do as he shall be advised by his Lords. Rot. Franc. 7 Rich. II. M. 18. That the Lords beyond the Seas be arrayed and armed according to their State and Faculties. Rot. Sact. Rich. II. Part. 2. M. 15. A Command, that all between 16 and 60 be in a readiness, Rot. Franc. 10. Rich. II. M. 23. Arays through all England. And in the Time of Hen. IV. Rot. Part. 5 Hen. IV. M. 24. for the arraying of all Men throughout England, and that many should not be content, and could not go, to contribute unto it. 3 Hen. V. M. 39. dorf. Pat. 13 Hen. VI. M. 10. General Commitments for entertaining
refitting of Ships, without declaring the Cause. *Pet. 14* Hen. VI. almsg’d* Job. de N. to arreit all Ships in the Port of Southampton, to do Service as the King shall command, there was no Cause declared. *Pet. 28* Hen. VI. *M. 2.* 13. Complications to array, and those arrayed to keep in Array, with diligent Watch into all Countries. *Hen. VII. pars. 1.*

The King writeth to Sir Fitz Hugh, to array Archers and Horfemen.

So that it appeared by those Precedents in all Ages, that those Defences which have been made by Sea and Land, are not confined to Port Towns, and Maritime Places, but per tentum Angliam. In the next Place I shall give a particular Answer to some objections that have been made, as have not fallen in my way; and to the Acts of Parliament, Realms, Records and Book-cakes, urg’d by the other Side.

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

*May it please your Lordships,*

the Matter that I did protest to inquit upon this Day, was the answering of the Objections. I shall use no Preamble, no Repetition to introduce what I have to say: But in the answering the Objections, I shall first give anwer to the several Acts of Parliament inquis’d upon, then to the several Records and Realms that have been urg’d on the other side. And in the last place, I shall answer the Exceptions that have been taken to the Writ, 4 Aug. 11 Cor. Mintimins, and Form of Proceedings.

The first Act they have inquis’d upon, is that of William the first, call’d it what you will, an Act or a Charter. The Words of it are verbatim in *Mat. Paris. Volumus & concedentes, quod amnis liberi nominis fiat quies ad aumt taliage.*

It doth no way trench upon the Royal Power: for as in the beginning of my Argument, I opened to your Lordships, that this Power was inherent in the Kings of England before the Conquest; here is only a Concession that they shall be free ab omnibus injustis exactions. Now this is no unjust Exaction, for it is of common Right. And then the other Part of that Law doth explain it; for it doth say, *Quod famus frustrae conjurationis, &c. fo for the Defence of the Realm. By the same Law they would urge to take away the Power, by the same Law it is refered.*

The next thing they inquis’d upon, was the Charter 17 Johan, or on Magna Charta as they call it; which indeed is mentioned in *Mat. Paris.,* and may be under the great Seal. The Words of that are, *Nullum simulacrum vel accurram usque per commune Concilium, usque ad primum proximum tumultum faciend* & *nutritend* &c. &c.

This Charter, as it was acknowledged by themselves, was granted at *Ranun Mend,* where the Banners were display’d, where there was War or Rebellion between the Barons, Commonalty, and the King. It was not affented unto, the King sitting in Parliament: For Parliaments are not called with Arms, and in the Field. It was, in truth, an enforced Act from a distracted King. Shall this bind the Crown? I shall remember the Act of Parliament made 15 Ed. III. and there only were things that were in Parliament enacted derogatory to the Crown, as this is: *That no Peer should be question’d but in Parliament; That no great Officer be removed but in Parliament; That no Clergyman shall come before Temporal Judges.* These were Things that were much derogatory to the Prerogative of the King, 15 Ed. III. That King the same Year, when he was better advis’d, did make a Charter which is in print, for the recalling of this prejudicial Act of Parliament fill’d in the Books. It appeareth by the Parliament-Rolls and printed Books, where the King declared it was drawn from him, with an unwilling Mind, and was prejudicial to the Prerogative of his Crown; and therefore by that Charter it was repea’d.

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

But take the Words as they are, what be they? *Nullum simulacrum vel accurram usque per commune Concilium legiti.* If these were an Act, doth it extend to take any thing away that belongs of common Right unto the Crown? And that hath been the Exploitation of my Lords the Judges, of Acts of Parliament; that Acts due of common Right, are not taken away by general Words, *Commune.* And therefore these Acts due of common Right, as this is, are no way taken away.

Befides for the Statue of *Magna Charta,* it is made 3 Hen. III. cap. 29. *Nullus liber bona cepit,* ant imperio imperii m. per legem, &c. The general Words of this Act of Parliament do no ways impeach the Royal Power, for this Royal Power is Lex s. terre.

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

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

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

First, that it taketh away no Acts that are due by the Law of the Realm; yet the Acts are general: *Nullus tallegium vel accurram usque* *ad Parliamentis,* &c. Here is not in this Act of Parliament so much as any Exemption of an Aid to
Knight the King's Son, or to marry his Daughter; yet in this the Law is observed, that these Aids are not taken away; and so is declared, 2d Ed. I. cap. 11, which doth reduce these Aids unto certainty. So as your general Words of nihil anum-
Hitum will not do it, if this be an Aid due by the Laws of the Land.

This Aid is to be properly an Aid for a Contribution of King and People for the Defence of the Realm, it is ad proficendum cum Navibus nortis : then I say this Power is into jure suum Majestatis, one of the highest Prerogatives of the King, and shall never be taken away from the King: 17 Hen. 7, Statute. [Some puppets serve] doth not extend to the King to take away his Tenure. If you will have such a high Prerogative taken away, you must first in the Acts of Parliament. Nay, my Lords, I say that in the Times of Ed. 1, this Royal Power is expressly relieved by Act of Parliament to the Crown; and therefore in alter-
times never intended to be taken away.

First, I shall first come out of the Statute of 25 Ed. I. cap. 5, 6, that doth recite, that Aids and Taxes that have been given unto us towards our Wars, and other Burdens of our own Grant and good Will, howsoever they were made, might turn to a Bondage, &c. We have granted that we shall not draw these Taxes into a Cutoff, &c. and do grant that for no Burdens henceforth, we shall take such manner of Aids, but by a common Consent of the Realm, &c. saving the ancient Aids due and accustomed.

This Aid is not taken to be an Aid, for this was never given to the King of England, but taken by Royal Power: the Statute of 25 Ed. I. speaketh of such Aids as have been given, and excepteth such Aids as have been due and accustomed. And by the Precedents shewn, it appeareth these have been due and accustomed. It hath been defined in Habeigantia, and with a Mandamus, 2 Ed. I. cap. 1. this Statute doth confirm the great Charter, and the Charter of the Forefathers; but in the End of it in the Parliament-Roll, that notwithstanding all these things before-mentioned, both the King and the Commons of this Realm, all they different at the making of this Ordinance, will intend the Prepotency of his Crown to be faved unto him.

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

But then there was a Thing materially objected, if the Records would have warrants what had been said, and that was, Ret. Parl. 29 Ed. I. and then it was said, 'That theo' there be Savings, 25 Ed. I. and 28 Ed. I. yet here is no Saving to this Act; so then if not for the Act 29 Ed. I. all was loft.

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

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

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

So this Statute is relative to what hath been formerly done: What hath been found done for-

merly, appear by the Records of King John's and Ed. the First's Time, that the Subjects were

for forth Shipping at their own Charge: then those Writs went out in King John's and Ed. the First's Time, as hath been shewed. And this Statute alloweth in two Cases, one where Nec

fitty requireth, the other upon coming of Strange Enemies; and this Writ requireth no other, but where there is Necessity in the King's Judgment.

The next Statute is 1 Ed. III. cap. 7. which was

objected, where Men at Arms were conveyed into Scotland and Goafages without Wages; the King faith, it shall be done fo no more.

The Statute mentioneth Scotland and Goafages, foreign Wars, and so foreign to this Binsfoins; for

the Scotland was subject to the Dominio of Eng-

land, yet it was a divided Kingdom. 8 Rich. II. Cont. Civil. Cont. 276. This Fine shall be paid by a Stranger, because he was in Scotland at the time of the Fine levied. Bret. 242. An Abja-

rition into Scotland is good. 6 Rich. II. Protection. 46. That Scotland is out of the Realm; therefore this Statute that speaketh of Goafages and Scotland, speaketh of foreign War not of Defence.

The next Statute is 18 Ed. III. cap. 7. Men of

Arms, Hobelkars, and Archers, shall be at the

King's charges; the Statute speaketh likewise of going out of England.

The third is upon the Defence at Sea of the

Kingdom, it is no going out of England, for that see 5 Rich. II. Protection. 50. The shipping of Men and Ships for the Defence of the Coasts, is not going out of England.

The next Statute is 25 Ed. III. cap. 8. no Man

shall be compelled to and Men of Arms, Hobelkars, or Archers, otherwise than what hold of such Service, without Consent.

My Lords, this Statute of 25 Ed. III. doth not take away any former Laws. These three former Statutes of 1 Ed. III. 2 Ed. III. and 3 Ed. III. are recog-

nised in the Statute 4 Hen. IV, and its enabled, they shall be freely held in all Points: so if these Statutes must be kept firmly in all Points, then the Statute of 25 Ed. III. doth not repeal any of that them. Now that of 1 Ed. III. cap. 9. referreth a Power to the Crown where Necelity requirith, and where hidden Enemies come. 26 Ed. III. Those Ships were sent forth, and commanded for the defence of the Realm, at the charge of the Subjects, Ret. Fr. 20 Ed. III. m. 4. 5. Ret. Fr. 28 Ed. III. m. 6. So is clearly there is no part of this Power impeached by this Statute of 25 Ed. III.

Then they have objected Ret. Parl. 2 Rich. II.

m. 3. That upon a Counsel of a great many Earls, Barons, and Sires of the Realm, attinued by the King's Privy-Council, it was there declared what Danger the Kingdom was then in, and that Money was wanting; they declared they could not remedy these Missifiefs, without charging the Commons, which could not be done, but by a Parliament.

This is no Act of Parliament; it is but a Parleys, or Difcourfe, or Communication between the Lords and Commons; it was 2 Rich. II. In the Non-age of a young Prince who did not attent; for there was no Royal Affent unto it, fo no Proof in this Case.
The next Record they objected was, \textit{Rot. Parl. 9 Rich. II. m. 10}, there was a Tenth and a half, and a Fifteenth and a half granted to the King, upon Condition contained in the Schedule; which is, that the King should assist that the great Officers of the Kingdom should be named by Parliament. And Servants appointed for defence of the Money.

If the King doth accept of the Subsidies and Aid upon Condition, doth this take away his Royal Power? It is all more done in this than was in the Parliament 31 Jac. for there the Officers and Treasurer were appointed by the Houfes of Parliament.

But then further it doth appear, that this was granted, \textit{pro viaggio Jahaninis Regis De Cafiffe, &c.} in that it was not granted for the Custody of the Sea, but for that Voyage.

The next Record they inflected upon was, \textit{Rot. Parl. 8 Hen. IV. m. 2.} A Tenth and a half, and a Fifteenth and a half granted with a Pretention, that this should not be brought into Example.

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

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

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

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

This is no Benevolence, but a legal Due.

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

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

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

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

It was never intended, that any Power of the King, by his Prerogative, should be taken away or relieved by it. I dare be bold to affirm, for I was of that Parliament, and was present at the Debate, that there was never a Word spoken in that Debate of taking away any Power of the King for the Shipping-Bulfinfe.

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

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

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

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

In the next place they have objected out of the Parliament Books, 33 Ed. I. that upon a Petition made to the King, to have Reaffirmation of Money taken, that the King did ordain the Treasurer shou’d be Satisfie’d.

I shall desire it may be read, and you shall see those Monies for which Direction was given for Satisfaction, were for Goods taken for the King’s Use. \textit{Rot. Parl. 33 Ed. I. fol. 105. daf. per finus pro guerra, Ut. Reipub. per Regnum, Rees ordinavet per Consiliwm quod fatisfacit factum in cite quum parvit.} So this Record was for Monies taken for the King’s Use, therefore Reaffirm Satisfaction should be given, \textit{Pommbulandum} Foreit \textit{Rot. 20 Ed. I. de liberattione Angl. 18 Febr. Lincoln.} So here is no taking away of any former Act of Parliament; it refererth to what should be futurly amended and revoked.

The next they objected was, \textit{Rot. Parl. 8 Ed. II. m. 8.} the Fryars of St. John’s at Jerusalem did petition to have Satisfaction of 3254 l. taken by the King out of their Treasury.

Now, because this Record was vouch’d two Days together, I desire it may be read; and upon the reading, it will appear, to be upon another Purpofe, \textit{Sum} le Roy, &c. there was Caufe and Reaſon why the King should make Satisfaction.

The next Record was, \textit{Rot. 16 Ed. I. m. 2.} and that was highly magnified by them: That there were several Committees went out to enquire of Grosausenibus, of Woods, and of other Particulars, \textit{de Capit. marius}; and in this it was affirmed, \textit{viz. (as all the King’s Council took their Notes)} those Clauses were omitted out of the Writ that concerns the Forfeiture of Lands, Goods and Chattels, or Seizures.

This Commission maketh nothing to this Purpofe, for like Commissions daily come, where there are Taxes laid upon Men heavier than ought to be. Then a Commission to enquire of Grievances.
anes in this kind, wherein an Answer of any thing unjustly taken shall be restored, but not a Word to impeach this Royal Power. And, my Lords, for the Penalties in the Writ, 31 Ed. I. st. 20. Power to seize the Lands and Goods of the Refusers, 20 Ed. II. st. 10. under Forfeiture of all their Goods, 10 Ed. III. s. 5. def. Clasf. 12 Ed. III. st. 18. def. that the Penalties and Commands were as high in this Commission as before.

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

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

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

You shall see, it was only to pray for him for his Voyage into foreign Parts, (and he exceeded the Credulity to be real, beginning thus: De confitenda Regum effusis populo, and ending, de grataminibus) dated at Beverick upon Peace. Your Lordships for nothing by this Record, but the Defire of a Prayer, felt to pray for the King for his Voyage beyond Seas; the other, concerning the Charges and Impositions. Surely this Contribution commanded in the Shipping-Binelines, was none of their Charges, Tallages, or Impositions. This his Defire to the Archbishop was not only in the 12th Year of his Reign, but the like in Ann. 25, 26, and 50. for truly those Prayers of the Archbishop were for other Causes, and not for this, which was for the Peace of the Realm.

Then you objected Rot. Franc. 7 Rich. II. st. 13. That the King assigned Tonnage and Pancey to Henry Earl of Northumberland for gourt of the Seas.

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

Then they inflicted upon the Parliament-Roll 13 Hen. IV. s. 47. the Office of measuring of Linen-Cloth, a half-penny upon the Buyer, and as much upon the Seller, and other Fees upon Long-Cloth; the Parliament, 13 Hen. IV. declares it to be a void Office, and that accordingly Judgment was given, 13 Hen. IV. Out of this he would conclude, that therefore there should be no new Office, and that an Office granted with a Fee is void in Law.

For answer to this: First, The Reason why that was a void Grant was this; it appeared, 4 Ed. I. that the Office of Measuring of all Woolen and Linen-Cloths, was one entire Office. If the King will grant to that or another Man which did intercess upon the former Office, a void Patent; therefore a flagitious Conclusion, that because this Office was void, therefore no new Office to be granted, 22 Hen. VI. fol. 9. The Office of surveying the packing of all Cloth, a good Office. 27 Hen. VIII. fol. 48. The King granted to one to be his Surveyor, a good Office; Fite-Her. faith because it had no Fee, therefore it was a void Office. And now at the Bar it is said, because it hath a Fee, it was a bad Office. If this Reason may hold, all ancient Offices may fall. 34 Hen. VI. Office to be Marshal of the King’s Bench; 12 Hen. VII. 15. To be Warden of the Fleet. Nay, it ticketh down all Offices that have been erected for the public Good, and upon just Occasion, as the Office of Solicitor to Chancery, Star-Chamber, &c. All those within time of Memory must be shaken by this.

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

Your Lordships have observed in all my Discourses, that I have not inflicted any way upon any Office of Power, neither is it the Question in the Binelines: For no Man’s Property is invaded, no Sticking to his Goods, unless they incur it for Contempt; and by a wilful Contempt, the Subject may lose his Property. Therefore, Dec. fol. 16. and 13 Eliz. fol. 296. if the King will command his Subject to come into the Realm, and he will not, he shall forfeit for his Contempt all his Goods; or if he be attached to appear in the Courts of Justice, and not appear, he shall forfeit his Goods, 34 Hen. VI. 49. 9 Hen. VII. 6. If a Man will willfully contempt the King’s Command by his Writ, he may be disfranchised; this he inwards not by an Invasion of his Property, but in respect of his Contempt.

Then they alleged Rot. Parl. 50 Ed. III. st. 24. the Lord Lattimer, he was sentenced for perjuring the King to lay Imposts on the People.

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

And for the Sentence of Dr. Mantuavox, his nothing to this Paradoxe. This Writ denieth not the Property to be in the Subject, but faith, the Subject hath the Property; and therefore commandeth the Sheriff to disfrain him if he will not pay.

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

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

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

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

For their Objection, that the King hath a Revenue belonging to his Crown, for the defraying of all ordinary and extraordinary Charges, and for the Repair of the Sea, as Tenures by Knights, Service, Elzagues, Wards, Marriages, ambient Demen, &c. Toage and Poundage, Service of the Ports, and Profits of the Sea.

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

For his Tenures, that Knight-Service Tenure was originally inflicted for the Service of Scotland and Wales, 19 Rich. II. in letters. Guard. 163. and old Tenure, fo. 10. The Duties of Tottenham and Poundage are not given now to the King by Acts of Parliament; and when they were given, it was for the great Charges of this Defence. And besides, those Acts of Tottenham and Poundage only concern the ordinary Defence: the ending forth of the 75 Ships out of the Cinque Ports, it was but for fifteen Days, at their own Charges. And for the Profits of the Sea by Sturgeons, Whales, &c. is it a proper Defence for a Kingdom? And for the Service of the Ports, you may remember by the Records thieved, they were several times commanded ultra fervitium dein dominus.

But then they have granted one Cafe, and, I think, but one; that the King may ordain a Toll in a Fair or Market, or grant Pountage or the like because there is an ad quod Damnum, and thereupon shall be an Injuncj. &c. And the King may grant a Fair, without an ad quod Damnum, if in his Judgment, &c.

Ret. Stat. 1 Ed. III. c. 8. A Writ directed to the Treasurer to pay for the Shipping at Tynemouth. My Lords, it doth particularly appear in the Record, that if S. was Admiral, and going into Scotland, he was for a foreign War. It hath been mightily inflicted upon, that here needeth no Command to furnish Ships, by the King's Writ; every Man, by the Injunction of Nature, will do it, when there is a Necessity; no need of a Royal Power to command it.

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

But it hath been said in these Cafes, it is better to obtain a Mitchief than an Inconvenien: By this Inconvenience every Man's Property is taken away from him, as often as the King pleafeth, and in what Proportion he pleafeth.

This, the a Maxim in Law, yet it goeth but to Particulars: But the Los of a Kingdom is both Los of Liberty and Eftate; this is not to be reckoned among the Mitchiefs, for this Mitchief deftroyeth both Head and Members. Therefore I do marvel to hear the Rule of Mr. Holburne, Suffer a Mitchief rather than an Inconvenience.

The next Objection was the Parliament-Roll 2 Hen. IV. w. 22, Par faire des Burges; this was the Petition of the Commons, that the Commissions granted to Burroughs, Citizen of Towns, for building of Burges, should be repealed. The King's Answer for the present is, They should be repealed, but for the future, for Cafe of Necessity he would advise with the Lords.

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

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

For this I have given it an Answer, That it was not necessary to reprefent the Danger in the Writ: The King hath secret Intelligence, he hath his Spies abroad, his Armiffadors beyond Seas; he knows the Danger, we know not; nay, he knows what this is not fit to be difcovefed, and those Dangers by Preparation perhaps diversed another way: It's not fit by a publick Writ to reveal the Danger. But, my Lords, for the Satisfaction of his People, he hath expreffed sufficient Caufe enrough in the Writ; Quia Salus Regni periclitabatur.

They say there was no Danger represented at this time when the Writ went out. That is mistaken, for the Writ of Mittiums doth receive the Writ, and the fact, and quidem Praedces, and Piratae, &c. Which shows that Danger was the Caufe of the iffing of these Writs.

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

Surely the Grammarians tell us, that Salus is taken pro locutionem, as well for Safety as for Health. Metaphors are usual in Writs; I dare be bold to speak, there are more Metaphors in the Regifter than in any Book: Reform 61. 67. 68.

Then they have left no Stone unroll'd in this Cafe: Now they lay the King's Testimony, by his Writ, is insufficient for that. Under favour, the Tyte morip is without Exception; we are bound to give Credit to it. 1 Eliz. fol. 105. Ne ext Regne; the King affirms 3 S. will go be- yond the Seas, faith the Book, this Avemement of the King in his Writ is not travelable, you shall not aver against it. The Cafe remembered by Mr. Solicitor, was mistaken by Mr. Holburne in the Answer, Fl. 29 Ed. 1. Corn. Reg. Ret. 14. He faith, these Words vouched in the Record, were the Saying of the King's Counfel, and not the Opinion of the Court. Clear otherwise, for it was the Saying of the Judges; and then agreed, Quod Dominus
The next Exception was taken to the Scir Fine that this Scir Fine ought not to go forth for this Debt, and gave two Reasons for it. First, the Writ of a Aug., dixit directa a Form of levying, which is by Dilations, or imprisoning those that are Rebels. Secondly, It is no Debt to the King, and therefore ought not to be levied by Scir Fine.

My Lords, for this, this Duty is a Duty to the Commonwealth; it is pro defenso Regni, Todefend publicus publicus rei publicae, whatever shall detain any public Duty, he may be questioned by the King, as the Head of the Body Politick; for that it appeared, 27 Ed. Pl. 17, it was declared that J. S. and J. D. had levied 100 Marks on the County for the Array of certain Archers; which Money did not come for the Profit of the King. Out of which I observe two things.

First, This Money that was for Archers: The Money was levied on the Body of the County. Secondly, Recover'd by an Indictment at the King's Suit, 27 Ed. Pl. 17, 11 Hen. IV. fo. 2. The Fees of the Knights of the Share that sit in Parliament, they are reckoned among public Duties; therefore the Goods of a Stranger may be taken within the Town to pay those Fees, if the Money be not paid; the Dilations may be held, for it is for a publick Duty, 11 Hen. IV. 2. So are the Books: Register, the King may command the Sheriffs to levy those Fees, as well within his Liberty, as extra. Hil. 25 Ed. III. Rot. 57, corre Rige. Innumerae Hundredia de S. they make a Preference that J. S. and J. D. Chief Constables of E. paid Wages to Archers which went not beyond Sea. So by this Record it appears, these publick Duties are recoverable at the Suit of the King, with an Act of Domini Regis. Pet. 14 Ed. I. ed. 1. 14, the King commandeth an Account to be taken of the Revenue, and how the Summons levied have been employed.

P. 15 Ed. I. corre Rige 70, sive. Ripes was bettied, they gave Holanges; Promis made by the Town that their Holanges should be redeem'd, they were not: Complaint is made to the King, and it came to the King's Bench; and the Moneys being 200l. that was promised by the Town for the bringing back those Holanges, was ordered to be paid, because it was for the publick Service. So for other Things that are pro omnibus utilitate, inver Communis Hic. Liv. 4. Rot. 4. Annona Regina, due unto the Queen, may be levied by Procs out of the Exchequer in the King's Name, nothing more valid.

This Scir Fine is grounded on the whole Matter, the Writ a Aug, the Caronters, and Mititians; and commandeth that the Defendants shall have Cause why they should not pay the Moneys allifted upon them for the Publick Service.

My Lords, I have done with the Objections. I shall come to the Judicial Records, 24 Ed. I. Ad cogens Mercia Berks, an Inlens by the Relevants, it is referred to contribute, the Names of those that made Default, were certified into the Exchequer; it appeareth by the Records, that Proces went out of the Exchequer in the strictest manner, a capit in manus, of their Lands, Tenements, Goods and Chattels; and that their Bodies, with Horsie and Armour, be sent to Pontefract; for besides the doing of their Service, the Scourse of their Lands and Goods. In the same Year, 26 Ed. Rot. Recum. The- four. On the other side, J. D. Sc. gave him leave to the Chancellor of the Exchequer, and Ba- rons, in absence of the Lord Treasurier, of the Preparation of Men in Flanders, (this being re- member'd before to another Purpose.) It appear- eth that after Conuction had, they did relive to feed forth two Writs, one was to the Town, the other to J. H. Caffas Moris, to call all for De- fence of the Maritime, &c. Ext. Recum. Regis. 23 Ed. I. Rot. 80. Henry Hifley was fezied of the Manor of W. in Berks, he was afforded to find a Horse pro Caffas Moris. He complained in the Exchequer, that he had not the whole Horse; he did not come and pay, I ought not to be taxed, but submitted to the Power, and defined a Manor- ly Contribution. 28 Ed. I. Rot. 72, the Att- ory of Robert'sbridge's Cafe, remember'd on both Sides, divers times; under favour, the joining of the Illue in the Record is a very full Proof in the Cause; he brought a Replevin against J. S. for taking his Goods in an Inland Town in Kent; he pleaded the Coneducation between our King and the King of France, and Leighborne alligned Keeper of the Caff, that the Plaintiff was afforded unto 7 r. 7d. Aug. 30, 1515, Aug. 2, 1515, and the Defendant being Collector did discharge the Plaintiff did not pay in bar of this, that he ought not to be taxed, but that he was afforded ad in- nocentis, &c. for such Lands: the Defendant, the Plaintiff holds other Lands in the County, and for that Land he was afforded. Now this doth all- mit the Power of Taxing. H. 16 Ed. III. Rot. 25, corre Rige: The Jury of Suffolk did present that J. Roffid, and others, 8 Ed. III. were Hobblers, elected in the Hundred of T. and paid at home: They plead, Not Guilty. The Jury finds that J. Roffid do perform the Service, but J. D. did not perform it, therefore were committed to Prisons, and paid a Fine unto the King. By this Record it appeareth, the Money paid to the Archers and Hobblers was at the County's Charge. Methinks that the Difclaimer that is by the Commons, 13 Ed. III. Rot. Par. 9. & 11. is in nature of a Judgment in this Cause; for there they did disclaim they had no Cognizance, and there likewise upon their own Concession, that the Maritime Parts ought to de- fend at their own Charges, as the Inland Parts, the Inland Counties. This Concession, 13 Ed. III. is a strong Argument, Part 2. Ed. III. Rot. 20, when the Commons did petition for a Guard for the Sea: The Answer is, we have guard fait, and that was at the Charge of the Countries, as your Lord- ships know. 20 Ed. III. divers Ordinances made, which Ordinances made the Force of a Law: The King and his Council did ordain, Quod unum illi, &c. which have such a Quantity of Land should be afforded to find one Archer; one Hob- beller deeca l. two Hobblers vigilis, libro unum hominum ad annum 25l. This apptation Rot. 20. 13 Ed. III. part. 1. w. 17. the Counties of Bedford and Berks. In the same Year, another Ordinance, that those that did reside with their Families, duo potis, within six Miles of Maritime Parts, were excused from finding of Men without.
My Lords, upon the Occasion of this Service, there were divers Refusals made, Certificate by Mitimus of the Names of the Escheuer; as in the Case of Y. T. and W. G. were crossed for Defaults amongst others: upon this, the Court of Exchequer award Proces against those Men and others, which was a Capit in manus, Seizure of their Lands and Goods; they came in, and pleaded, they refuted infra facta locutis, with their Families and all their Powers: Iffie joined; upon this, the Jury impannelled, and it appeared, those that were found within fix Miles, Judgment quod factu die; but for others, they were imprisoned and fined, to 50 much Land as they had without the fix Miles, for that they were charged. If I should number to your Lordships the Judgments in this kind, I might speak here till the Morrow-morning. P. 22 Ed. III. inter commentariis, in the Exchequer; P. 25 Ed. III. M. 29, P. 27 and 28 Ed. III. and there is a Number more in other Years, as 29 and 30 Hen. IV. And, my Lords, according to those Judgments, Trin. 31 Ed. III. Rot. 3. the Writ went forth for discharging of such as have refuted upon their Lands within fix Miles. 21 Ed. I. Pipe-Kill; some discharged because they were in the King's Service.

So as, my Lords, out of these Records thus much may be collected. First, They affirm the King's Power in afflicting and levying. And Secondly, that this great Right upon those Ordinances made by the King and his Council, Thirdly, The Proces went out of the Exchequer, and in the King's Name, M. 22 Ed. III. Parl. coron Bar. Iffie joined, whether y. S. had Lands to the Value of 40 l. to find Hobblers; if he had, then he was to do it.

My Lords, I have now done with the Judicial Precedents; I have cited some few, amongst many others. It is now time, after so long Premisses, to draw to a Conclusion wherein your Lordships have heard. First, That the King of England, he is an absolute Monarch; and that by the Common Law of England, all those supra nume Majestis, and none others are included. This Suprema Dominia for all the Land that they Subject holdeth, it is derived from the Crown; and, as Pleaseth putte it, 12 and 13. that there is a tact Condition in Law annexed to his Grant, that his Officers may do Justice to execute Proces surely upon his Grant. This tactic Condition may be subject to a Common Defence. Supreme Jurisdiction, both by Sea and Land, was never yet impeached, and from him lieth no Appeal. And originally, by the Infitution of the Laws of this Realm, what was once in his Hand, and was never granted from him, is still in him; he hath abolute Power at the Time of Our Being and Peace. All these are in him as he is an absolute Monarch, and holdeth his Kingdom under none but God himself. It hath appeared also, that a principal Part of this Kingly Office consists in the Defence of the Realm; that as his Jurisdiction is by Sea and Land, so is his Defence. And this hath been made appear to your Lordships, both by Precedents before William the Eirth, and since: pro communii utilitate, and, in Case of Necelis, the King of England may ordain, by their Proclamation, Writs or Patents, by the Advice of their Council, or Judges, in legal Matters. That the King is the first Officer of this Discharge, both for the Prevention of it, and for the avoiding of it. Therefore for us to difficulty that he will command too great a Power or Aid, it is a Presumption against the Prelimation of Law.

It hath appeared likewise that all the Incidents of this Office are likewise inherent in his Majesty. We cannot build a Fore or Castle on our own Ground, without Licence from your Lordships. Your Lordships have heard the Proceedings, particular and general; Precedents which have universal Reons, good annus ex debito aquirit just; Writs awarded by the King's Royal Power, in Times of Parliament, when Parlements were sitting, and in those Years when great Aids and Subsilues were granted to the King, many times no Cause declared, nor the Occasion disclosed.

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

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

I need not to use so many Prepositions to your Lordships to do Justice in this Case: And therefore I shall humbly desire Judgment for the King.

The Argument of Sir Francis Welton, Kn., one of the Barons of his Majesty's Court of Exchequer, in the great Cause of Ships Money.

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

Hereupon Mr. Humpden appeareth, and demandeth Opor of the Writ 4 Aug. of the Curia and Muttimus, and their several Returns they being all read unto him, he faith that these several Writs, and the Returns thereof, and the Schedules thereunto annexed, do not contain any sufficient Matter to charge him to pay the 200l. and thereupon demurred. Mr. Attorney-General faith, that they do contain sufficient Matter to charge him, and thereupon the Demurrer is joined.

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

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

Upon this Record, I am to deliver my Opinion; and I take it there is sufficient Matter to charge Mr. Hampden with this 203. And so I give Judgment for the King.

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

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

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

To this he hath taken Exception, that Solus Regni pertinet dominator, the Danger is at the present Time of the Militiums, and doth not say, pertinetarius, 4 Ang. 11 Civ. and therefore this Expression now in the Militiums cannot make good the Defect thereof in the Writ of 4 Ang.

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

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

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

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

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

In this Writ, three Things, as Dangers, are expressed. 1. The Danger by Pirates. 2. The Danger of losing the Dominion of the Narrow Seas. And, 3. The great Peril in this Time of WARS. For the Pirates, I shall meddle with them; they are but petty Robbers, and ill running away: The Ports must defend themselves against these; the Inland Counties are in no Danger of them.

I will not insist upon the Dominion of the Narrow Seas, tho' that is considerable; for in the Defence of that conforts much the Prevalency of the Kingdom. But I shall insist on the Danger of the Kingdom expressed in the Writ 4 Ang. Thus, Congregatur etiam periculis undique, &c. There is Danger, there is Peril round about us; and it is by reason that there are now Times of War, we see Danger on every Side.

These Two Things trouble this Point. 1. The Subject felipes that this is only a Pretence, and that the Kingdom is not really in Danger.

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

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

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

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

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

These Things do persuade me that the Kingdom is in Danger, and a very great and just Cause to make Preparation for Defence. And if every Man would be so persuaded, they would not deny the Payment of the Money. An Example of this Nature hath happened in former times: In Henry the Seventh's Time, it appeareth, by a Record on the King's Part, Pat. 1 Hen. VII. pars 3. dvs. there were Wars between the King of the
The Romans and the King of France; they were both friends to Hen. VII. they ought him no ill-will; yet by reason of these great Wars, great Forces at Sea, and great Forces at Land, the King would not trust them, but sent forth his Proclamation, to command that Watch and Ward be kept over the Sea-Coasts, and Command was to all his Subjects, that upon short Warning they should be ready for Defence of the Kingdom. So this may well be an Example for the Courie that is now taken, for Defence of the Kingdom.

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

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

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

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

I answer, It is not warranted by the Proceedings in this Case; for the Sen' Facis is not to slew the Sheriff why the Party's Goods should not be sold, or he imprisoned, but why he should not be charged with the Money asfoled upon him.

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

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

They say, The King hath personal Service, the Service of Tenants, by Knights Service, Etcune, Cattle-Guard, Grand Serjeany, Petry Serjeany. Is the King bound by these to the Defence of the Kingdom? He that doth look on their Originals, will not say so: For these are Tenures referred upon the several Grants made by the King; and no more Reason is there that the King, by this, should be tied to defend the Kingdom, than there is for the Lords, that are Subjects; and have the like Tenure, that they should be bound to the Defence of the Sea.

They say, He hath besides these, Wards, Marriages, Religions, Fines, Iffues, Americaments, Primer Seizin, Fines of Alienation, Replevin of Homage, all Fruits of the Tenures; which all must go towards the Defence of the Kingdom.

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

It hath been objected, That the King hath the Profit of the Sea, as Royal Filles, Whales, &c. Wrecks at Sea, Trafalgar Trove, Royal Mines, &c.

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

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

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

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

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

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

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

1. For the Ports; they are of two Kinds, the Cinque Ports, and the Ports at large. What Services are due from the Cinque Ports, is expressed in Liber Rubricis, in the Exchequer, that they were to find 52 Ships, and 24 Men in every Ship, for fifteen Days; which cometh to 1158 Men.

The Ports at large are tied to no certain Service; it will appear by most of these Records which I shall apply, that the Cinque Ports have been charged with more than their Due, and the Ports at large equally with the Cinque Ports. Pat. 25 Feb. m. 6. the King sent his Writ to the Cinque Ports, and thereby commanded, good men Navis paratur, &c. &c. &c.; he doth not here tie them to a Number, but all must go. Clau. 17 Feb. m. 7. here the King sent his Writ Buxonis fuit de Rye, a Member of the Cinque Ports, Scot venire factum est esse Naves apud Scopus Portus; this was general, as the others. All the Ships, not tied to the Number of 52. Clau. 14 Hen. III. m. 13. a Writ went out to Partizians, being a Port at large, to provide a Galley, & eum munere factum est eum bonum, & quod prompt & parati sint ad professionem, non necesse fuerit. So here is a particular Charge upon Partizians, not bound unto it, to provide a Galley with all manner

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manner of Munition. Cl. 25 Ed. 1. m. 5. dor. A Writ went unto Guernsey, a Port at large, to make a Ship ready as often as Necessity shall require, 'do contributum faciendo pro Naviculius quatuor opere fuerit.' Pat. 9 Ed. II. part II. m. 26. A Writ goeth forth, and that was directed, Bellisuis & probis bonisiusis cumis' Southampton, to make Pravolvenijs Navigijs incrementis propriis; no Proricie from the King to pay this again. Cl. 20 Edw. II. m. 7. A Writ goeth to the Sheriff London, and that reciteth a Charge formerly made upon the City, and upon Kent, for finding of 12 Ships; London to find 9 Ships, and Kent 3, and forry Men in every Ship, ad suispos illorum. Cl. 20 Edw. II. m. 8. A Writ directed to the Bailiff of Yarmouth, which is none of the Cinque Ports, and they were charged with two Ships at their own Costs. And the same Command, in the same Roll, for all Ships of 50 Tons to be ready. Rot. Stat. 10 Ed. III. m. 12. That Writ reciteth the general Obligations that they are bound in to defend the Kingdom, almost in the same Words mentioned in this Writ; it reciteth, that every Man should be affeed iacta statum & facultates, so there was a Contribution; then cometh in the Claude ultra illam pertinentiam nonum debet pro ferculis. It is true, indeed, the King did pay towards this, but it is expressed to be of his mere Grace and Favour. 10 Ed. III. m. 2 dor. A Writ to Winchelsea, a Member of the Cinque Ports, and that was fined Oliverus nonus fuit part, both of the Ports & Alteam severius; and the Reason is expressed, Because without their Help the King was not able to defend the Kingdom, and appointeth them, by that Writ, that the Ships should be ready victualled for thirteen Weeks; whereas the ordinary Time was but for fifteen Days. Rot. 12 Edw. III. m. 8. there a Writ goeth forth to the Sheriff of Kent, and to the Barons of the Cinque Ports, whereby they were all commanded to look to the Cuthd of the Sea-Colts; here are the Maritime Towns and Port Towns joined together. 25 Edw. III. m. 22 dor. A Writ to Southampton, ad egressum Nonius. In the same Roll m. 8. more Writs to other Towns. Rot. 12 Edw. III. m. 5. there was a Command that the same should be within the Life of Thomas, from the 9th to the 60th, should be ready to defend the Sea-Colts, and this was iacta statum & facultates. Rot. Alu. 13 Ed. III. m. 12. Yarmouth charged with 4 Ships, and in each Ship 24 Men; whereas usually it was but 21 Men in a Ship, now I think they are come to sixfeco Men in a Ship. There are an infinite Number of Rolls to this Purpose, to charge the Port-Towns.

I come now to my second Division, which is Maritime Towns. Pat. 43 Hen. III. m. 4. dor. A Writ went to the Sheriffs of Norfolk, reciting, that Ships and Soldiers had faild them long, and that they were intending to depart, because their forty Days were past; command was, that they should stay, done adiut inde usuadum fuerit. Cl. 23 Edw. I. m. 5. dor. There were Writs directed to the Sheriffs of Southamptoon, Dorset and Wiltshire, these three are all Maritime Counties: A Command, that they should raise three thousand Men to defend the Coasts. Pat. 24 Ed. 1. m. 17. A Writ directed to the Sheriffs of Lincoln, York, and Northumberland, to affit certain Commissioners to take up an hundred Ships, with a competent Number of Men, these are to Maritime Counties: The like Writs go to the Sheriffs of

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

I will open it plain, that it is for their Eafe to bring in the Island Counties. This Cause is one of so great Consequence, as is conceived; for if the Port-Towns and Maritime Towns may be charged, then it bringeth but in the Island Counties. In England and Wales there are fifty-two Counties, thirty-three of these are Maritime Counties; so the Island Counties are but nineteen at the most, and they contribute but a fourth Part of the Charge, for the Defence of the Kingdom, And so much to my second Division of Maritime Towns.

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

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

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

I shall go to the Records that charge the Island Counties. Cl. 49 Hen. III. m. 2. A Writ directed to the Mayor and Bailiff of Bedfor, an Island County; it doth recite, that divers of that Town were called to go with the King towards the Sea-Colts, contra bellum incogitation, & nume receitas, & causas fortuit & at leaste fue & expensas; and appoint at what Rate they should levy it, the Hohmancen were to have eight Pence per Day, and
mand no Sum of Money? Then if you will give it this large Confrontion, you will take away all Fines and Averments that are due to the King, all lawful Impostions; and fatally this was not the Intent and Meaning of this Statute: but it was only to take away all Taxes and Taillages that were unlawful. If they were lawful this Statute modelled not with them.

Now that no Taitlage is to be taken, it appears in the Parliament-Rolls, 13 Hen. v. m. 12, where an Office was granted by the King, with a Fee, for the measuring of Linnen-Cloth, that the Subject should pay him a certain Sum of Money for every Piece measured; whereas at the Parliament, the Commons complain, that this was an unjust Imposition, and they desire that they might not be charged with this kind of Taitlage, which, as was apparent, was unjust, and so they had pre- sent Relief against it.

The next Act of Parliament is 13 Edw. III. the second Parliament of that Year, three Parlia- ments being held that Year. The Commons grant the King a certain Sum of Money, for the great Buineis he had as well on this side the Sea, as beyond; but after a Cessation of the Troubles, then the King is to be at the charge of the future Defence; thereupon the King granteth this shall not be had in excessum, and that they shall not afterwards be taxed without Parliament: and this is the strongest thing that I have heard objected.

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

I observe in this Act of Parliament a sub- sequent Clause, that will go far to the annulling of this Objection; for neither in the Acts of Parlia- ment, nor in the Petition of Right, is there any mention made of the Defence of the Kingdom; if the King had been bound to defend the King- dom, the Parliament, in making this as a Kindness acht hands? 14 Edw. III. This Act was made, yet the Aids continued, none of these Acts were found till 24 Edw. III. Rot. Franc. 29 Edw. III. m. 9, &c. 26 there went out Commissions to array Men, to the Counties of Suffolk, Dorset, and Somerset, for the Defence of the Maritime Parts; within eleven Years after the making of the Statute, Rot. Franc. 26 Edw. III. m. 9, the like Writs to the Earl of Hunting- ton, Confessores quod ament intolente de jure ad defendend? in pertinenti; and that they shall array the Men in this County, and to bring them ad cofederationem, and by this it is recommended for the elevating of Beacons, which is the first Direction of that nature: So here is a new Charge, and within eleven Years after the making of the Statute. The same Year likewise there went Writs to the Sheriffs of Notting-ham, Derby, Sulep, Berks, Middlesex, Bucks, Northampton, &c. So the Writs go almost into every County, and divers other Writs of the like nature, as Rot. Franc. 28 Edw. III. m. 34, yet as I said, in no Act of Parliament extant, nor in any Writ that I can find, there is anything that appears to charge the King with the Defence of the Kingdom, and in all of them, no Distinction made between the Port-Towns, Maritime-Towns, Counties, and In- land-Counties; but that all of them are generally chargeable. And for the red of the Acts of Par- liment
Iliamant, they are all mentioned in the Petition of Right, and therefore I pass them over. There is in these Acts, Provision against Loans and Grievances; but this Clause, for the Defence of the Kingdom, I find it mentioned in no Act of Parliament but this of 14. Ed. III. before mentioned.

I will now come to the Petitions in Parliament.

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

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

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

1. For the Reason given in the Writ, Good ownes taiget per owmes debet supportari; which is but Equity.

2. The King is trusted with the Defence of the Kingdom, and therefore 'tis fit he should have Means wherewith to do it. But you say he may call a Parliament, and they will give him Means wherewith to do it.

'Tis true, this Thing in question, if it had been done by Parliament, it had been done by the lawful Means; but because he might have it by Parliament, must he therefore have it no other ways? The Question now is, whether what is done, may be done without a Parliament or no? What is done, is done by the great Seal, which is the next Authority to a Parliament. What if an Enemy had come before the Parliament had met, or before they had granted any Aid, should the Safety of the Kingdom depend upon such Contin¬
gencies? God forbid. Will you have Forces on both Sides, and refrain the King to his Power by Parliament, which may be so dilatory, that the Kingdom may be lost in the mean time?

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

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

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

To this Objection I answer, It is no Means to keep back a Parliament; for there are many other Causes of calling a Parliament, besides for the Defence of the Kingdom: as, For making good Laws, redressing of Grievances, &c. The King may be engaged in a Foreign War, and the Subject must help him. But to call a Parliament always is not necessary; for when the Kingdom was in the greatest Danger that ever it was, as in 38, and the Rebellion in the North, yet no Parliament was called in either of these Dangers.

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

I shall give three Answers to this Objection.

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

2. This Objection cannot be made, unless you suppose a False in the King: Make what Laws you will, if the King be unrighteous, he will break through them.

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

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

To this I answer, If the Danger be greater, the Defence must be greater, and then the Supply must be greater; and no Man can suppose that the
the King will impose that on his Subjects when there is no need. I shall now come to the two last Exceptions. First, That the Power cannot be given to the Sheriff by the Writ of Aug. to tax every Man in England and Faculty; that this is too great a Power to be committed to the Sheriff.

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

For the Exception to the Seci’ Fact it has been objected, That the King cannot by that Cause levy Money, because the King having no Interest in the Money, he cannot levy it by Seci’ Fact; neither doth it appear in the Writ, to whom this Money is to be paid.

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

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

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

But it hath been said, When this Money is gathered, we know not what becomes of it. I answer them, with the common Roll in Seci’ Fact 24 & 25 Ed. III. where a Commination went forth to levy Money for Maritime Defence, but what was done thereupon is not expressed. But at that Time there was a Cause adjudged in the Exchequer, it is a Norfolk Cause, where divers being commanded to go to the Wars against the Scots, and thereupon Armour and Wages allowed them; afterwards comes a Counter-command to some of them not to go, and two Men that had Wages went not. Whereupon a Writ went out against them, and the Jury found the one Guilty, and he was ordered to pay back the Money; but the other going to the Wars, afterwards, by a second Direction, was quit: And the first gave Security for the Repayment of his Wages, being 30 s. and half for the Armour.

It hath, Lofl, been objected, That this Taxation ought to be fecundum legem & consuetudinem Anglie; and that ought not to be by Writ, but by Parliament.

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

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

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

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

THE Record hath been opened, therefore I shall spare that Labour. I conceive the Case in Question to be this, Whether the King, by his Right of Sovereignty, may impose on his Subjects, in Case of Necessity, to contribute with him to the necessary Defence of the Kingdom, without the Subjects Consent in Parliament.

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

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

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

The Subjects have objected, That they may bring Actions against Officers of the King for Affumments by virtue of this Writ. But for that I find
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pun, you wronged us, and your Auditors, and yourselves, to talk of it.

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

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

You then talk of a Property the Subject loathed thereby; but this rather to abuse the People, without either Colour or Shadow. It was ad faciendam, or rather infeudandum Papalum. If you at the Bar had not spoke it Argument Gratia, it could not but have proceeded out of the Depth of Malece, or Ignorance, or both. If one he found guilty of Murder, and the Judge knoweth the contrary, what shall be done? He ought to acquittance the King thoroughly; for it is the King’s Right of Sovereignty to pardon, but the Judge hath no such Power. I say, the whole Care appertaineth to the King only, and he is the sole Judge both of the Defence at Sea and Land.


But we will come to the Third. The folc Charge of the Defence regularly and legally appertaineth to the King, at p. 1. In Regi, qui recte regit, hoc eum sunt necessarium; arma & Leges, Sic; with which Words accord judicium, in his Presention, from whence is taken in Piscaliz, fol. 245. in the Cafe of Mines. One Reason why he hath Royal Mines belong to the King, is, because he is the Head, and the People his Members. And he is to preferve the Subject two ways: by Arms, to defend them against all Hufility; and by Law, to preferve them from Injuries. 3 Rep. fol. 11. The Body, Lands, and Goods of the King’s Debtor were liable to Execution; uti Dejutoris Regii & Paricin cinemam & Bullienar notitv. Rep. 11. The King’s Treasure is the Liftament of Peace, the Prefever of the Honour and Safety of the Realme, and the Sinews of War; and is of high Elevation in Law, in refpeét of the Necessity thereof; that the imbecillizing of Treasure ‘Trove’ not in the King’s Chelf, is Treafon. And Treasure, and other valuable Things, arc fo incident to the Crown, that they cannot go from the Crown. He hath on the Land, Wardhips, Elechats, Americamens, &c. for the Maintainance of his Honour and Dignities Royal. For the Sea he hath Wars, &c. thefe do little towards an Army to defend the Crown. The Reason why the King hath the Cultums, is for the Protection of Merchants upon the Sea, against Pirates and Enemies of the Realme. So I shall conclude this Point, That the ordinary Defence, both for Care and Charge, of Sea and Land, doth appertain to the King.

The next is this, which is my Fourth Head: That the extraordinary Charge of Defence regularly ought to be supplied by Parliament, and cannot be done without it. Albeit Subsidies be of Gift and Grant, yet this is of Right and Reason; the King is Peter Patriae. If the Son give to the Father when he wants, it is his Duty. 19 Hen. VI. the
the Rector of Cheddington's Cafe, whether the King may grant a Discharge of a Fiftteenth? If the King may grant a Discharge to one, fo he may do to all. It is against Law the King should not have Subsidies of his People, in case of Necessity and Danger, and be willing to defend the King and the People; tells us he should grant to the King Aids for the Defence. This is to be done in Parliament, regularly; and that this extraordinary Charge cannot be imposed but in Parliament, there are their Objections.

I come now to the Statute de Tallogia non concede, which without question is a Statute, being in our printed Books; and in the Petition of Right 3 Car. it is recited at a Statute, and established: the Words of that are, Nulla Tallogium sine offensa Parliamentii. And 14 Ed. III. cap. 1. there the King expresse himself, he will not impose any Charge or Aid on the Subjects, but in Parliament. Per seque reciteth this to be the Law, No Charge without Parliament. And Bodinus, lib. 1. fol. 97. faith, "That the Statutes of Eng- land are as a Buckler to defend the Subject a'gainst the King, for laying any Charge upon them but by Parliament." And in his sixth Book he magnifieth this Kingdom for the due observing this Law. Other Kings, in this Point, have no more Power than the King of England for that it is not in the Power of any Prince in the World, and his Pleasure, to raise Taxes on the People, no more than to take another Man's Goods from him. And yet, nevertheless, if the Necessity and Danger of the Commonwealth be such, as it cannot fail for the calling of a Parliament, the King in his Wisdom and Fortitude may lay a Charge without their Consent: and this is by the Law of jus Gentium, the Rule of Law and Reafon holdeth quod annus tanger ii omnibus debet juxta fortuna.

And so I come to my Fifth Head, If the De- fence be of Necessity, and the King's Treasurie doth not suffice to defray the Charge, then, in- stead of the Rule quod annus tangit ii omnibus debet juxta fortuna, qui futuri, commendum, futuri debet & eum. If the Treasurie of the King will not defray the Charge, I do not conceive he is bound to fall or pawn his Crown, or his Lands, tho' some Princes have been so courteous to do it, and paid it again.

You pay at the Bar, He must spend all, and more if he had it. I will put this Cafe in the 10th Rep. One is bound at the Common Law by Prefcription to repair a Wall against the Sea, yet in Cafe of Necessity, in Avoidance of publick mischief, the Prefcription ceaseth; yet in this Cafe, if Reparation must be done, then correct this Rule, quando injustitiam exeunt, tacit qui futuri commendum, futuri debet & eum. And if he be not able to do it, the Charge being so extraordinary, shall he not have Contribution? The Law com- pelleth not Impossibilities. So the King is bound to defend the Kingdom by Land and by Sea: but if the Defence be so great, and the Danger tends to the Subversion of the Kingdom, and the King not able to make Defence, the King and his Sub- jechts ought to contribute to this Charge, in due Proportion. In which Lawverens, si redem lex. If the Law shall make this Provision for a small Level of Ground, for fortiri for the Commonwealth, in the Time of extraordinary Danger and Necessity.

Sixthly, in this joint Charge of Defence, the Land ought to aflift the Sea: nay, it is not pos- sible that any Island should be defended without the wooden Walls of the Navy at Sea. Canus the Dane enter'd the Thames Mouth with an Army, and after making him land he landed in Dartfort; and again flipped his Men, and entered the Same; then he went into Wrexfordshire, then he failed back again to other Parts of the Kingdom: so he that is Master of the Sea, may make great Spoil upon the Land at Pleaure. The Netherlanders having a great Navy, the Spaniards fortified strongly; as soon as the Wind served they set sail, and were Fourscore Miles off before the Spaniards could march with their Forces to make Restitution; the Netherlanders prudently got a strong Place, and afterwards failed to another Place, and took that also. There are no new Examples, for Islands to be Masters of the Sea. Our Grand Army in 88, at Tilbury, what Good had they done, if the Spaniards had been Masters at Sea? It is not pos- sible for an Island to be safe, without a Navy at Sea, as appeared in Sir Walter Raleigh's History of the World; and if the Sea must defend the Land, why should not the Land be contributory for the Defence of the Sea and Land? There are several Precedents where Writs have gone to Inland Counties, to charge them to go to the Cusody of the Sea. Chiefly 48 Hen. III. 24 Ed. I. 56 Ed. III. &c. Writs are gone into Berks, Oxon, &c. Inland Counties, and ordered them to contribute towards the Defence of the Sea.

To the Seventh, That in cafe of inftant Danger, the Impofion cannot be by Parliament. I will here consider the Nature of the Danger, as Mr. Sollicitor readily purifies it; it concerns the Ef- fence, Subversion, Deftruction and Ruin of the Kingdom, or the Difhonour of the Kingdom, Quando Hannobi ad Perian, for the Senators then to fit down in their Robes, is rather a Charge to the Commonwealth, than ought efte. It is no Time then to call a Parliament, no well-advised Man will think it fit; here are Particular cafes, the Danger is certain, none will lay it is fit to call a Parliament.

This Kingdom of England hath been four Times conquer'd, and therefore we have Referre to fore- see the Danger; for, by the Romans, then by the Saxons, then by the Danes, and last by the Normans.

The Moralsl do make three Parts of Providence. 1. Memoria praeterrum. 2. Perspicacita prelum. And, 3. Providencia futurum. It much concerns the King, the Head of the Com- monwealth, to be inquisit in the Prevention of publick Danger; Conjuncures and Probabilities are to be regarded. Now put the Cafe upon a probable and violent Prefumption; a potent En- my is prepared and ready to come. Is it not fit there should be a Defence prepared infanty? Besides, there may be just Referre of State, why an Enemy is not fit to be revealed in Parliament; for if great Preparations be, and very probably against us, then to discover them to be an Enemy, is to give them Occasion to become a Challeger. Not Master of the certain Amount of Things. One may be a Friend, in which the King, to fort, or a Neutr, not yet openly discover'd; yet we may be mistaken in our Opinion of them. I leave this to your Conformation, whether it be fit, or no, to discover our Thoughts, in Parliament, of an Enemy?
The Eighth Thing is, That in these Cafes of Necessity and Danger, the King, Pure Gratia may charge the Subject, without his Consent in Parliament, by his Regal Prerogative; for in the Kingdom there are two Kinds of Prerogatives, Regale & Legale, which concern his Person, Lands and Goods.

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

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

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

But, oh, good Sir! Is this always true? Is not the Cloud sometimes even over the Head, before declared? If you read Consuet. he will tell you, That in times of Peace we ought to forbear. But in these Cafes, where the Danger is imminent, faith Bediins, lib. 1. op. 47. the King ought not to expect a Parliament, but to raise Money suddenly, and such Impressions laid upon the Subjects are just and necessary.

This is the Opinion of those Writers, who wrote not according to the Law of any one Kingdom, but according to the Law of Reason. I could vouch these two Authors, concerning the Right of Sovereignty which they gave to Kings, to impose Charges on the Subjects, without Consent of Parliament, in times of Necessity.

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

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

To say, in time of extraordinary Danger and Necessity, Boni viti sunt fisci leges, I say, for every Man to be his own Judge, is for every Man to do what he listeth. Mr. Holborne tells you, That if it rears in the King's Power thus to tax the Subjects, whereas Mr. Hampden is now taxed 20s. he may the next Year be taxed 20l. for, faith he, If the King may tax when he will, then he may say what he will. It's an ill Conscience you make us to tax, when you magnify Parliaments, great Rea son we have for it; let us do so of Kings; let none think dishonourably of Kings; no question they will regard the Laws of God, and to make such Objections, is not handily handled.

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

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

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

And Rot. Parl. 2 Hen. IV. m. 22. a Comission went forth for the providing of Barges; and the Commons petitioned to avoid this Charge, and prady'd that the Comission might be repealed. And the King, upon this, calls in the Comission. Shall this be a Dissembler of the King's Right? He faith, he will speak with his Lords. This is only a falsifying Answer. Besides, the King was but an Ufperor. Now to say this Answer of the King's is a Resolution in the Cafe, is a great Mifake.

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

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

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


Gor. Admit, I say, there were an express Act, that the King, were the Realm in never so much Danger, should not have Aid from his Subjects, but in Parliament, it is a void Act; will any Man say such an Act shall bind? This Power is as inapplicable from the Crown, as the pronouncing of War and Peace is: such an Act is manifestly unreasonable, and not to be suffered; faith Dallier and Stow. To follow the Words of the Law, were.
were, in some Cafes, Injustice, and against the Good of the Commonwealth, wherefore, in some Cafes, it is necessary to leave the Words of the Law, and to follow that which Reason and Justice require, and Equity ordains, which is no other but an Exception of the Law of God, or Law of Reason, from the general Rules of the Law of Man: Which Exception is tacitly understood, in every general Law. This Imposition without Parliament appurtenants to the King originally, and to the Successor ipso facto, if he be a Sovereign in Right of his Sovereignty from the Crown. You cannot have a King without these Royal Rights, no, not by Act of Parliament.

Again, These Acts bind not, for that a favorable Construction, in Cafe of the King, is to be had in all these Cafes, Dole and Sudden, fol. 27. 'Tis not probable to make a general Law by Law, but you shall fail in some particular Cafe: If a Law were made in a City, That no Man, under pain of Death, should open the Gates of the City before Sun-rising, yet if the Citizens, before that Hour, flying before their Enemies, came to the Gates of the City, and one, for having the Citizens, open the Gates before the Hour appointed, yet he offendeth not the Law, for that Cafe of Necessity is excepted from the said general Law by Equity. So for the Statute in Edward the Third's Time, not to give any Relief to a flurdy Beggar, upon Pun of Imprisonment; yet if one relieves him with Clothes, in the Extremity of cold Winter, to give his Life, he shall be executed by the same Statute. By such an Exception of the Law of Reason and Equity, as aforesaid, is this Power referred to the King.

Impoffibilitys are to be excepted out of all Laws: Neuo tantum ad impoffibilita. Poverty and Impoffibilitys, as one answered, were more mighty Godfesses than either Force or Love.

But now you will say, Where is this Danger? How doth this Necessity appear? If you would find it, you need not forquire for it either by Sea or Land; but in this very Record, the Writ thewheth, and the most favorable Construction is to be had for the King; as in Pleasdu's Comment, 335, the Cafe of Mines of Gold and Copper.

Now all this while I have been in the General, and in a manner in Propositions; I come now to Application. Before I defend to it, I shall shew upon what Part of the Record I shall ground my self. Tho' in the M'tinitus it be Salus Regni perliteratur, which is said to be metaphorical, for that it asketh no great Answer; it is good enough, as in the Writ of Oyer and Terminer, semus qui habebt domann vel fabationem, are bound to contribute. Will you bind the King to the Language of f. 3. 5. May he not express himself in what legal Manner he pleaseth?

You say, That this Pirate of Salut Regni is too wide: If it be alluded, and you demur upon it, you confess this for the most Advantage for the King; as in the Cafe of Mines. It is not alluded in the Scr. Fac's; this might have been made a good Question.

But without all these, I conceive the Writ 4 Aug. containeth the Causes for this great Preparation, and expressthem in particular. What if it were no more but this, Left we should loose the Dominion of the Sea? What is it to be called Dominum Maris, and not to maintain it, but to suffer this Princely Honour to perish, and others to become Masters of it? What Havock and Confusion would follow? And this the true Intention of the issuing forth of this Writ.

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

Next a great Oppression used at this Time, Datum eff Antiq. It is true, &c. that the Pirates do take and spoil our Merchants, carry our Men into Captivity: What will you say to this? Let them take our Men, and let us have a Parliament, and we will bring them home again: The Land was never without Thieves, nor the Seas withoutRobbers.

Next, paratum periculon & prevarican, &c. now these Ships go for the Defence of the Sea aginst this Danger, & sofrum & sofrorum. The Writ faith the whole Kingdom is in Danger, both by Sea and Land; and you have confed this by your Denunciation.

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

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

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

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

The Cafe.

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

I may call this Writ, a special Writ, or a Commission upon the Cafe. It is not a fe I am, it beginneth with divers weighty Reasons or Causes, pro rario of the issuing of it; as,

1. His Majesty had Intelligence that certain Pirates, & maris grauiore, as well Mahomets as others, were congregat upon the Sea, quod ab olio per sustum Anglicanum defendi consequit; and did daily rob and spoil the Ships and the Goods of the Subjects of the King, and of his Confederates, and did
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did captivate the Persons of those whom they took.

2. His Majesty did confiscate, that those Men did now enjoy the preponderance, ad mercatores alterius subhancias, & ad Regnum gravandum ut sitis renum

3. His Majesty did consider the Perils, quae au-
diqua illius guerrae temporibus inimicorum, ita quod regii & suppositis suis defeunant mariis & regni, omnibus

4. His Majesty's Royal Resolution was, De-

5. Lastly, his Majesty called to mind a Regula jure & rationis; Omnium inchoatarum et successivi

5a. Upon these solid Reasons, as upon a firm Foun-

6. The Mandauns, as a firm Foundation, the Mandauns of the Writ is grounded, and followed in the next place.

The Mandauns is,

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

2. That the Ship, to furnish'd, be ready at

3. That all this be performed, ad capturiam of themselves sem in viutis omnium suarum salarum, & ad suum genere necessitati.

4. After the Mandauns, an Affidavit, or Com-

5. The Commission to the Sheriff is inter elle. That he shall make an Affidavit fideiuncto facti, &que, for Contribution to the Exence of the Provisions aforesaid, shall appoint Collectors, shall levy the Money to be afflicted (if he be

6. The Directions to the Sheriff begin with a

7. The King fords that the Sheriff shall levy more than is necessary for the Exences: That any Money levied shall be appropriate to any other Uses, quibusque utiliter; and then, lastly, in case that more be collected than shall be useful, the King commands that Refitution be made of it.

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

That Certiorari recites the Writ of Augt 11.

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

ercy the Names of such Refusers, and the Sums afflicted upon them.

The Sheriff's accordingly make Returns in a Schedule annexed to the Certiorari. In one of the Schedules there is, inter alia, Sobe Mandelstone, Mr. John Hampden l.t.

After this, by Writ of Mandauns out of the Chancery, within in May last, the Tenure of the Writ of Augt. 11. with that Words, quod quidem levis pro eodem regni auctoritate & popol

ejusdem per hotitabitur non est jurisdictionem inter alia brevis ad juventus pompousam, & aspersione

10. By which (prout) but especially by the (newer) the King's Honour and Care of Justice are

11. After this, and in the same Month of May last, the Barons awarded a Writ of Sciur Fac' into Buckinghamshire, against those whose Names are in the Schedule aforesaid, whereby commanding the Sheriffs to cause them to appear in the Exchequer by a Day, to show Cause, if they can, why they should not pay the Money. And the Payment of the Sums of Money afflicted upon them is paid in full.

12. The Sciur Fac' is always a judicial Writ, and certainly the Barons have proceeded very judicially and gravely, in awarding of it. In weighty Causes, especially, if they be not of common Impression, proceeding in modo judicii is truly judicial.

13. Upon that Sciur Fac' Mr. Hampden is returned garni'd.

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

The Words of his Demurrer are,

14. That materia contenenda in the fame Records, minus sufficient in lege estit, ad ipsum omnemur.

15. He doth not say, that materia is minus viva; but, acknowledging the Matter contained in the Writ to be true, he putth the Caeque de bonis & male, upon Sufficiency or Insufficiency, in Point of the Law, for charging him.

Mr. Attorney for the King hath joined in

16. Upon this Demurrer, one main or grand Quest-

17. The grand Question is shortly this,

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

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

 Qui ad panea repetit, faite pronunciari; but he that will determine in this Question, must representer ad multi, enege magna & ardua.

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

And truly, for my part, I have laid the Ques-
tion to my Heart.

All the Arguments which have been made in it, have been profound at, and specially needed.

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

I have likewise considered of the Reaons and Authorities in Law, pertinent to this Cae.

And upon my Pains, Deliberation and Study, I have concluded with myself, and in mine own Understanding am satisfied, and think I shall sat-
fysy others, that as this Cae flanfled, upon the Records in the Pleading, or in this special Cae; the Charge imposed is good in Law, and con-
sequently that Judgment ought to be given against Mr. Hampden, Sund equiu.

For my clear Delivery and Expreffion of my feel, I divide all that I shall fay into these four Heads.

I. I will fale the Cae, and fale the proper Ques-
tion of it, at the Pleadings are.

(The true flating and fettling of a Cae condu-
ceth much to the right Answer of it.)

II. I will confider the Policy and fundamental Rules of the common Law, appallly unto that which upon flating of the Cae shall appear to be the proper Ques-
tion.

III. I will confider the Acts of Parliament, the Answer to Petitions in Parliament, and the several Magna Carta's of the Liberties of England, which concern the King's Power in this Cae.

IV. I will enforce the natural Objections, which have been made on the other fide.

Upon my First General Head.

I hope that none doth imagine, that it either is, or can be drawn by Consequence, to be any part of the Question in this Cae. Whether the King may at all times, and upon all Occasions, im-
pofe Charges upon his Subjects in general, with-
cout common Content in Parliament? If that were the made the Question, it is, questionless. That he may not.

The People of the Kingdom are Subjects, not Slaves, Frenemen, nor Villains, to be taxed de alio & baffe.

Tho' the King of England hath a Monarchical Power, and hath jura nonfu mife, and hath an absolute Trust fettled in his Crown and Person, for Government of his Subjects; yet his Government is to be confedere leges regni.

It is one of the Questions in the Parliament Regius; at his Coronation, (see the old Magna Carta, fel. 164.) Cancedis jufa leges & confuetudines regni effe mandata? And the King is to anwer, Canced.

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

They have in their Lands Feudum simplex, which by Littleton's Definition, is, hereditas legitima, vel jura.

They have in their Goods a Property, a peculiar Interest, a mens & tutas.

They have a Birthright in the Laws of the King-
dom.

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

Thus much I speak to avoid Misapprehensions and Misreport upon that which I shall fay in this Cae; not as if there were Care of faying too much upon any thing challenged on the King's fide.

We have in front his Majesty's own most grati-
uous Declaration, that it is his Maxim, That the Peoples Liberties ftrngthen the King's Preroga-
tive, and that the King's Prerogative is to defend the Peoples Liberties.

Secondly, Tho' Mr. Hampden's Counsel have fpent all their Powder in citing a Multitude of Records, beginning with one in King Jofu's Time, and fo downwards, to prove, that the King's Miniflers have paid, that the Barons have been by Writs commanded fometymes to pay, fometymes to make Al-
lowances, Out of the King's Moneys or Duties.

In Cae of Foreign Auxiliary Wars.

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

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

In Cae where Viufals, or other Provisions, were taken from particular Perfans, by way of Purveyance, for Soldiers, or for the King's Army:

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

In Cae of taking Money or Goods against the Owners Content, by Warrant, for the King's Ufe, for War, or other Manner of Defence:

In Cae where particular Men's Ships, Horfs, or Armour, were loft in the Wars:

In Cae where private Men's Houles were ufed in the King's Service:

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

Altho' I confefs it be true, that the King in all these cited Cae, must pay of his own, without impofing upon the Subject; yet I fay that those Cae come not close to our Cae: For every of those Cae hath a manifest, particular, and fett Reafon; but none of thefe Reafons are appallable to the Cae now in question, as is eazy to demon-
strate, if a Man would enter into every of thefe Particulars; which I forbear, for faving of time.

And thefe Records being taken away, the Mult-
titude of the Vouchers on Mr. Hampden's fide will be greatly abated.

Thirdly, The Cae of the ancient Tribute called Danegeld, of which Mr. Hampden's Counsel hath spoken, tho' it come nearer than any of the former mentioned Cae, yet it much differs from the Charge imposed in our Cae.

It hath been faid on Mr. Hampden's fide,
1. That Danegeld was not imposed, but by common Assent of Parliament.
2. That after it was so imposed, it was released by Edward the Conqueror.
3. That it hath been now so long uncollected, that it is scarce known what it was.

To the Third I answer, That the Proof urged that it was created by Parliament, is at the best but a Conjecture; it hath been fancied that the Words of Leges Edu. Conf. fl. c. 12 are in one Place, Statutum fl. Danegeldum annum reddi, &c. And in another Place, Danegeldi reddi primitis infinitus fl. &c. And Statutum is a proper Word for an Act of Parliament, a Statute.

But in my Understanding it is apparent, that it had not Creation by common Assent in Parliament, but only by Regal Authority; or at the most by the King, with his great Lords Assents, which in those, and after times, was frequent. My Reasons are, 1st, In Tinterns', or the black Book of the Exchequer, l. i. c. 28. The Words are express, A regibus subiectis finibus suis suis; &c. and mention of any other was never inserted in that Statutum. 2dly, It appears by the said Leges Edu. Conf. fl. c. 12. That at the beginning of Danegeld, omnis Ecclesia liberalis erat; the Reason given, quia nigio missis confessit Ecclesiae avoetum, quam armamentum defensibus: and yet in the Addition to the said Leges, it appears, that William Rufus imposed that tribute upon the Church also, and that without common Assent. For the Words are, Danegeldum concessum et a Borromius, non legi statutum nique formatum, and certainly those Barons by whom it was concessum, were not all the Barones, for it is plain, that the Bishops and mitred Abbots did not enroll.

3dly, In that Clause where statutum fl. is used, in Leges Edu. Conf. the Danegeld is said to be ad 12 d. ex numero quod hodie; and afterwards it doth appear that it was made 4s. by William Rufus, ex numero quod hodie, Ecclesiae non excepta; which Increafe was most unjust, if no more but 12 d. was limited by common Assent at first.

To the Second, I answer, with Sir Henry Seyler's Distinction. There were two kinds of Danegeld; one, ad pacandas Donas; another, ad avenda Dones, and other Pirates. It may be, that the Conqueror released that ad pacandas, for the Dones troubled not this Kingdom in his Time, they had enough to do then at home, and if there was no Caufe of Collection of any Taxes ad pacandas Donas: And then it was de facto exacted by the Danish Kings before Edward the Conqueror, viz. Canute, Harold, Harryson, and Hardicanute, it was unjustly taken by them, the Caufe of Grant of it ceasing in their Time of Sovereignty here; and that might be the Caufe of the Conqueror's Dream, That he saw the Devil dancing upon the Money collected in his Time for Danegeld; which Supposition of a Vision occasioned him to release it, as it is written. But certainly the Danegeld ad avenda, &c. was not released by Edward the Conqueror: for it appears in Tinterns', before cited, that Danegeldum festus insignis regibus diebus ad tempus Willielmi primiti, if fab insignis Regibus, then under the Conqueror.

Again, it appears in Leges H. I. c. 16. that Danegeld was in that King's Time a Duty to the King: For the Words are, Danegeldum fi ad terminum non reddatur reeditur anni superest; ergo, not released by his Proctor Edward the Conqueror.

I further find in Roumhnus Certal, that Stephanus Rex, Regnum initus, Danegeldum, i.e. 2d, ad bidam, quius antecessores fuit fugitus omnis accipientis, in eterno condonatus: which (condonatus) shows that he, as a King de facto, had a Right to it, ergo, not formerly released. But for the Validity of such a Release by K. Stephen, a manifesto Ulterior, tendering to the Dismission of a Tribute granted to the Crown by Act of Parliament, see 9 E. IV. f. 3.

To the Third I answer, That it is true, it is obscure what the Danegeld was; you have heard by what has been cited, mention of 1 s. 2 s. and 4 s. to be the Sum of it; and truly, I think, it was more or less, according to the Occasion of Money for Defence: the Tribut ad pecundas Donas, I believe at first was but 12 d. out of every Hyle, but afterwards increased by the three succeffe Kings, Donas themselves, for I find it was at first but about 10000 l. per Ann. it was raised to 30000 l. then to 40000 l. and lastly, to near 50000 l. which huge Sum was in those times a Barden charge to the People. But however I maintain the Uncertainty of the Sum (especially if you understand that which was collected ad avendas Donas) is a clear Proof, that it was not created by Act of Parliament, for then the Sum thereby certain could not be mounted.

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

But, to return, The Differences between the ancient Danegeld and the Charge in our Cafe, are apparent and many; for the Danegeld was,

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

Leges the Words of the Authorities under written, from whence many Obervations, and good Conclusions may be drawn touching Danegeld.

Leges Edu. Conf. c. 12. Danegeld redditur, proper Piratas primus initius est, patrium enim infestantem, atque eum pro suis fuis supplicat; ad quam infestamentum respondentium statutum ad Danegeldum annum reddi fl. 12. denarios ex numero hodie totius patriae, ad concurruntibus eos qui praeter una irruptions vestigiis obviatur. De loco quo Danegeldum libera omnis Ecclesie, quia unius confessanit Ecclesiae ornatorum, quam armamentum defensibus.
... in the Case of Ship-Money.

Hone Libertatem tenui Anglicum Ecclesiam, utque ad tempus Willemium junioris. Danegeldum concilium efi ei a Baroniis, non laet statuum, neque firmamenta, sed habitut necelsitatis causae ex unanque kida a judicis, Ecclesiam non excepta. The Black Book of the Exchequer, written in King Henry II's Time, in that Part which is Tilloch's Work, or the Magnifier at Disputatius, it is lib. c. 28. not c. 11. it is misprinted in firmed Sir Henry Spelman's Glossary.

Ad Domes ascendens, a Regibus Anglicis statuum et, ut de fugiatis habita quoddam perpetua du doliis argentis fociocerter in utrum cum fortuna, qui perpetuus, qui martiriis que hoc tempus rebuerunt. Quia igitur principaliter pro Domi inquisitione est hic redditum, Danegeldum dictum, hoc ide jurisprudentialis regibus fociocerter utque ad temporum Regis Willelmi pristis. In quo, non recte, tam Den quam cetera teretie mariae, prae conatesbiliberet incurrat. Cui earum, de facie, terna, ut ejusdem regni imperium, quia hinc ut non multum fociocerter, quod fuerat utrumne necessitate bearet tempus testamentum, ex tenebris omnium prorsus inoptatis caelestis dimittit. Rata igitur temporibus ejus vel societatem ipsum simul tamen, hoc est eum ad exterius genitores nullis vel apud operationis voluntatis imperator.

Verum esse, tempore fociocerter ut ipso, liberum fine quod ejusdem ad Sarcarum, ut dictum, ut siccet, et siccet, et siccet.

Leges H. I. c. 16. Danegeldum, i.e. e. 13. de unanque, hodie per annum, fi ad terminum non reddat, suae excludit.

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

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

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

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

Masts were Prentations in Kind of a Benevolence, upon the King's first coming to his Crown; such are yielded at this Day in Wines, to a Prince of Wales.

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

Taxes & Tallages, in Quinzena. B. 9. 33 H. VIII. Nota per exposition de eosdem del Estebos, que taxas et tallages d' a nter, nos dines, quinzenar, et another Subsidies, grant par Parliament. Et le Quinzena est des Layes, Et le Difje de Clergie et df d'offrir leys de leur terre. Et le difje le Quinzena de Lois est de leur bien. Ee. dictum partem homorum in Civitatis et Borgis, et partum honorum de eosdem de a nter, qui fuerit in sicnum temps for leur bien, viz. du aids pour leur terres qui fuit vold troublan, mes est aff leyes, secundum rationem terrarum fuorum per seges de terres et auert quantites, iis finc que a, et, tout science leur certein en chun voit et pas par tout le realime mes il en core levy en auncs lieu pour leurs bien, mais infinieoire lieux, pour leurs lors.

Subsidies quod abou coniit, fi. certes some for the pond du ras de terre en oncs, came apt in les Acts de Parliamentis de grant du subsid.

Fifthly. It cannot be said, that the present Cafe is to be called Aid, as unless the Command can be obeyed, an affable infallible Rain and Subversion of this Kingdom will happen, and that infamously. In such a Cafe, quid nos is lawful; and happy he who by doing any Exploit, can save the Ship from finking, the Body from falling.

Sixthly. It is to be observed, That the principal Command in the Shipping-Writ, is not to levy Money, it is to provide a Ship; which Ship being to be provided at the Charge of a Multitude, in regard the thing cannot be done any manner of way, but by the Means of that which is necessarium; namely, Money, therefore the Instructions in the Shipping-Writ, are not only apt, but necessary, that an Assiduity be made. Whereof in proportionable Sums of Money may be collected, for the Provision of the Thing commanded: And thereupon it may be said, that the Sum assiduity upon every one, and in our Cafe: upon Mr. Hampden, is not a Debt et terminis, but is rather a Duty to be performed, as a Means conducing to the principal End: The Refusal of Performance of which Duty, is a Refusal to obey the principal thing commanded, Qui negat Mediam. d Atlantic. Fearem.

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

And this being the true State and Way of the Proceedings, in the present Cafe; it is apparent, that tho' the Sto. Pet. against Mr. Hampden be in the King's Name, yet it is not to have Execution as for the King's Money, or as for a Debt due to the King from Mr. Hampden: But as is manifest, if the whole Controversie of the Writ of Sto. Pet. be not brought on to be brought on a Declaratory Payment, That Mr. Hampden ought suaviter to the Payment of the 20 £. asseised upon him. So that, with his 20 £. together with the other Money of Buckinghamshire-Men, asseised ab uno every of them particularly, the Ship commanded from the County of Buckingham may be provided.

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

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

In the Writ of Aug. 11 Car. and in the Writ of Minton, there are Cases express' of the issuing of the Writ of Aug. 11. or the Shipping-Writ; those Cases are several, but not to be severed, all of them to be laid together into the Balance.

1. Pi.
1. Pirate congesti, upon the English Seas.
2. Pirate navigium indicis preparato, ad merco-
storos ulterius navigandos, & ad regnum gravandum.
3. Persicae are Unique regno Anglicie, in his
guarinium temporibus.

Thise persicae do minimis regnes, nisi cito
remedium poterint, ad regni desponsamen, maris
situationis, & securitatem stabiliturum.

Out of a choice of them, I shall choose,
That there is in the Cafe real and manifest Per-
ril; not passion terror, Fear without Caufe; Tem-
pora are de facto furiosa, there is de facto, securi-
cum congregatio.

Again, we must observe. That in this cafe,
1. The Command is, ad professicenam caou
nivium reges: So the King himself is to join with the
Subject in the common Defence: Here is not a
Royal tibi fieri non vis: Here is rather a Contrbution,
than a Point.
2. The Ships and Arms to be provided are to con-
tinue the Subjects own in Property: The King
doeth not assume the Potency of them to himself;
he only commands them to be made and used for
the common Defence. This appears by the Words
(ad professicenam caou nivium nonis): So the Writ
sets a Distinction between novis naftis, (that is, the
King's) and the Ships to be provided. See the
like of this M. 28 & 29 Ed. I. Commissia, with the
King's Remembrancer, for Gallies command-
ated upon the like Occasion; and P. 5 E. II. and P. 13
E. II. with the King's Remembrancer, intro brevia
directa Baronebus.
3. The Subjects are commanded, in this Cafe,
to be at the Expences, tan in viuibusibus, quam
hominum salaris ad guerorum necessitatis. This I
shall prove clearly anon, to be consistent to Law,
and warranted by many Precedents, in the like
Cafes.

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

5. The final End and Scope of all this Prepar-
tion is, Deferre Regni, tuta maris, retine domini
maris, securitas stabiliturum, fides Reipublce.

But Mr. Holbrow hath objected, That Solus Rei-
gnum, in viuibusibus, is not to be taken as part of this
Cafe, because it is not in the Writ of Aug. 11
Car. but is inserted into the Mittimis, above two
Years after; and he fa ith, That Mr. Hampden could
not know 1 Car. that at that time fides Reipublce
periclibatrum; and therefore he is not to be blamed
for refusing to pay his Affeñment, which was be-
fore the Mittimis, and grounded only upon the
Writ of Aug. 11 Car.

He further observed, That in the subsequent
Shippings-Writ, that Caffe is expressly now put
out. To this answer,
1. It is true, that Solus Regni is not in express
Terms, or in thufe identical Words, in the Writ of
Aug. 11. but it is expressed'd in that Writ in Words
equivalent.
2. If it were not contained in that Writ in Words
equivalent, yet it enforces the Words in that Writ
in Matter purporting, or not new, or different from
it; and I am out of the Rules of Departure, where-
in if it were, it were a good Exception in Finics
of Pleading.

3. That Caffe in the Mittimis by way of De-
claration or Signification to the Barons, what the
Reaoun was, that moved the King to iffue the first
Writ; and the Barons are to take notice of it, as
well as of the Caffe in the Mittimis, where-
by the King signijied to them, that he had fent
the like Writs as that of Aug. 11. to all the Coun-
ties of England: And this is a Declaration of that
Meaning which the King had in the Beginning.

By Draym's Case, 6. 9. after Affeñment exe-
cuted, or a fine levied, a Declaration may be made,
to what Ufe that Fine or Affeñment was.

In a word, the State of our Caffe is thus:
Danimunum maris, & falsus rapicibus periclibatrum,
conseunt Regi & sophis, anni qua poterint fuga-
ime taxes accelerare, ad regni desponsamen, maris
situationis, & securitatem stabiliturum.

Now whether to fet the Commonwealth free and
in Safety from this Peril of Ruin and Defruption,
the King may not, of his own Royal Authority,
and without common Affent in Parliament, impo-
se a Charge upon his Subjects in general, to pro-
vide such Shipings, as is necessary, in his Royal Judg-
ment, to join with his Majesty's own Ships, and to
attend to the Defence of his own Ships as his Majesty in
his Royal Wisdom shall think fit, and also to joyn
them to be themselves at the Expences, tan in
viuibusibus quam hominum salaris, & alii ad guer-
orum necessitatis?

I would be both to irritate any, differing in Opi-
inion from me, with provoking or obloquus Terms;
but I cannot more fully express my self, (and so I
defire it may be taken as an Expression, and not as a
Comparison) than in saying, That it is a dan-
gorous Tenet, a kind of judazing Opinion, to hold,
That the Weal publitc must be expoed to Peril of utter
Ruin and Subversion, rather than such a Charge as this,
which may secure the Com-
monwealth, may be impri Med by the King upon the
Subject, without common Consent in Parlia-
ment.

So that the Security of the Commonwealth,
for the very Substience of it, must play and expect
until a Parliament provide for it; in which Interim of
Time, it is possible, na, apparently probable,
aye, in a Manner to be presumed, that all may
be, yea, will be brought to final Period of De-
struction and Defolation.

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

The Second General Head.

I now come to my Second General Head, where-
in I proposed to confer of the fundamental
Policy, and Maxims, and Rules of Law, for the
Government of this Realm, and of the Reasons of
Law pertinent to our Cafe, which are very many.
I will briefly and severally point at thofe which
make Impress on me.

1. It is plain, that as originally, even before the
Romans Time, the Faine of this Kingdom
was a Monarchical State, so for divers
Hundred of Years past, upon the Romans Deference of it,
and after the Heptarchy ended, it was, and con-
mued, and still continued Monarchical. And
our gracious Sovereign is a Monarch, and the Right
of free Monarchy appertain unto him; and yet
with this, that he must Leger & confuetudines
regni
regim fervore, & praeclara legis & confutatudinis & liberitatis Regis Edwarde, that is, Edward the Confessor's clear penumbral consecratas; as appeareth in the old Magna Charta, fol. 160. 4. i. juramenta
 Regis quando coram parlante.

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

He is utterly mistaken herein.

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

But the former fancied Policy I utterly deny.

The Law knows no such King-yoling Policy. The Law is of itself an old and truly Servant of the King's; it is his Instrument or Means which he ordits to govern his People by.

I never read nor heard, that Lex was Rex; but it is common and most true, that Rex est Lex, for he is lex legis, a living, a speaking, an acting Law; and because the King is lex legis, therefore it is foolish, that Rex consistatur ubi semittur iura in fictis factis faciat.

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

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

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

It is agreed, that the King is, by his Regal Office, bound to defend his People against foreign Enemies, our Books are so, F. N. fol. 118. Et si intrare quod te regis non det de re ducet; evij et deficere suam vult, evires te, evires tuam.

Juroamentum Regis, cited before, from Eccles. Dei, Civis, & populus, paulo ex integro ecequenti sermonem vix sensum; si (ex integro) then against all Disturbres of the general Peace amongst them, most chiefly, in my Judgment, against dangerous Foreigners.

Breton et Glanzil, in the Front of their Books, published, That the King must have Arms as well as Laws; Arms and Strength against foreign Enemies, Laws for doing Justice at home. Certainly if he must have these two Necessaries, he must be enabled with Means for them, and that of himself, not dependent ex aliorum arbitrio, for it is Regulæ juris, Lex of, quando quis aliquis aliquid consueti, consulti, & id sine que res tinta effer non posset.

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

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

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

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

Ret. Parl. 9 Hen. IV. n. 7. There is a notable Record of the very Right of the Commons, in the Form of Grant by Parliament of Supply to the King; Archbishop Arundel, then Lord Chancellor, in his Speech to the House, took for his Theme (Regum bonos vitae) it being then a time of inftant Necessity.

The Commons, in their Grievances, complained of the Default of Safeguard of the Sea, towards which they had granted a Subsidy before; Et pour
 tant (Note this for the Record, it was not spoken spring, as Dr. St. John urges) but pour tant que til ne font obliges a cel guerre finies, was not done de re exact; and they petitioned, That accordingly it would please the King to discharge the Commons, but the King did not discharge them, Quod non.

After this (the Record goeth) that there was a Conference between the King and Lords, of the State of the Realm, and of the Defence of it. And in that Conference, the King asking the Lords Advice, they answered, That a Tenth and half a Tenth was necnecessary from the Boroughs, and a Fifteenth and half from the rest of the People. This Conference and Advice being reported to the House of Commons, the Record is, Ils furent grandement difburres et elle deuroy en grand degage ment de leurs libertes. The Disturbance was so great, that the King himself took pains to pacify them.

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

And this is not my single Opinion. 19 H. VI. 64. B. Hobf CB. Baron, Le roy est inherite, that is, hath Right of Inheritance to have Fifteenths in his Court of Parliament; for the same Law saith, that the Prince defend his People, will also, that the People grant to him of their Goods, in Aid of their Defence.

Besides, I prove mine Opinion (if any Man deny it) unanswerably, out of the very Writ of Summons of Parliament: in it, Arsus & urgetia negativa, Regum ratione, & deitionum regis anglica & ecclesiæ conservantia, are mentioned to be the Caus of Parliament.

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