Now I pray you observe. 

In the Writ of Summons to the Peers of the Kingdom, the Words are, Super dictis negatis tradatur verum. Consilium imposendi; but in the Writ for choice of Knights and Burgesses to serve for the Commons, the Words are, Be good will and prudence for [fe &] Common-well Contented persons pridie, ut dicti dux & Burgesses pridie [fe &] Common-well Contentus & Burgesses pridie postea benementer (what is to do) ad faciendum et consciensium bis quae tradit ursum de Commune Consilii regni usque custodiori ordinaire sup. negatis austutis.

So the Words are, facere & consicere, to Matters agreed on concerning the Defence of the Kingdom; there are no other Matters mentioned in the Writ for Summons of their representative Body: no such Words as are in the Peers Writs are in theirs; yet I cannot say, and so I desire to be conceived, but that according to the Record of 9 Hen. IV. the Commons may also humbly offer their Advice to the King; they may hear their Grievances, and the State of the Commons: but it is plain, that the principal Duty belonging to the Commons is to facere & consicere. otherwise there would have been in their Writ, as well as in the Peers, super dictis negatis tradatur, verumque Consilium imposendi.

Upon this I put the Cape, and argue thus: the Kingdom wants present Provision, necessary for present Defence, to be in readiness; this Provision (the Cape to filling out) must be so speedily made, as that it would be dangerous, in regard of what may happen, to stay for an Affent in Parliament. Well, in this case there is a Duty from the Subject, and a Necessity that the Thing must be done, but the necessary Form for the Subjects Affent in Parliament must be perfected; I demand what must be done, or what may be done in this Cape, without Breach of Law?

Is the Duty lost for want of Time to observe the Form?

For my part, I understand not any Reaon that the Duty, in such Cape, should be lost; but I should agree, that were not this a Duty, et teratii, which is to come from the Subject, in such a Cape, but only a mere Benevolence, then such Benevolence could not by Law be exacted without the essentiel Part of it, viz. the Subjects Affent in Parliament.

I confess, that by the fundamental Law of England, the Parliament is Common Constitutum Regis & Regni, that it is the greatest, the most honourable and supreme Court in the Kingdom; that no Man ought to think any dishonourable thing of it: yet give me leave to say, that it is but a Common; so to say is no Dishonour to it: The King may call it, prouge it, diffilove it, at his Pleasure; and whatsoever the King doth therein, is always to be taken for just and neceffary.

We must consider, that it is a great Body, moves flowly; written Dispatches cannot be expected in it. The Befules, tho' the Parliament cannot ene, Parliaments may de foete: every particular Membe of the House hath his free Voice, some of them may chance to make Speeches, where there is no Cauze: it is possible that some of them may have fini-shit Ends; thes things breed Delays, so they may Disturbances. (I would to God, the late wofull Experience of this Kingdom, had not verifie this Speculations.)

Yea, there have been, in former Times, Cen- tures of Parliaments themselves; the good Parliament, Temp. Ed. III. Parliamentum indeformon, Temp. Hen. IV. and in the fame King's Time, if we believe my Lord Caft, 11. f. 113. Brown's, et id., the White-Crow Act. Thefe Matters are considerable in such Cases as ours. Wherein apparently Moris traditum periculum, and to follow the Rule, rinima least, is most dan- gerous.

5. The Point of retinui Domini maris (which is in the Cape) is not of an ordinary Consideration; for, besides the ancient Inheritance and Right which the Crown of England hath in it, it is ob- vious to every Judgment, that the Continuance or not Continuance of it to the Crown, not only the Rents, but even the ess of it of the Commonwealth doth conflict: and therefore it behoveth the Subjecte accedere to the Tuition of it: how- ever is an Argument of Supplication, or want of that Sanificatens of the Diminution of that Right which every Subject ought of Right, and hath a consider- ing Reaon, to proponit itself.

Notable are the Words in the Scotch Rolls, to Ed. III. multis, 5. In a Writ by the King to a great Part of all the Kingdom; Consilium, qua prudenter latinis Regnis Angliae domini maris & insularum personis, tantos praetextis temperantur exspectatur, & plurimum vos subdeget, fe hoc super regius usque tam temporibus in alioque tempore. Tantum annos omnibus de regno pro 30. s. et jefu. de, dansa, contra bellitium insularum, truncans caput quas, & j Kauf.

The Writ wherein the Word was, was a Command or Charge laid upon the Subject, without any Warrant of Parliament for it.

It is certain, that the King directed to all Earls, Barons, Knights, and others, ab aera. Though of great aetate accidentales, which included divers Inland Counties.

It called upon Occasion of David de Brothe ha- ving a great Navy abowt, and therewith having entered Terfey and Orkney.

The Writ is a Command to those to whom it is directed, Tame & tem gruvolus pertinentium inpersonis debito prodesit, to treat with the Archbishop of Canterbury, and other Great Men affigned by the King, super defegunio regni & populi.

The Writ concludes thus, Seire vos volumus, quod a rebellest us difficilis fustinit in praesenti, intrantus & tenuis gravis necessest, articulato, the King will repare those Rebels, and difficults, tenuentus facus & regius iniuria.

6. Not to speak of Necessity in general, which is of itself a Relaxation of Laws, and forses for a Depensation, even by the Equity of the Law it- self, in our Cape there is a Necessity in point of Government.

I shall put you a Cape, where an express Claus in an Act of Parliament hath been doomed void, because it was against a Matter of Necessity in point of Government.

2. 6. VI. 7. The Earl of Northumberland's Cape. Not Ed. III. to Ed. IV. 42 Ed. III. Penal Acts were made, That none should exercise the Office of Sheriff above a Year, altho' that he have a mon obligation that Clause of (et ubi) is void, and an omn obfervation may be of that you asfume: no Reaon can be for this, but because it takes a necessary part of Government out of the King's Hands.

7. Salus Regipublivae, by all Laws, is fuperven- tae, & 16annum necfaria. It is, where it interpelteth,
profeath, Lex legis. It takes away particular Interests, before itself give place for that Cause.

8 Ed. IV. 36 Hen. VIII. Dyer. A Bulwark for Defence may be built upon another Man's Ground, invitato domino.

No Dower or Thirding to a Woman, of a Caftle of Defence; it may indanger Salus Reipublicae, by dividing such a Piece.

An Alien Merchant takes a Lease for Years, of a Houfe for his Trade; this is a good Lease, so long as he tradeth, and there is no Emnity between his King and ours; but when he ceaseth trading, or if War happen, the King shall have the Interest of the Lease. The Reason is, that Salus Reipublicae may be concerned, if the Alien's Interest in it should continue.

If there were not Salus Reipublicae in our Cafe, yet there is in it at least Bonum públicum intended.

I will put a Cafe, where Subjects are bound without their Affent, for the Bonum públicum fake.

44 Ed. III. 19. Chamberlain of London's Cafe, Coke 5 f. 63. Inhabitants of a Town, without any Custum, may make Ordinances or By-Laws of any thing, pro bono publico; and in such Cafe, those who are abent, and so unconfenting, are bound, the Bonum públicum is the Cafe.

9. Prevention of further general Milchife, which may endanger, threaten even by Contribution of Law itself, upon other Men Rights. For that Cafe, pulling down a Houfe which is on fire, to save other Mens Houfes, is lawful. Highly's Cafe, Co. 10. 139. One is bound by Prefcription, to make or repair Walls, Dams, or such like against Water: This Man is not able to do it, a small Breach happens, which either must speedily be made up, or a general Milchife will happen. In this Cafe by Explication of the Statute of Sewers, and by an Equity out of the Letter of the Laws, grounded upon Salus pop. all those who are within the Level are to be taxed, and to contribute for present; the Ability of him, whose the Right of the Burden is, non expedita.

10. I find a Wit in the Register de reparatione fabricis, which is cited in Breule's Cafe, Coke 11 f. 82. b. whereby, if two Joint-tenants of be a Houfe, the one shall have a Wit of de reparatione fabricis, against the other; and the Words of the Wit are, Ad reparationem & substantiationem ejusdem domus tenetur; where the Word (tenetur) is observable. Every Man hath an Interest in the Commonwealth, but the King's Interest is incomparably beyond other Men; therefore the King may, by a late Reafon of Law, call upon his Subjects to join in Contribution with him, towards the Reparation and Subtenation of the Fabric of the Commonwealth.

11. In the gret and common Voüche's Cafe, 13 H. IV. 14. in the Debate of this Cafe of the new-erected Office of the measuring of Clothes in London, which was brought to Parliament; it is a memorable Saying of Ceapenep the Chief Justice, "The King may charge the People of his Realm without special Affent of the Commons, to a Thing which may be Profit to the common People." This Saying is cited and allowed in the Cafe of Monopolies, Coke 11 f. 86. b. and fo it is very commonly, upon Arguments concerning such Questions.

12. I obferve, that tho' the Precedents of Wits and Execution of them, for affefting the Subject by the King's Command, without Warrant of Parliament, are very many in several Kings Reigns; yet there is not any Precedent of an Alien's Action brought for any thing done in former Ages, upon such Command of the King as is in our Cafe, but only that one of the Abbot of Robertsbridge's Cafe, which hath been often cited; and in the pleading thereof it is acknowledged, that the a- ging of Mens Lands and Tenements to contribute, ad expiationem urinis by the King's Command, without Tax by Confeit in Parliament, was good in Law.

And I note, that that Cafe happened and was in Agitation, and gave fair Caufe of Demurrer, in an Action. The Time in demurrer, if the Law had been otherwise; for it was opened at that very time, when the Statute de Tulleigh was concurred was, made, or in hummering.

If only an Alien brought heretofore, non hi-рудо, it were not to be regarded, that it had been against the King's Power; but when that one is affervative of the regal Power, it is to be respected more than a mere thing, I mean, as a sanguinis pro- batio of it.

Lastly, I obferve, that upon Grievances, or Complaints in Parliaments which have been almost infinite, and upon all Occasions in former Times, no one Record hath been, or I think can be cited, that in such Cases the Commons have been impod without common Affent, for the necessary Defence of the Kingdom in an inartile Article of Necessity, any King hath ever answered, or assented. That such Charge hath been against the Laws or Liberties of the Subject.

Neither the Reclamation of the Subject alone on his fide, nor the single commanding Receipts of the Sovereign alone on his fide, are of Authority to preferve the Law; but if there be a Concurrence of King and Subject, that is it whereby a Judge may ground his Revolution.

As for that one of 2 K. II. which cometh nearest in that Kind, but hath not the King's Acknowledgement, I note, that it was upon a Deliberation, before the Charge was impod; and truly I think, that if the Charge in that Cafe had been first impoded and collected, upon Complaint against it afterwards, it would never have been adjudged for unjust.

Many things are questioned, and fomtimes de- nied to be lawful, before they are done, which fulta sunt, which being done, are good and va- lid in Law. If a Quetfion be made of that which of itself is lawful, the very making the Quetfion, makes it questionable, and may draw on an Opinion that it is not lawful.

Rat. Parl. 4 H. IV. num. 28. & Rat. Parl. 6 H. IV. num. 9. you shall find, that the Commons have received a Writ for the Wars of Scotland, the Re- bellion of Wales, the Safeguard of the Sea, or special the Defence of the Realm, they granted a Subsidy, but with Profeftation that it should not be an Example to charge the Commons hereafter with any manner of Subsidies, for the Wars of Scotland, or Wales, or the Safeguard of the Sea, or the Mariner of Caflis or Ireland, without Con- fent in Parliament. I obferve, that there is not a Word in this Profeftation, that the Subjects should not be charged without Confeit in Parliament for the Defence of the Realm, tho' there were a little before an express mention of it, and that with an effedtiveness. On the contrary, there is a List of Precedents of • • • •••• imputing of private

4 L 2

Mens
Mens Ships, in case of Necessity of Defence of the Realm, and Safety of the Seas, Command of making Gallies and Ballingers supernumeraries propter Congerings, Apparelling of Soldiers, and victualling and conducting them in this Case of necessa-

ty Defence, propositus supernumerarius, of several Towns and Counties, as well Inland as Maritime; the

express Words of the King's Commands in such Cases, by his Writs directed to the respective Sher-

iffs and Head Officers, are, That they should de-

voci factore expectare de commodo, sometimes e-

quotidie, sometimes ill-rum, as the Case was: where

in the prepositions, de quo, expectare; and in

what manner the Sheriffs Levies are, sit. Affirma-

tion by himself, and Collection by himself and

Ministers, I think few are ignorant.

Amongst which kinds of Writs, some of 38 II.

3 are remarkable for these Words in them, Compli-

que adnecesse fiet propri et caesas fortitatis ad secun-

datem & defensorum regni, defensorum hoste praepo-

tem, centre Alimentorum accetum, &c. Inter alia fiet

Rot. Clef. 48. H. III. men, 2. A Writ to the

Town of Bedford. So that the Preceding is ac-

cording to the Occasion, instant Provision nifed,

whereby a Promptitude may be not playing a Pro-

vision by Parliament, which Cunctation might be

opposite to Promptitude.

Afso the French Roll, 21 E. III. Pers 2. men,

9. Co. 11. flies, that whereas a Subsidy out of the

Wools had been granted to enforce for a certain

time only, yet the King, necessari quaestus, de con-

spicil Praedacion, Magnatuum, &v Minus et de capi-

tio fun, (not per communi causae) did ordain quod

subsidium prudio marius fugit a Fugibi a Fugibi a Fugibi a Fugibi.

Cafe Roll, 1 R. 2. m. 18. many Writs were di-

rected to the Bailiffs of the several Towns of Cam-

bridge, Huntington, Nottingham, Derby, Lincoln, Glos-

cester, Worcester, St. Edmondsbury, and Thet-

ford, reciting a former Command of the King to the

several Towns, to provide several Ballingers, ad

caesas validarium et magis dicturn boniamenti, of these

Townes. Now by those Writs the King declared to them, that celebat to the King and his Coun-

cil, that they who had m. and upwards in Goods, should contribute, and not others; and

commands those Bailiffs to compel Men of that Ab-

ility to contribute, per distributionis fisci necessitas, &

effet rei publicae, & media, which nothing exceedeth expence.

I spare Iteration, I conclude my Second General

Head with my Subscription again proved by my

Judgment, by what I have said before:

That when the Good and Safety of the King-

dom in general is concerned, and the whole King-

dom in Danger, the King may, by Writ under the

Great Seal, command all the Subjects of the

Kingdom at their Charges to provide and furnish

Ships for the Defence and Safeguard of the King-

dom, and may by Law compel the doing thereof.

And that in such Case the King is the sole

Judge of the Danger, and when and how the same

is to be prevented.

And how many more have subscribed to this Te-

net it is not unknown; the Records of the General

Courts of Justice of the Kingdom, manifest to

such as will look into them.

The Third General Head.

I have done with my Second General Head, and

come now to my Third; which is, To consider the

Acts of Parliament, Answers to Petitions in

Parliament, Magna Charta Laws, which concern

the King's Proceedings in this Case.

1. St. Edward's Laws have Dangerously mentioned

in them; fee cap. 12, but not another Syllable

pertinent to this Case, saying that the Church and

People are free, have Liberties and Customs be-

longing to them of Right, which is not by any

denied.

2. I find that there was a Magna Charta Liber-

tatum Regni made by K. Henry the First, the Be-

nefitious, in which is this Clause, That nullas puj-

devices tevers dominionum pruinent quizes oident

Geldis (Geln fiintificht a Sum of Money.) And yet

amongst the Laws of his Time, as appear by Lesa

Hen. I. c. 10. this is one which I cite before; Duquegillum i. c. 124, de nocumento bida per

parvi, &d tevarianum non redditor, sed emendamur

(whence ifrified an Amendment.

3. The Magna Charta of K. John, made at Run-

ning-water, was bye cited by Mr. Hopton's Coun-

sellor, and urged to be an Act of Parliament;

the Words inferred out of it are, Nonius feitogium

vel axillium capitur in regno supero, nisi ad corpus

nominum vestrum, & primogeniitum fium militum

facturam, & ad primogenitum fium militum facturam

summanum; & ad loc no flat nifi ratiiole auxilium,

&c.

The Words pitched upon are (Neniam axillium)

a general Negative; I have touched before the Sig-

ification of the Words (Ad, auxilion) I will an-

swer the Words further anon, together with other

Statutes, which have as general and further nega-

tive Words.

Observe, but there is no question but Running-

water Mud, Cly. was no Statute, nor ever was taken

for one, faving in those Parts wherein it and

Mud. Cly. of Hen. III. do concer: to give but one

Realon, tell me when, after K. John's Time, were

25 Barons appointed, according to that which is

contained in Running-water Magna Charta. If there

were any great matter in Nonius auxilium, it is

observable that those Words are not in Magna

Charta of 9 H. III. and that is the Magna Charta

which hath the frequent Confirmations.

In Conforme Observato 15 Ed. I. there is men-

tion that of Magna Charta of K. Henry III. by

Name, and none of that K. John's Magna Charta.

Certainly there were some Lege in the Magna

Charta of King John; the Barons did in that King's

Time iniquum petere et simulatum, otherwise that

Magna Charta would have been also confirmed,

as well as his Successor Henry the Third's.

And I pray you note, That after the Nonius

auxilium there follows on, Nisi ad corpus nominum

vestrum: If for that, then certainly much more

for the redeeming of the whole Body of the Com-

monwealth, which is our Case.

4. The Magna Charta of 9 H. III. which is the

often confirmed Magna Charta, tho' it allow all

the Liberties of the Subjects then claimed, hath no

special Words pertinent to our Quelion, which is a

Matter observable; for Charges for the Defence

of the Kingdom commanded by the King out of

Parliament, were frequent both at and before that
time.

In it there are only general Words of Hobant

libertas fiae; out of which Word (fia) I do ob-

serve, First, A Right of the Subject in his Liber-

tie, they are (fiae). Secondly, Those Liberties

which the Subjects must habere, must be the (fiae)

that is, such Liberties as are fit for a Subject, as

are compatible with the Relation between a King

and
and a Subject. The Words are not wmes libertates, all manner of Liberties, but (fut.) that is, Liberties proper for them, or such Liberties as they are, in good construction, capable of.

And indeed Quiæquid recipitur, ad modum recipiuntur recipitur. 14. H. VII. 7. 11. The Abbot of St. Bartholomewe's had a Charter from King Henry II. that he should be as free in his Lands, as the King was in his Crown; yet these general Words pass for no more than a Subject is capable of; he must not withstanding those writing Words, pay Fines for Aliquotation without License, admit the King's Valet, to enter into his Orchard, and fields like.

But in that Magna Charta of 9 Hen. III. cap. 20, there is this Clause, (Est in addito vniuersum en viribus suis in exercitum, &c.) which proves the King's Right, even by that Statute, to disposse of the Bodics of his Subjects for his Army.

Also Cap. 30, there is a Clause, that omnes Mercatores shall have safe Condues, and Liberty ad exercenda et commendanda, fines sibi adiuvant melius teneat, per authentica valia confessuram, preterquam tempore bellis; which Swees, that in Tempore guerra nulla tutela might be set up, they were not then valia talea. Dominus opus habet, made them too lenitiva & toleranda; in our Cafe, we have tempore genera.

But Conformatio Chartarum, which was 25 Ed. I. is the next Statute whereof there is any Colour for Mr. Hampden, the Words thereof are, Fye por si ben &joigny tieus manors de eydes, whyte, se preses, ne prenderen forke de con affent de vent le realme, facet les awt eydes & preses dues & accences. But this Statute hath not been stood upon, because of the Savex les eydes, &c. That which is faved or excepted is clearly out of the Body of the Law.

6. But then comes the Statute de Tallogio non concedendo; which of what Time it was, non confi. It was between 25 & 34 Ed. I. I do agree that to be a Statute or an Act of Parliament: The Recital in the Petition of Rights, 3 Cor. binds up my Judgment to affirm otherwise.

The Words of that Statute are general, without any saving or Exception, Nullum Tallogionem vel exceptionem, per vos vel heredes suos in regno nostro panantur fuu leventur fuer voluntate & affinit Ar- chiepiscoporum, Episcoporum, Canonic, Baronum, Militum, Burgeyand & aliorn libertorum comunnie de regno nostro.

Thefe Words indeed are general; but for a true and just Exploitation of them, the Occasion of the hard preffing to have that general Statute is to be confeddered.

K. Ed. I. had Right to Dukedoms and Earl- doms in France, and great Wars he had with the French King about them.

Great Troubles also he had out of Wales and Scotland.

He was in Flanders about auxiliary Wars against the French King, both at the making of Conformatio Chartarum, and of Tallogio non concedendo.

He had a little before, in the 22d of his Reign, caused Scrutinies to be made throughout the Kingsdom, to nifie Moneys for Supply of his great and preffing Occasions for thefe Wars, which in truth did not immediately concern the Defence of his Kingsdom; for if he would have let those Wars alone, he might have had Quiet enough for his Kingdom of England.

Upon the said Scrutiny search was made, where and in whose Treasuries or Hands Moneys were, whereby the King might be furnished; and indeed, the King's Minifters took the Moneys they found upon the Scrutiny as borrowed for the King, tho' it were against the Owners Wills to lend them; and amongst others, for the most part, they lighted upon the Treasurers of Religious Houses, many of which had Coffers well stored. The Religious Men being therupon oppressed themselves, inveased the Great Men against the King; and by that means, and the Pulabalnces of the Injury, the great Lords, effectually the then Constate and Marshal of England, Bolone and Bignot, floud out against the King with the greatest of Ruffiness; and at last the King being in a Straight, and not only one Extremity with yielding to another, paused the Act de Tallogio non concedendo, without the exception or the faving of the ancient Aliis which was in Conformatio Chartarum.

But it is plain, that thefe general Words were never meant, either on the King's, or on the Great Lords and other Subjects fakes, to be absolutely general for all Caffes: for notwithstanding those Words, the Aids for faire fex Chevalerie & for fete warre, continued, and did the King's Power to array and fend Soldiers, fumpet vllion, and conftitutions, into remote Parts of the Kingsdom, more of their proper force, for the Defence of the Realm, as appeareth in the continual Practice in that King's and his Successors Times; as, if I had time, I could make good by a long Succession of Precedents, appearing upon Records.

See a notable Apology or Remonfance publickly made by King Edw. I. in 25, enrolled, concerning his Proceedings at that time in this Busi- ness, whereby that is made good, which I have before alluded.

But besides this Anfwer, I shall give a further Anfwer to this and the other Statutes, when I shall have perufed all of them.

7. The next Statute urged is 13. Ed. III. in the second Parliament of that Year; in which Statute there is a Recital of a Grant in the same Parliment, of the ninth Part of the Goods of the Commons for two Years: The King willing to provide for the Indemnity of the Commons, willieth and granteth to the same Prelates, &c. (wherein note the word, the same) that the said Grant which is so chargeable, shall not be another time had in Example, nor that they (which must be construed the same Prelates, &c.) be from henceforth charged, nor grived, to make up any Aid, or to sub- stain any Charge, if it be not by common Affent, and that in Parliament: And that all the Profits rising of the said Aid, and of all Wards, Marriages, Cofums and other Profits rising out of the Realm of England, shall be spent upon the Maintenance of the Realm, and of the Wars in Scotland and France, and in no Place elsewhere, during the said Wars.

Note, that the general Claufe which is urged to be in this Statute, cometh in the middle part of the Statute, and is coupled with other Matter, which was but temporary; and therefore in my Judgment that general Claufe was meant to be but temporary, viz. during the Continuance of the Wars which were then on foot, and was never meant to be a perpetual Discharge for ever of all manner of Charges and Aids, as appeareth, for that, notwithstanding that Claufe, K. Ed. III. did shortly
shortly afterwards, and during all his Reign, as frequently charge the Subjects for Defence of the Kingdom, as ever he had done before: He had also his Aids par fair fire Chevalier & par fire marier, after that; which if the Words were to be expounded generally and perpetually, neither he nor his Successors could have had.

And it is worth the Observation, that this Statute recited in the Petition of Right, as Teleggio non concedendo, and the Statute of 5 Ed. III. against Loans and other things: Then come the Petition in itself, which is an humble Prayer to his Majesty, by his Subjects, That no Man hereafter be compelled to make or yield any Gift, Loan, Benevolence, Tax, or such like Charge, without common Consent by Act of Parliament: And his Majesty's gracious Answer in Parliament is, Sunt devoi fais causae & advise.

After this, his Majesty, that knows his own Heart and sincere Meaning best, in his second Speeches to both Houses, amongst other things, faith; and that most justly and truly, "That it must needs be conceived that he had granted "no new, but only confirmed the ancient Liber- ties." I observe, there is no express Clause in any of those Statutes which I have before cited, that no Charge shall be imposed without common Consent, not so for necessary Defence of the Kingdom: And I have since been offered to have been express, before that I doubt of what Validity it had been, I certainly believe, that neither King Ed. I. nor King Ed. III. nor our Sovereign, would ever have yielded to so dishonourable and unwise an Exploitation.

But all these several Statutes being general, and having no particular Expressions, I conceive that according to all Rules of Law for Expatriation of Statutes, those three Statutes, de Teleggio non concedendo, 5 Ed. III. and the Petition of Right, must have a reasonable Interpretation, and that by a common and just Equity, for Expatriation of those three Statutes, Aids and Charges, for so necessary a Purpose as the Defence of the Kingdom; and Saint Regis which will be clear out of the Law, as fully as if they had been precisely excepted: and if other Expatriation be made according to the Letter only, it might truly be said of such a literal Expatriation, That Litera accidit, that Laws made for the Good of the Commonwealth, will prove the Bane and Ruin of it.

I will give you a Taste of some Expatriations of Statutes, with Restrictions of the Generality of the Words of them, tho' they be general Negatives. The Caes I could put are very many, but I will cite only a few, and those such as are applicable to the present Case.

Depr. 361. The Statute of Glosseth faith, That Tenants for Lives or Years, must not make no Offerment, yet a Waffe, whereby the Land leaft mailerower, is no Waffe within that Statute. The Statute of Wofinghler the second faith, That Tenant in Tail shall not per for futsum, col geffemenr, do any Aet to the Prejudice of his Life: Yet 43 Ed.III. Oblivion Lambert's Cafe is, Tenant in Tail of Lands wherefo a Stranger hath Title of Entry; to gain a Release of this Title, and for Defence of his Estate, by his Deed grancteth a Rent Charge out of the Lands intailed; this Grant bindeth his Heir, so that he shall hold the Land charged, notwithstanding the general Words of the Statute.

There was a Statute made 14 Ed. III. That for every Sack of Wool carried out of the Realm, the 2 Marks 5 farthings for bringing into the Kingdom Bullion, that is Silver, to the Value of 2 Marks, and to take for it 2 Marks in Coin. 14 Ed. III. an Act was made, That whereas the Commons had granted a great Subsidy out of their Wools to the King for three Years; the King granted, that after those three Years, nothing shall be taken of the Commons, but the ancient Custum of 1 Mark, for a Sack of Wool. And 45 Ed. III. another Act was made, That no Impostion or Charge shall be put upon Wools, others than the Subsidy and Custom granted to the King, James Parliament.

Upon long Debate adjudged, That notwithstanding these two later general Statutes, yet the finding of any Wages for bringing in of Bullion, en-joyed by 14 Ed. III. were not taken away by either of those two later Statutes. And in that Case, besides the former Rule of Equity put by me for Expatriation of general Statutes, another Reason is given, applicable also to our Case, namely, That every Statute shall be taken the most beneficency for the King.

Pofeb. 13 Jac. In the Star-Chamber, whereas the Statute of 1 Rich.III. c. 8. faith, That the Sub-jects shall not be charged, by any Charge, Executions or Impostions, called a Benevolence, nor by any like Charge; yet once Mr. Oliver St. John, a Wilkes, gentleman, being brought to the Bar, protested for writing a Letter to the Mayor of Marl-borough, against a Certain Trade in, holding for, trying what Money rich and able Men would give unto King James, of their voluntary free Will, it was renouled by the whole Court of Star-Chamber, with the then Chief Justice's Advice, that a Com-mission to treat what Men would give voluntarily to the King, was not within the Statute of 1 R. III. tho' the Words were general; and Mr. St. John was grievously conf notices his in veighing his by his Letter against the awarding of the Commission.

I conclude this Matter, with an Answer by Mr. Solicitor, aptly given to Mr. St. John, who urged this Civilist out of the Laws of King W. I. c. 43. Volumen in annis liberis busines rotis regni habitant terea festa, bono & pace, liberis ab omnibus eiusmodis injuria & ab omnibus tollendi, se quidem vel ab eis capitato vel exigentur vis familiae, quod decidat sive fuerint quia liberis, quod de jure habet suae facta, & quiat statu- sym e & a nobis e digna & concedere juris heredi- tario per communiti constitution rotis regni.

You see here are general Words referring to a general Act of Parliament; yet afterwards, e. 59. are these Words, Statutis in annis liberis busines rotis regni sunt quies in frutres conjurati ad monachorum novi & ad regum novi, 350 vivendi jis & fratelliis, contra comites pro popo possa defensione & 20000 solvat. This latter Clause shows the Intentions of the Act of Parliament formerly set down, that notwithstanding the general Words of the Act, it extended not to the Caes of common Defence of the Kingdom, or where Salus Nacion- chiae Regis or Reipublice permissilatur.
I have now done with the general negative Statutes, strongly urged; and I think I have exempted the Question of our Cafe from the Pave or Invention of those Statutes. But besides those Statutes, Mr. Hampden's Council had urged some Statutes that no Soldiers, or Men at Arms, should be enforced to go out of their proper Counties, without Wages from the King. I will not let the beaufe, because urged, the pertinent in the Generality only of the Peoples Liberty, pass unexamined. The Statute of Winchester 13 Ed. I. c. 6. was cited for that Purpose. The Words are, 'Every Man shall have in his House Harneis to keep the Peace, after the ancient Auffiz.' And familiar what the ancient Auffiz was. And then there is a Clause for fresh Suits after Felony, from Country to Country; and indeed, in case of fresh Suit after a Felony, none is bound to go out of his Country. But as to the point of going without Wages out of the Counties for Defence of the Kingdom, not a word in my Book in that Statute.

Then comes Ed. III. c. 2. the second Parliament; the Words are, 'The King wills that no Man be charged to arm himself, otherwise than he was wont, in the Time of former Kings of England; and that no Man be compelled to go out of his Country, but where Necessity requireth, and famed coming of strong Enemies into the Realm; and then it shall be done as hath been used in Times past, for the Defence of the Realm.'

Nota. That before this Statute, the thing was for Men to go in such Cafes, proprius suae, as appeareth by many Precedents.

In the same Year, 2 Ed. III. c. 7. the Commons complained of Commissions to prepare Men at Arms, and to convey them to the King into Scutland, Geswifge, or elsewhere, at the Charge of the Shires; and that the King hath not before this time given any Wages to the Preparers and Conveyers, nor Soldiers, whereby the Commons have been at great Charge. To this the King's Answer is, The King wills that shall be so done no more.

Nota. But note by the very Complaint, that neither the Complaint nor Answer are apposite to Cafe of Necessity, for Safeguard of the Kingdom.

Then 18 Ed. III. c. 7. That Men of Arms chosen to go in the King's Service out of England, shall be at the King's Wages, from that Day they depart out of the Counties where they were chosen, till they return.

This Statute extendeth not to Cafe of necessary Defence. Besides, the Provision is against going out of England, which is not in our Cafe.

Then 25 Ed. III. 8. No Man shall be constrained to find Men of Arms, other than those that hold by such Services if it be not by common Ascent and Grant in Parliament.

This extendeth not to Defence of the Kingdom. Besides, it is a Provision for particular Men, specially required. Likewise it is only against finding the Bodies of Men of Arms. But prefiguring of Soldiers or Men of Arms, to serve in all manner of Wars, hath been always so frequent, both in old, late and modern Times, that it were needful Labour to prove that which every Man knoweth.

All these Statutes of 1, 18, and 25 Ed. III. are confirmed by Parliament, 4 H. IV. c. 13. and yet Rat. Parl. 5 H. IV. mmb. 24. (which is observable for the Time, being precipitately after 4 Hen. IV.) it appeareth, that there had been Commissions directed to Gentlemen of the Country, for arraying, arming, and conducting of Soldiers to the Coasts of the Sea, and elsewhere, in divers Countries; and that there were many Forces and Clauses comprized in those Commissions: The Obligation of which was perilous to the Commissioners.

The Commissions were brought into the Commons House, and by them entertained as Grievances. The Commons upon Deliberation, did oblige certain Clauses in those Commissions, and prayed the King, that from henceforth no Commissions of Arrayage should issue, otherwise than was contained in an amended Copy, which they humbly offered readily drawn.

And that Copy was agreed to by the King in Parliament, after Conference with the Judges, and Advice with the Lords thereupon; and the Tenor of the said Copy was enrolled.

And in the Precedent thereof, appearing in the Parliament-Roll, and being as for the County of Bucks, all Gentlemen of the Country are made Commissioners, amongst which I find the Name of Hampden, I believe an Ancestor of Mr. Hampden, the Party in our great Cause.

But to return: In that Commission there is a Recital of Invasion and Burning, which had been by Enemies: And that to mift them if they should again invade, ec pro luctuare & deserenda reigi & fortunam, the King afforhted Commissioners ad ordinationem & vindicationem armis belli ad armam, & ad armati festinantem omnes illos qui de corpore sunt prives, qui de prope proximi sunt, unde silent armare pellunt, quia, quodcumque corona firmam & firmamentum esse, & ad dispositionem omnes illos qui in terris & belli sunt partizans, & pro declarite corporis impeditas, ad inventionem avantes pro illis qui non sunt habiles, (where, by the way I note, that in a case of common Defence, the People, not the King are to be at the Costs.) And the Commission directs further, that the Commissioners shall train and divide the Soldiers, and shall command eos eadem ad coferam miftis, quam alia loca, ubi et quoque necesse fuerit, (here is nothing out of the County of Bucks, I am sure) and shall muster them, and that the armed Men shall be armed with their own proper Arms, and not with the Arms of others, upon Pain of Forfeiture of them, (note the Clause of Forfeiture) & ad arx legiones & subitum omnes qui fuerant reddere foras, & prifone commitendum, huius morati quippe pro eorum postea alius dominus ordinandi, (here is Power of Impression.) That Commission commands likewise the Commissioners to arm themselves, & inferior to make Beacns, whereby gentes patrie de aduersus inimicorum patriet congruis tempestatis praeveni, and a further Clause, that the Commissioners shall declare the Soldiers cum periculum aduersus, ad coferam maris & ait loco, in defensione regni & patrie; insa quod pro defella armamentis & ductibus domus patriae non advenient nihil modo.

The Commission I have taken, and now repeat at large, because offered by the Commons themselves in Parliament, infamously after the Confirmation of Edus. the Third's Laws, 1, 18, and 25 of his Reign beforementioned, and all by the Judges Advice.
All Powers of Command imply the Duty of Obedience. I say no more, but as Arms and Travelling by Land are necessary for the Defence of Land, so Ships and Sailing, Ordnance and Tackling, and the Necessaries mentioned in the Shipping-Writ, are most requisite for Defence at Sea.

And thus I have passed all the Acts of Parliament cited or pertinent to our Case; I confess they areiger than they are, and it shall in my Answers to them, I have not broached the Bonds of them, with the which I acknowledge both my Confidence as a Judge, and my Eftate as a Subject, obliged.

The Fourth General Head.

I Come now, in the Left place, to my Fourth General Head, which is, To anwer the Objections made by the Counsillor Mr. Hampden's Side.

The Objections were of these forts: some grounded upon Reasons of Law; some upon Authorities and Inferences upon Records; some upon Michie's Arguments, and the other Unanswerables present.

1. 2 R. III. 10 & 11. was objected; where, upon the Definicion of patricia in Curia, & patricia in Camera, concerning the affilling of Fines, it is said, that justiciarius Regis per curiam definitio suae officii, & sua dominus Rex per se in Camera suae, nee aliter curiam, nisi per justiciarios suos, & hce ex voluntate Regis, vice, per justiciarios suos & Legem suam unum de dieare. And it was said, that in the present Case, the King hath not proceeded per justiciarios, but per se or in Camera.

Answ. I answer, That in our Case there is not any thing done in Camera, the Shipping-Writ fitteth out of the Court of Chancery; besides, we are now in the Court of affilling a Fine. It is true, that if a Preliminary, Indictment, or Information, be depending in the King's Court, and so far proceeded in, as that Judgment of a Fine is to be given, this is not to be affilled by the King in Camera, but by the King's Justices in Curia.

Howsoever, if we go to Definicions, there is potentia absolutionis, and potestas ordinaria: I hope none will deny, but that the King hath potestatem absolutionis, in many Cases.

Stat. W. & Eliz. 1. It appears a Man may be committed per speciei praecipuum domini Regis, and is not in that Case Caebable.

20 Hen. VII. The King is Capitolis justiciariorum Anglie.

I put you the Case of Hl. 2. E. III. p. 6. One having Money of the King's wherewith to pay Soldiers, misused it, and committed many Outrages in Lanchester; a Writ issued to the Sheriff of Lancaster to attach him; being by virtue thereof attached, and brought to the King's Bench, he was there discharged; the Reaon given by Seruage the Chief-Justice was, Because the Attachement being grounded upon a Suggestion, was against the Law: no such Writ ought to have issued, unlefs there had been some Indictment, Preliminary, or Information depending. But I doubt not, if the King had by his absolute Power made a Special Precept in his Chamber for Commitment of this Man, he could not have been discharged.

The Truth is, The Objection upon the Definicion of Curia & Camera, is not rightly applied to this Case: it might as well have been urged against a Commission of Sewers iss'd at common Law, out of the Chancery. The Matter is, what the Law is concerning the King's Power, for Provision towards necessary Defence.

Obj. 2. It hath been said, that divers Payments and Promises of Payments have been made by the King in all Ages, upon Occasions of his Wars and Provisions for the Defence of the Realm and Kingdom, and many Records have been vouched to that Purpose.

Answ. I answer, First, It is true; but more Payments have been made by the Subjects alfo in the fame Cases; as will appear, if we go to vie by Records: Multitudes have, to that purpose, been cited on the King's Side.

Secondly, In some Cases, as of Borrowing, Purveyance, or the like, Payment by the King was of Right; but in the Cases merely for necessary Defence, his Payment, or Promise of Payment, was of Courtesy and Grace, and is not binding in Precedent, no more than in the Case of Mines Royal. It appears by many Precedents, cited in the Case of Mines common, that many Subjects, Owners of Land, wherein were Mines of Silver, shared with the King; some had a twentieth, some a greater, some a leffer Part: and this was objected against the King's sole Interell, which nowftanding was adjudged, and the Answer made to those Records was, That it was of the King's Courtesy and Grace, and not of Right: one may do with his own what he pleaseth.

But I will put you at large one of the Records which hath been cited, and let it be considered for whom it might.

25 Ed. 1. Rot. 77. Ex parte nemorator Regis. These Writs issu'd to divers Mayors and Bailiffs to make Gallies out of the merchants by the King, and Conclusus suus: it doth not say, commane concilium, to be made pro defensione regni & securitatis maris; and in the Record there is a Claude, Caynus quond ad bac poesivit, cens illud ferrivum, colvis in exilios bellicos caveirs allocauerit fiecerum. But note, that here is a Command they shall first lay out the Money: and note, that there is this further Claude, in the fame Writs, Volumus etiam quod bordas & intermari, quod ad bac campsam, navigatione in invention continent, & eunavigoferint in templi predestina vel extra pro geulis illis foederis capitains. I pray you note that Claude, for the express Words of Magna Charta are, Nulius capitonis absolutionem ad cofir, vel ad alia aegudis infcrius, sed voluntate quisvis quisque fati faciat, & yet it is commanded, that they should take bovam absolonum in this Case, and I think warrantably; for the Words in Magna Charta are, ad aegudis infcrius, but the making the Gallies, commanded, was not aegudis rigoribus, within, but aegudis rigori, without the Meaning of Magna Charta.

Obj. 3. Diligence, or no Precedent for many Years of this Course now attempted, hath been objected.

Answ. I answer, as it is said 11 H. IV. 7. § 38. upon that Objection against the Force of the Statute of 1 Ed. III. about the King's Prerogatives to lappled Churches, that an Act of Parliament dilided may be put in use, and so that Law dilided may be put in use, especially in the King's Case, for Maltus et lucres, &c.

Also, the Thing hath been done, tho' not this particular Way, Supplies have been made otherways; sometimes by Collection of Moneys, and Means without Warrant of Parliament; sometimes by liberal Provisions and Grants in Parliament, in late Kings Reigns by Benevolences, befo
The King may make a County de novo; by taking out of another; may make two Counties of one, or one of two, if he please.

Then take the whole as one Body, the several Members center in it; if one Member suffer, every Member of the same Body suffereth with it.

But methinks there is more Reason to excuse, than to charge the Ports and Maritime Parts; in this Cafe they stand between the Enemy and the Inland Parts, they are the next Door to Danger; and it is fit they should not be let Blood, but should keep it all, to serve themselves and the Inlands, and not have Means taken from them, whereby they may be disabled.

Besides, I refer myself to the several Precedents, single and at large, cited by my Brother Woffnson; by which it appears, that the Inland Places have heretofore been charged with Provisions of Gallics, Ballingers, &c. for the Seas.

By the Commissioun of Sewers, it appears, that this Course agrees with Proceedings in like Cafe, by the Common Law.

P. Nat. Register. All who are within the Level of an Imputation, rich or poor, without respect of Persons, are to be proportionably afflicted, upon that Commissioun.

P. 15. II. Rot. 70. in bx. wy. The Cafe of Rippons in Yorkshire, is notable upon this Reason; by it, it appears, that the Law was, that all that had Salvation by the Plaintiffs being Hollages to the Seas, were by Law compellable to bear their ratable Shares, to raise Moneys for the Plaintiffs Random.

23 Ed. I. cl. Rot. 1. num. 4. dor. In a Writ to the Archbishop of Canterbury, the Words and Matter are notable. I refer myself to this Book; Stinum, ne judicium, pervade circumstature faciunt principum, judicam, burtatam, & finiat ut quod ommis tas ngi ab omnibus approbator, &c &c cumani evidenti, ut in communismis probo per remedia promo communer obovtr. As to the Objection out of the Records, (per remedia probo communer) that should be by Parliament; I think the contrary is apparent out of the Writ: for the Writ requires the Arch-bishop, with the Clergy of his Diocese (not Pro- vince) by their Procours, inasmuch as the King of France, Cloi'x ecclesiae & bellatorum capitulorum synodum congregat, prosunt ignominiam Anglicanam amonio de terrae Anglicana deo, to come, by a short Day ensuing, to Westminster, tuum & sub ad trentanu, ordinacna & faciendm nobisnum, & cern etei preselatis & aliis incolis regns queller fit periculis buynofdvi observii. Note, here is no mention of Proceres; and besides, Clergymen have no Capacity of Knights or Burgesses Places in Parliament; therefore this was not a Treaty appointed or intended in Parliament; which is further enforced upon the Words (ad trentanu, &c. multiplem & ceteris preselatis & aliis incolis regni.) If a Treaty in Parliament should have been, it had been readier to have expressed in Parliament, or in Commons, and not to have used the other improper Expresion.

Besides, I do not find that any Parliament was holden at that Time, nor at any Time between 21 E. I, and 24. E. I. whatsoever was laid by Mr. Sir John to the contrary.

But if this Treaty had been, or were intended to have been in Parliament, it is not concluding; for it could not be in Parliament, as had been urged.
37. The King against John Hampden, Esq; 13 Car.I.

Objec. 6. This Way draweth a many ill Consequences; for this Murrumaging and Grudging of the People, by reason of the Burdens upon them.

Answ. The Consequence would be worse, if the Kingdom should be lost, (which I cannot mention without a good obli.) and de multis minimius.

Befides, popular Grudgings are many, if not most times cautious; they are not to hinder doing of Right.

Objec. 7. This is to become an annual Charge upon the People; there is Caufe of thinking fo, because since 11 Car. we have had every Year new Shipping-Wris.

Answ. If the Necessity continues, the Charge must continue. The same Reason serves for the Continuance as was for the Beginning of it. Yet I deny that of itself it may be annual.

Coffante Coffe, effusio debet effusio; but continentiae tanha, continentissimus effellus.

This must be left to his Majesty's Justice, which God forbid that any should think he will abuse.

Objec. 8. It hath been agreed, that if there were flagrans belittos, if we had (quod obis) a Hannibal ad portas, then this Course without Provision in Parliament, were not against the Law. But it hath been said, that we have neither flagrans belius, nor a Hannibal, in our Cafe.

Answ. Let us consider what the Reason is, why it is not against the Law in cafe of flagrans belius, or Hannibal ad portas. It can be no other but to avoid a further Mitchief. The same Reason holds in our Cafe, wherein there is apparently an initium moloniun; and in such Times as we now live in, or robus fice fiantibus, no Man of Under-standing, but must acknowledge that Security is dangerous.

Objec. 9. Tonnage and Poundage, which was used in former Kings Times to be granted by Parliament, for a Provision of a Stock, for those Purposes for which the Shipping-Writ now issueth, is taken de facto by the King's Majesty, tho' it be not yet granted him.

Answ. Read the Words of the Statute that Sac. & ali. at large. In them observe, 1st a Confession by the Commons, That Tonnage and Poundage hath been paid to the Kings of England Time out of Mind: I say, it is so confes'd; I do not say, that in Truth it was so.

2dly. Observe the Word (Towards.)

3dly. A Confession that the Tonnage and Poundage are not sufficient for those Purposes, for which it was commonly granted. The Occasions are now for valler Exchanges than were requisite at that Time; and what Tonnage and Poundage will now suffice to perform, must be raised some other Way.

Alfo it is to be known, for an Answr to the Objection against the taking of it, as if it were not taken de jure, that Tonnage and Poundage hath been always taken, with a continuando upon the Change of a King, before such time as a Grant came of it by Parliament; upon the Demise of the King, the payment or taking it never ceased, or was discontinued, until it came to be due by Grant of Parliament.

Objec. 10. It appears that a Parliament might have been held; there are about six Months between the Tyme of the Shipping-Writ, and the 11t of March ensfhing.

Answ. This receiveth an Answer in itself; for if the King had been pleased to have called a Parliament, to have had Provisions granted, and by or before the 1st of March 11 Car. Provision had been granted, yet the thing commanded by the Shipping-Writ in August, to be ready in March, could have but begun in March to have been then prepared, and so a whole Year apparently lost; in which time, God knows what might have become of this State.

Objec. 11. But what if the King firme only, that there is such Danger as must be prevented, when in truth there is no such Matter?

Answ. Hath not the King a Confidence?

The Law believeth his Affirmation, and for that Caufe they are not traversable, as appeared by my Lord Dyer upon the Ne exors regno.

Reg. Rex recordum spectaculis. Tygfe myfips, is his Language; it is against the Duty of a Subject to contest with him.

Again, it is a Rule of Law, Caubet in acte sua credendum est; it is the King's proper Art, to have Intelligence of foreign Intensions, to foresee publick Dangers, to conclude and put in Execution what is necessary for the Prefervation of his Estate and People.

Ito regres suprasi populos. Rex suarum, nuementa: He libr turrit armis, &c.

Alfo Mr. Hampden, by his Denourer in this Cafe, hath confes'd all the Matters in Fact, which moved the King to issue this Writ, and are mentioned in the Writ.

Objec. 12. 26 E. 1. Pat. Roll. mem. 21. hath been urged: there it appeareth that the King, deferius to amend gravissima populi nominis sua fulta, sent Commissioners to hear and determine what takings had been from the Subjects made in the King's Name, but without his Warrant; and to punish it presently, and to do right to the Parties: but as for that which should be found to have been taken by the King's Warrant; 'Le Roit vell que fai carisfi, et il est ferra tan to qu'il yi teni apotes por relo.'

Answ. Note the Distinction in this Cafe between the Repayment and Satisfaction by the Parties for that which was taken without Warrant, and the Repayment, if it were taken by Warrant of the King. For in cafe that which was taken by colour of the King's Warrant was against the Law, it was as tortuous to the Subject, as that which was taken without the King's Warrant; and in all Justice, the Subject ought to have been reftored to his Right, with as much Expedition in one Cafe as the other.

Alfo, as hath been already answered, the Words are not (they fall not the part) but Le Roit ferra tan to qu'il yi teni apotes por relo; that is, as I conceive it, The King will give them a reasonable Answr.

Objec. 13. Upon the Words Regnus & Regnum; in Writs to the Bailiffs of divers Towns, when they were sent unto to array and fend Men at the Exences of the Towns, it hath been urged, Ergo the Thing required is a Matter of good-will, and not of Right; in which Cafe it would rather have been a Mandamus, or a Preceptimus, than a Regnum.

Answ. Note the Regnus precedes.

Alfo the Word Regnus signifies as properly a Commandment, as a Prayer. Interceded.
in the Case of Ship-Money.

Alfo the Words are, efflaftage requiriam & regamam.
Alfo Cena princeps orat, praelius præcepta colorant.
But since these Words are urged, let them be read; and it will appear, that in the Matter of them, pertinent to this Question, they make direc-
tively for the King.
For that Purpofe, Rat. Sec. 12 E. II. n. 7. de ads, but chiefly Rat. Sec. of the fame Year, n. 13. deurf. In the Writ to Lon-
dale there, the King reciting that the Staits faces regem Angliae non ingenti armamenta unumquaeque ingrey, had taken the Call of the Kings, and of his Subjefts, and did still hold them; and had be-
figured more callus; and that the King, by the Countel of the Pelates, Earls, Barons, and the Peers of the Realm, had ordained (not a Word of the Common), to be at York fuch a Day, with an Army; and they had promised to be there with him fojournum fini centio rosses fini: as confide-
rentes qual pro tantis mediocrites, foledes & solitutes noftriae in præfenti mensa appetivae adjutantes. decretum rosses & vergo, de voce focietatis confederati, eft effigens requiriam & regamam quam in præntie confederationem debita habentes, they should infinitely array 500 Footmen, and send them to the King, fojournum fini.

Note. All this done without Warrant of Parliament;

and more Court-like Words, certainly, were of Purpofe used in such a Time as that was, of infant Necessity, ad faciendum populum, either needed, or might have been used, if it had been so thought convenient.

Objct. 1. Out of P. S. 26 Ed. I. Rat. 35.
Commune ex parte Remeruerint Regis. Regionale
Gray being commanded by the King to levy and
and conduct to the King 1000 Men out of Broomefield
and Tela; he, by his Letter to the King, answered,
that he durst not chufe 1000 Men there, without
Warrant; and that he would not move (that is,
move) in this Part without Pay.

Alfo. His writing that he durst not, is not to the
Rights, but in his Judgment it was not fair, or
might be dangerous.
Alfo, he durst not without Warrant, it may be,
he thought the Kings Letter, without his Great
Seals, no fufficient Warrant.
Alfo, it appears in the Record, that the King
had fent him Word before, that the Treasurer
should ordain Payment; but it seems Pay came
not; and then it is likely Soldiers would not do
without Money: They commonly cry Guelf, and
if they have it not, are apt to dibdib.

Objct. 15. Repayments commanded by the King
(ut confecte Regis convertitur) Ergo, the King
about not take of Right in these Cases.

Alfo. The Record is 23 E. I. Commune ex parte
Remeruerint Regis; there is a Command for Re-
payment. Solus pro occiuitis negatiis & pro utili-
itate & defejimo talibus Regis: the King had received
of the Abbots and Convent of Conventicle 613l. and
had promised Repayment; now these Words:
And alfo, for that the Abbots had petitioned the
King in Parliament for Repayment. So here was
a Promise originally for Repayment allo in this Case;
So very great Sum of Money it was which
was taken from one fingle Corporation, more than
and was proportionable for them; and therefore just
and conftabule, that Repayment should be:
the great Sum was taken upon a Scrutiny,
and in Parliament it was thought that
Money might be had. And upon that the
forefaid Sum was borrowed (unwillingly, God
knows, as to the Lender) of this Abbots, and of
divers other Religious.
The like Scrutiny was made, temp. E. I. and the like
Confe for Repayment, as appears, Rot. Parl. 3 E. II.
And, indeed, it had been before that Time, and
it continued a usual thing, for our Kings to
look into the Treasuries of the Religious, when
they had Occasion of Money; and sometimes to
take their Silver Plate; and rich Offerings, for
Supply of infant Wants. And the Religious
would not fail to press upon the Kings Confidence,
until they had Refhiction.

Objct. 16. 12 E. III. Ro. Alcanun. n. 22. deurf.
A Letter to the Archbishop to move all the People to
pray and give Alms for the King.

Alfo. I say no more, but will read what
the Record is, itself legatium.

Pater. Sec. Opus populus regni, urbis oribus,
talцит & impofternities habereger, grad
delenas reeferimus, fid (note this but) insecutibus re-
costie cantant, de eiscluis oribus ipsum relevare
viam voluntum; (to no Wrong cond: fol:4) Necessity
excised it, and Continuance of a Wrong cannot
be justified.) The King defires the Archbishop
to move the People, ut tantum necessem in bi-
militia, benepl, patiente & charitatis: fufficat:
note thee Adverbs, especially benepl. And
they would have a good Opinion of the King,
and would pray and give Indulgences, to the
end he might prosper in his Wars for Recov-
ying that Right in France. (Neces, so the end, Sec.)
One must prodiit (gute non e simulat
vise praeipue voluntaria, ipfus gravem) non
objiciumas.

Objct. 17. Out of the Parl Parl: 3 E. III. m. 9.
One of the Points to be considered and proped
by the King, was for Confe to be taken for a Na-
vy at Sea, and for Recovery of Jersey, which the
French then had conquered.

Alfo. In this Prohibition the Words of the
King are, Et par tunc feri nos Comus dieberges del
guar de la Mer, by which Words it is evident,
the King conceived, that the Commons were by
Law charged with the Guard of the Sea.

It is true, the Commons answer, They pray
in drit. del guer del meave, that they be not charged
to give Council, it being a thing whereas they
have no Cognizance; but they give their Advice,
that they think the Barons of the Offices should do
it, and therein they confess, that the guarding of
the Land belongs to the Commons, fana gesta de-
manser et prander. They could not deny but that
the Sea must be guarded. They put not the Charge
of that Guard upon the King, but would place it
upon the Ports. Of what Strength or Power the
Portese were in those Times, I know not; but in
our present Age, it is apparent, they are not by
many Degrees, near able to defend the Seas, which
must notwithstanding be defended, and that De-
finite can fall upon none but the whole Realm.

Objct. 18. Upon the Parl. 15 Pej. 2 R. II.
part 1 where the Speech of Serjea, then Chancel-
er, is set down; he therein declared the Cause of the
Summons of that Parliament, whereby it appen-
deth, that a little before there had been a Parlia-
ment at Gloucester, and no Provision for common
Defence there agreed upon; and that after the De-
mise of that Parliament the King had assigned
some Prelates and Lords to of his continual
Council, for the Year following; the said Council
treating and having before their Eyes, the great
4 M 2
Michiefs
Michiefs and Perils, with which the Realm was on all Parts inwurden, and the Summer approaching, and no Ordinance made in Parliament for Salvation of the Realm, and Refinance of the Estates of Land. And for said Council durst not take up on themselves alone the Ordinances of so perilous and high an Act; but it was advised by them, after Christmas to assemble a great Council, of all the great Lords of the Realm, Prelates and others: and upon a second Warning there came well near all the Prelates, as well Abbots as others, the Earls, Barons, Banneters, and other Sages of the Realm; and then there the great Perils and Michiefs to the Realm being disclosed, by reason of the great apparent Wars by Land and Sea, whereas no Ordinance was provided; and moreover, it being declared before them, by the Officers of the King, and Treasurers of the War, as to the State of the King, and of the Realm, that nothing remained in the Treasury for the War; it was said, in the same Council, for conclusion final, that the Lordes, that be offe, be sute, and lawfule, and aginst the Common del realme, that charge no pei offe sute ne grant, sute pursuanc. And in every person, the parliament are eke sune, in the suerte time that sute army, for ordere et tene in defence, et fatuation del realme et del noire, et del conv del noire a qui sueret, et del seignior appuyrent voluntarie el reg, divers grand fundis del mony. Et eftif, accorde a gent, de gentis, et de materis, quod leg per offe fuit in del grand Convall, avirit away por ce deaus. Et ad done a ceus por royall ger, por repay-ment. It hath been said, that the present Quest- tion is finally answered.

Alfo, I confess that this Record hath a great Shew of Proof, that there is an apparent and infall Time of Danger to the very Salus Reipublicae, yet no Charge upon the Commons may be made, or granted, without Parliament. And indeed, this is the strongest Proof upon any Record, that hath been urged on Mr. Hampden's Side. But I think it will receive an Answer with indifferent Affections, if these Things be observed in their Con- flict in Parliament.

Note. The Words of the Record, That the Lords, appointed Counsellors, could not advise or find any Means; and it is certain, that no Counsellors, none but the King himself, could command to hold a Matter. The King then was not there; he was at that Time searce out of his Nurie's Care.

5. The People at that Time were waveriing, and full of Discontents; they had withdrawn them- selves from Parliament. Alice Poets had a little before paid her Pranks, and the young King was not fortunate in his then governing Servants.

Lastly, The Things necessary, viz. Security of the Kingdom, was done by another Way, viz. by lending it to a Prince, as in the Record. But put the Case it had not been done one Way or other, then of Necessity the People must be charged, tho' without, yea, tho' against their Consent; for the Kingdom must not be lost, an ultimam refugium must be found out, rather than so fatal and final a Michief and Mistery must be endured.

Objet. 19. Ret. Part. 2 H.IV. n. 22. Concerning Barges and Ballingers, commanded to be made without Assault of Parliament. The Commons Petition faith, That this had not been done for one cause hauer, and pray'd that the Commisions might be repealed. The King's Answer was, That the Commissions should be repealed.

Alfo, It is plain that those Commissions, before that Time, seal'd of themselves; for they were made in Richard the Second's Time, and dii'd with him. All Commissions from the King are but Authorities which end with that King from whom they issue.

Alfo note, that the said K. Henry the Fourth's Answer in Parliament goeth further, viz. But for the great Necessity which the King hath of such Veffels for Defence of the Realm, in case the Wars should hold, the King would commune with the Lords of this Matter, and after flew to the Com- mons for their Advice. Which Words are notable to this Question. It cannot be denied, but this Answer to the Commons said Petition in Parlia- ment, in effect, was a Roy al Answer.

I note that Rot. Parl. 1. R.II. n. 22. there is a Gratification by the King, in confirming of Franch- es to those Cities and Towns, qui sunt are (that is, now in this Time of Parliament) charged with the making of Ballingers in Defence of the Realm. Here in this Parliament just Occasions were given to the Commons to have complained of this Charge, with the making of Ballingers, charged upon them before the Parliament, if it had been a Wrong; but they complained not of it, for ought appears; and the King's Gratification is no Proof that it was as by way of Recompense for a Wrong; but it is plainly an Argument of the King's Grace to them, by the lessening of them in their Ser- vices for the Commons' Will. The like appears, M. 3. 2. Chro. K. Rem. inter brevia directa Barnibes.

Alfo it is to be bgknought, that in all King's Times, some Matters have been preferred in Parliament, from the Commons to the King, as Grievances, which in themselves have not been Wrongs, or against the Law: We find in our Books, there may be damnum abique injuria.

Objet. 20. Part. 7 Ed. IV. n. 7. In the beginning of the Parliament, the King himself spake to the Commons, and, amongst other things, promised the Commons, He would live of his own.

Alfo, The King's Speech (ayeth not there, but goeth further, the Words are these: 'I purpose to live of mine own, and not to charge my Sub- jeets but in great and urgent Causes, concerning more the Well of themselves, and the Defence of them and the Realm, than my own Plea- sures; as heretofore by the Commons of this last hath been done, and home, to my Pro- genitors, in time of need.' Which Words are remarkable: not a Syllable in them of doing this only by common Affent in Parliament, but relatively, is heretofore, &c. which bow it hath been
de facto, you have heard; namely, sometimes in Parliament, and sometimes out of Parliament.

The last material Objection to be answered by my Memory, is the Authority of Fortescue in his de laudibus legum Angliae, where he faith, Cap. 13.

That the King of England is Rex politice regens; and regulariter, to do what he pleases. This needs no Answer, it is agreed. But he farther faith, Cap. 9. That the King may not publi facientes propriis fabricare, restituantur eis uti recte; that he may not Baldwin & certe errare eis impune terrae & suae. That he may not subjiciendum populi rezutante anerare impious titum peregrini; I answer, That 'tis most true regulariter, et regula venit quisque fallit.

Cafes of Necesity, Cafes of Bonam publicam, Cafes of Salus Reipublicae, are not to be comprised within ordinary Rules. I have spoken so much heretofore already, that now I will say no more, but conclude, That in Cafes of Necesity, pro potestate Reip. every Subject must (even by Rules of Law) be his own master; must contribute to his own Abilities; must feed to his own keeping. But most must expel their Treasures. Able Men of Body must put on Arms. Great Counsellors must give their best Advice. Women must not be idle.

Old Men and Clergymen (if they have no other Powers) must attend their Prayers. And Judges must press and enforce the Laws upon the Subjects to compel them to contribute. And so have I done at this time: And what I have said, I have spoken to the Bell of my Understanding, and in the Charge of my Confession in a Cafe of Salus Reipublicae.

And being most high time now for me to give over, I conclude upon all my Reasons and Authorities cited, That as this Cafe is upon the Pleading of it, the Charge of 20 s. imposed on Mr. Hampden, towards the Provision of a Ship, commanded by the Writ of Aug. 11, Car. Regis, is consonant to Law, and consequently, That Judgment ought to be given against him, 2nd auctor. The Opinion of Sir George Vernon Kt., one of the Justices of his Majestys Court of Common Pleas at Westminster, delivered in the Exchequer Chamber, in the great Cafe of Ship-Money.

This is a Caufe of great Consequence, and is one of the greatest that ever came in question in this Kingdom, and the Records are infinite that have been cited on both sides; but by reason of want of Health, and Difficulty of Body, I have not been able to peruse the Records as I intended, and have prepared myself, in which I am to argue, and therefore I would desire Time until this Day Sevennight, to peruse the Records and compare my Notes, wherein, as you may fee, I have taken great pains. [Producing his Notes to the Court] that I may be the better prepared to deliver my Opinion in this weighty Matter: And then, God willing, I will not fail.

But it was answered by the Court, That in regard certain Days have been peremptorily assailed as a test for their Arguments, it could not be altered now, nor could they give him any further Time.

Whereupon he said, Seeing I may not have any further Time, I must therefore deliver my

Opinion in brief, according as I have conceived it in my Conscience to be, which is as followeth, viz.

That the King, pro bona publice, may charge his Subjects, for the Safety and Defence of the Kingdom, notwithstanding any Act of Parliament; and that it is warrantable by Gascoigne, 13 Ed. IV. 14. and moreover, that a Statute derogatory from the Prerogative doth not bind the King; and the King may dispense with any Law in Cafe of Necesity. 2 Hen. VII. 17. And so concluded for the King.

A Few Notes of the Argument of Sir Tho. Trevor, Kt. one of the Barons of his Majestys Court of Exchequer, in the great Cafe of Ship-Money.

A FTER he had opened the Record he said, The Question upon it was, Whether Mr. Hampden should be charged with the 20 s. imposed upon him, as this Cafe is?

This Cafe, by reason of the Weightiness of it, is adjourned from the Exchequer hither to be argued, and the Advice of all the Judges is required herein; many Days have been spent in the arguing of this Cafe, as it well deserves; fix Days by the Defendant, and fix Days on the King's side.

It is some labour, in a Cafe of this Extent, to contract myself, according to my Conscience and best Knowledge: I shall severally ponder the Weight of this Cafe, and digge, as, by the Law is warrantable, and so ground my Judgment accordingly. And the Judgment which I shall give, in fine, is, That Mr. Hampden ought to be charged with this 20 s. and is to give Satisfaction for the same. My Lord Coke's faith of a short Cafe in his 11 Reports, That tho' be as short a Cafe as ever was argued, yet the weightiest in any Court for Consequence: So it may be affirmed of this Question, for the Sum is but 20 s. but the Weight thereof is of far greater Extent: it concerneth the whole Kingdom. Mr. Hampden hath demurred, and thereby hath granted all Matters of Fact to be true. The Defendant's Council have taken much Pains for their Client; and, without Flattery, so have the King's Council.

I acknowledge, the laying of a Charge upon the People by Parliament is a safe way, if Time and Occasion will permit. Anno 1588, when the Invincible Armada, so termed, came into England, the Provost Care for the Prevention thereof was out of Parliament. Alas! it is not Parliament's care to keep us safe. Was not that detestable Gunpowder-Treason, 3 Jac. deviled to have been excused in the Parliament-time? The Wifdom of the Parliament did not discover this utter Ruin and Defraution, that had like to have happened to the King and Kingdom, and to the Overthrow of Religion; but it was the great Mercy of God that did it.

This Kingdom hath been always Monarchical: A Democratical Government was never in this Kingdom. In the time of the Britons, 500 Years before the Birth of our Saviour, when Brut came from Troy into Britain (as one writes) it had a politick and regal Government: This is confirmed by the Letter from the Pope to King Lucius. And our King hath as much Power and Prerogative belonging to him, as any Prince in Chriftendom hath.
The King against John Hampden, Esq.; 13 Car. I.

hath. It is the King's Prerogative to appoint the
Beginning and Ending of Parlaments. So great a
Body can move but slowly. A great part of the
seven Months would be spent, or the Parliament
ended; and then we were but to begin to rig
and trim our Ships, to provide Powder, Shot, Cables,
&c. many of these, perhaps, to be had in foreign
Parts; Malters and Gunners, &c. to be got; Ready
Money must be had for the provision of all
these; this will require convenient time before
this can be done. What Hazard may the Kingdom
run all this while? What Policy is there to make
State-Affairs known to the People? They may
think themselves, they would not make a Ship
for the Service, and then they might have had it
for their own Use afterwards. When the King-
dom is in Danger, the King may command a Sup-
ply for Prevention thereof; and who can tell
Better than the King how to prevent the Danger?
Nec nofias mai babet Legem. The King then must
not fear. The common Law don't regard the
common Good above particular; as in Ponings,
Necessity, and Peaceable.
The Provision of Shipping hath prevented us
from Danger internal, and I hope it will still.
It hath increased the Honour of the Kingdom. It's
known not only to ourselves, but to other Princes,
that our Ships are of far greater Barchen, Strength,
and better furnished, than ever was before. All
which redounds to the King and Kingdom's Ho-
nour. The Ship, called The Sovereign of the Sea,
may be termed, The Sovereign of all Ships.
To conclude: The Sum affidited for this Business,
I wish it may be paid by all cheerfully, for it is
generally a Good, for the Safety of the whole Kingdom: The Projects are not speculat-
ed by it, exclusive in their Lignities, or Properties in
their Gonds: The King's Prerogatives protect the
Peoples Liberties, and the Subjects Liberty the
King's Prerogative: 'Tis proper for Kings to
command, and Subjects to obey. We that are
the Judges of the Kingdom have paid it, and there-
fore it is fit our Opinions concur with our Actions
in this Cause. And to my Advice is, That Judg-
ment ought to be given that Mr. Hampden ought
to be charged with the 20. s. affidited on him.

The Argument of Sir George Crooke Kt.
Our of the 'Judic平安 of his Majesty's Court
of King's Bench at Westminster, in the
Exchequer-Chamber, in the great Cause
of Ship-Money.

This Cafe of Mr. Hampden's stands upon
Record, and what Judgment may be upon
this Record is the Question. I find no Party
in this Cafe but Mr. Hampden. A Solicitor is brought
against him, to shew Cause why he should not
be charged with the 20. s. affidited upon him, to-
wards the finding of a Ship.
The Occasion of that was the Writ of 1 Aug.
which is the Foundation of all; and that is direc-
ted to the Sheriff of Middlesex, as to other Sheriffs,
to prepare a Ship of such a Burden, for the Reaons
mentioned in the Writ, Quia Procedens, &c. be-
cause the Kingdom is infested with Pirates, &c. Quo
Datum est nobis intelligi, &c. for that they do
seek to draw Men into Captivity; and also
we should lose the Dominion of the Sea; and for
these Reasons these Writs are sent forth. For
the Time that they were to continue abroad, it
is twenty-six Weeks, so long the Payment of the
Men to be at their Charge: & gain Rebates, &c.
and if my do rebel, that they should be imprison-
and. To the Record fetched forth further, that
upon this Writ a Ostリア was forth, and Mr.
Hampden was certified not to have paid it.
Now upon all, Mr. Hampden hath demanded
Quo of all the Writs, and hath demurred.
I must confede, this Cause is a very great Cause,
and the greatest Cause that ever came in question
before any Judges. And for my own Part I am
fary it should come in question in this Place; more
requisite it was to have it debated in a publick
Assembly of the whole State: for on the one side,
it concerns the King in his Prerogative and Power
Royal; and on the other side, the Subject, in his
Lands, Goods, and Liberty, in all that he hath,
besides his Life.
For my own Part, I am sorry that I am enor-
mised to differ from my Brothers that have argued
before me; a Brother Court it were for me to have
argued with them privately, who have argued so
learnedly and well. I have thrashed all that I could
to have concurring with them, but speaking,
according to my own Heart, (for we are to give
Judgment upon our Oaths) in Respect of my Rea-
sion and Conscience, I cannot concur with them;
it makes me at a stand with myself, because of
the Arguments of so many learned Men before me,
and to inflect my Judgment, whether it be erro-
rous or no. Yet I must let down my own Rea-
sions, and upon them leave them to my Lords that
come after me to judge on.

Judgment is of the Lord, the Hearts of Men,
and not the Judgments, but in the Hands of God;
and when Judgment is once past, we have
done. For my own Part, I know in this Cause we
cannot do so well as we should, but to satisfy our
selves in our Consciences and our Understandings;
and in this Cause we are to give Counsel to the
King according to our Oaths, whether this Charge
be legal or not. If legal, the Subject ought not
to complain: If not legal, then not in the King's
Power thus to charge the Subject.
The King's Counsel have maintain'd this Writ
to be good; and the Judges that have argued, in
their Judgments have maintained it. Then the
King is advised by his Judges, Whether this be
legal or no? If legal, it is well, if not, then the
Brideg is upon us. For the King doth nothing
what he is advised.
The Cause hath been excellently, learnedly,
and well argued on both sides; for that which was
preferred by Counsel on either side, did not much
move, for they argue as Counsel; and we are to
give Judgment upon our Oaths, on what they
have said.

But the Judges Opinions already deliver'd do
much trouble me. When I have been of Coun-
fel, I have argued one way, and have thought
myself very clear; when I have come as a Judge,
and argued, I have thought clear otherwise of the
Cause. I determine, whether they give Judgment in this Cause
according to God's Doctrine, and my own Consci-
ence, and that is the best. And so I do not doubt
but all my Brothers have gone according to their
Conscience, which makes me suspect myself. But
every Man standeth or falleth to his own Master.
I desire God to guide me to a true Judgment; and
that, for the Reasons aforesaid, I doubt myself,
yet I am not of the same Opinion with my Bro-
thers; but according to my Conscience, I think
that
that Judgment ought to be given for the Defen-
dant; For which my Argument shall stand upon
these Points.
1. I hold that this Wr1t is not allowable by
the Common Law, but is a Wr1t absoluutely against the
Common Law.
2. Admit it was good at Common Law, yet it
is against divers Statutes.
3. I hold, that no Necessity, nor no Pretence
of Danger, can give this Caufe for the Wr1t: For
if the Wr1t be against the Common Law, no Pre-
tence of Danger can Warrant it.
4. There is no Warranty by Prerogative of the
Crown, nor Power Royal, for this Wr1t.
5. That this Wr1t is the firt Wr1t that ever was
devised in this Kind, and firt put in Practice, ei-
er in Inland Counties or Maritime Parts.
6. That there is not any one Precedent, nor
any one Record judicial, or Judgment in Point of
Law for the Wr1t; if no, then I hold it not fit to
be maintained.
I come now to the Wr1t it self. 1. I hold the
Motives of this Wr1t to be insufficient to warrant
the fame.
2. The Command of the Wr1t are merely a-
gainst the Law; because the Command of the
Wr1t are, to charge the Subject to find a Ship,
with Men, Munition, &c. against the Words of the
Common and Statute-Law.
3. If they were, yet the Affeclions of the
Wr1t are not warrantable by the Law, and no
Affeclion: And if no good Wr1t, then the Sirit
Part will not like.
4. I come to the Certiorari: And, whether it
be well-grounded, or no, is the Question. And I hold,
it doth not well illuf, as this Caufe is.
1. For the Point of Law. We that are Judges
are bound, according to the Law, not according
to our own Imaginations, both to judge accord-
ing to the Law, and the Law of this Land, either
d of the Common Law or of the Statute-Law: and
I see no Book, nor know of any Authority that
doth maintain this Wr1t; but contrariwise, there
are Books and Authorities in Law, that fay, This
Wr1t ought not to be maintained. It is a Rule in
Littlen, tbat tbat which was never done before,
cannot now be done.
I fay, there cannot be produced an Example of
the like Wr1t, I mean the Wr1t 4 Aug. 11 Car. that
ever went unto the whole Kingdom, to make Ships,
&c. nor unto all the Maritime Counties, at one
time; but it is the firt Precedent, either for In-
land Counties, or Maritime Parts; and if no Pre-
cedent before, then not by the Law to be main-
tained.
2. It is against the Common Law of the Land,
which gives a Man a Freedom and Property in his
Goods and Efluate, that it cannot be taken from
him, but by his Confeit in Specie, as in Parlia-
ment, or by his particular Agent: for the Law
puts a Difference between a Freeman and Bond-
man. A Bondman's Goods may be taken without
his Confeit; but not of a Freeman.
Then thus flades the Cafe, and the Question
arifteth, Whether this Wr1t to command the Sub-
jects in any Inland County, to prepare a Ship, and
provide Men, Munition, &c. went out by their
Confeit? And whether allowable or no, if without
their Confeit, for this is a Charge upon the Sub-
ject. And I fay, no common Charge upon the
Subject ought to be but by a common Confeit, or in
a Parliamentary Cafe. Mr. Lumbart faith, that
in the Conqueror's Time the King could charge
the Subject with no unjust Taxation, nor Taillage,
feil per commune canceitum. And that was a Law
not given by the Conqueror, but allowed by him,
as to be the Law of the Kingdom. In the
Clartu in King Jofu's Time, it is plain, the
Liberty of the Subject is there confirmed, Nul-
num fantatur, nullum auxilium vit per commune can-
celation. It appeareth plainly by the Books, that
this cannot be done but by Confeit in Parliament.
Fortesce Chief Justice fet down what the Law of
England is in that kind, as Inftuctions for the
young Prince. Saith he, ' The King governeth his
people by Power, not only Royal but also Po-
liquely.' If this Power over them were Royal
only, then he might change the Laws of his
Realm, and charge his Subiects with Taillage, and
other Burdens, without their Confeit. Thus the
King can change no Laws, nor yet charge them
with strange Inpolitions against their Wilis. He
fetth down, as the Head is the chief of the Body,
so the King is the Head of his People: He cannot
take any thing from them, without their ordinary
Confeit; the common Confeit it is in Parliament.
Cap. 3. an express Claufe there, hoc individuo. Shew
me any Book of Law against this, ' That the King
shall take no Man's Goods, but he shall pay for it,
rio' it be for his own Provision; or lay any Barden
upon his Subiects, but he must do it by their Con-
feit in Parliament. If this be the Privilege of the
Subiect, then it is express, the Subjects ought not
to have this Charge imported upon them, but by
their common Confeit. Then it is said, As this Statute
is the A£ of the King, the Lords and the Com-
mons only give their Confeits; I fay, it is the A£
and Grant of the Commons, as well as of the
Lords; for what Confeit is given there, is given
by every Man of the Kingdom, by the Power of the
Voice which they gave in chufing the Knights of
the Shires and Burgofies. There is a Book Cafe,
13 Hen. IV. fol. 14, expressly, 'That no Man shall
be charged without his Confeit in Parliament.
Cafegoins, Chief Justice, gave it as a Rule. Cafe's
Reports, Clark's Cafe, No Man to be charged in
St. Alans, but with their Confeit.
In the Chamberlain's Cafe, to put a
final Charge upon a Merchandize, &c. when it is
for the Good and Benefit of the People, is a thing
to be allowed thru a common Ordinance to be
Good, fo they have no Lo£ by it; as in Cafe of Mu-
rage, Portage, Paveage, and Tolls of Markets:
Taxes upon the People for these are allowed, becauf
they are Matters for Ufe of the People, and are not
as a Matter of Charge imposed upon the People.
Fitz. Herb. No. Br. The King hath the Govern-
ment of the whole Kingdom, both in time of War
and Peace. None will deny but that he may com-
mand, that no Man can doubt of; and therefore
in that kind, in Point of Imposition, the King, by
his Wr1t, commanded, That that shall be fettled
and be done by those that have Benefit or Lo£
by the Imposition; and those only are to be
charged, as come unto Kent: 'If an Imposition be in
Kent Marshes, shall the County of Middlefex be charged
therewith? no; but those that have Profit by it,
or have Lo£ by it. Vid. the 10th Report.'
Then here flades the Cafe; if that be fo, the
Quetion is not now, Whether a common Charge
may be levied upon the Subject, without Confeit:
No quetion but a common Charge may, if occa-
sion, and every Man ought to obey it.
But the Question is, Whether, upon the Allegations in this Writ, there shall be a Charge to impo
Money upon them in the mean time, within their Affidavit I say not, but a Parliamentary Court: in that kind the common Law doth not allow it. A notable Case in 14 E. II. Bane. R. Ret. 60. Hid. and Levei.'s Cafe in Durban; an Action of Tref-
pas was brought against Livor for taking away the Cheif of Hid's, with Goods and Money in it he pleaded not Guilty; the Jury gave a Special Verdict, That the Defendant took the Money; but it was upon this Occasion: The Scots had invaded Durban, and burnt divers Houses about Durban; upon which the Inhabitants of Durban assembled together to consult about their Defence, and took an Oath to obey the Parliament to be made by Consent amongst them; whereas the Plaintiff was one that swore, and gave his Consent: Whereupon they made an Order to give the Scots a Sum of Money to depart, but they would not be gone without ready Money; whereupon they made a Second Ordinance, That every Man's House should be searched, and where they found Money, to take it: Thereupon the Defendant took the Money out of the Plaintiff's House. The Judges affects the Jury, If this left Order was done with the Plaintiff's Consent. They held it was done by Reaion of the Occasion. Thereupon the Ordinance was given for the Plaintiff: That because it was in virtue of his Consent, that therefore they ought not to be charged. It came into the King's Bench, and they seeing of this Special Verdict, the Judges of the King's Bench reversed the Judgment: for why? what was done, was done by his own Consent and proper Act, because of his Consent upon his Oath; and therefore (said the Judges) he had means to help himself against the Commonality of Durban, and to pay him again to his proportionable Part. This proved, That no Man ought to part with his Goods, but with his Consent. That of Rich. II. which is not a Statute, yet doth show, that the Law was at that time, as it is the same at this Day. Advice was taken in a great Assembly how to charge the Commons: And it was answered, That they could not be charged, but by common Consent in Parliament, And it was the Declaration of Sergeant in the Parlia-
ment-House, That without Consent in Parliament, the Commons ought not to be charged; because the Commons have a Convent in Parting with their Goods. It is said in Doctor and Student, That the Subject hath such a Property in his Goods, that no Man shall meddle with them, but by his Con-
vent; which is the Reason they recover Damages they meddle with their Goods, not by their Consent. Another Reason why the common Law lookt
into it, is, because of the Inconveniences that might infuse, if this should be allowed; To charge one Ship, by the fame Reafon there might be ten Ships charged. We have a pious King, and tho' he will now do it, yet the Law lookt into this Inconvenience. That of Duneghel began in the Year 991. The first Composition was 10000 l. The secon 16000 l. The next 24000 l. The next 30000 l. And in 10 or 11 Years, by five Several Rulings, it came to 48000 l. And for, that I do know, this may come to forty hundred thousand Pounds. Therefore the Law lookt into to make certain the Charges. The first double Sub-
sidy that ever was, was 31 E. I and the Chancel-
lor of the Exchequer said, It did make his Heart to quake to move for a double Subsidy, one Sub-
sidy being granted to lately. The Reason of it was, because the Spanish Invasion was foreseen. After the Spanish Invasion was past, then came the Second Grant of a double Subsidy; and he said, he hoped not to live to see a Subsidy granted a
gain. 33 and 39 E. I. It came to three Subsidies, and four Subsidies, but if there had been ten Subsi-
dies, what was done, was done by Parliament; and the Law alloweth it because of the greater Inconvenience. Then it is in the Judgment of the Parliament for the appointing of those Subsidies, as the Occasion requires. The Case of the Damage and Poundage, as appears by all the Statutes made in Rich. II. and con-
tinued till Hen. IV. V. VI. VII. and so downwards to King James's Time, are to the end the King might have Money in his Coffers for the Defence of the Realm, and for the Safe-guard of the Sea, that he might not, upon a sudden Occasion, be unprovi-
ded, because it is Reason and fitting that Kings should have Money ready against any Occa-
sion. But now it is not granted, yet it is taken, the same Profit is made small: And I do not doubt but the King doth imploy it for the Defence of the Kingdom, and the Safe-guard of the Sea. The difference between a Defence and a War is much for the first there is no Law to compel the Sub-
sident unto it, but by Parliament: For the Second, which is the Defence, every Man's Person is bound in Defence, Expeirece & vitam in, upon Peril thereof; but he is not bound to any Charge with-
out his Consent. So in this kind I hold, as the Law flandereth, that no Charge ought to be im-
ploed, but by their common Consent; for you will make it all one to take away the Property of the Goods, which you do quodnam modo, the not 'in specie. Power is given to disfain the Goods, and to sell them; and every Man is able to the Defection of the Sheriff. But admit this Charge might be imposed by the common Law, yet I do conceive it is prohibited by the Statute; for I hold, as now my Brothers the Judges, have held, that the Statute de Tagallio non usus concedendo, is a Statute, notwithstanding what hath been argued at the Bar to the contrary. It is apparent in our printed Books; and in one of our Books, the express Time is mentioned when it should be made, viz. 25 Ed. I. then it is said to begin. Taillage is an ancient Aid, and so is Par
ship marier, and par faire chevalier; but no Taillage without a common Consent in Parliament; so I agree with my Brothers, that it is a Statute. Next this Statute of 25 Ed. I. which is said to be no Statute, the Kingdom of England never held it for a Buckler for them, That no Charge (without common Consent) should be laid upon them. And the Reason wherefore this Statute was made, was in respect of the great Taxes im-
ploed on the Subject without Consent, in time of War. The next Statute is 14 Ed. III. cap. 1. a great Subsidy was then granted. What was then done? The King doth grant for him and his Heirs not to put them to any Charge afterward, unless it be by common Consent in Parliament. Oh! but this is but for that King himself - lone! I answer, it is perpetual. If the King doth grant for him and his Heirs, it doth go to all his
Pothicery,
manner of Charge, Aid, or Tax should be laid upon the Subject, but by Common in Parliament. The Judges are to expound them according to their Intention.

But they say, the Practice hath been otherwise. We say not now what de facto, but what de jure was done; and we, as Judges, must not allow de facto, sed quid de jure fuit in fieri.

To answer the great Objection, It is for the Defence of the Kingdom: Here is such a Necessity and Danger, as will not admit the Delay of a Parliament.

I hold, for my part, that no Necessity nor Danger can allow a Charge, which is a Breach of the Laws. I hold it absolutely, that for a General Charge of Money upon the People, it cannot be upon any Pretense of Danger or Necessity. Mens Percons may be used in the Cafe of Necessity or Danger; for every Man is bound to defend the Kingdom, but no Necessity can procure this Charge without a Parliament. The Law provideth a Remedy, in Cafe of Necessity and Danger; for then the King may command his Subjects, without Parliament, to defend the Kingdom. How? By all Men of Arms whatsoever, for the Land; and by all Ships whatsoever, for the Sea, which he may take from all Parts of the Kingdom and join them with his own Navy; which hath been the Practice of all former Kings: In their Necessity they have taken Ships from all Parts of the Kingdom.

And Ed. III. m. 2, Scot. 10 Ed. III. m. 16, when there was a great Navy of Scots and French appeared, and intended to come and invade the Kingdom, the King appointed two Admirals, one towards the North, the other towards the West, and to meet together at what Place he pleased; and, m. 16, sent into North-Wales and South-Wales to maintain one Ship, either of them upon their own Coasts of the Sea, for the Defence of the Kingdom. And in Rot. Amt. 12 Ed. III. Writs went for the arrestand of Ships in all Parts of the Kingdom. Rot. King. 1 H. IV. m. 12. Writs issued to all Archbishops and Bishops, shewing imminent Danger, that they should be ready in Arms, to come and affright all Enemies, if he should appoint them. But in that Time, when the King was sick, yet no Ships appointed to be prepared through the Land. And 5 Hen. IV, that all the Men of all Parts should come together in such a Place: This was only an arraying of Men to be in readiness. 3 H. V. to the same purpose. And 1 Hen. VII, which was much flood upon, of a Rumour of Wars between the King of the Romans and the French King, which might, perhaps, in the End, tend to an Invasion of this Kingdom, there was an arraying of Men, from 16 to 60, and gathering of Ships, and taking Order for Watch and Ward upon the Sea-Coasts, but no Command to make Ships. 4 Hen. VIII, par. 1, there the King by Proclamation failed, That the Enemy is ready to enter, the Ships are furnished with Men of War to invade the King.

What then? What was done then? It is no more, but that every County in England have Men in Readiness to Affright, from 16 to 60, to defend the Kingdom, and to have good Watches and Wards upon the Sea-Coasts.

But, I pray you, in the dead Times of Hen. VIII. Hen. VII. Hen. V. Hen. IV, were there ever any Writs went forth for Ships into any County? it doth not appear that any County was to prepare or make any Ships; but only Men in Ship-Money.
The King against John Hampden, Esq. 13 Car. I.

Arms: So the Law makes Provision, in Time of Danger, by help of their Persons, and with Ships, not with a pecuniary Charge; for that cannot hold for any, nor can be done without Parliament. And if New Ships must be made, it must be made by Parliament. If so be the Writs be to make Ships, then let the Sheriffs make them, and shew for their Discharge upon Record, that they are made and prepared. But to appoint by Writs Ships to be made, and by their Directions appoint the Sheriffs to levy Money to pay off some of the Ships, was never yet done, this being a great and weighty Imposition. The Law did always account it a Parliament, able to provide and to give sufficient Aid, and must fit to consult de ordis Regni: and there is a Contempt of and Grant of the Commons to what is done, they are Actors in it.

By the old Law of Abrid, Parliaments were to be held twice a Year; and by express Statute made 4 Edw. III. 14, an express Law was made, That every Year a Parliament should be held, especially if Need required. And by another Statute, for avoiding of Grievances that daily happened, a Parliament should be held once a Year. Then it is to be conceived, a Parliament may be called, and Things may be charged that way.

And for the Objection, That a Parliament is not the speediest way to prevent the Danger; the Imagination of Man cannot invent a Dearth, but Court may be taken for Defence, till a Parliament be had. So, for my part, I hold this Point of Necessity, or Danger, cannot be held a sufficient Ground for this Writ.

The next Thing is this: Yea, but this is maintained by prerogative and Royal Power. I say for that, by my Oath I am bound to maintain all the true prerogatives of the King, and we that are Servants to the King must maintain his Prerogatives, and, to the best of our Skills, not suffer them to be diminished. But I hold there is no for the Writs.

The Prerogative is, that which the Law pre

form, that the King can do no Wrong: And it is in British, Rex potest facere quod jus potest facere. 11 Rep. Magnolius-College Cafe, 236. Plutarch's Comment, The King can do no Wrong, nor any Ait to wrong the Subject; therefore, he

not potest agere quod non potest facere. Therefore if this Charge be against the Law, so much to the Prejudice of the Subjects, as I conceive it to be, the King will never do it; for it is done by Misinformation that it hath been usually done, and may be justly done. 21 Edw. III. 27, a Parent is made, which is a Wrong to the Subject, the King, de jure Regis, ought to revoke the Parents, for the Law hath that honourable Conict of the King, that he can do no Wrong. A King, therefore, to have a Royal Power or Prerogative, to do that by his Writs, to command any thing to be done that is against the express Laws of the Kingdom, to the injuring of the Liberties of his Subjects, is not admitted by the Law: The Royal Power is to be taken away, for as it is before laid by Fort sexe, he can change no Law, nor charge his People, but by common Consent in Parliament. So, for my part, I hold that this same Charge upon the Subjects, by his Royal Authority, it is not allowable:

The King, we know, is a most just and pious King, that he will do nothing against his Laws; if he did know it to be against Law, he would never define it. When a Judge of the Land was called in question, in Queen Elizabeth's Time, about denying some Loan, delivering his Opinion against the same, he said, It was against his Oath, and against the Law, to advise her Majesty to it. With which the refted satisfied. If the Judges say, by Law the King may do this; he may do it: If they say no, but by Ait of Parliament, he will never do it.

But it is said, The King takes the Court, More magnum. There is not any Precedent express, nor by any Judicial Record, that warranteth this Court: and if there were any Precedents, we are to judge according to the Law, and not according to Precedents; not to judge what hath been done, but what of Right hath been done. 11 Rep. Magnolius-College Cafe, there be many Precedents, that maintaineth not a Right; the Question is still, Whether a Right or not?

But admit that Precedents could make it to be lawful, yet I hold there is not any one Precedent to maintain this Cafe.

For, First, I say there is no one Precedent gotech to Inland Counties all over England, before now, to any Jurisdiction of Maritime Counties to prepare, as my Brother Berkeley is charged, that he knoweth none for any Inland Counties, but 1 Rich II. 15, 57, there Writs went out to divers Inland Towns, but not to Counties, to make Ships; and besides, these were not any to Inland Counties.

To this I say, Thir, Writs that went out at that Time were done by Conveyance in Parliament: for an Order was made in Parliament. That all that had any Charters, the ancient Cities, Boroughs and Towns, that had any Charters of Liberties, should there be examined; and appoint points, and by whom; and have their Liberties confirmed without Fine, if they would produce Ships for the Defence of the Kingdom. But yet this Record not any Inland County or Maritime County is charged, nor no Inland Town, but those that would have their Liberties confirmed.

Now to look upon the Precedents of K. 7's 6th Time, 6 juben. 9 juben. 14 juben. &c. here be the six Precedents in Court; and I have looked into every Precedent on the King's side, to satisfy myself; and all those Precedents are only for arming of Ships, that they should not go forth of the Realm; and 15 juben. All Ships to be ready as the King shall have Occasion.

Then we come to Hen. Ill's Time: 12 Hen. III. in 15, 15, &c. there are six of these Records, I have taken them all, they are no more, but only to Port Towns, and to Port Ships, and the rest to have Men at Arms, in readiness upon the Sea-Confis, and that but for forty Days.

Then for the Precedents of Edw. I's Time, all of them being examined, not any one of them go to the Counties; 1 Ed. I. 77 divers Ships are appointed to be made, but it is ad summum Regis, and only unto Sea-Towns, the Record shews, that by the Barons of the Exchequer they have an Allowance for it. 2 Ed. I. 8, 5. Sall, a Writ to the Sheriff of Norfolk, to compel them to maintain their Sea-Confis, 14 Ed. I. 1. A Writ to the Conferences called the Mayor names parishes, and armed Men to be put in them. So to command in that kind the King may, and we must obey; he commands Ships ready made, not to make them. Afterwards, 14 Ed. I. Rot. 177. several Writs to the Archbishops and Bishops, to attend
attend with their Arms in readiness, to maintain the Coasts. 14 Ed. I. Ret. 78. A Writ to the County of Berkshire, A Thing much stood on; it is only for Matter of Army, if it be well looked into, and no Matter of making or finding of Ships; and divers other Writs in this King's Reign, for maintaining of Armies in their proper Counties: and no Man can deny but every Man in his proper County is to go to defend the Kingdom. And also for having of all Ships of above 40 Tons in readiness: But to make new ones, in any Inland County, is not warranted by any Precedent, that I can see; tho' I have looked over all the Records that have been brought unto me; no, not in Maritime Counties, to make Ships.

For the Precedents of Ed. II. Time, 9 Ed. II. &c. to put them all together, they are only to congregate Ships to be in Readiness, but not to make new Ships.

To come to Ed. III. Time. 7 Ed. III. m. g. Command is to affit the Admiral with their Ships, as Occasion shall require. 10 Ed. III. 11. A Precept to Port-Towns only, to bring their Ships to Portsmouth, for 13 Weeks, furnished with Victuals, &c. 1 Ed. III. 16. not to depart without Licence. 10 Ed. III. 12. Ed. II. Ret. Avis. Writs only to Port Towns, &c. &c. More. 12 Ed. III. m. 12. A Command to Henry Hussey, &c. ed. conveyed Tenants, and to attend on the Sea-Coasts. But there were the Causes of making the Writ, 12 Ed. III. that there Should be no further Charge laid on the Subject: so that all before that Statute do not prove our Case. 15 Ed. III. A Catechism of the Ports commanded, and Warrants to arrest Ships. 16 Ed. III. Command to the Earl of Dover, &c. to prepare Ships against an Enemy that intends to come to subvert the Kingdom, and to set up Beacons, which is the first Original of Beacons that I observe. All these Precedents in Ed. III. Time, were but to keep Men and Ships in readiness, and to bring them to the Sea-Coasts. 46 Ed. III. m. 3. that the Frenche made great Preparation, whereupon they are commanded all to array, both Clergy and Laity, to guard the Sea-Coasts. And in these Times, there was more likelihood of Danger than now, no Writs came out then, but only to array Men, and keep them in readiness. 50 Ed. III. to array Men in Norfolk to defend the Coasts. 29 Ed. III. Command to the Bishop of Durham, and into Cambridge and Northumberland, to have their Men in readiness. A Number of these Precedents in that King's Reign.

For Rich. II. Time, it doth not appear by any one Record there is any thing for Ships, but only for the Catechism of the Sea.

And for Hen. IV. Hen. V. Hen. VI. Time until 2 h.2. they are all concerning Matters of Arms, not to make Ships. And when the Rebellion in the North was in the Queen's Time, then by Writs Men were commanded to be in readiness, for Defence of the Kingdom.

The next Thing we come to is the Writ it self. For my part, I hold it to be illegal; mark the Recital of the Writ, it is no more but Quod datum de nobis intelligi, &c. not a plain Affirmation, as Apparenity of it. Then the Motives are, Because the Pirates do infest the Seas: Such Motives as never were in any Writ before. All former Writs were not to provide great Navies in respect of Pirates; there is no such great Danger of them. 15 Ed. I. it is there set down, when Pirates infested the Seas, they took Order that there should be only 10 Ships to fear the Coasts. 16 Ed. III. &c. Command that Men should be arrayed, left the Enemy should invade the Kingdom; but no mention made of Pirates, for they will be removed with a few Ships. Mark the Times when great Pirates were upon the Sea, they would be glad to stuff away when the King's Navy came towards them. Now that this should bring the King's Navy to Sea, is against the Law of the Land, and are not Motives sufficient to induce a Change of this Kind.

Secondly, The very Commands of the Writ it self are unlawful, in respect of the Inconveniences to an Inland County; whereas there was never any Inland County charged in that kind before, as Coalt-Towns that have been heretofore charged with Soldiers, and had none, were discharged. When Bodmin in Cornwall was charged with finding of a Ship, they thought they never had Ship nor Mariners there, and that divers of them were imprudently for not finding such a Ship; whereupon Commission was to the Admiral to examine the Truth thereof: And because it was found they had not Mariners, they were discharged.

But Mr. Solicitor answered, This was done by the Admiral, beyond his Commission; but 13 Ed. III. the same Year, there was a Writ awarded to Cheesifer in the County of Suffolk, to find a Ship, and they complained they had not any Ships used to arrive there, nor Mariners therein inhabiting; and thereupon they were discharged, upon a Writ out of the Chancery: So I say, Inland Counties that are not wont to have Ships, the Law doth not appoint them to do that which they cannot do, nor will not expect from them that which is impossible.

The Purseance of this Writ is against Law; it appoints them to provide a Ship, hire Men, and provide Victuals and Wages for them, 26 Weeks, &c. I lay, this is against Law plainly, and against divers Statutes, and no Law doth warrant it; for Soldiers, which are the King's Servants, ought to have their Pay from the King, at the general Rendezvous, 15 Jodan. m. 3. Ships commanded to be at the Ports upon the King's Pay. Tenants by Writ, and for 30 Days, to be at the King's Charges, 16 Ed. III. 13. or in a place near the King, upon the Navigation of the Scots, many Men being left, appointed Soldiers, and their Wages paid, and what to Durham, and what to Newcastle, &c. 31 Ed. I. in the Exchequer, Writs went out to levy Men to refit the Scots, and they would not furnish without their Wages. 16 Edw. III. to pay Soldiers Wages, 2 Edw. III. Ret. 16. there is it set down in Parliament what Soldiers have received for their Wages. 26 Stat. 1 Ed. III. cap. 7. Soldiers are not to go out of their Counties without Pay. 10 Ed. III. the Men of Bucks stood upon it, and would not go out of their County to the Coasts of Southampton without Wages. Ret. Avis. 12 Ed. III. m. 12. A Writ to compel all Men to make Mutiny for Ships, for the Town; and thereupon II. and B. they were commanded to maintain the Men of the same Town. Conf. 1 Ed. III. m. 14. Men of Arms for the Defence of the Sea-Coasts commanded their Wages were not paid them: Ordered, The Town from whence they came should pay them. The Statute of 11 Hen. VII. cap. 1. proveth, that Soldiers that go out of their own Counties to attend the King in his War, shall have their Wages from the Time they go from their Hotes, to be paid by the King's own Officers.
I hold that this Affirmation is not lawful and allowable: then if the Affirmation thus made falls to the ground, the Power to the Sheriff to affix doth; and he may do as he lists, put more upon one than another, therefore an Affirmation in that kind is not legal.

Then the Claus, Si rebelle fuerint, &c. to imprison them, then to give Power of imprisonment to the Sheriff: Chales have been in former Writs, in Cales of Arrayes, to disfrain, if they rebel to pay, never in Cale of levying Money, to imprison for it: it is clearly against Magna Charta to be imprisoned, unless he be indicted, or by the Power of Law.

The next: Things is the last Clause of the Writ. If more be gathered than shall be needful, to be returned amongst those that have paid it: That therefore the Ship must be done, we are now upon the Record, and by this Record it doth not appear that a Ship is made. It appears Mr. Hammond was affixed 20l. towards the making of a Ship. It is said, If the Money be paid, ships can provide Ships. This is not according to Law, to commit men to the Seas, and to suffer it into Magna Charta, if a Ship were made by a Country, the Country should have it again; but in this Case it is otherwise: this 20l. is brought to have the Money.

For the Conclusions, it is Ordered to a Sheriff cut of Office, to take the Monaments, and if that not to be, for in Government it be done, are direct to the present Sheriff, so for the old Sheriff to follow Claus: what they have done, and the new Sheriff to make their Return, he is the immediate Officer of the Court.

Admit the 20l. should go forth, it would do nothing, etc., e. to whom, or how, nothing is heard of it, and no man what it was for, if not appear, in which it doth not appear.

Besides, It is strange Money in this kind, and below is the Ship, it is well. It is not for the utmost, which they have done, and the new Sheriff to make their Return, he is the immediate Officer of the Court.

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Besides, It is strange Money in this kind, and below is the Ship, it is well. It is not for the utmost, which they have done, and the new Sheriff to make their Return, he is the immediate Officer of the Court.

The argument of Sir George Crooke Knight, one of the Justices of his Majesty's Court of King's Bench at Westminster, in the great Cale of Ship-Money, as it was presented to the King's Majesty. For Cale is this upon the Record. The King by Writ under the Great Seal, dated 4. Aug. 11. of his Reign, di-
Clauses of the Affid.

1. According to the vestry and parishioners of the town of Ship-Money, the said town of Ship-Money, the inhabitants thereof, and their representatives, have erected and set up a certain monument, to wit, a certain monument, hereby described, and set up within the yard of the town of Ship-Money, and is now in good repair and preservation.

2. That the said monument is a monument, erected by the town of Ship-Money, and is now in good repair and preservation.

3. That the said monument is a monument, erected by the town of Ship-Money, and is now in good repair and preservation.

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44. That the said monument is a monument, erected by the town of Ship-Money, and is now in good repair and preservation.

45. That the said monument is a monument, erected by the town of Ship-Money, and is now in good repair and preservation.

46. That the said monument is a monument, erected by the town of Ship-Money, and is now in good repair and preservation.

47. That the said monument is a monument, erected by the town of Ship-Money, and is now in good repair and preservation.

48. That the said monument is a monument, erected by the town of Ship-Money, and is now in good repair and preservation.

49. That the said monument is a monument, erected by the town of Ship-Money, and is now in good repair and preservation.

50. That the said monument is a monument, erected by the town of Ship-Money, and is now in good repair and preservation.
4. Admitting it were legal to lay such a Charge upon Maritime Ports, yet to charge any Island County, as the County of Bucks is, with making Ships, and furnishing them with MATTERS, Mariners and Soldiers at their Charge, which are far remote from the Seas, is illegal, and not warranted by any former Precedent.

5. I shall examine the Precedents and Records cited to warrant this Writ, which have been all the principal Grounds of the Arguments to maintain the same. And I conceive there is the chief ground-work being in my Notes, but I forget it. But before I proceed to the Argument, I desire to remove two Difficulties: First, That by the Demurrer the Danger of the Kingdom is confuted; and so it is to be allowed for a Case of Necessity.

To this I answer, That the Demurrer confutes not Matters but Facts, in which the Matter is legally set down; but if it be not a legal Proceeding, then the Demurrer is no confutating of the Matter of Fact. This appears in the Book-Cafe, 5 Hen. VII. fol. 1., and Coke lib. 5. fol. 66. in Bynner's Cafe, That a Demurrer is no confutating of Matters of Fact, but where the Matter precede is sufficiently pleaded or laid down; and so it is held in all our Books.

The Second Difficulty is, That this Cafe is so received by our Opinions under our Hands, that this Writ was legal; which was professed by Mr. Solicitor.

To this I answer, That it is true that I have set down my Opinion under my Hand unto Two Cafes, to the shift voluntarily in Dec. 1635, which was thus:

1. I am of Opinion that where the Good and Safety of the Kingdom in general is concerned, and the whole Kingdom is in Danger, of which his Majesty is the only Judge, there the Charge of Defence ought to be borne by all in general.

This I held to be agreeable to Law and Reason; this Opinion I do still and shall always maintain; for where the Kingdom is in Danger, the King may command every Person of his Kingdom with all his Force to come and defend it at all Times and in all Places of his Kingdom where he pleareth; and the King is the sole Judge of the Danger, and of War and Peace; and if any do not perform his Commands therein, he is inexcusable and punishable in a deep manner.

The second was in Feb. 1636, which is thus, That when the Good and Safety of the Kingdom in general is concerned, and the whole Kingdom in Danger, his Majesty may by Writ under the Great Seal of England command all his Subjects of this Kingdom at their Charges to provide and furnish such Number of Ships with Men, Victuals and Ammunition, and for such Time as his Majesty shall think fit, for the Defence and Safeguard of the Kingdom from such Danger. And that his Majesty may compel the doing thereof, in cafe of refusal and refractorines. And that in this Cafe his Majesty is sole Judge of the Danger, and when and how the same is to be prevented and avoided.

To this Opinion, I confess, I then with the rest of the Judges subscribed my Hand; but I then diffented and to that Opinion, and then signified my Opinion to be, that such a Charge could not be laid by any such Writ, but by Parliament: and I do hereby truly in that Point one other did agree with me, and diffented from that Opinion; and four others, in some other Particulars, from that which was subscribed. But the greater part seeming absolutely to be resolved upon that Opinion, some of them affirming that they had seen dyers Records and Precedents of such Writs, satisfying them to be of that Judgment; I was preceeded to subscribe with them, for that the major part must involve the rest, as it was said to be inlaid in Cafes of Difference, and for that the leafe Number must submit to the major, although they varied in Opinion; as it is in our Court, if three Judges agree in Opinion against one, or two where there are two Judges, Judgment is to be entered per Cursiam, if the major part agree, and the other are to submit to it: and in Cafes of Conference, and Certificate of their Opinions, if the greater part did agree and subscribe, the rest were to submit their Opinions. And this by more antiquity Judges than myself was affirmed to be the continual Practice; and that it was not fit, especially in a Cafe of this Nature so much concerning the Service of the King, for some to subscribe, and some to forebear their Subscriptions: And that although we did subscribe, it did not bind us, but that in point of Judgment, if the Cafe came in question judicially before us, we should give our Judgments as we should in a Case after the Arguments on both Sides, and we were not bound by this halden Resolution.

Hereupon I contended to subscribe; but I then said, that in the mean time the King might be misinformed, by our Certificate under our Hands, conceiving us all to agree together, and to give him this Advice under our Hands, and not know there was any dissatisfied or was doubtful: but it was then said, the King should be truly informed thereof; and thereupon we that dissatisfied, did subscribe our Hands with such Protections as forfooth, only for Conformity, although contrary to the Opinion I then conceived.

But this being before Arguments heard on either Side, or any Precedents seen, I held that none is bound by that Opinion. And if I had been of that Opinion absolutely, now having heard all the Arguments on both Sides, and the Reasons of the King's Council to maintain this Writ, and why the Defendant is to be charged; and the Arguments of the Defendant's Counsel against the Writ, and their Reasons why the Defendant should not be charged to pay the Money afflicted him; and having duly considered of Records and Precedents cited and shewed unto me, especially those of the King's Side, I am now of an absolute Opinion that this Writ is illegal, and declare my Opinion to be contrary to that which is subscribed by us all. And if I had been of the same Opinion that was subscribed, yet upon better Advisement being absolutely certifie in my Judgment and Conscience in a contrary Opinion, I think it no shame to declare that I do extract that Opinion, for bonum maximum eerreur, rather than to argue against my own Conscience. And therefore none having, as I conceive, removed those Difficulties, I shall proceed to my Argument, and shew the Reasons of my Opinion, and leave the same to my Lords and Brothers. Not one Precedent nor Record in any precedent Time, that hath been produced or shewed unto me, that doth maintain any Writ, to lay such a Charge upon any County Island or Maritime.
I have examined this particular Writ, and the several Parts thereof; and do conceive it is illegal, and not sufficient to ground this Charge upon the Defendant.

1. The Motives of this Writ are not sufficient to cause such a Writ to be sent forth.

2. The Command of the Writ to prepare a Ship at the Charge of the Inhabitants, which mentions Vietsuals and Men, is against the Common Laws and Statutes of this Kingdom.

3. That to lay a Charge of finding Vietsuals, and Wages of Soldiers and Mariners, is illegal, and contrary to the Common Laws and divers Statutes.

4. The Power of Affidavit given to the Sheriff alone, and to dinhin for this, is illegal, and not warranted by any Precedent.

5. The Power of Impounding is illegal, and contrary to divers Statutes, and not warranted by the Precedents.

6. That the Preced of the Writ, and the Practice of it, is contrary to itself, and oppositum in objeto.

7. If this Writ were legal, yet the manner of the Affidavit as it is certified, is not warranted by this Writ; consequently this Sum cannot be demanded of the Defendant by virtue of this Writ.

8. That the Certificates and Sic Est ifc. illated not legally, and consequently no Judgment can be given against the Defendant thereon.

For the first Point, that this Writ, 4 Aug. 11 Car. is against the Common Law, my Reasons are these:

1. Because this is the first Writ since the Conquest that went out to any Inland Comity to prepare a Ship with Men and Ammunition, for ought appeared by any Record that hath been flown. And where there was never any Precedent, by the Rules of Mr. Littleton, sol. 43. the Law is conceived not to allow any such Writ. And Sir Edward Coke in his Comment upon Litit. sol. 81. faith, That there is where no Exemption, it is a great Intendment the Laws will not hear it.

So I conceive here, never having been a precedent before of any such Writ to the Sheriffs and Inhabitants of a County, to prepare a Ship with Men and Ammunition upon any Occasion whatsoever, that it is against the Common Law to award such a Writ.

2. That for the Common Law of England felteth a Freedom in the Subjects in respect of their Persons, and given them a true Property in their Goods andEffects; so that without their Consent, or implicit by an Ordinance which they be not forth unto, by a common Afflent in Parliament, it cannot be taken from them, nor their Effects charged: and for this purpose the Law distinguisheth between Bond-men, whose Effects are at their Lords Will and Disposition, and Free-men, whose Property none may invade, charge, or unjustly take away but by their own free Consent, and therefore not warranted by Law; which is proved by their Authorities.

Coke in his Reports, lib. 8. sol. 92. in Francis Cafe, lets down this Rule, Quod usquam eis, fine fictiis facta detegit nostro animis, jus in alieni transferri non sagittis. Mr. Lambert, sol. 24. setteth down the Laws of England which were confirmed by William the Conqueror, hath these Words: Inter alia volumus:

& concedimus, quod annus Majestatis Regis sui pro eis habent et tenant terras frutis & paupissimis suis bone & in parte, liberis ab omnibus cedenda inquit & ab omnibus aliis (not mentioning there injustis). Ita quod nihil ad eos exigere pretium fuit justice deihtum. Hereby it appears there is an absolute Freedom from all Taillege.

17 of King John, in Mat. Paris, fol. 246b. the King doth grant and confirm unto his Barons and Commons, inter alia these Liberties following: Nulam feodagiam vel annuam penam in Regno nostro interfecit per omnes Concilium Regni nostri, nisi ad rei publicae corporis nostri, sive ad rei publicae corporis nostrae, sive ad rei publicae corporis nostrae primum legibus alius imposita vel assignata, nisi ad rei publicae corporis nostrae sive primum legibus alius imposita vel assignata.

This by it appears what was then conceived to be amongst others their Liberties, and then confirmed; which was, that no Aid should be laid upon them but by Parliament; for the Parliament was then called Common Council.

That the Law is fo, appeared by the Treatise written by Fortescue, who was then Chief-Juic of England in King Henry IV's Time, and after Chancellor of England, when he wrote the Book, intituled, De dominis legum in Anglia, fol. 25. cap. 9. he faith thus; That the King of England can no longer change the Laws of England at his Pleasure, for Principatui regalis et politico ryte populo suo datur. This Power were royal only, then he might change the Laws. Tallegio passiv & eversa succurris eis injustis injustis; but adds, that the King of England should not so affright the people with new poitls, sic subjiciat populo suis potestatem eversi iniquis injustis, sic subjiciat. And so in the 13. fol. 31. he compares the King and Subjects of England to the Head and Body Natural: Ut non possis corpus physiocrum novec omne tumor neque, neque facies proprias vires & propriam funguis lumine dominantur, sic in alius fortis, nec Rex qui capti corpus caritati suntur potest leges corporis illustri, nec juro passuum substantiam prope faber demum, reclusiones etiam invadat. Thus he in this Place; but in fol. 84. cap. 36. he feemyth to say, In loco dictio, Rex jusque in juro, per se sec sanctificatione, Tallegio passivo & everso succurris aliqui imposita, leges fortis, et leges aequas, sic in aliis aut si nova caustis fine concilii vel ordinis tuitus Regni fuit in Parliamentis suo expressa. Which Words seem fo general, that in no Cafe he can do it.

So it appeareth by the Book-Cafe, 13 Hen. IV. fol. 14. That the Grant of the King, which tendeth to the Charge and Prejudice of his People in general, is not good, unless it be by Parliament. But it is agreed there, That Grants of Tolls, of Fairs, of Pontage, Package, Murage, Ferrying, or such like, which are for the Profit, Good, and Eait of the People, and Profit of them that will take them, and the People must be paid to pay, but to them that will take the Benefit; and being very small and reasonable Sums, the Law doth give Allowance to them: but if they were great Sums, that tend to the Charge of the People, the Law will judge them void.

This appeareth in Sir Ed. Coke's Reports, lib. 5. fol. 63. in the Cafe of the Chamberlain of London, That an Ordinance made by the Common Council of London, where they have a Cuffom by their Common-Council to make reasonable Ordinances to bind all within the City, concerning Clothes to be brought to Blackwell-Hall, there to be viewed, measured and searched, before they were sold, and a Penny upon a Broad-Cloth appointed for the Officer that did that Service; that such a Charge was reasonable; for that it was for the publick Be-

Benefit of the City, and the Commonwealth; and a pecuniary Penalty laid for not performance of that Ordinance was allowed.

Idem, fol. 64, in Clark's Caiue it is recited, 'That an Ordinance made by the Allet of the Plaintiff himself, and other Burgesses of the Town of St. Albans, for a small Tax upon the inhabi-
tants of the City, towards the Erection of the new Courts, and other Neccesaries, for the Term to be kept there, was allowed to be good, and did bind the Plaintiff, being by the Plaintiff's own Content, and for the publick Good of the Town.'

Allo Cake, lib. 11, fol. 86, in Davie's Caiue citeth this out of Fitz-Her. Na. B. fol. 122. That every Grant of the King hath this Consideration in it, tacit or express, Siquid Patrice per Donationes illius, magna fumo non aurorut. And as by Grant the King cannot charge his People, so neither can he by Writ lay any Charge upon his People, but by their Content, or where they have apparent Bene-
fit thereby; And that is the Reason of the Writ in the Reg. 137, and Fitz-Her. Na, B. 113, Where by Breach of the Sea-Walls any Inundation is of the County, the King, who is Potest Patriae, and taketh care for the Good and Safety of his People, sendeth out his Commission to inquire by whom Default any such Breach happened, and to cause all that had Lands or Commons to be contributary to the making up of the Sea-Walls; and this is done by a Jury: but this Charge cannot be laid upon a County or Town in general, but upon particular Men that have Loses or Benefit, or may have Loses or Benefit thereby: And this is done by Leave of a Jury, because it is a Charge to Com-
missions appointed. So it is at this Day, upon Commissions of Sewers, as appeareth by Cake, lib. 10, fol. 142, in the Caiue of the Isle of Ely. The Taxation by the Commissioners of Sewers, must be upon every particular Man that hath or may have Loses or Benefit by such Inundations, and making up of the Walls; and cannot be laid upon any remote Parts, which are out of the Level of such Loses or Benefit; and it must be certain and particular upon Particulars: certain, by reason of Loses or Profits, and cannot be laid in general upon a Town, but in the Caiues there is a particular Loses or Benefit, and in particular Places, and not in petty Charge. And then where the Law allow-
eth that which in Reason is to be done, that may be done without a special Statute: for, De unius parte non carat lex. But in this Case there is a general Charge thro' the whole Kingdom, which the Law doth not permit, without common Content in Parliament.

But it hath been alleged, That this Charge hath been imposted for the publick Safety, and Defence of the Kingdom: and may not this be done when called the Advantage by it?

To this I say, When imminent Danger and Caute of Defence is, there must be Defence made by every Man (when the King shall command) with his Perfon: In such a Case every Man, as it is said in the Precedents, is bound por fe & fia for to defend the Kingdom. And I think no Man will be unwise, but that he will expend fe & fia for the Defence of the Kingdom, when there is Dan-
gger; for otherwise, he is in danger to look to fe & fia: but to lay a Charge in general upon the Kingdom, either for making or preparing of Ships, or Money in lieu thereof, is not to be done but by Parliament, where the Charge is to be borne in general by all the Subjects.

To prove further, That no Man may have his Goods taken from him but by his Content, appeareth by a Record, Mich, 14 Ed. II. Rot. 60, in the King's-Bench, in a Writ of Error brought up-

On a Judgment given at Durban; where in an Action of Trespas, by William Heborne, against William Keyles, for entering his Houfe, and breaking his Chest, and taking away 120s. in Money, the Defendant pleaded not Guilty; the Jury found a Special Verdict, That the Scotts having entered the Bishoprick of Durban with an Army, and making great Burning and Spoils, the Com-
monality of Durban met together at Durban, wherof the Plaintiff was one, and agreed to find some to compound with the Scotts for 1600 Marks; but because that was to be paid immediately, they alledged, that William Key-
les the Defendant, and others, should go into every Man's House, to search what ready Money were there, and to take it for the making up of that Sum; and that it should be repaid by the Commonality of Durban; and thereupon the De-
fendant did enter into the Plaintiff's House, and did break open the Chest, and took the 70l. which was paid accordingly towards the Fine. The Jury was demanded, Whether the Plaintiff was present, and did consent to making of the Money? they said No: whereupon the Plaintiff had Judgment to recover the said 70l. and Damages. But there was no Remedy for his Money; and the Defendant was com-
mitted in Execution for that Sum. And there-
upon the Defendant, Keyles, brought a Writ of Error in the King's-Bench, and assigned his Error in point of Judgment: and there the Judgment was reversed, and the Reasons set down in the Record were, First, Because the Plaintiff, Heborne, had his sufficient Remedy against the Commonality of Durban for his Money: Secondly, Because he him-
self had agreed to this Ordinance, and was sworn to perform it; and that the Defendant did nothing but what he was commanded and suffered to be by his Oath, and therefore is accountable to nothing but by his Content, and as Servant unto him, therefore there was therein no Trespasser: and therefore the Judgment given in Durban was reversed, because he had af-
fented to that Ordinance, tho' afterwards he was unwilling; yet having once consented, his Goods were lawfully taken. By which it appeareth, that if he had not particularly consented, such an Ordi-
nance would not have been good to bind him; alioth this was in a Case of great Danger, and for Defence.

2. Ric. II. post 1. The Parliament- Roll proveth this directly; alioth it be no Act of Parliament, yet the Record is much more regarded, for it shew-
eth what the Law was then conceived to be; for, Sordage, the Lord Chancellor, then swelled to all the Lords and Commons assembled in Parliament, That all the Lords and Sages had met together since the last Parliament, and having conferred of the great Danger the Kingdom was in, and how Money might be raised in case of imminent Dan-
gers, which could not stay the Delay of a Parlia-
mant, and the King's Councils had not sufficient therein; the Record is, they all agreed, Moneys sufficient could not be had without laying a Charge upon the Commonality, which lay they, cannot be done without a Parliament, and the Lords them-
selves,
selves, for the time, did supply the said Neceffity with Money they lent: when Record proves directly, That this Charge without an Act of Par-
\licence is illegal:...
Which Statute, Ralph in his Abidgment, fol. 441., in his Title of Taxes, abridgeth in this manner: "Anno 25 Ed. I. it is ordained, that the Taxes taken, shall not be taken in Cufon, nor but by the Affent of this Realm, except the antient Aids and Taxes: and there the Tux of 40. upon the Sack of Wool is released.

Ralph: That no Taillage, by us or our Heirs in our Realm, be put or levied, without the Affent of the Archbishops, Bishops, Earls, Barons, Knights, Burgesses, and other free Commons of our Realm, that nothing be taken to our behoof, in the name, or by reason of Male tout of a Sack of Wool. Statute de Tailage non concedenda.

Object. Mr. Solicitor laboured much to prove, that there was no such Statute, de Tailage non concedenda: 1. For that it was not to be found on the Rolls of Parliament. 2. For that it was not set down when it was made. 3. That it was but an Abstract out of Conformatio Cotorum Liberty. Mr. Attorney said, he would not deny it to be a Statute, neither would he affirm it; but that yet it did not extend to take away the Aid demanded, by Prerogative or Power Royal for the Defence of the Kingdom.

Refoult. To this I answer, This was never done, it could not be a Statute until this Argument; and that it is a Statute, appeareth, 1. For that it is printed in the Book of Statutes, for a Statute. 2. It is recited in the Petition of Right, to be a Statute. To that it is not found on the Rolls, I answer, That many Statutes that are known Statutes, are not found on the Rolls, as Mag. Clar is not.

And as touching the Time, I conceive it to be made 24 Ed. I. cap. 1. for it is set down in the great Book of Statutes, printed 1618, to be the first Statute therein made, viz. in these Words: No Taillage nor Aid shall be taken or levied by us or our Heirs, in our Realm, without the Good will and Affent of the Archbishops, Bishops, Earls, Barons, Knights, Burgesses, and other Persons of the Land.

And that it is a Statute, all my Brothers have agreed.

The only Doubt then is, whether this Statute extendeth to Aid for the Defence of the Kingdom; which I think it doth: for it is the precise Words of it, That no Taillage or Aid shall be imposed but by Grant in Parliament, which extends to all manner of Aids: and by this Law the Subjects of England have defended themselves ever since, as with a Buckler, as faith Boninum, fol. 97, where by it appeareth, that notice was taken of this Law in foreign Parts, and so held till be a Statute in force.

The next Statute is 14 Ed. III. cap. 1. which recites the Grant of the great Subsidy of the ninth Fleece, the ninth Lamb, &c. formerly granted; whereupon these Words follow: "We willing to provide for the Indemnity of the said Prelates, Earls, Barons, and others the Commonalty of the Realm, and also of the Citizens, Burgesses, and Merchants aforesaid, will and grant for us and our Heirs, to the same Prelates, Earls, Barons, and Commons, Citizens, Burgesses, and Merchants, that the same Grant shall not be had forth in Example, nor fall to their Prejudice in time to come, nor that they be from henceforth charged or granted to make any Aid, or sustain any Charge, if it be not by the common Affent of the said Prelates, Earls, Barons, and other great Men and Commons of the said Realm of England, and that in the Parliament: and that all the Profits arising of the said Aid, and of Wards, Marriages, Customs, and Echevices, and other Profits, arising of our said Realm of England, shall be let and dispended upon the Maintenance of the Safe-guard of this Realm of England, and of our War in Scot- land, France, and Gueldres, and in no Place else where our War is.

By this Statute it appeareth that it is expressly provided, that the Subjects shall not be from henceforth charged or griev'd to make any Aid, nor sustain any Charge but by common Affent, and that in Parliament, which is as express as may be, and exclusive to any Charge otherwise; which I conceive was made against the Appointment of making, or preparing and sending out of Ships at the Charge of the Towns wherein they were, or sending Men out of their own Counties at the Charge of the County.

Object. Now whereas it is alleg'd by my Brother Birkley, That this was but a temporary Statute, and ended when the War was ended, which appeareth by the last Clause for Employment of those Prebends towards those Wars; I conceive it appeareth to be an absolute and perpetual Statute, for it is granted for him and his Heirs in Perpetuity. And also it appeareth by Pridy's in his Comment. fol. 457, in Sir Thomas Wode's Case, where a Grant is by the Name of the King, which is in his Politick Capacity; this extendeth against him, his Heirs, and Successors, altb' they be not named. Alfo the Intention of this Law appeareth to be for the Security of the Subjects, from the charge for all future Ages. And then the Office of Judges, as also by Sir Edward Coke his Reports lib. 5. fol. 7. and Pelham's Comment, in lecon and Sude's Case, is to construe Statutes according to the true Intent of the Makers thereof, which was in this Statute, that it should be a perpetual Security for the Subjects. And to little purpose it had been, to make a Statute to continue but during the Time of the War, or during the King's Life.

Object. Alfo where it is alleg'd that the Statute of 14 Ed. III. is not mentioned in the Petition of Right, which is some Argument that it was not conceived to be a continuing Statute.

Refoult. To that I answer, That in the Petition of Right it is said, That by the Statute there reciteth, and order the good Statutes of this Realm, the Subjects shall not be compelled to pay any Taxes, Taillage, Aid, or other like Charge not let by Parliament; in which this Statute is as well intended as other Statutes, and as far as if it had been expressly recited. Alfo it appeareth by all the Books of Statutes, that this Statute is granted as a Statute continuing, whereas others expired, are fet down as expired.

21 Ed. III. cap. 11. A Subsidy being granted by Parliament, viz. 40. on every Sack of Wool transported before Michaelmas following, and 6d. on every 20. of Merchandise, for the Safe-guarding of the Merchants and Defence of the Coast, &c. After Michaelmas, viz. 31 Obs. 21 Ed. III. by Writ the Collectors were commanded to continue the Collection of those Subsidies until Easter. But, 25 Nov. 21 Ed. III. the King by Writ com-
mended the flag of the 6.d, in the 202, and to continue the Collection of the Subsidies upon the Sacks of Wool until Easter.

22 Ed. III. Rat. Parl. m. 16. The Parliament being held at Lincoln, the Commons complain of the Continuance of this Collection of the Subsidies upon the Sacks of Wool longer than the Parliament had granted it, and provided that it should not be continued longer than Easter, at the Procurement of any Person. By this it appears, that the Parliament being careful that the Time for levying of a Subsidy granted, should not be enlarged by any Power; much less would they admit of a Writ to lay a Charge without Grant by Parliament.

25 Ed. III. m. 8. It was enabled that no Man should be compell'd to find Men at Arms, other than such as hold by such Service, except it be by common Assent in Parliament. By this it appears, that if Mep. be not compellable to find a Man at Arms, unless it be by common Assent in Parliament; much less is any brand to be contributory to the preparing of a Ship with 180 Men at Arms, and Victuals, and Wages of Soldiers for 26 Weeks, unless it be by common Assent in Parliament.

Rat. Parl. 21 Hen. IV. Num. 32. An Act of Parliament, as I count it, in the very Point, is in these Words: 'For that of late, divers Committees were made to divers Cities and Burroughs within the Realm, to make Barges and Barringers, without Assent of Parliament, and otherwife than hath been done before these; howsoever the Commons do prays the King that the said Committees may be repealed, and that they may not be of any Force or Effect.' To which it is answer'd, 'That the King will not that the said Committees be repealed, which is an absolute and necessary Statute.'

But then there are added these Words: 'But for the great Necessity he hath of such Vessels for the Defence of the Realm in case that the War shall happen, he will treat with his Lords of this Matter, and afterwards will he the to the Commons to have their Counsel and Advice in this Point.' So by the Record it appears that the Commons did conceive, that no Cities, Burroughs, nor Towns, without Consent in Parliament, were to be charged with the making of such Vessels; to which the King agreed. And from that Day to this, until the making of these Writs, in no Age, 'altho' the Kingdom hath been many times in danger of Invasion, and hath been invaded, there do not appear any Records that ever I have seen of Writs directed to any Towns or Cities at their Charges, to make or prepare any Ships or Vessels whatsoever.

Object. And whereas it hath been objected, and especially inflected upon by my Brother Berkley, that this latter Part, that the King will treat with his Lords concerning them, and after confer with the Commons, is a gentle Denial of that Act; as the Experience is at this Day. Le Roy sé soufira is a Denial of an Act.

29 Ed. IV. m. 1. I answer, It is an absolute Act, for it is an absolute Assent to the Petition. And that which came after was but a plainable Excafe, for that such Committees had gone out; and this further Confutation never appeared to be made, nor ever any such Writ or Commission for such Vessels to be made went out since until this Writ.

13 Hen. IV. m. 10. A Grant is of a Subsidy of Ooohs, Woolfells, Hides, and other things there mentioned, and of Tonnage and Poundage for one Year, for the Defence of the Marches of Ca- lais, &c. and for the Defence of the Realm, and the Safeguard of the Sea. And therein is this express Prov: 1. Provided that this Grant of a Subsidy of Ooohs, &c. and Tonnage and Poundage, in time to come, shall not be taken in Example to charge the Lords and Commons of this Realm with any manner of Subsidy for the Safeguard of Calais, &c. nor for the Defence of the Realm, nor the Safeguard of the Seas; unless by the Will of the Lords and Commons of the Realm, and that by a new Grant to be made, and that in full Parliament to come.' By this it appears that it was then provided, that no Charge should be laid on the Lords or Commons, nor for the Defence of the Realm, but by Grant in full Parliament.

13 Hen. IV. m. 43. A Petition was in Parliament recting, That there was an Office granted of Alms within London and the Suburbs of the same, with Peces to that appointing, where any such Office was annexed, nor any which should be grants thereof, and that by colour thereof, they levy one Half-penny of the Buyer and a Half-penny of the Seller, and upon Sale of every hundred Ellis of Censores a Penny of the Seller and a Penny of the Buyer, wrongfully against the Statutes in the Times of your Highness's Predecessors made to the contrary, by which it is ordained that no Taillage or Aid shall be granted nor levied without Assent and Consent of the Lords and Commons of your Realm, as by the said Statutes is fully declared; wherefore they prayed that such Letters Patent made thereof shall be void and holden for none. And this was granted; whereby it appears that it is declared then in Parliament, that those Statutes were and did continue; that no Taillage or Aid shall be levied without Grant in Parliament.

Ric. II. c. 1. It is enacted in these Words: 'Our Sovereign Lord the King remembering how the Commons of this Realm, by new and unlawful Inventions, and inordinate Coveteze, have, against the Laws of this Realm, been put to great Servitude and Importance Charged and Exactions, and especially by a new Impost, called a Benevo- lence, whereby divers Subjects of this Land, against their Wills and Liberties, have paid great Sums of Money. It is enacted and ordained, that the Subjects and Commons of this Realm from henceforth shall in no wise be charged by such Charges or Impositions called a Benevolence, or such like Charge: And that such Exactions called a Benevolence, before that time taken, shall be taken for no Example to make any such, or any like Charge, from any of his Sub- jects of this Realm hereafter, but shall be damned and nulled for ever.' By this it appears that it is expressly provided that the Subjects shall not be charged by way of Benevolence, which is in nature of a Free Gift, nor such like Charge; that is, no Charge of Money shall be laid upon the Subjects upon any Pretense of it, for Defence in time of Danger, or Guarding of the Sea.

The last and concluding Statute is the Petition of Rights, made in the third Year of his Majesty's Reign, reciting, That it was enacted by a Statute made in the Time of Edward I. commonly called Statutes
The King against John Hampden, Esq.; 13 Car. I.

37. The Statutum de Taelagio non concedendo, that no Taillage or Aid shall be laid or levied by the King or his Heirs in this Realm, without the Good-will and Affent of the Archbishops, Bishops, Earls, Barons, Knights, and others the Free-men of the Commonalty of this Realm. And by a Statute of 23 Ed. III. That none shall be compelled to make any Loans to the King, because he made Loans were a bulwark for the defence of the Land. And by another Statute, that none shall be charged by any Impositions called a Benevolence. By which Statutes, and other the good Statutes of this Realm, your Subjects have inherited the Freedom that they shall not be compelled to contribute to any Taxes, Taillage, Aid, or other like Charge not set by Parliament.

And then they pray, that none hereafter be compelled to make or yield any Gift, Loan, Benevolence, Tax, or such like Charge, without common Consent by Act of Parliament. And after five other Things there mentioned, the Conclusion is: 'All which they pray at their Rights and Laws, and for the Safety of the King and Kingdom. Let Right be done as is deserved.' Which is a full and perfect Statute, shewing in this Point the Liberty of the Kingdom prayed, and allowed; which was not done without the Advice of the Judges, whereof I was one, whose Opinions were then demanded, and resolved that the same did not give any new Liberty, but declared what the Liberty of the Subject was in this amongst others, that they should not be compelled to be contributory to any Tax, Tailage or Aid, nor any like Charge not set by Parliament. All which Statutes, those of 23 Ed. I., 32 Ed. I., and 14 Ed. III. being in the negative and in force, I conclude that these Writs to lay such a Charge is against the Law, and so the Affirmation by colour thereof unlawful.

Object, Now whereas the precedent Arguments have been that the Kingdom being in Danger, therefore these Writs went forth for the making of Ships, because there could not be so suddenly any Parliament called, and the Parliament is a slow Body, and the Kingdom may be left whilst there is a Confusitation, and the Danger is conceived to be very great, because the Writ 4.4.3. so mentions, that the Pirates provided a great Navy to infest the Kingdom, and it is fit with Speed to provide a Remedy: And that the Writ of Muttimus mentioneth, That Salus Reipublicae, potestas: And we must believe their Suggestion to be true, for the King's Certificate by this Writ is Recipsum Superlativum, as Mr. Solicitor and my Brother Berkeley termed it, and must leave it upon the King's Confidence if it be not true, to lay such a Charge upon an untrue Suggestion. And the Defendant alle by his Defentur hath controlled all the Suggestion in the Writ to be true; therefore it must be concluded the Kingdom was in great Danger, and present Remedy must be had by making of their Ships, and must be commanded by the Writs, and not to lay for a Parliament: and my Brother Croxely saith, It may be if a Parliament were called, they will not yield to the going forth of such Writs, altho' the Kingdom was no so much in Danger. And this Change in refect of the making of the Defence is not within the Intention of these Statutes; and if it had been expressly mention'd within a Statute, that such a Charge should not be imposed, it had been a void Statute, and contrary to the Laws, that the Kingdom should not be defended.

Repos. 1. To all these I answer, That the Matter now in question is upon the Writ 4.4.3. Whether that be legal or not, and the Suggestion therein be sufficient or not for the Writ of Muttimus, mentioning that Salus Reipublicae potestas: at the Day of the filing of the Writ 4.4.3., which is a Year and an Half after the first Writ, doth that signify it; and this not notified to the Sheriff and Inhabitants of the Country to make them the more careful, and in a greater Consequence if a Ship were not provided, but it is only a Notice to the Barons of the Exchequer, that the same was the Reason that the same ensued forth.

Repos. 2. The Suggestion are not absolute, that any such Danger was, or such Navy was prepared by Pirates; but only mentioneth, Quin doctus juris intelligi that the Pirates had done such mischief.

Repos. 3. If such Suggestion had been absolutely set down, yet we are not always bound absolutely to believe them; because many times untrue Suggestion are put into Writs and Patents; and this is a Consequence upon the King's Confidence, neither doth the Law impose upon any Fact to the King, that any such be: for the Law doth only conceive honourably of the King, that he cannot, nor will not, signify any Untruth under the Great Seal; but he is absolved therein, and the Law imputeth it to them that so misrepresented the King, and thrall in such Suggestion into the Writ or Patent. And therefore all Patents grounded upon untrue Suggestion, are accounted void.

Repos. 4. That the Demurrer confischt nothing but that which is legally and well set down; but if it be illegal the Demurrer confischt it not, but is well offer'd for that Cause.

Repos. 5. If the Kingdom were in Danger, yet a Charge must not be laid in general upon the Subjects, without their Consent in Parliament: for either the Danger is near, and then the present Provision must be made by Mens Perseus, and the present Ships of the Kingdom, which the King may command from all Parts of the Kingdom, as Need shall require; but cannot command Money out of Mens Purse, by divining of their Goods, or imprisoning of their Persons. But if the Danger be further off, by reason of any Foreign Combinations, (as it is conceived it may be here) that Provision must be made of Ships by all the Kingdom for Defence; then, as Philip Cavaliers, fol. 179, faith, That Cloud is seen afar off, before that the Tempest falls, especially by a foreign War; and such Invasions cannot happen so soon, but that the King may call his Sages together, and by Convent make Provision for the same.

So I say here, If there be Time to make Ships, or prepare Ships at the Charge of the Countries; then is there Time enough for his Majesty, if he pleaseth to call his Parliament, to charge his Commons, by Consent in Parliament, and to have a Subsidary Aid, as always hath been done in such Cases. And they are not so long coming or meeting, but they will make Provision for Defence, it being for all their Safeties: For it appeareth by Coke, 12. fol. 1. in his Epitile, that King Eadred made a Law, That a Parliament should be held twice every Year, and often, if need requir'd, in Times of Peace: So that it was then conceived, that it was necessary to have Parliaments to redress Inconveniences.
Sugg.
Suggetions, when he is drawn to do any Wrong to the Hurt of any other; much more I say, when he is drawn to do any thing to the Hurt of his Subject; in general. Sir Ed. Cole, lib. 11. fol. 86. in Dearte's Case, it is said, That every Grant of the King hath this Condition annexed unto it, Tacite aut exprim. sua, quas Patris per Dominum illam magis fidelis non emeret, fen generosus. The Book called Dauther and Student, fol. 8. setting down, That the Law doth well the absolute Property of every Man's Goods in him, and that they cannot be taken from him but by his Consent, faith, That is the Reason that if they be taken from him, the Party shall answer the full Value thereof in Damages. And I conceive, that the Party that doth this Wrong to another, shall, besides the Damages to the Party, be imprisoned, and pay a Fine to the King; which in the King's Bench, is the tenth Part of as much as he payeth to the Party. So then, if the King will punish the Wrong of taking Goods, without Consent, between Party and Party; much more will he not by any Prerogative take away any Man's Goods, without his Consent, particular or general. If not, he had been a Tyrant. So I conclude, that I conceive, there is not any such Prerogative to award such Writs to command, &c. to fulfil such Charge, as to be contributory to it, and to be disdain'd and impriion'd for not Payment thereof.

Also I conceive, That this is not an Act of Royal Power; for if it be illegal to impound such a Charge, then it is not accounted as a Matter of Royal Power, but as a Matter done upon an untrue Suggestion, and a Matter of Wrong done: and Wrong is not imputable to the King, for he can do no Wrong; but it is imputable to them that advised him to this Courte. Royal Power, I answer, is to be used in Cases of Neccessity, and imminent Danger, when ordinary Courtes will not avail; for it is a Rule, Nous entendrons de ed extra ordinaria, quando facit per ordinaria; as in Cases of Rebellion, hidden Invasion, and some other Cases, where Martial Law may be used, and may not by for legal Proceedings. But in a Time of Peace, and no extreme Neccessity, legal Courtes must be used, and not Royal Power.

Therefore, whereas in the Statute of 31 Hen. VIII. cap. 8, which was made upon the Supprestion of Abbeyes, when Rebellions were begun to be feared, it is recited, That sudden Occasions happening, which do require speedy Remedies, and for lack of a Statute, the King was enforced to use Royal Power; it was enacted for the Reafons therein mention'd, That the King, by the Advice of his Council therein nam'd, two Bishops, two Chief Justices, and divers others, the major Part of them, by his Proclamation, may make Ordinance for Punishing of Offences, and Lay Penalties, which should have the Force of a Law, (with a Promise that thereby no Man's Life, Lands or Goods, should be touch'ld or impeach'ld) so that therein Royal Power was for'ld by a Statute: yet that Statute took care that no Man's Life, Lands or Goods, should be taken or prejudice'd; and that Statute was thought inconvenient, and therefore the same by a Statute of 1 Ed. VI. was repealed.

So Bratton, lib. 2. cap. 24. fol. 55. And the same is cited in Cole, lib. 2. fol. 11. in Calvin's Cafe, Regis Carone off facev 'Justitiae & Judicium, & tenerere Faciem, sine quisquias Carone consuerit non potest, nec tenerere. Cole, lib. 7. fal. 5. in Calvin's Cafe, cited out of Verteigne, Res ad totam corporam & benemuriam criminis of; which being so, he cannot take away Mens Goods, or charge them without their Consent, by any Prerogative or Royal Power. All where can be no such Neccessity, or Danger conceived, but may cause thele Writs to be awarded to all Counties of England, to prepare Ships at such a Charge, and with such Men and Ammunition, without Consent in Parliament; for the Laws have provided Means for Defence in Times of Danger, without taking this Courte: for that the King hath Power to command all, or any Persons of his Kingdom, to attend with Arms at the Sea-Coasts, to defend the Coasts, or any other Parts of the Kingdom; and also by his Officers, to make flay or arrear, all or any the Ships of Merchants, and others having Ships; or as many as he pleaseth to go with his Navy, to any Parts of his Kingdom, for Defence thereof; and to appoint any one to whom he appointed the Guard of the Seas, or the Sea-Coasts, at such Times and Places as they should appoint. And this hath been always taken and conceived to be sufficient for Defence, against any Prince whatsoever; and yet the same was in Times, when the Navy of England was not so strong, as now by the Blessing of God and the good Providence of his Majesty it is.

That this Courte was then so taken, appeared by divers Records, viz. 23 Ed. I. m. 4. the Record recited, That the French King had prepared a great Navy upon the Sea, and purposed to invade the Kingdom, & fuegimus Anglimans de terra delere; and thereupon the King commanded all the Ships, and Men with Arms, to be in readines to defend the Kingdom.

Ret. sect. 10 Ed. III. m. 16. reciteth, That certain Galleys in Parts beyond the Seas, were prepared with Provisions of Men, and Arms, and other Neccessaries of War, and ready to invade the Land; Command was, that divers Ships should be in readines to defend the same; and the Ships of the Ports of Ireland to be sent into England to help to defend the Kingdom.

Ret. sect. 10 Ed. III. m. 22. A Wit was to the Balfif of South Wales, reciting, That the Scots and divers others confederating together, prepare themselves to Arms and Ships in a great Number, and intend to invade the Kingdom; to command them to have one Ship ready upon the Sea to defend their Coasts. The like Wit was then to Newport.

Add. 12 Ed. III. m. 10. A Wit to the Mayor of London: Quia imposseris o filii in Gallicam usum mimis in modernis conuergetis in diversis partibus regionis legislatur ingenii, & aversam prvidert, ecclierstis, si posint invitare se in any. The King commanded them to shut up the City towards the Water, and to put all their Men in Arms ready to defend, &c.

Add. 13 Ed. III. m. 13. A Wit to the Balfif of Great Yarmouth: Quia pro certe dicimus quid bohissi filii event & abhorretes eis Gallias & navis superior in opinione multitudinis in partibus esteris congregarum, & eius homines ad armas parati faciant, & praeponant se meere versus regionem nostri & navis & regni nostri & Portus proprie mare finam.
1637. Scacc. in the Cafe' of Ship-Money.

_1. finitvm pro viribus denuero, & id regnum invadere &c, command the same Town to prepare four Ships with 140 Men, &c._

At the same time Writ went forth to twenty other Towns upon the Sea-Coasts. _Fronce. 20 Ed. III. m. 5._ Writ to the Earl of Huntingdon and others, _Quia adorfaris neffri Francice nos & regnum suum invadere machinamento, nuncua sequevum preparari facti & ornati, we demand ad regnum ne- trum Anglie habitatione reddam fed ad nos & dominum nostrum_ and all the natione Anglicanum pro viribus suoscentur &c, commanding them to guard all the Sea-Coasts of Kent, and to array all Men to be ready with Arms to defend the Sea-Coasts.

5 Hen. IV. m. 28. A Commission is to Thomas Marley and others: _Quod cum insinu neffri Francice Britane' Scot & alii adhavernes inter se obligationem robust & potentiam armate super mare in effecto, prae futur ordinario regnum angliae Anglie invadere, &c, commanding them to array Men with Arms to defend, &c._

4 Hen. VIII. Par. 2. The King by Proclamation to the Count of Kent, signified, that it is come to his Knowledge of certain, that his ancient Enemy, the Duke of York, had prepared, and put in readiness a great Fleet of Navy, furnish'd with Men of War, to invade the Kingdom of England; the King appoints the Lord of Abergavenny and others, to put Men in Array, and to be ready to defend that Country.

A.D. 1538, when the great Invasion was by the Navy, termed the _inviocible Navy_, which was forseen long before, this Course of preparing Ships by every County of the Kingdom was not appointed; yet in all the Times, when there appeared so great Danger or Invasion, there never went any great Writ into any of the Counties of England, to provide Ships: But the Navy of England, and Army of England was always accounted sufficient for the Defence of the Kingdom.

So I conclude this Point, that I conceive this Course cannot be taken by any Prerogative or Royal Power, nor any Alligation of Necessity or Danger.

For the fourth Point, I conceive, that if it were legal to lay such Charge upon maritime Parts; yet to charge any Inland County with making of Ships, and furnishing them with more Mariners and Soldiers at their Charges, which are far remote from the Sea, is not legal, nor warrantty by any former Precedent; for it commandeath an unreasonable and impossible thing by them to be done: and then a Writ, commanding such a thing as is unreasonable and impossible for the Parts of themselves to perform, without Help of other Counties, is always illegal; for it is a Rule, That the Law was not to be imposed._

If one by Covenant bind himself to do a Thing impossible, the Covent- nant is void.

This appeareth by the Book-Cafe 40 Ed. III. fol. 6, where the Cafe is expressly, that if a Man do Covenant to do a Thing impossible, the Covent- nant is void, and the Deed is void in that respect: also the Book, _m. 2 Ed. IV. fol. 2._ If a Feoffment be made upon Condition to be void, if the Feof- deed did not a Thing which is impossible, the Feoffment is good, and the Condition void: for it was the Fault of the Feoffor to annex such a Condition. And this appeareth by the Cafe of on Arbitrator, if the Arbitrator award, that one shall enter into Bond, with such a one as his Surety, to pay a Sum of Money, or to do any other Act, it is void, as to the finding of a Surety at the least; for it is not in his Power to compel him to be his Surety: therefore the Law accoun- teth it unreasonable, and to void. And this appeareth by the Book-Cafe 17 Ed. IV. fol. 5, where it is so resolved.

So this Writ commandeth the Sheriff and Inhabit- nants of an Inland County to find a Ship with Malters and Mariners, whereas there are not any Shipwrights that have Skill to make Ships, nor any Malters or Mariners ever there to guide a Ship, for they are all convertant about Matters of the Plough, and feeding Cart, and Husbandry, and are trained up by Musters to Skill of Arms to defend the Country, but not with Sea- Affairs; for most of the County never saw a Ship, nor know what belongs to Malters or Mariners; and the Country is not bound to feek out of the County for such Men; and perhaps if they should, they cannot tell where to have them: Therefore, when such Writs to Inland Towns have been a- awarded to find Ships with Malters and Mariners, it being conceived by Information that they were Maritime Towns, and had Ships, and Mariners there, it seemed that the thereof being made appear to the contrary, they have been discharged, as appears by a Record, _13 Ed. III. part 2. m. 14._ where a Writ went to the Ad- miral of the Fleet: Upon Complaint to the King by the Men of Bodoa in the County of Cornwall, that they were unjurily charged to find a Ship with Malters and Mariners, whereas that Town was no Port-Town, nor adjoining to the Sea, but far within the Land, nor ever had Ships lying there, nor Mariners nor Steamen, nor ever used to find any such for Sea-service, and that their Major and Officers were impiur'd for not finding a Ship; thereupon the King appointed to have it inquired whether their Allegations were true, and if it were true, signified that he would not have them be unjustly charged, but that they should be discharged thereof. Which wercovel, that it was then accounted unjust to lay such a Charge upon a Town that was an Inland Town, and had no Mariner inhabiting in it; much more when such a Charge is laid upon an Inland County, which is much farther remote from the Sea, and cannot perform by themselves that which the Writ com- mandeth.

Object. But this Record being objected by the Defendant's Counsel, Mr. Solicitor gave Anfwer, that the fame was, because the Admiral of his own Authority had charged them, which was not ac- cording to his Commission; for he was only to charge the Port-Towns and Sea-Towns: but that the fame may not be done by the King's Writ, that it is not a Writ at large.

Rejoind. But to this Anfwer, that I conceive it is all one when such a Charge is laid upon a Town by Writ, which is an Inland Town, for it appears by another Record of the same Year, viz. 13 Ed. III. part 1. m. 14, where a Writ was directed to the Admiral of the Fleet, _De ars Thunus veritias partes occidentales; reciting, where the King by his Writ to the Town of Chicheley, commanded the Mayor and Commonalty there, that they should make unam Nonum & duos Ejusdies de Guerra parari, with Mariners and Men at Arms, to be at Portinston such a Day, to go with the King's Ships; and that they had complained that they had not, nor ever had any Ships arriving in that Town, nor had any Seamen or Mariners dwelling..._
dwelling there; and that it appeared to the King, by Inquisition of a Jury returned into his Chancery, that their Allegation to be true: therefore, because the King would not have them inibi gestari (for so be the Words of the Record) the King commandeth the Admiral that they shall not be troubled nor restrained for not Performance of their Service. Whereby it appeared, that if they being within a few Miles of the Sea, should not be able to find such a Ship, much less more Inland Counties that are farther remote from the Seas, are justly to be charged with finding Ships and Mariners. Therefore I conclude this Point, that I conceive, this Writ in that respect is not legal, nor warranted by any former Precedent.

The fifth and great Point hath been, and indeed the chief Argument hath been, a multitude of Records and Precedents, which have been cited, that should warrant these Writs; and that the King hath done nothing but what his former Predecessors have done; and have lawfully done; and that he doth now but More Majestis, and that which is always in ancient Times hath been and done, and therefore ought to be done.

I confess this Allegation much troubled me, when I heard, they cited Records cited, and so learnedly and earnestly prefixed by Mr. Solicitor, and after by Mr. Attorney, to be so clear, that they might not be gainsaid: but that they proved a clear Prerogative, or at least a Royal Power, that the King might do fo, especially when my Brother Woffin, and my Brother Berkley (who have seen the Records) prefixed some of them, and relied upon them for the Reasons of their Judgments: I say, I was much disturbed the first year; until I had perused all those Records sent me by the King's Counsel, and satisfied my Judgment therein.

But now I answer, That if there were any such Precedent [as I shall shew there was not one shewed to me], to prove this Writ to be usual, yet it were not material: for now we are not to argues what hath been done de facto, for many Things have been done, which were never allowed; but our Question is, what hath been done, and may be de jure. And then, as it is said in Coke, lib. 4. fol. 13. in Wotton's Caius, it is said, Multitudine erasmissi non parit errari patronum: and lib. 4. fol. 94. in Scalts Caius: Multitudine Precedentis, unless they be confirmed by judicial Proceedings, in Courts of Record, are not to be regarded and none of these were ever confirmed by judicial Record, but complained of.

But to give a more clear Answere unto them, I say, that in my Opinion, upon View and serious reading of all the Records that have been sent me on the King's Part; for I have read them all over Perbatim, and I presume they all conceived to be material, and I have taken Notes of every one of them, and diligently conferred of them, I conceive that there is not any Precedent or Record of any such Writ sent to any Sheriff of any Inland County to command the making of Ships at the Charge of the County; but this is the first Precedent that ever was since the Conquest that is produced in this kind.

But it is true, that before 25 Ed. I. there have been some Writs to maritime Towns and Pors, and other Townes, as London, &c. where they have had Ships and Mariners, to provide and prepare Ships, and to send them to such Places as the King pleased to appoint, upon any just Cause of Fear of any Danger, for the Defence of the Sea and Kingdom; and great Reason, that they having Ships and Matters of Ships and Mariners, should be at the King's Command, to bring all or as many as might be, for the Defence of the Sea and Kingdom, being those that had the most Benefit of the Seas, and likely to have the greatest Loses if the Sea and Coasts were not daily guarded; and those were appointed most commonly to be at the King's Charge, but sometimes upon necessity they were appointed to be at the Charges of the Towns and Pors adjoining: which I think was the true Cause of the Complaint in Parliament in 25 Ed. I. and of the making that Statute for the flying of that Court; for there is no Record of any such Writs afterwards in Edward the First's time, after that Statute to maritime Towns, to prepare or find Ships at the Charge of the Towns.

But in the time of Ed. III. then, the War being between him and the French King in June 10, 11, 12. & 13 of that King, where the most Writs were awarded to maritime Towns, to send Ships at their Charges sufficiently furnished: and those I think were the Principal Cause of the making of the Statute of 14 Ed. III. cap. 1. And after that Statute no such Writs, nor any Commissions for that Purpose were awarded to any maritime Towns, or Inland Towns, for the making of Ships, but one; which Record was much prefixed by Mr. Attorney, and afterwards by my Brother Nettin, and my Brother Berkley, to prove, that this Court was, and might be practised after the Statute of 14 Ed. III. for finding forth such Writs, and al lowing. But that Record is fully satisfied, for it was grounded upon an Ordinance of Parliament in 2 Rich. II. m. 52. that all antient Cities, Boroughs, and Towns, that would then, should have their Charters confirm'd without any Charge of Fine, five only to make a Ship of War for Defence of the Realm: so this was not compulsory to any, but voluntarily to those that would have their Liberties confirm'd. And afterwards, in 1 Hen. IV. Commissions were awarded for making such Vessels of War; but those lifting forth without any Ordinance of Parliament, were complain ed of in Parliament 2 Hen. IV. and for such Writs lifted forth in any Age, to any maritime Towns, to make Ships, or prepare Ships at their own Charge for the King's Service, until these late Writs.

This general Answer I give to all the Records; and now I shall take a short View of all the Records that have been cited and sent to me, and leave them to the Judgment of my Lords and others, if any of them prove these Writs usual and legal.

The Records of King JOHN's Time.

6 Job. m. 1. 6 Job. m. 3. 4 Job. m. 2. 17 Job. m. 7. Three of these are to arrest and make liable of Ships, that they should not go out of the Kingdom, but to be ready for the King's Service; and the other was to bring Ships of particular Towns to the Mout of the Thames, for the King's Service.

10 Job. m. 4. A Commission to guard the Sea to Job. de March, and to the Sheriff of the County of Lincoln, and to all others to attend his Commands.
1637. Seacc. in the Case of Ship-Money.

15 Feb. Writ to the Barons of the Cinque-Ports, and divers other Towns, to have their Ships ready for the King's Service.

In the Time of Henry III.

14 Hen. III. m. 14. 14 Hen. III. m. 5. A Writ to the Bailiff of Purfleet, to prepare one Galley. A Commission to the Sheriff of Rochester, and another to the Sheriff of Kent, to cause all Men to be in Arms in that County, and to affix them what Arms they should find. 14 Hen. III. m. 4. A Writ to the Sheriff of Norfolk, commanding him to cause them appointed to attend all the Coasts in that County, who having served 40 Days intended to depart, that they should stay 8 Days longer by reason of the Danger, and longer, if Need required. The like were sent to the Sheriffs of Suffolk and Essex.

43 Hen. III. m. 2. A Writ to the Mayor of Bedford, commanding him to provide for the Expenses of them that were sent from thence for the guarding of the Seas yet it is but for eight Days more after the Date of the Writ.

48 Hen. III. m. 2. A Writ to the Men of Essex, Norfolk, and Suffolk, appointed to attend for the guarding of the Sea-Coasts, reciting, that the King had appointed a. d. m. Coged moris & partis maritimas within their Counties, commanding them to affix him, and to perform therein what he required.

48 Hen. III. m. 7. A Writ to the Sheriff of Cambridges and Huntingdon, to command all Men of those Counties, able to bear Arms, to come to the King to London.

In the Time of Edward I.

25 Ed. I. m. 5. A Writ to the Sheriff of Essex, Norfolk, and Suffolk, reciting, That such Persons were appointed ad coged maritimas in those Parts, commanding them to attend them. Another to the Sheriffs of Norfolk and Suffolk, reciting, That certain Confabulaires were appointed to affix Men at Arms, sufficient for the guarding of the Sea-Coasts, commanding them to dislairn and compel them affixed to go.

24 Ed. I. m. 17. Writs to the Sheriffs of Lincoln, York, and Northumberland, reciting, That he had commanded A. d. A. de B. ad congr. & capit. cenam avos, between Leibh and Birwick, ad bonas potestates in eft possid., commanding them to affix him therein.

24 Ed. I. Rot. 62. A Writ out of the Exchequer to Adam de Guerd and Olise Gardisano of the Sea-Coasts in the County of Southampton, to dislairn the Abbott of Reading, to find Horles, which he was affixed at for that Service.

24 Ed. I. m. 16. Writs to all Archbishops, Bishops, Earls, &c. in the Counties of Suffes, Devon, and Cornwall, to attend with their Horsemens and Footmen, for Defence of the Sea-Coasts in those Parts, when they shall be required by the Guardian of those Coasts.

24 Ed. I. m. 7. A Writ out of the Exchequer, directed to all Archbishops, Bishops, Earls, &c. in the County of Norfolk, reciting, That Peter de Revilla was appointed ad coged. porticn maritimae lieris, commanding them to affix him.

24 Ed. I. Rot. 78. A Writ out of the Exchequer to the Sheriff of Berks, reciting, That the King was informed by Adam de Griden Guardian of the Sea-Coasts in the County of Southampton, that those Men in the County of Berks, were assembled to come to the defending of the Sea-Coasts in those Parts, came not as they were warned, commanding to dislairn them, and compel them to come and to do the Service.

The like Writs were then awarded to the Sheriffs of Wiltshire and Southampton, &c.

24 Ed. I. Rot. 81. A Writ to the Bailiffs of Great Yarmouth, reciting, That the King was informed, that certain in Plenderes and Frenner, in a great Multitude, apparel'd like Fishermen, intended to insulate their Towns, warning them to gather their Ships together, and all their Arms, to defend themselves against such an Attempt.

24 Ed. I. Rot. 84. A Writ to all Sheriffs and Bailiffs, &c. reciting, That he had appointed some therein named ad congre. numerum maris & galliarum marinarum, & commanding the Sheriffs in their several Counties to be affixing them therein.

24 Ed. I. m. 9. A Writ of Superfectes to the Guardian of the Sea in the County of Southampton, to dislairn Hugh de Plefis to find Arms for his Lands in that Country, for guarding of the Seas, because he was in service with the King.

Note, All these Records are for Arrears, and congesting Ships, but none to make or prepare Ships at the Charges of the Country.

24 Ed. I. m. 24. A Writ to the Sheriff of Essex to dislairn for the Winter nine thole that lay at the Sea-Coast, with their Arms to defend the Coast; but commanding them to be in a readines when they should be again commanded. The like Writs were then awarded to the Sheriffs of maritime Counties to the same purpose.

25 Ed. I. m. 12. A Writ to the Sheriff of Lancasters, reciting, That whereas the King had formerly commanded him to go to all the Ports and Towns where Ships were, commanding the Bailiffs of the Ports to have all the Ships of Burden of 40 Tons at Winchelsea, by such a Day; now commanded the Sheriff to see them made ready, and sent thither accordingly.

Ibid. m. 13. The like Writs directed to the Sheriffs of Lincoln, York, Northumberland, and Cumberland.

Ibid. m. 14. The like Writs directed to nineteen other Ports and Towns in other Counties.

21 Ed. I. m. 20. A Commission to send away Men at Arms in the County of Wightesland.

21 Ed. I. Rot. 77. In the Exchequer, shewed by the Defendant's Counsel, Writ went to several Maritime Towns upon the Sea-Coasts, and other Towns where Ships were usually made, to make Ships and Gallais ; and that the King will allow and pay for them, when he knoweth the Charge thereof.

In the Time of King Edward II.

Pat. 9 Ed. II. Part 2. A Writ to all Men in the Towns upon the Sea-Coasts, and Ports of the Sea, between Southampton and Falmouth, reciting, That the King had appointed John de Novum to make Provision for a Navy in those Towns and Ports, at their Charges, he commanded them to perform what he in that behalf shall require.

Claw. 20 Ed. II. m. 8. A Writ to the Bailiffs of Yarmouth, reciting, That whereas the King had commanded all the Ships of the Burden of fifty Tons, from the Thames Mouth towards the West 4 P. Parts,
37. The King against John Hampden, Esq; 13 Car. I.

Parts, to be at Portsmouth such a Day, &c. and they had sent two Ships: That the Mallers and Merchants complained, that they could not serve without Wages, and therefore appointed them to find them Wages.

20 Ed. II. m. 10. A Writ to the Bailiffs of Yarmouth, commanding them to send all their Ships of the Borden of thirty Tons and above, to overcall in Suffolk, with double Tackling, Victuals, and other things necessary for one Month. The like Writs at the same time to other Towns, to the Number of four and thirty.

20 Ed. II. m. 10. A Writ to the Mayor of London, to provide three Ships with Men and Ammunition to go with nine Ships of Kent to guard the Seas about His.

15 Ed. II. m. 15. A Writ to the Sheriff of Norfolk, commanding him to warn all Barons, Baronets, Knights, and others of that County, to attend the King at Coventry, at such a Day to go with the King.

15 Ed. II. m. 15. Writs to the Sheriffs of Norfolk and Suffolk, commanding them to arrest all Barons, Baronets, Knights and Esquires, who were commanded to attend the King at Coventry, such a Day therein named, and come not, to be before the King and his Council to answer it. The Record faith, like Writs were then awarded to other Sheriffs of other Counties.

16 Ed. II. m. 12. A Commission to array all Persons between the Ages of Sixteen and Sixty, with Arms convenient, to come to the King, when they shall be required.

19 Ed. II. m. 6. A Writ to the Archbishop of Canterbury, commanding him to array all his Servants and Families, to be ready to defend the Kingdom, if any Invasion should be.

The like Writs at that time to all the Bishops.

In the Time of King Edward III.

2 Ed. III. m. 92. A Writ to the Mayor and Bailiff of Southwark, commanding them to cause all their Ships of the Borden of forty Tons, and above, to be furnished with Men of Arms, and Victuals, ready to defend the Land, if any Invasion shall happen.

Seot. 7 Ed. III. m. 19. A Commission to Hugh Courtenay, to guard the Seas in the Counties of Devon and Cornwall, and commanding all others to assist him.

10 Ed. III. m. 25. The like Commission to Hugh Courtenay, for guarding the Seas in the same Counties.

Ibid. A Writ to Bartolomew de Inglode, for Custody of the Sea-Coast in the County of Southampton; and therein is a Command to John Thelbourne, and others for the County of Southampton, and to Will. de Poyforde, and others for the County of Berks; and to Rob. Mardell, and others for the County of Wilt, to array Men with Arms, and to have them in readiness to defend the Coasts of Southampton.

Seot. 10 Ed. III. m. 2. A Writ to Will. Clinton, Guardian of the Cinque-Ports and others, to survey all the Ships of the Cinque-Ports, and other Ports from the Month of the Yarmouths to Portsmouth, and to cause them to be furnished with Arms and Victuals for 13 Weeks, from the time they shall go from Portsmouth.

Seot. 10 Ed. III. m. 2. A Writ to the Mayor of Wincetls, to wit: the Ships appointed for that Town to be furnished with Men and Arms, and Victuals, and other Necessaries for thirteen Weeks.

Seot. 10 Ed. III. m. 16. A Writ to the Admiral of the Fleet from the Month of the Yarmouths to the Wexford, to keep up to the Seas the Ships of the Cinque-Ports, and other Ships arrested to defend the Kingdom against attempt of any Invasion.

The like Writ was then to the Admiral of the Fleet, from the Month of the Yarmouths to the North Parts, with the like Command to hold the Ships together upon the Sea.

Seot. 10 Ed. III. m. 16. A Writ commanding the Ships of the Port of Ireland to be fast hither, to guard the Seas here.

10 Ed. III. m. 12. A Writ to the Bailiffs of Yarmouth, to cause the Men of that Town to contribute to the Charges of the Ships and Men, and Victuals, sent from thence for the Defence of the Kingdom.

Seot. 10 Ed. III. m. 12. A Writ to all the Bailiffs of Liberties, and Men of South-Wales, to have one Ship riding upon the Seas for Defence of those Parts.

The like to the Men of North-Wales.

Seot. 10 Ed. III. m. 21. A Writ to the Arrayers of Men for the County of Berks, to compel them of that County, aligned and ascribed for the keeping of the Sea-Coast in the County of Southwark, to go to Portsmouth by a Day thence appointed.

And 12 Ed. III. m. 12. A Commission recurring, that the King had appointed all the Ships from the Mouth of the Thames Northwards, to be armed, and to cause them to be furnished with Ammunition, Men and Victuals, and to be brought to Yarmouth; and that the Men of London related to contribute to the Expense of the Charge of the Men sent in the Ship from that Town, and the furnishing of that Ship; and therefore commands the Commissioners therein named, to assist them that relate to contribute and disburse them.

And 13 Ed. III. m. 13. The like to compel the Men of Barlegh to contribute for the Expenses of the Men of that Town.

Chaf. 2 Ed. III. m. 17. The like to compel the Men of the Counties of Surrey and Suffolk, to contribute to the Expenses of the Men of those Counties, that did attend for the guarding of the Sea-Coasts in those Parts.

Fes. 12 Ed. III. m. 8. A Writ to all Archbishops, Bishops, &c. and to the Sheriff of Kent, and the Barons of the Cinque-Ports, and all others in that County, commanding them to be asfilling to f. de Cobham, to whom the Custody of the Sea in those Parts is committed; and to defend the Coasts against any foreign Invasion that shall happen.

And 12 Ed. III. m. 10. A Writ to the Mayor of London, reciting the Danger of Invasion, and commanding to shut up the Gates at the Waterfide, if the Enemies approach.

And 13 Ed. III. m. 12. A Writ to the Bailiff of Yarmouth, reciting, that he had by his Writ commanded four Ships of War of that Town to be made ready with Men, Ammunition, and Victuals for three Months, at the Charges of the Town, to be brought to Yarmouth, and that they failed to come at the Day, to the great Peril of the Land; therefore commands the Bailiff to compel them at another Day therein prefixed, to be at the same Place.
There it is set down, that the like Writs were awarded to the Bailiffs of fourteen other Towns, for sending their Ships, being charged some of them for one Ship, and some for two Ships.

Cliff. 13 Edw. III. m. 38. A Superfeder for the Abbots of Romsey, for being charged with Arms for guarding the Coasts in Norfolk, for his Lands in Norfolk, because he was by Command attending with all his Forces in the County of Hingham, for the Safety of the Part.

Cliff. 13 Edw. III. m. 14. A Writ of Superfederas to the Arrayers of Arms in the County of Oxon, to discharge John Munditt to serve there, because he served in Writs.

Cliff. 13 Edw. III. m. 14. A Writ to the Arrayers of Arms in the County of Wiltshire, which is only concerning the Payment of Soldiers Wages, who then attended to guard the Sea-Coasts.

The being all the Records showed me, it appeareth that there were no Writs issuing out in those Times to any Sheriff of Inland Counties, or Maritime Counties, to make, or prepare Ships upon any Occasion whatsoever, but only to Maritime Towns, to send their Ships, or prepare their Ships, at their own Charges.

The Records showed me since Edw. III. do not show any Writs to be awarded to any Maritime Town, to prepare Ships at the Charge of the Towns, except the Records of 1 Rich. II. and 1 Hen. IV. which I have before answered; and they show since Time showed unto me, except such as I have mentioned in my Argument, are these:

Sext. 30 Edw. III. m. 37. A Commission to Nicholas de Quincey, to array Men to refit the Scots.

Sext. A Writ to the Mayor of York, to array all their Men to be ready when they shall be required.

20 Edw. III. m. 15. A Commission concerning the Array of Men in the Counties of Derby and Nottingham, and to punish them that come not when they are warned.

Rat. France 11 Edw. III. m. 31. A Writ to the Arrayers of Men in the County of Southampton, to discharge the Abbots of Battle, for finding Arms for Defence of the Sea-Coasts there.

France 23 Edw. III. m. 20. A Commission to John Bodington, for the Custody of the Port and Maritime Parts in Carisbod, and to array all Men to be in readines. There is 4 x down, that the Like Commission is to others in several other Counties.

France 26 Edw. III. m. 9. A Commission to the Earl of Huntingdon and others, to have the Custody of the Ports in Kent, and to array Men, and to set up Beacons; which is the first I observe of this Kind.

France 46 Edw. III. m. 34. The like Commission then to several other Persons, to array Men in several Counties, as Warwick, Oxon, Berks, and Bucks.

A Writ to the Archbishops of Canterbury, reciting the Danger of Invasion by the French, to hurt the Church and Kingdom, commanding him to array all his Clergy in his Dioceses, and to be ready to go with the King's Forces, &c.

The like Writs to all other Bishops in the Kingdom.

France 50 Edw. III. m. 47. A Writ to the Arrayers of Men in the County of Norfolk, and to the Sheriff of Norfolk, commanding them to command all great Men and others that have Mansions upon

or near the Sea-Coasts, to refort to them with all their Families, for the Defence of the Coasts.

The like to the Arrayers and Sheriffs of ten other Maritime Counties.

Sext. 29 Edw. III. m. 13. A Commission to the Bishop of Durham and others, to array Men in Durham, Cumberland, and Northumberland, to refit the Scots.

France 40 Edw. III. m. 31. A Writ to William Zouch and others, to remove with all their Families to their Hoults upon the Sea-Coasts.

Nota, That all the Records are for arraying Men, and none for preparing Ships.

In the Time of King Richard II.

1 Rich. II. m. 7. A Writ to the Bailiffs of Scarborough, because their Town was upon the Coasts of the Sea, and in danger of Invasion, carefully to look to the Cuthulpa thereof.

End. Rat. 12. A Writ to the Mayor and Bailiffs of Oxford, to repair the Walls of the Town, and to compel those that had Lands there, to contribute to the Expenses thereof.

This Record hath been much urged by Mr. Solicitor and Mr. Attorney, that if the King have such a Power to command the Walls of a Town to be repaired, much more to command Ships to be made, which are the Walls of the Sea, and consequently the Walls of the Kingdom.

But this is clearly answered; for that it is: but a private Town, and that which hath been formerly so walled, and for Defence and Safety of the Town; and none were to be charged but those that had Benefit thereby; and so it proveth nothing to the Case in Question.

End. Rat. 42. One Writ to the Sheriff of Kent, and another to the Sheriff of Essex, commanding them to perform an Ordinance made by the King and his Council, for setting up of Beacons, and keeping Watch about them.

Sext. 7. Ric. II. m. 8. A Writ to the Archbishop of Canterbury, to command all his Clergy between sixteen and fifty, to be army'd and put in Arms, both Horse and Foot, according to their Qualities, to defend the Kingdom.

France. 11 Ric. II. m. 13. A Writ to Sergeants at Arms, to arrest all Ships of War in the Ports of Plymouth, at Dartmouth, and other Ports, in the County of Cornwall; and to bring them to Hamburgh, to go with the King's Majesty's Ships.

In the same Roll, divers other Writs to divers other Sheriffs at Arms, to arrest the Ships in divers other Ports.

Sext. 3 Ric. II. m. 3. A Commission to the Duke of Albemarle, to array Men in the West-Marches, towards Scotland, to refit the Scots.

In the Time of King Henry IV.

Rat. Pugil, 1 Hen. IV. m. 11. A Writ to the Sheriffs of Derby and Nottingham, reciting, That the King certainly understood that the Scots intended with a great Power to invade the Kingdom; commanding them to proclaim in all Parts in their Countries, That all Men between sixteen and fifty, should put themselves into Arms, according to their Degrees and Qualities, to be ready upon two Days warning at any time, to defend the Kingdom.

4 P 2
The like Writs were then directed to the Sheriffs of Lincoln, York and Lancaster.

Chap. 1. Hen. IV. m. 12. A Writ to the Archi-
shop of Canterbury: Statis informati etis quos titi
inimici sui Francia & aliiubi adhuceras, cum
magna claque Navium, cum magna multitudine armat-
erum super mare congregatis diversarum villas per Cae-
navium Regis ne inboxerent, & nos & Regnum seu
defensum, & Ecclesiam Anglicannam jubeberint inten-
duunt & præparant; thereupon commands, That the
Clergy in that Diocese be array'd and arm'd, and
to be ready to go against the Enemy.

The like Writs to all other Bishops in England.

Note, Altho' this great Danger be mentioned, yet
no Command to prepare Ships.

Pat. 5. Hen. IV. Part 2. m. 28. A Commision to
Thos. de Arby, & others, and to the Sheriffs
of Norfolk and Suffolk, and to the Bailiffs of
great Towns, viz., York, and to Stand expost, & adhuceras, cum
Potestas armatis: 'in quos' Moris in aeterni, praevia fuerit
ordinaria, & intuentur Regi jubeant, &c. Com-
mand to survey the Town of York, and for-
ify it.

Note, Here else, the true great Danger and
 Diffidence of Time, yet no Writs issued to any
Counties to prepare Ships.

In the Time of King Henry V.

Pat. 3. Hen. V. Part 2. m. 27. A Commission
to array all men at Arms in the West Riding in
Yorkshire, to be ready to defend those Parts.

The like Commissions to others, in nineteen
other several Counties.

In the Time of King Henry VI.

Pat. 13 Hen. VI. m. 10. Pat. 29 Hen. VI. m. 11.
Pat. 29 Hen. VI. m. 12. Pat. 29 Hen. VI. m. 1.
Commission to array all men for the Defence
of the Kingdom, and in all the Marches; and
for suppressing of Rebels.

In the Time of King Edward IV.

Pat. 10 Edw. IV. m. 11. Commission to George
D. of Clarence, & al to array Men for Defence.
Pat. 10 Edw. IV. m. 13. A Commission to John
Lod. Hunsley, to be Captain of all the Forces.
Pat. 43 Hen. VI. m. 22. A Commission to Mar-
quils Montague, to array and put in Arms all Men
beyond the Fren. 

In the Time of King Henry VII.

Pat. 1 Hen. VII. Part 1. A Commission to Rich-
bard Fitz-Hugh, and others, and to the Sheriffs
of Yorkshire, to array and call to be armed, all able
Persons, Abbots and others, to be ready to defend
the Kingdom.

1 Hen. VII. Part. 1. A Writ to the Sheriffs of
Norfolk and Suffolk, to proclaim in all Parts in
those Counties, for that there was likely to be open
War between Charles King of France and the King
of the Romans, and great Navies are prepared on
either side; commands, That Watch and Ward
be kept, and Baecons kept to give warning; and
that every Man be ready, if need be, to come and
defend the Kingdom.

In the Time of King Henry VIII.

4 Hen. VIII. Part 2. A Writ to the Sheriff of
Kent, commanding him to proclaim in that Coun-
ty, That the King being certainly informed, that
the French King had prepared a great and strong
Armament, furnished with Men of War, to invade the
Kingdom; therefore commanded all Men between
the Age of sixteen and fifty, to put themselves in
Arms, to be ready to defend the Kingdom at an
hour's warning.

In the Time of Queen Elizabeth.

1 Eliz. Commissioners went to take a View of
all the Harbs in England &c for Service, and to
survey all the Arms, to have them all put in read-
ines, as Necessity should require.

Now it appeared upon View and Examination of
all those Records, most of them being cited by Mr. Solicitor and Mr. Attorney, in their several
Arguments, there is none of them to prove the
killing of any such Writs to Inland or Maritime
Counties to prepare Ships; altho' there have been
many times great Dangers, nor yet any Writs to
Maritime Towns, &c. the Statute of 1 1 Ed. III.
to charge them to be ready to make the Charges.

So then I conclude this Point. That I conceive
this Writ is not warranted by any former Preced-
ent.

Now I come to examine the Point of this Writ,
Whether the same be legal and warranted by any
former Precedent: And I conceive it is not.

1. The Motives mentioned in the Writ are,
Quae damus de nobis intelligi, which is no certain
Information: Quod guidam praevias & navigia gregati-
tibus, did take the King's Subjects, Merchants, and
others, and carry'd them into miserable Captivity.

All the and, their following, I conceive are
not sufficient Motives, and were never in any Pre-
cedent before to have a Royal Navy prepared. For
the former Precedents are, that great Princes in open
Time of Holiſtity had provided great Navies with
Ammonition and Souldiers, with intent to invade
the Kingdom, as appear'd by the former Prece-
dents: and against such Provisions it was necessary
to provide the Royal Navy, the King's Ships, and
all the Ships of the Kingdom, to be gathered to-
gergether to withstand them. But to make such Prepa-
rations against Pirates, it was never put in any Writ
before; for when Pirates infil'd the Sea, they came as
t it were by stealth, to rob and to do mischief;
and they never dared appear but when they
may do mischief, and clear away by their flying.
But against them, the usual Course hath been, that
the Admiral or his Deputy with some few Ships
have secured the Coast, and not to employ the whole
Navy. And this appear'd by a Record, 25 Ed. I.
m. 9. William Leightoun the Admiral was appoint-
ed upon such an Occasion with ten Ships to lie up-
on the Sea, for the Safety of the Merchants;
and the usual Practice hath been, when they hover
upon the Sea, by sending a few Ships of War to
fearer the Seafarers, and make them fly away. And
there is no fear of the Loss of the Dominions of the Sea,
by any Act. Pirates can do; neither is it convenient
that every County of the Kingdom should provide
Ships against them.
2. The Command of this Writ is to provide a Ship of 450 Tons at the Charges of the County, furnished with Matter and Manners; which is imperative for them to do for the Reasons before alleged, and therefore is illegal, and not warrantable by any former Precedent.

3. The Command of this Writ to find Wages for Soldiers for 26 Weeks after they came to Perthmouth, when they are out of their County, and in the King's Service, it is illegal, being against the Court's Precedents and divers Times, and against divers newly-expressed Statutes, and this appeareth by divers Records.

13. Iban. In the Writs of Summons of the Tenants by Knights Service, it is expressly mentioned, that after forty Days Service (for so many Days they were to do Service by their Tenure) they should be satisfied ad manus Regis.

14. Pechb. 16 Edw. I. Amongst the Writs of the Exchequer it is there set down, that the Footmen of Chaffaire being 1000, who were appointed to go for the Defence of the Borders of Scotland, would not sit out of their Counties without Wages; and there 'tis set down, that one therein named was sent down with Money to pay the said Footmen.

15. Aber. 16 Edw. I. inter Brevi ters' in the Exchequer, by reason of the Invasion of the Scots, many thousands of Soldiers were taken from divers Parts of the Kingdom ad uniam Regis. And there 'tis mentioned, that Clerks were sent down with Money to pay the Soldiers of several Counties their Wages.

16. Edw. I. In the Exchequer, in Account, the Wages for Land Soldiers for several Counties, and the Wages for Mariners are set down, what the Wages that were paid came to by the Day, and by the Week, both by Sea and by Land.

17. Trin. 31 Edw. I. inter Brevi in the Exchequer, the Wardens of the Marches of Scotland signified to the Banners, that the Men of Cumberland and Westmoreland, appointed for the Defence of the Marches, would not sit out of their Counties without Wages; whereupon Order was given for Wages for them.

18. Edw. II. Commissions went out to pay Soldiers, who served out of the several Counties, for Defence against Scotland.

Hill 2 Egoc. III. Rt. 16. In the Exchequer; it was ordered in Parliament, That whereas some Soldiers had received of none of the King's Officers, Money for their Wages, they were to be given Bonds for Re-payment, and that those Bonds should be all re-delivered.

1 Edw. III. cap. 5. That no Man shall be compelled to go out of his Country, but where Necessity required by golden coming of Roaring Enemies into the Kingdom, not being done, as hath been done in times past: which, I conceive, is to be at the King's Wages, when any are out of their Counties.

But to clear all Doubt, the express Statute of 18 Edw. III. cap. 7. is, That no Men of Arms, Hobblers and Archers,chothen to go in the King's Service out of England, shall be in the King's Wages from the time they go out of the Counties where they were chothen, until they come again.

19. Hen. VII. cap. 1. That all that had any Grants of Lands from the King; and 1 Hen. VII. cap. 1. Thoso that had any Offices of the Grant of the King, are to serve the King in his Wars: But in both it is appointed, they shall have Wages from the time they shall come from their Houses, until they return.

2 & 3 Edw. VI. cap. 2. It is narrated, That no Captain receiving Soldiers, serving by Sea or Land, shall receive any Wages for more Soldiers, or more Time than they shall serve; and shall enter the days of their entring into Wages, upon Pain, &c.

All which Records and Statutes do prove, that the Soldiers should be at the King's Wages; therefor the Court of Wards for Soldiers Wages for twenty-six Weeks, when they go from Perthmouth, is legal, and expressly against those Statutes: and so the Affirmation being entire, as well for the Wages, as the other Charges, I hold it to be clearly illegal, and not to be demanded.

4. That the Command of this Writ to the Sheriff, to affix Men at his own Discretion, is not legal, nor warranted by the Precedents: for Precedents are commonly, that Affirmations for Contributions, for making or setting out of Ships, have been by Commissioners, which by Precedence had Knowledge of such Matters, as commonly Sheriffs have not. Alto, this saith to the Sheriff too great a Power to value Mens Eftates, as to enhance whom he will, and to favour whom he will.

5. That the Power to the Sheriff and Mayors of Towns, &c. to imprison, especially as it is used, is illegal, and expressly against divers Statutes: for it is provided by Mag' Chor' cap. 39. Quod nullus capitaverit vel imprisonaverit, nec haber cuiu minimis, vex per judicium parium fuerint, vel per legem terrae.

Alfo, 5 Edw. III. cap. 9. That no Man shall be attached, or his Goods seiz'd, contrary to the Form of King's Chor's.

Alfo, by the Statute made 37 Edw. III. cap. 18. it is recited, That by that great Chancer, none should be taken or imprisoned, but by due Proces of Law; yet by colour of this Writ, the Sheriff may imprison any Peron, yes, any Peer of the Realm: for altho' Peers are not to be arrested by ordinary Proces between Party and Party, as it is resolved in the Councils of Scotland's Cafe, in Cos. lib. 6. fol. 32. yet upon Contempt, and upon Proces of Contempt, which is always for the King, any Peer may be imprisoned, as it is resolved by all the Lords, and all the Judges, in the Star-Chamber, in the Earl of Lincoln's Cafe: and so the Sheriff, by colour of this Writ, may arrest any Peer, as for a Contempt in not paying. But by the Book-Cafe, 2 Edw. III. fol. 2. it is resolved, That a Writ to imprison one upon Suggestion, before he be indicted, or without due Proces of Law, was illegal. So for this Clause, I hold this Writ to be illegal.

6. The last Clause of this Writ is, That by colour of this Writ, there should be gathered than will be sufficient for the necessary Expense of the Premisses, and that none who shall levy any Money towards their Contributions, shall detain the fame with them, or employ the fame to other Uses; and if more than did suffice were collected, it should be repaid amongst those that paid, after a rateable Proportion. But as the Court is taken, it is not to be performed: for no Ship, nor Tolling, nor Ammunition, nor Men, nor Wages, nor Victuals being provided, it is not to be known, whether more be gathered, or less than would suffice: And there being Money gathered, it is of necessity either detained with the Collector, or the Sheriff, or employed to other Uses than are appointed.
pointed by the Writ; so the Writ is not perform-
ed; And the Money annexed and collected, is not
duly paid nor collected; and the Money annexed
and unpaid, cannot be duly demanded.
7. Admitting the Writs were legal, and the
Commands therein legal, yet the Affimment, as
is certified, is not sufficient to charge the Defen-
dant; for it is not certified, that any Ships with
Armament, and Men were prepared: and this is
a Year after the Time it should have been pre-
pared, and sent to Pennsant. And if it were not
prepared, there is no cause to charge the De-
fendant; and that not appearing to be done, it
shall be conceived not to be done.
For if one be charged, in consideration of a
thing to be done, before a certain time to pay a
Sum of Money, if the thing be not performed
according to the time, none can be charged for
not payment of the Money after the time is palf:
for it is in nature of a Condition precedent, to have
a Duty or Sum of Money to be paid after the
Condition performed; and there, he that will
have the Duty, must shew that the Condition is
performed.
This appeareth in the Case of 15 Hen. VII. and
Coke, lib. 7, fol. 9. Uglyodd's Case: And therefore,
if the Ships be not prepared according to the Writ,
or Money employed for preparing a Ship for and
in the Name of the County; then every one that
paid any Money, either voluntarily in obedience to
the Writ, or compulsorily upon Diftree, may
demand their Money again of the Sheriff, or
of them that received it: For as they paid their
Money, so it must be dispofed of, and cannot be
dispofed of otherwise by any Command whatsoever,
altho' it be under the Great-Sea: For the Com-
mand being under the Great-Sea, to prepare and
furnish a Ship to such a parapoe as in the Writ is
mentioned, and they paying it to that Parapoe, it
cannot be otherwise dispofed, altho' it be more
for their Advantage: for private Men having In-
terest therein, that cannot be taken from them,
nor dispofed withal. Therefore, in Coke, lib. 7,
fol. 37, in the Case of Penal Lous, it is resolved,
That if the Penalty appointed to be forfeited upon
a penal Stature, be given to the Poor of the
Parish where the Offence is committed, the King
cannot dispense with the Penalty for that Offence,
because the Poor have an Intered therein: but if
the Penalty be given Part to the King, and Part
to the Poor, the King may dispense with his own
Part, but not with the Part of the Poor.
Object. And where it hath been said, That it is
by way of Accommodation, because the Country
cannot well know how to provide to content, and
perhaps with more Charge.
Rejoins. To this 'tis answered, They must do
it at their Peril, if the Writ be legal; and then
if it be done, they shall have the Benefit thereof.
For as my Brothers Wifon and Berkley have
both agreed, if the Ship were made when the
Service was done, the County for which it was
made shall have the Benefit of the Ship, Ammu-
nition, and Victuals, and of the Service of the
Men, being made more expert against another
Time; and the Ship may with some early Charge
serve again, and nothing lost, but the Expenditure
of the Victuals; and the Kingion shall be so much
the more strengthened by having so many Ships
made or prepared; and they may have Account
of their Money how it was bestowed; and if any
Surplusage be gathered, to have it restored. And
that the Law is so, that if the Money be received
of the County, and not employed accordingly,
the Party so receiving it, and detaining it, or mis-
employing it, is to pay a Fine to the King for the
same, and is accountable for the Money, appears
by two Records.
The one in Hill. 16 Edw. III. Rot. 23. B. R.
where two Soldiers were indicted, for that they
taking 3 l. a-piece towards their Arms, and the
bringings of them to the Place where they were
appealed to serve the King in England in his
Wars, they went not, but tarry'd full in their
Houses, and retained the Armour and the Money
which they had received for that Purpoe: They
thereupon being convicted, pleaded Not guilty;
and the one was found to go in the Service ac-
cording to the Appointment, & he was discharged:
and the other was found, that he received the
Money, and went not to do the Service, nor re-
stored the Arms nor Money; thereupon he was
committed to the Prison, and paid to the King a
Fine, and found Sureties to pay the Money to the
Hundred from whom he had received it.
The other was in Hill. 20 Edw. III. Rot. 37. B. R.
where two High-Constables were indicted, for that
they, 3 Ever. III. had received six Marks of the
Towns in their Hundreds, to set forth Soldiers,
and had not let them forth, but detained the
Money; which they denying, it was found that
they had received the Money for that Purpoe, and
had disburfed 10s. and 6d. thereof towards the
fitting forth of Soldiers, but had retained 38s.
and 6d. and not disburfed it: thereupon they were
fined and imprisoned, and afterwards enlarged upon
Sureties to pay the Money they had retained un-
disburfed, at the next time the King commanded
Soldiers from those Parts. By both which Records,
being for Offences done so long before, it appear-
eth, that those that have received Money of the
Country to prepare Ships, and not employed it
accordingly, are answerable to the King and his
Successors, to pay a Fine for Mis-employment of
it, and are chargeable to those of the County of
whom they received it for Payment thereof.
8. For the last Point, I conceive, that this Cer-
tiorari directed to the two that were late Sheriff
at the Time of the Affimment, and not to the
Sheriff that was at the Time of the Cerviorari
awarded, who is the only immediate Officer to
return the Writs, is not legal; for it is the first
that hath been seen of that kind: for all Writs
are directed to some immediate Sheriff, requiring
him to demand of the former Sheriff, what they
did upon the former Writ: and they are to return
to him what hath been done, and he to return
the fame to the Court, whereunto he is an imme-
crate Officer; and the former are not any Officers.
So the Sir Feo' thereupon grounded, I conceive,
is not good: Allo the Sir Feo' to warn Mr. Hampden ad flendum et si quid pro se habeat, &
quare de praedicti vigint' fals' averat non debet, not
flowing to whom, is uncertain, and is insufficient.
Thereupon I conclude upon the whole Matter,
that no Judgment can be given to charge the De-
fendant.
The Argument of Sir William Jones, Knight, one of the Justices of his Majesty's Court of King's-Bench at Westminster, in the Exchequer-Chamber, in the great Café of Ship-Money.

In Easter Term there issued forth a Sei' Fate and this doth relate to divers sums of Money exacted upon divers Persons in the County of Bucks, for providing a Ship of 450 Tons, with Men, Ammunition, &c. to attend the King's Navy for defence of the Kingdom.

And afterwards upon a Certiorari out of Chancery directed to the Sheriff, to certify those Assignments, and the Names of those that made default of payment, Mr. Hampden was returned to be affixed at 20s. and hath made default.

Upon this Return the King by Mittimus out of the Chancery sent the Writ, the Certiorari, and the Return, to the Barons of the Exchequer, to do as the Court shall think fit.

Thereupon a Sei' Fate went forth to the Sheriff to command Mr. Hampden to fly Cause why he should not pay the 20s. affixed upon him: He was returned warned, and appears and demands Over of the several Writs and their Returns, and of the Sei' Fate; and upon all this he demurrs in Law, and Mr. Attorney hath joined in Demurrer with him. And my Lord Chief-Baron and the rest of the Barons have adjourned this hither, to define the Advice of all their Brothers of the Law; and indeed it requires Advice, for it is as great a Café as ever came to be advised on before Judges.

I say it is a great Café; it concerns the King in his Royal Prerogative, and the Subject in his Interest, in his Land and Goods, and Liberty of his Person. They that have spoken already, and they that shall speak after me, shall hardly escape the Confuse of the People, of some that have some Underhandling, of some peradventure that have left, and of some that have none at all, but speak according to their Opinions, Affection, or Wills. Felicitates evertur libertatis, &c. per solis justices judicatores: we should be happy to be judged by them that are learned; but when it is by them that understand not, then it is turned into Calumny and Reproach.

Some have taxed them that have gone, or will go with the King, as the' they were careful, and went about to captivate the Liberty of the People and take away their Goods. Some are taxed on the other side, if on the contrary, that they are given to Popularity: so as I may say as the Phil, Bit, Damis, we peignif in labio lac, for it is impossible to escape their Tongues, and between these two Confuses I am like to fall. And however I may fall with my Sentence, with God's Grace I shall make no Shipwreck of my Convenience.

I am taught by the King to display his Justice equally to all, and sworn to dispense his just Prerogative, as well as the Subject's Liberty; and if I do otherwise than as Judges, we do as false Men. If any Man offend contrary to his Oath, he doth forfeit his Lands, Goods and Tenements. I shall not therefore as any other defend against my own Convenience; but defend to give Judgment, not regarding the wary Months of others.

The King's Counsel, and the Counsel at the Bar, have spoken so largely to this Business, and it is spoken to by my Brothers so fully, that I can hardly lay any thing but what hath been said before; so I will select some few things, to satisfy my own Conscience, tho' I cannot satisfy any Man's else; which I will do as plainly as I can, and as I ought to do. And if there had not been a variety of Certiorari, I should have spoken very little; but now necessity requirith that I must enlarge myself a little more.

1. I will state the Question, and in it put many things objected out of doors. The Question is, whether the King of England, when he perceiveth Danger to be imminent to the Kingdom, and a necessity of Defence, may not by his Writ tend to all Counties as well Inland as Maritime, to require them, at the charge of the County, for a convenient time to provide Shipping, with Men and Ammunition, &c. but no Money to come to his Pure, but the Ships to go to defend the Kingdom.

The Question funds not, whether the King may draw it to be a perpetual Charge upon the Subject, which under colour he can hardly for this goeth upon a Fear of Danger, which continueth but for a Time, and therefore this cannot be perpetual; for when the Occasion ceaseth, the Taxes must likewise cease. There is a Cafe to this purpose, 39 Hen. VI. c. 39. Protection. Broke. A Protection granted to one for three Years, and the Question was, whether a good Protection: The Rule is, the King may grant a Protection for one Year, and at the Year's end, renew it for another Year if the Occasion require it, and so for a third Year; yet he cannot at the beginning give a Protection for three Years together. So in this cafe, tho' the King may, upon an emergent Occasion, command Ships, yet by reason of that Occasion he cannot make it perpetual, for the Occasion may cease.

2. In this Cafe, I will not except the King's Majesty himself, to bear a part of the Burden; the Head and Body must go together, he must join with his Subjects in the Defence of the Kingdom.

3. The Question is not, whether for a foreign War he may command this Charge; it must be only in defence of the Kingdom in Cafe of imminent Danger.

4. It is not whether the King may lay this to draw a Sum of Money into his own Purse, for the King tends to have no Money; but to provide a Ship; and if the Sheriff accordingly provides a Ship, there is an end of the Business; all this is out of the Cafe.

As Calvin Chief-Judge compared a Fine to manus Bifrons having two Faces, the one looking backwards, the other forwards; so may I of my Argument: I shall first look backwards, and tell you quid secundum, what we have done; and then forwards and tell you quid secundum, what we shall do.

The Quid secundum rests in the Advice we have given to his Majesty in the Cafe, and the Opinion of the Judges subscribed with their Hands delivered over to his Majesty (which was read at large by him.) The Advice we gave contents of four Articles.

1. That when the Kingdom is in danger, all the Kingdom is to join in the Charge of Defence.

2. What shall be adjudged a Danger, and what not, his Majesty is the sole Judge thereof.
of, and of the Means how to prevent and avoid it.

3. That in Case of Danger he hath Power to send to Inland Counties, as well as to Maritime, to assit to defend against Invasion.

4. That the King hath a Power of Compulsion, to punish those who refuse to contribute to this Charge.

This Opinion being jointly and severally delivered by us, declared by our Lords Keeper in the Star-Chamber, in the Presence of us the Judges, before the Lords of the Council, with an Intimation as if it were the full Consent of all the Lords of the Council before-hand, and there commanded to be instilled in all the Courts at Highcourt; yet we so delivered our Opinions, that if better Reason was shewn to alter them, we might recede from them; for we had better recusare, than worse currere.

Now to the second Point, quid faciamus, whether to stand to this Opinion or not, and then whether this Book or Record will warrant it, and how far it differeth from what we have done, I shall first confine it to the Point.

I am an old Man and really for my Grave, my Tongue and my Heart shall go together. I am of the same Opinion I was then; and conceive what we then delivered was according to Law; with all Modesty submitting to those that have been or shall be of a contrary Opinion, for the Grounds of Law and Nature support it.

1. Salus Populi et Suprema Lex. Sed justitia com- medom, fientur debet & omnes. Squid amans longit, ab omnibus debet sopportari. What do these Rules intimate else, but that when a Danger is imminent the Charge must lie upon the whole Kingdom, and that the King must be borne by all? And that is not denied by them that were of Council on the other Side. It must not be of every Kind of Fear and Rumour that must draw this kind of Burden upon the Subjects; but such a Danger as the King in his Underestanding perceiveth doth require a speedy Defence.

2. That the King is sole Judge of this Danger, and how to prevent and avoid it, is not to be literally understood; for we are his Judges deposed, but our Judgment flows from him. Judgment is seated in the King, he is the Fountain of Justice, from whence all other proceeds. Bruta facit, Rex potestatem. We are Judges cumulative not primitive; so is he the supreme Judge.

In the Parliament the King is the sole Judge, the rest are but Advertisers. 22 Ed. III. fol. 2. Here it is that the old Fadition of penning of Statutes was Rex Statuit. 7 Hen. VII. Afterwards it came to be with the Advice of the Lords and Commons. Trin. 6 Hen. VI. Rot. 41. Buce. Reg. There was a Prior brought a Writ of Annuity against one in Ireland, there was Judgment in the Common-Pleas; then at length a Writ of Error in Parliament; the Judg- ment confirmed; afterwards a Writ of Error in the King's-Bench here, and both Judgments reverted. And in the Entry of the Judgment the Record suit, Nos exu affegte & ad requisitionem Causantiae do reverence the Judgment. Where note, the King is the Man that is the sole Judge thereof. (By the way observe, out of this Record, the Power of the King's-Bench in England; for upon this Record it appears a Writ of Error was brought in the King's-Bench in England to reverence a Writ of Error in Parliament in Ireland.) This sheweth the King in Parliament is the sole Judge, the rest but Ad-
The next Authorities objected by my Brother Crooke, are the Laws of William the Conqueror, and Charter of King John, then the Statutes, then Fortescue; and therefore he faith very much, that the King of England cannot lay Taxes upon his Subjects, without their Consent in Parliament.

And he speaks of Taxes and Charges that cannot be imposed without Consent, some other Places of the Author do shew, that it is where the King imposeth it for his own private Use, and not in Cafe of publick Defence.

The next is 13 Hen. IV. the Charges of 1 d. upon a Cloth for measuring, adjudged void. I conceive it was not adjudged void upon that Point. True, in Parliament it was complained of as a Grievance to the Subject, but every Petition in Parliament doth not argue a Right: it may be it was at damnum, yet obviter in iure; that Cafe differs much from this, for there was a Charge to a private Benefit, and no regard to the publick, which perhaps the Law will not allow, but where there is a qual pro qua; nor of the Cafe of Dice, Cards, Monopolies, the Cafe nothing like this: so a Commission of Scovers may lay a Charge for the Repair of a Bank; when the Lands are overlawn, and the Owners be not able, the Neighbourhood must be taxed; so in Cafe of a Bridge.

Then the Statute of 2 Rich. II. was objected; nothing must come to the King’s Purse, nor to the King’s Coffe, but it must be for the Defence of the Kingdom.

This was no lawful Charge, because the Intention was to fill the King’s Coffers, which were empty, and that could not be done but by Parliament; so it is not in our Cafe, no Money is to come to the King’s private Use.

That of Hen. IV. for repealing of Commissions that were awarded to provide Barringers, the Record faith only that the King’s Answer to the Complaint was, Le Roy je words avec ses Signors.

Then he comes to the Statue of Tonnage and Poundage only for ordinary Defence of the Kingdom.

Why there should be any Difference between an Inland County and a Maritime I know not, since the Nation Differently engaged as one entire Body; and the Inland Counties have the Benefit by sending their Woods by Sea, and yet they must not help to the Defence of the Sea. As in the natural Body one Member helps another, so when the Maritime Counties are not sufficient to make Defence (as in cafe of extraordinary De
cence they cannot be) the Inland County must contribute. Besides, the King may unite an Inland County to a Maritime, and make them but one County; is not he Lord of the Land as well as of the Sea? What was the Law before the Division of Counties? Surely it was equal in charging the whole Kingdom; for I see no Reason but an Inland County then be liable under Law, as well as a Maritime. In ancient Times, things done upon the Sea, were tried upon the Land in the King’s Bench, as by many Records appeareth. One is of a Norman Robber upon the Sea.

Objecf. But if this be so, the Law suffeth a greater Inconvenience, viz. that the King may by his Writ charge what and when he pleareth.

Ripon. This the Law suffeth the King’s Goodness with, that he will not require it of his Subjects but when there is occasion; and he may do it,
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So long as he continues it no longer than there is occasion.

Object. But were not Dr. Cowell and Dr. Manswaring sentenced in Parliament for such Tenets?

Ref. They were sentenced, and dearly, but different from our Case: I was a Member in the Parliament, and was in the lower House, when Cowell was sentenced. I will tell you what Dr. Cowell did: he wrote a Book, and under the Words Prerogative, Subjects, and Kings, he inferred as if the King might make Laws without Consent in Parliament; and wrote against the Common Law, which the King is sworn to maintain: thereupon he was sentenced, and his Sentence was just, and I gave my Voice for it. The other was Dr. Manswaring, he preached two Sermons that the King was not bound to observe his Laws, that the Right and Liberty of the Subject are at the King's Will and Pleasure without Parliament, and that he could bind the Conscience of the Subjects, and that they are bound to pay Loan-Money upon pain of eternal Damnation: and that they did refuse to pay the Loan-Money, did offend against the Laws of God, and were guilty of Disloyalty and Dibedience; and that the Authoraty of Parliaments, was not necessary to the granting of any Subsidy. For this he was sentenced, and made his Submissil. That was for railing of Money for his own Use, but this is to require his Subjects to provide Ships for the Defence of the Kingdom.

Object. The next Object is Coining, that he that Tenure great Profits ariue to the King for Defence.

Ref. Shall the Defence of the Kingdom be laid only upon those who have their Maintenance out of the publick Revenue? What will the King have left to maintain himself, his Queen, his Children, Intelligences abroad? Will you strip him of all? It is true, I hold that the King, with the Subjects, must join together in the Defence of the Kingdom. If the King be rich, you should have pleaded that the King had, sufficient in his Purse.

Object. Then it is objected, that there is no apparent Danger, and that this Charge is not allowable neither by the Common Law, Statute Law, or Custom.

I say, it is by the Common Law; but will you have Danger so apparent, as Hannibal ad perier? Will you suffer an Enemy to come in before you prepare to repel? If once he gets in, you will hardly get him out. Is not that as much to be commended, that doth prevent a Danger before it cometh, as when it cometh? Is not the Care to prevent Fire from a House before the Fire takes hold of it, as great as when it is on Fire to quench it? Therefore the King, like a good Physician, seeing a Disease growing, before it goes too much Strengthen prevents it.

Object. In fix Weeks Time, a Parliament may be called.

Ref. But it may be, yet after they meet, a long Time they spend in Consultation before they can do any thing; which would be too mischievous in a sudden Invasion: and therefore King Ed. III. in his 10th, 11th, and 12th Years, whilst the Parliament was sitting, sent forth his Writs for Aid.

Object. It was alleged by Mr. Holborne, that the Law of Nature teacheth every Man to defend himself;

Ref. What, I pray you, will you then have done, on a sudden Invasion, when Forces must be raised? In other Parts of the Kingdom as remote, and all must meet together? If the King must expect such an actual Invasion, before such time as he fends forth his Writs to have them all in readiness, how poorly would the Kingdom be defended at that time? Our Forces would be scattered, and cannot be brought together, which thus divided cannot withstand a foreign Power.

Object. The last Object was, that the King, at his Pleasure, may draw when he pleaseth this Charge upon the Subjects, if he say he is of Opinion that there is Danger.

Why may not the Law allow this, and trust the King's Judgment here as well as in the Case of a No. Regal, in which if the King commands his Subjects to stay at home, for such and such a Cause, the Cause is not travelable? First, the King doth not an Act of Parliament, you cannot speak against the King's Certificate under the Great Seal; fake tidt Record is no Plea.

Again, God Almighty blest the King; it is against Preamption of Law, that the King, whole Heart is in the Hands of the Lord, should tell a Lie. God gives William to govern ariue. Lyning Lips do not become a Prince, Truth to God Almighty he owes. The Law says, the King may declare a War, but to declare Falsum, The King may not know a Truth, but cannot speak falsely. Yet juramento solius, he is bound to administer Justice, and not to griev the Subjects. Is he so unwise to charge them and himself without Cause, with providing of Ships? What Benefit comes to him by it? Surely to tell a Lie will be no Advantage to him: he was a King of Wickedness to lay a Charge on the Subject to no Purpose; thus he shall charge himself and his Subjects about nothing. Does any Man think he will put a Burden upon his Subjects without Cause? We have a good King, and our Imagination ought not to be too strong.

The fourth Affirmation is, that the King hath Power to compel them to the contributing to this Charge. This Power of the King is a special Prerogative, and if good at Common Law, it taketh away the Statute, when it is pro bono publico, to defend the Kingdom.

The general Words of a Statute shall never be construed to extend to it; the Charter of King John shall never take away the King's Prerogative, neither the Statute de Taliiago von concedenda, which I agree to be a Statute, and so my Lord Coke allows it to be. Now this Power of the King, of which I argue, is in special Prerogative in respect of Government: it is proper to a Specter a quoque modo, therefore the general Words of a Statute shall never be construed to extend unto it: as if the King hath a special Interdict in Land by the Prerogative, it doth not pass away without precise Words, as the Books are infinite in it. If the King grants away Land by his Letters Patent, parcel of a Forest, without special Words, this shall remain subject to the Forest-Laws still: so many Causes may be put, when general Words of
The Argument of Sir Richard Hutton, Knt., one of the Justices of his Majesty’s Court of Common-Pleas at Westminster, in the Exchequer-Chamber, in the great Cafe of Ship-Money.

TH E King by his Writ A. Aug., informs, that there were gathered Pirate et Marius Graffitores, and that they were gathered together in hostile manner to hinder our Merchants from bringing their Goods into our Ports; and receiveth, that there are Wars abroad, and that considering these Perils and Dangers, and that the Defence of the Kingdom consists in the Defence of the Sea, which at all times belonged to this Kingdom, and that the Charge of Defence is to be borne by all; and the King is both that in his Time such in Honour as the Dominion of the Sea shall fall away or be diminished, and not be defended, had therefore sent a Writ to the Sheriff of Bucks (as to other Counties) to provide a Ship of such a Burden against the 1st of May, and to come to Portswold, and there to remain for 6 Weeks, and so as shall be directed them for the Defence of this Kingdom. And the Writ directed, that all that are Inhabitants shall be affected for the providing of this Ship with Men and Ammunition.

By force of this Writ, Mr. Hampden being affixed at 20s. there went forth a Certiorari a Year and a half after, directed to the Sheriff of the County of Bucks, to certify what Sums they had affixed by virtue of the said Writ 4 Aug. and there are two several Certificates returned into Chancery; one, That Mr. Hampden was affixed at 20s. the other, That he had not paid it. 5 Maii 13 Car. the King, by Mittimus out of Chancery, recites, that when he awarded the Writ 4 Aug. Eius regni periclitabatur, and that it was for the Defence of the Kingdom and Security of his Subjects; and doth find this Writ 4 Aug. the Certiorari, and Mittimus, to the Barons of the Exchequer, and commands the Barons to do that which appertains to Justice to be done. Whereupon a Servi Fa’ is awarded; whereto Mr. Hampden hath appeared, and demanded Oyer of the Servi Fa’ Mittimus, Certiorari, and the Writ 4 Aug. and hath demurred generally; and Mr. Attorney hath joined in Demurrer; and how this Servi Fa’, is the Question.

And I am of Opinion that this Servi Fa’ doth not lie, and that Judgment in this Cause ought to be given against the King. For the better understanding of the Court, I shall observe in the Method of my Proceedings,

1. Whether a Charge of this nature may, by the King, be imposed, by original Writ only under the Great Seal, without a Parliament. Wherein I hold it cannot be proved by any Authority or Reason, unleas in time of actual War and Invasion.

2. I will answer the Objections only made formerly by them that have argued, that these Statutes do not extend to this kind of Prerogative, and that this Prerogative is not taken away by any of these Statutes.

3. I will answer the Precedents, both by Precedents of equal Nature, and by some Reasons, where-
whereupon I will conclude, that this Prerogative and Power, which is Monarchical, is included and taken from the King, and that must be done by Parliament.

4. I will answer some Objections that now have been raised, and were before made by Mr. Sollicitor.

5. I will just open the Writ, that it neither contains a Matter sufficient in the Writ itself, nor is there Matter to warrant any such Libel as is pretended; neither is the same lawful, nor can it be

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The Statute 25 Ed. III. enacts, that none shall be compelled to find Hobblers; Si il ne fût per commum consuetud in Parlament. The Reafon given in the Parliament-Roll, is very observable; 

Now, as my Brother Jones hath taken a great deal of Pains and Time, I will not be drawn from my own Order by what he hath said; but answer him in his Argument.

1. I say, that this Power of affailing of Money, being a great Charge, cannot by the Law at this Day, unles in time of actual War, be imposed upon the People by Act of Parliament.

The Acts of Parliament that have been mentioned, the firft, Magna Charta, which is an ancient and great Statute, it concerneth unto us with an Infampus from Ed. I. confirmed thirty times; the Words are, Dedimus & concedimus libraries subcrito per scriptum. Nullus libor innostrerum vel imprimitor. anti diffahit de libro Teneacent suo vel secretumin, etc. anti aliquo modo diuinatur, ant in concerrum intentat, utque pro legale judicium pariam fuerat, vel per legem tarnen. King William the Conqueror made these Laws, and swore Men to these Laws. And then King Edward, in theift Chapter, commands them to be kept, and he will keep them so long as concerns him and all his People for ever. And for this they granted him a fifteenth Part of all their Goods, and it is a Statute here to this Day, Stanford Ed. 17. to be tried per partes, as the Barons at this Day have for their Trial the Privilege of this Statute.

The next Statute is 32 Ed. III. chap. 5. reciting, And foraffamuch as divers Perfons, &c. we have granted for us and our Heirs, that we shall not draw such Aids and Pride into Custom for any thing done heretofore, by any other Rule or Precedent that may be found. So there is now not only for Taxes for War, but for any other Bifines whatsoever, for quod omnino exempt de la Reine, faying the ancient Aid and Prizes due and accrued. And this faving is nothing, for this Statute extends to no Particular; for if any extend to Aids by Tenure, all England is not bound to this, but some few. The Statutes extend to such Aids as the whole Kingdom is subject unto; none will say that all the Kingdom holis of the King belongs to &c.

The Statute of 34 Ed. I. concerning certain Liberties granted by the King to his Commons, this is printed Anno 1354. 25 Hen. VIII. No Tail

37. The King against John Hampden, Esq. | 19 Car. I.

The Statute 25 Ed. III. enacts, that none shall be compelled to find Hobblers; Si il ne fût per commum consuetud in Parlament. The Reafon given in the Parliament-Roll, is very observable; Cor

The Statute 25 Ed. III. is confirmed by the Statute 4 Hen. IV.

The Statute 4 Rich. II. a very good Statute, which in a young King's Time, enacted and done by the Lords and Commons: There have been many Inventions to charge the Subject. Now Hen. IV. invented many Benevolences, and that is rectified, That whereas divers Inventions, &c. (all the World think I am full of Inventions) it is erased from henceforth, that the Subject shall no ways be charged with any such like Charge. They gave it the Name of Benevolence, but indeed they were Imposts, and great Charges were collected with that Name.

I conclude with that Statute of this King, the Petition of Right, which rectifieth the Statute de Talleleg. Very many particular Things are mentioned there, Men are not to be compelled to lend Money without common Affent in Parliament; which is a Confirmation of these Statutes. I have done with the Statutes.

For the Authority of the Year-Books; I will confine those two Authorities cited by my Brother Cooke, tho' my Brother Jones fliegl the 13 Hen. IV. the principal Cafe being then a Grant of an Office of measuring of Cloth and put in Practice, and being granted out of Parliament condemned to be void; for the King cannot grant any common Charge on his People but in Parliament. And tho' my Brother Jones said, that perhaps such a Charge was Dammum, yet not Injurio; surely had not there been more in it, it had not been damned as illegal.

The other Authority is that of Fortegeu; tho' my Brother Jones, in that Book, doth omit that which is material; for that Man he was sworn Chief Justice of England, and afterwards made Chancellor, who faith expressly in his 9th Chapter, That the King of England cannot alter any Law; That he governs his People, not only by Royal, but by Politick Power, and can lay no Charge upon them but by Parliament. The King can change no Law, nor make Land Gavel-kind which is not, nor make Land divisible which is not; which he might do if it were to be done by Power Royal. And Fortegeu concludes with this excellent Saying, fel. 26. 6. Rejoice therefore, So

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The Statute of 14 Ed. II. agreed to be perpetual by my Brother Jones, for my part, I can see no Reason why it should be so. The Statute reciteth, That whereas the Barons and Commons of the Realm have granted of their good Free-will the King an Aid towards his Wars as well on this side the Sea as beyond, of the ninth Sheep, the ninth Sheaf, &c. and the ninth Part of all their Goods, we will and grant for us and our Heirs, that the same so charged shall not be brought into Example to make any Aids, he doth not say such Aids, but by Conform in Parliament. No Man can say against these Words, they are so full and absolute.

The Statute 25 Ed. III. enacts, that none shall be compelled to find Hobblers; Si il ne fût per commum consuetud in Parlament. The Reafon given in the Parliament-Roll, is very observable; Cor

The Statute 7 Rich. II. a very good Statute, which in a young King's Time, enacted and done by the Lords and Commons: There have been many Inventions to charge the Subject. Now Hen. IV. invented many Benevolences, and that is rectified, That whereas divers Inventions, &c. (all the World think I am full of Inventions) it is erased from henceforth, that the Subject shall no ways be charged with any such like Charge. They gave it the Name of Benevolence, but indeed they were Imposts, and great Charges were collected with that Name.

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1637. Scacc. in the Case of Ship-Money.

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take away any of the Subject's Goods without making Satisfaction for the same; neither can he lay any Taillage, Subsidy or other Burthen, or make new Laws, or alter old, without express Agreement of his People in Parliament.

I have done with the first Part of my Argument. I will now come to my Objections now made, and herefore make against those Statutes.

First, For the Statute de Tallagio non concedenda. True, it is very probable that it was no Statute, but an Extract out of the Statutes of 25 Ed. I. which is upon Record, the other not being to be found upon the Roll. It was averred una voce, it was a Statute, tho' not without Probability it was no Statute, as it waslearned observed by Mr. Solicitor, in respect of the King's Absence beyond the Seas. Only I collect this out of his Argument that he thought that that Statute did reach very far against the King, which he could answer no way, but to take it away; therefore he thought it a Statute of some Force.

Next, my Brother Berkley would have the Statute of 14 Ed. III. be to a temporary Statute, and but during the Continuance of the Wars. The 15th Part of the Statute is absolute, but the latter part is but a temporary Statute, and but during the Continuance of those Wars. But it must (the former part thereof) needs be perpetual, for it is granted for the King and his Heirs.

The next Objection is by my Brother Jones and my Brother Crumley, That this Power Royal is part of the Prerogative appertaining to his Person, and inherent to the Crown, a proper and native mode, so ineparable, that an Act of Parliament cannot take it away.

I confess there are some ineparable Prerogatives belonging to the Crown, such as the Parliament cannot seize from it. And I will prove to you out of Books, Cales and Statutes, that the King cannot release his Tenure in Capite. It was endeavoured that a Law should be made that the Court of Wards should be shut up, it was resolved it had been a void Law; such is the Care for the Defense of the Kingdom, which belongeth inseparably to the Crown, as head and supreme Protector of the Kingdom. If Parliament should enact that he should not defend the Kingdom, or that the King should have no Aid from his Subjects to defend the Kingdom, they Acts would not bind, because they would be against natural Reason. But in our Case here, there is no such thing; for there is no Act that restrains the King to lay any Charge at all, but only ties him to one Means, by which he would come by it, to wit, by Parliament. If before the Statute a Man alien Land held of the King without Licence, the King shall seize the Land, and have it forfeited to him and his Heirs for ever. Now by that Statute the Prerogative is refered to a reasonable Fine only; this was inherent in his Person in any thing he could be, and yet it is restrained by Parliament.

Before Mag. Chor. the King might take any Man's Goods for his Provision, and cut any Man's Woods down, to build or repair his Cattles: yet since that Statute it is enacted, Nullus Vicecomes nec Balleinus noster capiunt eos, &c. nisi reddat liberacionem. Nec capiunt boscum alienum ad captra vel ad alia agenda sofrira, nisi per voluntatem illius eiusque ille fuerit. And to this Day this Statute is of force, that the King cannot take these things, nor use his Prerogative.

The Prerogative of Nullum tempus occurs Regi, is a great one; yet in some Case of Lapfe of Churches, this Prerogative is taken away by the Statute of 25 Ed. II. cap. 1. where the King granted for him and his Heirs not to present in but in his own time: and this being pleaded 11 Hen. IV. fol. 7. is adjudged against the King, notwithstanding the Rule of Nullum tempus occurs Regi.

The Statute of 7 Hen. VIII. c. 2, concerning Retract of Informations, and that of 21 Jac. whereby the King excludeth himself to make a Title to any Land, whereof he had not been in possession within 60 Years before this time, he was tied to no time, but unlimited; yet this great Prerogative is thus bound. 30 Ed. III. cap. 12. Parliament to be held every Year one, or oftener if need be, because of divers Mischiefs that may happen. It is to be acknowledged as a gracious Favour from his Majesty to his Subjects, that he would admit of this Case to be argued in any ordinary Court of Justice, and not refer it to the Parliament, to which Place all such weighty Causes are most fit to be referred. I am satisfied in my Conscience he would do nothing in this Case, if he were justly informed, or may be informed he ought not to do it by Law.

The Laws of England mutari non potuerunt, without consent of Counsell gathered together: Si summatione movefris, hie Fortunae (as the Case of ours is) it is referred to the next Parliament; Si aliquid inequum, then it is to be put to the Parliament. 30 Ed. III. fol. 7. These are rather a New Question concerning the Statute of Windsor, about Recovery by Actions against the County where Robberies were committed; there the Case in respect of the Difficulty was refer'd to the Parliament, and there the Sheriff was wanted to have his Money.

You shall fee a notable Case in the Register fol. 224. among the Writs, of two that were at York, and served by a Clerk in the Chancery there to appear at Rome: and because of this Contempt they were committed to Prison, and a Writ came to bail them, returnable corusc unus in Parliamento: hoc Masters of Difficulty were adjourned into Parliament.

Woffington 2. cap. 28. In nova causa fiat novus remedius in Parliamento. To refoe Cales of difficulty, Statues have enacted that there should be two Parliament every Year, viz. 4 Ed. III. c. 4. which was a great Confirmation of the Liberties of this Realm. Littleton 110. 180. Parliament ought to be frequent. I know not how it comes about, that this Kingdom which hath thus long flourished by Parliament, should now forget her frequent kind of Government by Parliament, whether by Reason of some thing past, or some Diffier now fallen out, that this which is the ancient way (I do not say that Parliament is the Government) but Kings have governed by them) is so much out of use now-a-days.

I do not prescribe Power to the Parliament to govern the Realm, but the publick have been governed by the Parliament. There was seen too much of the ambitious Humour of some in the last Parliament, that stirred up nothing but Confusion and Diseomtentment as we now feel it to our great Prejudice.
Now I come to Precedents. First, that of
Danger has been object'd of which there were
Two kinds, as Sir Henry Spelman in his Glossary
obsev'es; the one ad periculum, the other ad fiellum
Densae: great Sums of Money they had to go
home again from 12000 l. to 24000 l. per
Annémum, and it was raised in three Years; it
was continued until King Stephen's Time; at which
time 'tis said it was released. For my part, I see
not but that it might n't be put in use as for-
merly, had it not been for the Statutes of Ed. I.
and Ed. III. before-mentioned: for it was not
laid down when the Danger ceased, but was
continued and taken up by Princes when they had a
mind to it, as by William the Conqueror, and Wil-
liam Rufus, but since those Statutes it was never
taken (and here be read the Words of the Statutes.)
So if these Statutes took that away, why do they
not bind in our Cae? Which is a full Answer, in
my Opinion, to that and all other Precedents be-
fore these Statutes; there have been flues 200
on each side; but I say it had been better they
had never made use of them.

So to all the Precedents made before the Sta-
tures de Talagio non concedenda, I give this general
Answer, to be of no force.

For the Precedents in Henry III.'s time, which
were many; yet in those Commissions for pre-
paring of Galleys, after they were made they
were at the King's Cost: This may be done at
this time.

And with the Statute of 14 Ed. III. I answer
those Precedents of the 10, 11, 12 Ed. III. and
by the way observe the Times that were then, that
Statutes were forced to be made to remedy those
Evils; and family that were the Burdens and
unenatable Times which the King, in the 15th
Year of his Reign, confes'd he had oppress'd his
Subiects with, and by that there had been for-
getten, because he was urg'd to it by his Neccessities,
and not for any ill End of his own, (and so be can-
sed the Record itself to be read openly before all the
Judges.)

2 Hen. IV. 2 Ric. II. A general Assembly call'd
and reconven'd, That Money could not be raised but
by Parliament. Since this time, all the Prece-
dents that have been vouch'd for are by Men,
and putting them in Readiness.
23 Hen. VIII. There was force upon them
their Charges to go toique some Rebels in
Lincolnshur, but afterwards were recomposed
for their Charges; faith the Record, Our Pleasure
is to send a Melling'er, and on a Bill of Charges he
shall fatisfy them. I do agree, and there are
many Statutes that Men should be array'd, as the
Statute of Winchester, which are only Preparations
to make Men ready.

Now for that which hath been urg'd by Mr.
Excellency attend'd well, That the King, by
the Law of the Land, hath a Prerogative in the lands
and Goods of his Subjects; so that in some Cae's, the
Sheriff may for him break open a Man's House,
and the like, because otherwise he cannot execute
Justice.

True, the King hath such a Prerogative, and
fit it should be us'd; for otherwise justice could
not be administ'ed, as 'tis in many Cases, the She-
riff, th' a Verdict by Default, hath Power by
Prerogative of the King to break into the House,
and give Possession; for otherwise Justice could
not be administ'ed, if all Laws were concern'd: for
which Contempt the King may use his Power.

Again, the King of his own Discretion maintains
his Courts of Justice, and is bound to do, 39
Ann., 34 Hen. VI. And in lieu of these Charges
that the Law gives him, it is from and under other Duties,
so there is upon the Matter a quid pro quo: But
where there is an Interest in a Subject, he cannot
take it away without his Consent, as he may do it
in Murage and Pontage, and the like; for there is
a particular Benefit to the Subject. So I think
I am almost at an End of answering the first
and second Part of the Precedents; the ancient Time
was one Way, and the modern Time another Way.

In Ed. IV. Ric. III. Hen. VII's Times, they are
all for Wages of the Mariners, certain Allowances
they had; what a Week, what a Day is set down.

But you say, here in this Case appears no Mo-
ney to be paid by the Subject, but only for a Ship
to be provided by the Sheriff, and no Money to
come into the King's Purse.

I must conclude this Part with what is agreed
by all, That if this Writ had been to levy Money,
it had been void.

As I do take it, the Writ is to prepare a Ship
of such a Burden; so the Ship is the Matter:
Then give me leave to lay this, and I say, as it
appears plainly by the Record, there was no Ship
prepared at all; then if no Ship, no Writ can be
had against him for Disturbance. 'Tis known
to all the World, 'tis not Ships, but Ship-Money:
Ship-Money is in every Man's Mouth. 'Tis hath a
Name of preparing Ships, but the End of it is to
prepare Money, as in Yorkshire twelve thousand
Pounds.

But the Provision of a Ship had been expressly
allowed, it might have been prepared, and there-
fore Mr. Hampden's Counsel could do nothing but
demur; and by demurring, they confess'd noth-
ing but what is materially and sufficiently al-
lledged, so that it might have been deny'd by a
Traverse.

But you will objec't, That I did subscribe to a
contrary Opinion, and let my Hand unto it.

To this, for my own part, I must say, and I
can truly say it, 1. My private Opinion was ever
against it. I did subscribe, but it was but for
Conformity; for it is known to all, when a great
Number meet together, the Judgment is that
which the greater Number faith: Besides these
Words to which we subscribe are no wise pur-
sons.

2. Our Opinions were very suddenly required;
for the King's Letter bears date Feb. 2. and
our Opinions upon it bear date Feb. 7. following;
and it was in a Cae wherein we never heard any
Argument: and we usuall'y do, and God forbid
but we may differ from our private Opinions
upon a better Reason heard. But I am of the
same Opinion now that I was then.

But it will be said, we might have done it
more advis'dly. No Man of us but some
times delivers his Opinion, and yet after we have heard
an Argument, have changed our Opinions, and
gone contrary to our former Judgment.

3. If after any Arguments heard I had been of
the same Opinion that I was delivered, yet the
Writ doth not put the Direction thereon; for
the we' agreed, that the King might charge in
cell of a general Danger, yet was this, and is in-
tended not a Danger of Pirates, but an imminent
Necessity, and apparent Danger, which could not
be avoided. For I do agree in the Time of War,
when there is an Enemy in the Field, the King
may
may take Goods from the Subject; such a Danger, and such a Neecesfit, ought to be in this Cafe, as in cafe of a Fire like to consume all without speedy Help, such a Danger as tends to the Overthrow of the Kingdom. Give me leave to say, that Kings of England have exercis'd great Power in taking this to themselves. 17 Hen. VIII. in the Cardinal's Time, it was counted lawful to send forth Commitments throughout England, to take a sixth Part of the Goods, whereupon many Upon a Refusal were sent to Prison; the Lord Cobham among the rest sent to Prison from Huntington to London: at length Norfolk and Suffolk grew to such a Heat for taking away their Goods in that undue manner, that the King was forced to call a great Council, who suppressed those kind of Writs; and the King laid the Fault upon the Cardinal; and the Cardinal said it was the Advice of the King's Council, and they don't it; so he bore the Shame.

So in the Time of Queen Elizabeth, who was a gracious and a glorious Queen, yet in the End of her Reign, whether through Covetousness, or by repute of the Precedent, I know not, but by what Counsell the said Benevolence; the Statute of 2 Ric. II. was prested, yet it went so far, that by Commitment and Direction Money was gathered in every Inn of Court; and I myself, for my part, paid 20s. But when the Queen was informed by her Judges, that this kind of proceeding was against Law, she gave Directions to pay all such Sums, as were collected, back; and so I (as all the rest of our House, and as I think of other Houses too) had my 20s. repaid again: And Privy-Councilers were sent down to all Parts, to tell them that it was for the Defence of the Realm, and it should be repaid them again.

Now for the Exceptions to the Writ itself, I must answer my Brother Berkley, That no Allegation afterwards (if the Writ be not good) will help it. The Writ is said to contain Matter sufficient, Quia datae ab usu intelligi; quod quidam pirata navem & bona seditione usurpa &c. and lead our Men into miserable Captivity, and provide Ships, Mariners, &c. ad gregandum regnum sofferre. Now here's nothing for the Defence of the Realm, no cognoscitio belli adversarii; as the Writs did antiently run.

Again, Pirates are to be withold with ordi-

nary Defence, which apparranteth to the King himself; but for extraordinary Defence against Invasion, when the King is like to be overthrown, there indeed the whole Kingdom is to contribute to the Defence. And our Resolution was, when such a Danger was apparent, the whole Kingdom in Danger, then the Defence to be extraordinary.

But you object, That the there be no Danger set forth in the Writ, yet in the Mithimus it is cer-

tify'd, Quod falsis regni perlicitotatur. The Writ issued a Ang. 11 Car. the Mithimus came not out till near two Years after: Now the Council perceiving the first Writ was not sufficient, gave such a Command to the Writ containing this Clause of Solus regni perlicitotatur: so this coming so long after, cannot make that which was not legal ab initio, to become good by Matter ex post factum; this could not be helped by any subsequent Matter, as in Cafe of a Fine, &c.

This was much fool'd upon my Brother Berkley; but I shall answer him with two Cafes not to be deny'd: The Firrth, Person's Cafe in the 4th Report. A Man conveys Land to the Use of himself for Life, the Remainder to I. S. for Life, the Remainder to his Wife for her Jointure; tho' in this Case I. S. die before her Husband, so that now it falls out to be as advanta-
geous to the Wife, as if it had been limited her immediately after the Death of the Husband: yet it is resolved, because it is not so limited in the Beginning, no good Jointure to bar her of her Claim to her Dower.

Also in Close's Cafe, 5 Report. A Will un-
certain (and so not good) shall not be helpeen by an After-Avement subsqueunt to alter the Estate: So it is in our Cafe, if the Writ were not legal when it first issue, no subsequent Matter shall make it good.

The Writ commands the Sheriff & guin rebel-

les invocari to imprison, and to diffitain all such as refuse to pay. This is directly against the Statute of Magis Charle none ought to be diffraigned or imprisoned, but by the lawful Judgment of his Peers, and according to the Laws of the Land; twas never contained in any Writ before, nor can such a Writ be made in England.

Besides, the Words of the Writ are to rate e-

evry Man feodum, feotum & facultates; shall the Sheriff be a Judge and Party? If the Affidavit be done according to the Writ, he must be Judge and Party: Never such a Writ before. All Sher-

riiffs must pay nothing themselves, or every Sheriff must affix himself, 8 Hen. VI. Dyer 320. So, for the Realms aforesaid, I hold the Writ to be a-

gainst Law.

Again, no Ship was prepared: If it had been prepared, it had been tie it own Goods; if not, it might have been pleaded, that there was never a Ship to the Writ, and then the Sheriffs might have been punished for not obeying the King's Commands.

It hath been said, he hath confered all Matters contained in the Writ; whereas in a Demurrer he confesst he not Matter of Fact, but what is sufi-


ciently set down, 30 Eliz. Coke 23. resolves the fame.

But to the Writ of sec. Fo' I conceive it not le-

gal; no such Writ can go forth to two Sheriffs of one County, they being neither of them Sheriffs at this Time; for it went out after they were out of their Sheriffswick: therefore some Return should have been made by Inquisition. I never did fee or hear of any Writ that went to two Sheriffs of one County, as it was to Berk's, and to two Sheriffs made two several Returns.

Again, this Money cannot be leyed by sec. Fo', because the Writ direct's other Means, either to diffraign or to imprision; therefore not by sec. Fo', for it is contrary to the Words of the Writ. And seeing the Sheriff hath not followed that Di-

rection, he must answer the Contempt.

But here to answer my Brother Trevor; I do agree in some Cafes of a Certificate, or Prefer-

ment, that a Bridge was out of Repair, or a High-

way flop, there shall go a sec. Fo' upon that; but that tells to whom the Money shall be paid. But here the Writ doth not demand it shall be paid to the King for not preparing a Ship; that must be by Office or Inquisition on Record, if a legal Certificate, as it is 2 Ed. III. fol. 2. The King commands the Sheriff of Leicester to fum-

mon I. S. &c. to come and meet him with Aid, to go into Scotland; he spent the Money to a great Value: There went a Writ out of the Exchequer to attach this Man: yet after long Debates it was held
held fit, the King must be informed by Matter of
Record.
I agree, that the King, as he is Lord of the
Sea, may lay Impositions; but then he ought to
defend the Merchants Goods from Pirates. That
famous Cafe of Michæs &c. Jo. in which Cafe I was of
Council, of an Imposition of 5 l. a Tun on
Current, one Bates stood out, and would not
pay it; adjudged that that Imposition was law-
ful, for the King may lay an Imposition; for he
hath the Rule of the Sea, and hath Power to
hinder Merchants to traffic; and if they traf-
fick, he seizes their Goods.
To conclude with that which my Brother Ber-
keley said, that the Subjects of England are free Men
not Slaves, free Men not Villains. Here is no
apparent Necessity of any Invasion; therefore by
Law, they cannot be thus compelled to part with
their Intercâl in their Goods. If there were any
apparent Necessity, they were without Limit or
Stint.
Thus have I, with as much Perfidity as those
Impositions which attend my Age, would give me
leave to, yet forth my Reasons; and without
any farther Protestation I conclude, both for
Matter and Form, that you are not to give Judg-
ment for the King.

The Opinion of Sir John Denham Kt. one
of the Barons of his Majesty's Court of
Exchequer, in the great Cafe of Ship-Mo-
ney, presented in Writing.

May it please your Lordships,
I had provided myself to have made a short
Argument, and to have delivered my Opinion,
with my Reasons: But by reason of want of Rept
the last Night, (my old Diakase being upon me)
my Sicknes and Weaknes are greatly increased,
informeth that I cannot attend the Babins, as I
defined. And if my Opinion be required, it is
for the Plaintiff.

Sir John Denham’s second Certificate, di-
rected to the Lord Chief Justice B ramp-
ston, 28 May 1638.

Sir John Hampden’s first Certificate.

May my Lord.
WHERE have appeared unto us upon this Re-
cord many several Arguments, and excel-
lently made: it comes now to my Court, to ex-
press my own Opinion.
It appeareth upon this Record, that Pofh. 13
Car. a Sir’s Pet. illud out of the Exchequer to the
Sheriff of Bucks, reciting, Whereas several Sums of
Money mentioned in a Schedule to that Writ
mentioned, by virtue of the Writ 4 Aug. affected
upon several Persons for providing a Ship, were
not paid, whereof he was commanded, in his secur-
fet, to take several Persons in the Schedule
named, &c. appears in the Exchequer, Orde’s
Trin. 13 Car. to shew Cause why they should not
take those Sums of Money affected upon them.
Thereupon a Certiorari 9 Mar. 13 Car. was di-
rected to the Sheriff of Bucks, to certify the Sums,
and the several Persons upon whom they were
affected, and of the Warning given unto them to
pay the same: The Certiorari being returned, and
in Court in April 13 Car.

Then on 5 May there came a Writ of Mitinius
out of the Chancellor, by which the said former
Writs were called to the Barons of the Exchequer;
which Mitinius recites the Writ 4 Aug. and not
the Record itself. And the Barons are command-
ated, that they shou’d thereupon proceed, as by the
Mitinius is required.

Upon thefe Records, thus certify’d, there issued
out of the Court of Exchequer a Care’s Pet. that is
now in Debate, which was awarded against the
Parties mentioned in the Schedule; and Mr. Han-
pden being returned, hath appeared, and de-
nedeth Oyer of the Writ 4 Aug. 11 Car. of the
Certiorari 9 Mar. 13 Car. and of the Mitinius 5
May 13 Car. Upon Oyer of thef, and reading
them unto him, as was demanded, Mr. Hampden
hath
in the Case of

Mayor of Buckingham, and to the Bailiffs and Bur- 
gefts of Chipping-Wiscome, and Parishes of the 
County of Bucks, &c pro omnifl hominibus of the 
Thofe Towns, and all others dwelling in that County; 
these are the Perfons who are charged. And by 
that Writ, 4 Aug. they were charged with this Parti- 
cular, That they fhould before the first of Mervcb 
then following, at their own Cofts, prepare and 
provide a Ship of War of 450 Tons, furnifhed and 
 fares with Men, Ammunication, and Victuals, 
to be brought to Portman's at their Charge, at or 
before the fifteenth Day of March; and from 
thero, to be maintained in good and fufficient 
Cofts and Charges, for the Space of 26 Weeks 
then next following, to attend fuch noble Perfons, 
to whom the King fhould be pleafed to commit the 
Cufody of the Sea, and to pursufe their Directions.

The Second fort of those two Mandates defends 
from the Perfons to whom the Writ was directed 
unto fome few, and that is upon the Matter to the 
Sheriff of Bucks, and to the Mayor of Buckingham, 
and the Bailiffs and Burgefts of Chipping-Wiscome: 
To fhew is given and limited a Pover by the Writ, 
with the whole County, facrum fla- 
mus & facultates: And that they 
shoud be Rebels, they fhould 
strain them, or by any 
Means commit them to Prifon, 
then to remain until his Majefty 
finds forth an Order for 
their Deliverence. This I do conceive to be 
the End of those two Mandates mentioned and 
comprized in the Writ 4 Aug. 11 Car.

After this Writ 4 Aug. 11 Car. almost a Year 
and an half, then come forth the Ceteriorari out of 
Chancery, dated 9 Mor. 12 Car. directed to the 
Sheriff of Bucks, who, with the other Refeferees, 
fhould certify unto the King the Names of fuch 
Perfons as were afflicted, and what they were 
affllicted, and who have Perfemed, 
and who not. That Writ was returnd 26 Apr. 
then next following. And therein Mr. Hampden 
appears as a Defendant to the Sir Fd.; therein 
was he certified to have been taxed to the Sum of 
20l. for his Lands in the Town of Stock Maunde- 
side, and that he did refufe to pay it, and did not 
pay it unto him, nor any of the Collectors that 
were appointed. 

This being returned into Chancery, and no 
Order there made, or any Rule, that the Sum 
impofed on Mr. Hampden fhouid be paid, 5 Miffi 
then following, in the fame Term cometh a Mit- 
tions, relating the Efect of thofe Writs, which is 
directed to the Lord Treasurer and Barons of the 
Exchequer; herein the Tenor of the Writ (and 
not the Writ ifelf) is certified into the Exchequer; 
and withal it certifith the refl of the Record, 

together with the Schedules annexed to thofe Writs; 
and by that it is commended to the Court that 
they fhould proceed to do for the further Receipt 
and Collection of the Sums behind, as by the Law 
and Customs of the Kingdom of England fhould be 
required.

And upon this Certificate here cometh a Writ of 
Sir Fd. directed to the Sheriff of Bucks, to give 
Notice to the Perfons that were Defendants, that 
they fhould appear and fhew Cause, if they could 
lay any things, which might exonerate them 
thereof according to the Laws and Customs of the 
Realm; and the Writ is fo returned: And 
upon that Return Mr. Hampden appears upon the 
Day in Perfon, and after Oyer of the Proceeding, 
fhall demurred.

4 R. Upon
Upon this Record, as being the Case, and the Demurrer thereupon joined, we are to see what is the Law and Custom of England upon the Matter extant in the Record; for I stand not to expatiate beyond the Record, but to stick close to it, as it is in the Case, now depending in Court, upon this Record: And therein I shall confine my self to only a few general Heads, I shall not be long in any thing.

The first thing is, Whether these two Powers and Manches were included in the Writ & &c., in the original Grant of the 6th of the 7th, or in the 7th, in the Preparation of a Ship and Provisions, and of the Rents and Crown interests, as after, for Taxation at the Peace of 1660, and the Rents to whom it is to be paid, and the same upon the Marks of the Writ, &c. suppose I say, that the two Powers and Manches were in Law, according to the Law, to the Crown of England, upon the Record that is the 2nd. Quo Warranto, the same to the No. 7th, and the same to be imposed upon the Country, that is to be discharged. The Second Question is, whether the Parliament admitting the Writ was legal, according to the Letter of the Writ, to do that now it is, to be reduced by it, for which reason I think, to Consideration. I am afraid to take a direct Word of the Act of 1689, and the Act of 1687, to pull the Excision of the Manches. I am not able to meet to the Crown of England, upon the Record, to be reduced by it, for which reason I think, to Consideration. The Third Question is, Whether this Writ of the 16th was founded upon the Defence of England, and damages in Law, that thereupon there be such Manches, that they may charge the Defendant with the Sum also, &c. upon it, for which reason I think, for the Act that it was done was a misfortune, to answer, and not East, and proceed upon the late Case, that there should be a perfect Remedy for avoiding the Inconvenience that it appears, no credit for our Good. Herein, this is stronger to everyone that knows me, but of what is my fault, if I partake of the Rule that every Man is bound unto, than being, I know well, that the 7th Man is more bound, and not such a wrong, under Case to preserve the King's Provisions, to do that which may advance the same, as we are, all bound to do by the great Oath that we have taken upon our Promission. And in that Particular, I am told some more bound than myself.

Upon this I have been told, and I have truly looked into the Records, for both both in my Mind, it will give leave; and according to what I understand of the Law, and the Custom of the Kingdom of England, to be upon this Record, I must needs say, that I do confine for my own particular unwillingly, that upon this Record Judgment ought to be given for the Defendant.
the Sheriff, Mayor, and Bailiff, thus employed, are excluded from the Charge; for they can do no Act upon themselves. It should have been done per succursum præsorium boni consilii, considering these two different Powers. I hold the Law so to be clear in this Point. It appears not upon this Record that they were affenting unto it, or agreed upon any Ordinance herein.

Now the Power of the Preparation, upon the whole it is on the Sheriff himself, Mayor, Bailiffs, præsorium boni consilii and all; but when you come to the latter iæther falsa, by the Laws and Customs of the Realm, a great Part of the former Charge is removed directly from these that were chargeable: for how can the Mayor do it, or the Sheriff, and how can he tax himself? He and all his Effects within the County of Souls under the first Charge, and all discharged by the Power of Taxation limited in the second Clause: and therein I take it, that this fame is not legal according to the Customs and Laws of England, the one doth not agree with the other. If you ask me the Reason of it, my Brother Hylton hath given it. The Charge is upon the Sheriff, and his not possible for the Sheriff to tax himself, he cannot find himself inter Rebellas, he cannot commit himself to Prison, there to remain till such time as the King's Majesty shall deliver him; that he cannot do. So for the other Causes of Buckingham and Chipping-Wittcombe, as aforesaid likewise, if they can do this, then clearly the former Charge, imposed by the Act and laid to be done by them all, is out of doors.

Now it cannot be done, according to the Law of England, upon the Sheriff or upon his Land. The Point I think is very evident in our Books. 15 Hen. VIII. If a Defendant that is Sheriff be to be summoned, and he return that he cannot do it, Justice—- but that return was not good, for that he might summon himself. 8 Ed. III. But if it come to a further Question, that if there be any Execution to be done where another may be prejudicial, he cannot do it, as to imprison a Jury upon a Writ, where he is a Party, which may prove a Prejudice to another; for if he do it, it is not lawfully done, as it is in Dryer, fol. 8, 9. Of the Sheriff in a common Recovery. So upon those Authorities, for the first Question, I hold it manifest, that this Act which the Sheriff is charged to do, is afterwards by this second Power discharged: that two Powers do not cohere, and therefore are not warranted by the Laws and Customs of the Realm of England.

Concerning the Act: Quotidie my Opinion is clear, that there is a material and legal Exception appertaining on the one-hand Writ. My Reason is, the Sheriff is the Officer of the County; but when he must do it, I take it legally, he ought to do it: according to the Duty of his Place by the Law of England, that I do not take to be at his Will and Pleasure to lay one thing upon one, and another thing upon another: for my part, I conceive this must be done per succursum; he is not to be Judge in case of Uncertainties, when a Division of Charge and Taxes is to be made; where things are put in Certainty in any of the King's Courts, there he may execute, as take a Man's Goods, imprison, &c. but in case of Uncertainty, the Law hath annexed to his Office, Way and Means how to reduce the things to a Certainty, and that is, per succursum præsorium boni consilii: as in the Case of Parceners, if they have a mind to make Partition of their Inheritance, they may do it by Agreement between them if they will, or by making of Lots by a third Peron, and the Elder shall chuse; but if the hermselves make the Partition, she shall not both divide and chuse; that alters the Cause for Execution, when it is in proprium perfor, but admit they cannot agree, the Judgment of the Law is, that the Sheriff shall go in his proper Peron into the Ground; shall he at his Discretion make the Partition as he pleaseth? No: The Judgment is, the Sheriff shall go in Peron unto the Land, and that per succursum, per lupificationem, to be taken by chosen Jurors, they must chuse of it; they must not do a thing to be done per succursum, then indeed in the Power of the Sheriff, he may now chuse whether he will prefer the Elder or the Younger. But for our Case, that this should be done by a Sheriff, by his Discretion, whilt the Interest of several Persons is concerned, is as it were to make a Rape. I do not find that in any Book of Law, I must confesse. In that Act, which is done by the Law, there can be no Error or Partiality; 16 in Prim. Ne' Br' in his Writ de uno rando probatae parte, see there what is to be done: it goeth to the Sheriff, he is trusted with the doing of this, but he is trusted by legal Means; what shall he there do? Where 20 Acres of Land held of the King in Chief, they are to sell several Hands, there must be but one sort of vera for discharging of the Rent; but this must be done per succursum, not by the sole Power of the Sheriff. Hereof I find a notable Precedent; it is true, it is not in our Books of Law, but in a Hilbertian; yet he doth set it down in that manner, that a Man may trust him so far; Matth. Par, he faith, and see the Breviary: 17 Hen. III. eight Years after the making of Meg Chai, authorized by Parliament, that the King himself in his Parliament was pleased (according to the Instructions of Parliament) to require Canelliam & Auxiliam, for the King's Wars, where, by the way, let me observe, that Auxiliam from the Subject is of course, but that canelliam are not merely voluntary, but Duties, to give Money towards the Defences of Necessities of State; and in that I agree with the Opinion of my Predecessor, Il. Chief-Baron. 19 Hen. VI. The King is bound to defend the Kingdom. The same Law that binds him to the Defence of the whole Realm, gives the King a Right of Inheritance to claim Subsidies for the Defence thereof. But to return to Mat. Paris: It appeareth there that the King in Parliament did demand Aid of his Subjects, Canelliam & Auxiliam, their Counsell as they were bound, their Help as they were able. It is said, that they made Choice of the Earl of Essex to give their Anwer, who at that time was in Office, and that the Efforts were but weak, that by the Laws of the Kingdom they that had been there in Peron, for they their Escuse might not be troubled. The Prelates they were more courteous in their Anwer, they desired Time to asssemble themselves together, many being far distant: they thereupon was a Time, assigned, till Vos' Pauly. In the mean time they all confedered, the Lords on the one side, and the Lords Spiritual on the other side; and being demanded a Fifteenth of their Goods, they answered, So as they might have their ancient Laws established to them, for which they had been so much troubled, they would willingly affent unto it. The King continued unto it, and thereupon