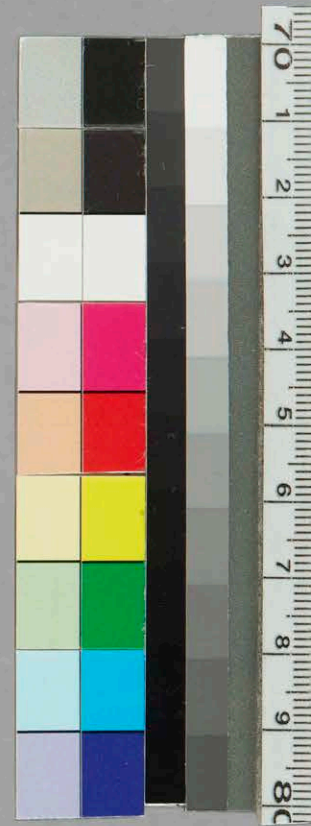
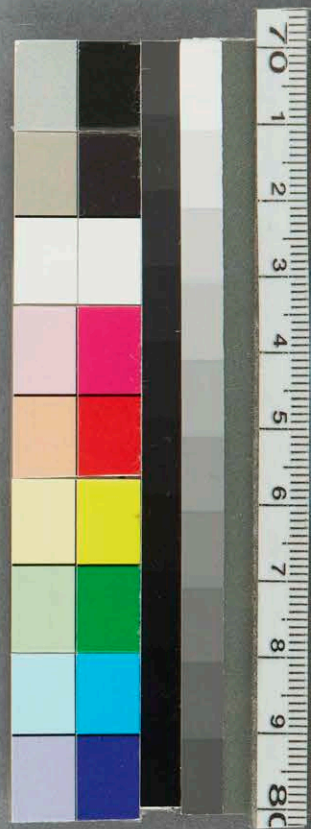
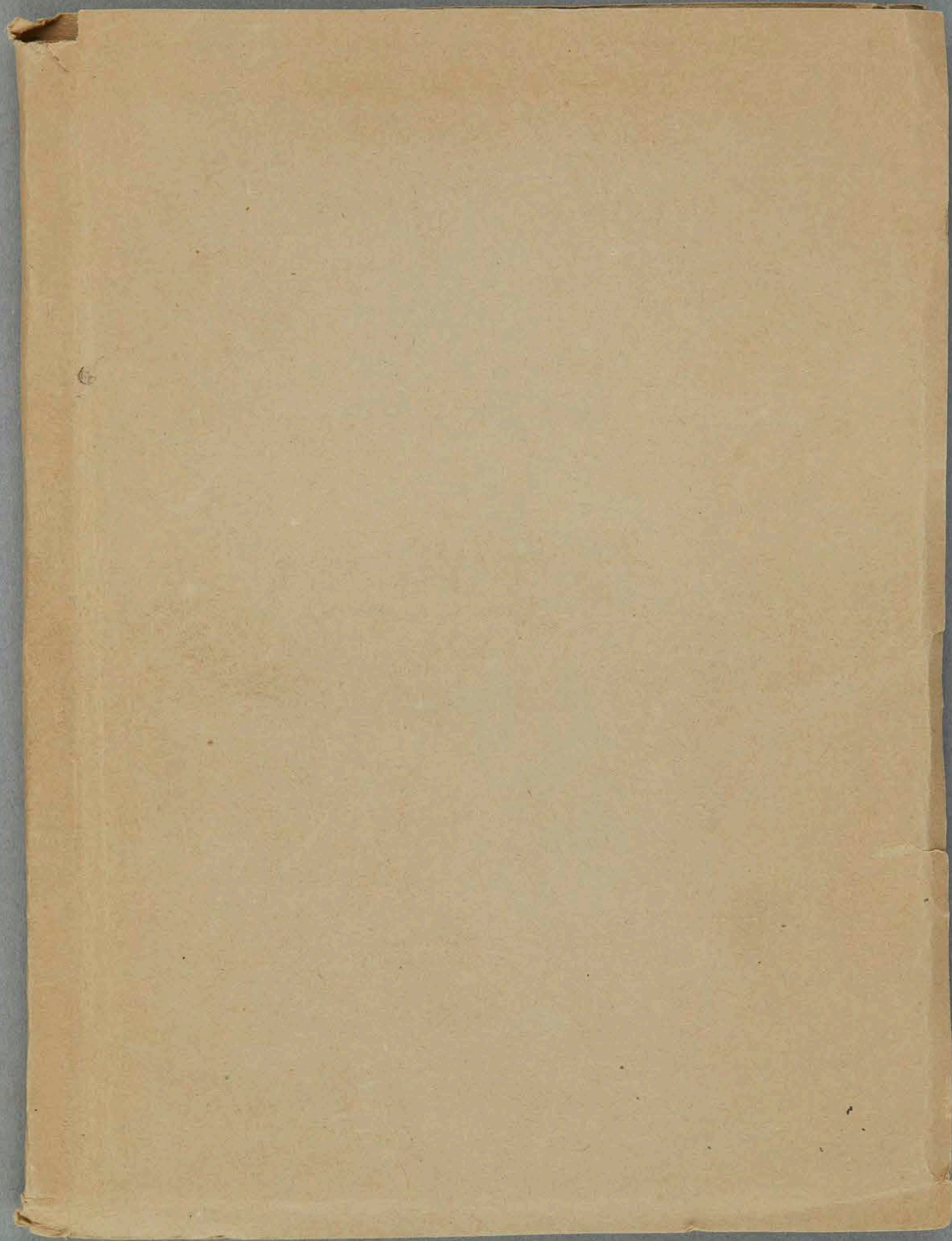


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FREE-HOLDERS  
GRAND INQUEST  
TOUCHING  
Our Sovereigne LORD the KING  
AND  
His PARLIAMENT.

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Claudian. de laudibus Stiliconis.

*Fallitur egregio quisquis sub Principe credit  
Servitium: Nunquam LIBERTAS gratior extat,  
Quam sub Rege pio*

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Printed in the three and twentieth year of the Raig of our  
Sovereign Lord King CHARLES.

[1648]

名古屋大学図書

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## The Preface.



Here is a generall beliefe, that the Parliament of *England* was at first an imitation of the Assembly of the three Estates in *France* : therefore in order to prepare the understanding in the Recerche we have in hand, it is proper to give a brief accompt of the mode of *France* in those Assemblies : *Scotland* and *Ireland* being also under the dominion of the King of *England* ; a touch of the manner of their Parliaments shall be by way of Preface.

1. In *France* the Kings Writ goeth to the Bayliffs, Seneschals, or Stewards of Liberties, who issue out Warrants to all such as have Fees and Lands within their liberties, and to all Towns, requiring all such as have any *complaints* to meet in the principall City, there to chuse two or three Delegates, in the name of that Province, to be present at the Generall Assembly.

At the day appointed, they meet at the principall City of the Bailywick. The Kings Writ is read, and every man called by name, and sworne to chuse honest men for the good of the King and Common-wealth, to

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be present at the Generall Assembly as Delegates, faithfully to deliver their *Grievances* and *Demands* of the Province. Then they choose their Delegates and swear them. Next they consult what is necessary to be complained of, or what is fit to be desired of the King: and of these things they make a Catalogue or *Index*. And because every man should freely propound his *Complaint* or *Demands*, there is a Chest placed in the Towne Hall, into which every man may cast his writing. After the Catalogue is made and signed, it is delivered to the Delegates to carry to the Generall Assembly.

All the Bayliwicks are divided into twelve Classes. To avoid confusion, and to the end there may not be too great delay in the Assembly, by the gathering of all the Votes, every Classis compiles a Catalogue or Book of the *Grievances* and *Demands* of all the Bayliwicks within that Classis, then these Classes at the Assembly compose one Book of the *Grievances* and *Demands* of the whole Kingdome. This being the order of the proceedings of the third estate; the like order is observed by the Clergy and Nobility. When the three Books for the three Estates are perfected, then they present them to the King by their Presidents. First, the President for the Clergy begins his Oration on his knees, and the King commanding, he stands up bare-headed and proceeds. And so the next President for the Nobility doth the like. But the President for the Commons begins and ends his Oration on his knees. Whilst the President for the Clergy speaks, the rest of that Order rise up and stand bare, till they are bid by the King to sit down and be covered, And so the like for the Nobility. But whilst the President of the Commons speaks, the rest are nei-

ther

ther bidden to sit, or be covered. Thus the *Grievances* and *Demands* being delivered, and left to the King and His Counsel, the Generall Assembly of the three Estates endeth, *Atq; ita totus actus concluditur.*

Thus it appeares, the Generall Assembly was but an orderly way of presenting the publique *Grievances* and *Demands* of the whole Kingdome, to the consideration of the King: Not much unlike the ancient usage of this Kingdome for a long time, when all Laws were nothing else but the Kings Answers to the Petitions presented to Him in Parliament, as is apparent by very many Statutes, Parliament Rolls, and the Confession of Sir *Edw. Coke*.

2. In *Scotland*, about twenty dayes before the Parliament begins, Proclamation is made throughout the Kingdome to deliver into the Kings Clerk or Master of the Rolls, all Bills to be exhibited that Sessions before a certaine day: then are they brought to the King and perused by Him: and onely such as He allowes are put into the Chancellors hand to be propounded in Parliament, and none others: And if any man in Parliament speak of another matter, then is allowed by the King, the Chancellor tels him, there is no such Bill allowed by the King. When they have passed them for laws, they are presented to the King, who with his Scepter put into His hand by the Chancellor ratifies them, and if there be any thing the King dislikes, they raise it out before.

3. In *Ireland*, the Parliament, as appeares by a Statute made in the 10 year of *Hen. 7. c. 4.* is to be after this manner. No Parliament is to be holden but at such season as the Kings Lieutenant and Councill

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there



there do first certifie the King under the Great Seal of that Land, the causes and considerations, and all such Acts as them seemeth should passe in the said Parliament. And such Causes & considerations, and Acts affirmed by the King and His Councell to be good and expedient for that Land: And His licence thereupon as well in affirmation of the said Causes and Acts, as to summon the Parliament under His Great Seal of *England* had and obtained. That done, a Parliament to be had and holden after the form and effect afore rehearsed: And if any Parliament be holden in that Land, contrary to the form and provision aforesaid, it is deemed void, and of none effect in Law. It is provided that all such Bills as shall be offered to the Parliament there; shall first be transmitted hither under the Great Seal of that Kingdom, and having received allowance and approbation here, shall be put under the Great Seal of this Kingdom, and so returned thither to be preferred to the Parliament. By a Statute of 3 and 4 of *Philip* and *Mary* for the expounding of *Poynings* Act, it is ordered, for the Kings passing of the said Acts in such form and tenor as they should be sent into *England*, or else for the change of them, or of any part of them.

After this shorter narrative of the usage of Parliaments in our neighbour and fellow Kingdoms, it is time the *inquisitio magna* of our own, be offered to the verdict or judgement of a moderate and intelligent Reader.

The



## The ARGUMENT.

**A** Presentment of divers Statutes, Records, and other Precedents, explaining the Writs of Summons to PARLIAMENT: shewing,

1. That the Commons by their Writ are onely to Perform and Consent to the Ordinances of Parliament.
2. That the Lords, or Common Council by their Writ are onely to treat, and give Counsel in Parliament.
3. That the King Himself only ordains and makes Laws, and is supream Judge in Parliament:

With the Suffrages of

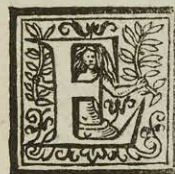
Hen: de Bracton.	Hen: Spelman.
Io: Britton.	Io: Glanvil.
Tho: Egerton.	WWill: Lambard.
Edw: Coke.	Rich: Crompton.
Walter Raleigh.	WVil: Cambden, &
Rob: Cotton.	Io: Selden.

THE



THE  
FREE-HOLDERS  
GRAND INQUEST

TOUCHING  
*Our Sovereigne Lord the KING*  
and His PARLIAMENT.



Very Free-holder that hath a Voice in the election of Knights, Citizens or Burgesſes for the Parliament, ought to know with what power he trusts thoſe whom he chooſeth, becauſe ſuch truſt is the foundation of the power of the Houſe of Commons.

A Writ from the King to the Sheriffe of the County, is that which gives Authority and Commiſſion for the Free-holders to make their election at the next County Court day after the receipt of the Writ : and in the Writ there is alſo expreſſed the duty and power of the Knights, Citizens and Burgeſſes that are there elected.

The meanes to know what Truſt, or Authority the Country or Free-holders confer, or beſtow by their election, is in this, as in other like caſes, to have an eye to the words of the Commiſſion, or Writ it ſelfe : thereby it may be ſeene whether that which

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the House of Commons doth act be within the limit of their Commission: Greater or other trust then is comprised in the body of the Writ, the Free-holders doe not, or cannot give if they obey the Writ: The Writ being Latine, and not extant in English, few Freeholders understand it, and fewer observe it: I have rendred it in Latine and English:

### Rex Vicecomiti salut. &c.

Quia de advisamento & assensu consilii nostri pro quibusdam arduis & urgentibus negotiis, nos, statum, & defensionem regni nostri Angliae, & ecclesie Anglicanae, concernen, quoddam Parliamentum nostrum apud civitatem nostram <sup>die</sup> <sup>prox. futur</sup> teneri ordinavimus, & ibid. cum praelatis magnatibus & proceribus dicti regni nostri colloquium habere & tract: Tibi precipimus firmiter injungentes qd' facta proclam. in prox. comitat' tuo post receptionem hujus brevis nostri tenend' die & loco predict. duos milit' gladiis cinct' magis idoneos & discretos comit' predicti, & de qualib. civitate com' illius duos cives, & de quolibet Burgo duos Burgenses de discretior' & magis sufficientibus libere & indifferenter per illos qui proclam' hujusmodi interfuer' juxta formam statutorum inde edit. & provis' eligi, & nomina eorundum milit', civium & Burgensium, sic electorum in quibusdam indentur' inter te & illos qui hujusmodi election. interfuerit, inde consficiend. sive hujusmodi electi presentes fuerint vel absentes, inseri: eosque ad dict' diem & locum venire fac. Ita qd' iidem milites plenam & sufficientem potestatem pro se & communitate comit' predicti ac dict' cives & Burgenses pro se & communitat' civitatum & Burgorum predictorum divisim ab ipsis habeant, ad faciendum & consentiendum his que tunc ibid' de communi consilio dicti reg. nostri (favente Deo) contigerint ordinari super negotiis ante

te dictis: Ita quod pro defectu potestatis hujusmodi, seu propter improvidam electionem milit' civium aut Burgensium predictorum, dicta negotia infecta non remaneant quovismodo. Nolumus autem qd' tu nec aliquis alius vic' dicti reg. nostri aliquo modo sit electus. Et electionem illam in pleno comitatu factam, distincte & aperte sub sigillo tuo & sigillis eorum qui elect'oni illi interfuerint, nobis in cancellar' nostram ad dict' diem & locum certificates indilate, remittens nobis alteram partem indenturarum predictarum presentibus consut' una cum hoc breve. Teste meipse apud Westmon'.

### The King to the Sheriffe of Greeting.

Whereas by the advice and consent of Our Councill, for certaine difficult and urgent businessses concerning Vs, the state and Defence of Our Kingdome of England, and the English Church: We have ordained a certaine Parliament of ours, to be held at Our City of the day of next ensuing, and there to have conference, and to treat with the Prelats, Great men and Peers of Our said Kingdome. We command and straitly enjoyne you, that making Proclamation at the next County Court after the receipt of this our Writ, to be holden the day, and place aforesaid: You cause two Knights, girt with Swords, the most fit, and discreet of the County aforesaid: and of every City of that County two Citizens; of every Borough, two Burgesses of the discreeter and most sufficient; to be freely, and indifferently chosen by them who shall be present at such Proclamation, according to the tenor of the Statutes in that case made

*The Free-holders grand Inquest.*

and provided: and the names of the said Knights, Citizens and Burgeses so chosen, to be inserted in certaine Indentures to be then made betweene you, and those that shall be present at such election, whether the parties so elected be present, or absent: and shall make them to come at the said day, and place: so that the said Knights for themselves, and for the County aforesaid, and the said Citizens, and Burgeses for themselves, and the Commonalty of the aforesaid Cities, and Borowghes, may have severally from them, full and sufficient Power to Perform, and to Consent to those things which then by the favour of God shall there happen to be ordained by the Common Councel of Our said Kingdom concerning the busineses aforesaid: So that the businesse may not by any means remain undone for want of such power, or by reason of the improvident election of the aforesaid Knights, Citizens, and Burgeses. But We will not in any case you or any other Sheriffe of Our said Kingdom shall be elected. And at the day, and place aforesaid, the said election made in the full County Court, you shall certifie without delay to Vs in Our Chancery under your Seal, and the Seals of them which shall be present at that Election, sending back unto Vs the other part of the Indenture aforesaid affiled to these presents, together with this Writ. *Witnesse Our Self at Westminster.*

By this Writ we doe not find that the Commons are called to be any part of the *Common Councell* of the Kingdome, or of the *Supream Court of Judicature*, or to have any part of the *Legislative power*, or to *Consult de arduis regni negotiis*, of the difficult busineses of the Kingdom. The Writ only saies, the King would have conference and treat with the *Prelates, great men, and Peers*: but not a word of treating or conference with the Commons; The House of Commons which doth not minister an Oath, nor  
fine,

*The Free-holders grand Inquest.*

fine, nor imprison any, but their own Members (and that but of late in some Cases) cannot properly be said to be a Court at all; much lesse to be a part of the Supream Court, or highest Judicature of the Kingdome: The constant custome, even to this day, for the Members of the House of Commons to stand bare, with their hats in their hands in the presence of the Lords, while the Lords sit covered at all conferences, is a visible argument, that the Lords and Commons are not fellow Commissioners, or fellow Counsellors of the Kingdome.

The duty of Knights, Citizens, and Burgeses, mentioned in the Writ, is only *ad faciendum, & consentiendum*, to perform and to consent to such things as should be ordained by the *Common Councell* of the Kingdome: there is not so much mentioned in the Writ as a power in the Commons to dissent: when a man is bound to appeare in Court of Justice, the words are, *ad FACIENDUM & recipiendum quod ei per curiam injungetur*: which shews that this word *faciendum* is used as a term in law to signifie to give obedience; For this, we meet with a precedent even as ancient as the Parliament Writ it self, and it is concerning proceedings in Parliament. 33. Ed. 1. *Dominus rex mandavit vicecom. quod &c. summon' Nicolaum de Segrave, & ex parte Domini regis firmiter ei injungeret, quod esset coram Domino Rege in proximo parl. &c. ad audiendum voluntatem ipsius Domini Regis &c. Et ad FACIENDUM & recipiendum ulterius quod curia Domini Regis consideraret in premissis*: Our Lord the King commands the Sheriffe to summon *Nicholas Segrave* to appear before the Lord our King in the next Parliament to hear the will of the Lord our King Himself, and to PERFORM and receive what the Kings Court shall further consider of the premises.

Sir *Ed. Coke* to prove the Clergy hath no voice in Parliament, saith, that by the words of their Writ *their consent was onely to such things as were ordained by the COMMON COUNCELL of the Realme*. If this argument of his be good, it will deny also voices to the Commons in Parliament, for in their Writ are the selfsame words, *viz. to consent to such things as were ordained by the COMMON COUNCELL of the Kingdome*. Sir *Edw. Coke* concludes, that the *procuratores Cleri*, have many times appeared in Parliament, as *spirituall assistants*, to Consider, Consult, and to Consent:

## The Free-holders grand Inquest.

but never had voice there, how they could consult, and Consent without voices he doth not shew: Though the Clergy (as he saith) oft appeared in Parliament, yet was it only *ad consentiendum*, as I take it, and not *ad faciendum*, for the word *faciendum* is omitted in their Writ; the cause, as I conceive is, The Clergy, though they were to assent, yet by reason of *Clericall exemptions*, they were not required to Perform all the Ordinances or Acts of Parliament.

But some may think, though the Writ doth not expresse a Calling of the Knights, Citizens, and Burgesies to be part of the Common Councell of the Kingdome; yet it supposeth it a thing granted, and not to be questioned, but that they are a part of the Common Councell.

Indeed if their Writ had not mentioned the calling of Prelats, great men, and Peers to councell, there might have been a little better colour for such a supposition: but the truth is, such a supposition doth make the Writ it self vain and idle; for it is a senselesse thing to bid men assent to that which they have already ordained; since ordaining is an assenting, and more then an assenting.

For clearing the meaning and sense of the Writ, and satisfaction of such as think it impossible but that the Commons of England have alwaies been a part of the Common Councell of the Kingdome, I shall insist upon these points. 1. That anciently the Barons of England were the Common Councell of the Kingdome. 2. That untill the time of Hen. 1. the Commons were not called to Parliament. 3. Though the Commons were called by Hen. 1. yet they were not constantly Called, nor yet regularly elected by writ untill Hen. 3. time.

For the first point M. Cambden in his *Britania*, doth teach us, that in the time of the English Saxons, and in the ensuing age, a Parliament was called, *Commune concilium*, which was (saith he) *Præsentia Regis, Prælatorum, Procerumque collectorum*, the presence of the King, Prelats, and Peers assembled; No mention of the Commons: the Prelats and Peers were all Barons.

Apud Selden.

The Author of the Chronicle of the Church of Lichfeild, cited by M. Selden, saith, *Postquam Rex Eduardus, &c. CONCILIIUM BARONUM ANGLIÆ, &c. After King Edward was King; by the*

## The Free-holders grand Inquest.

the COUNCEL OF THE BARONS of ENGLAND He revived a Law which had layen asleep threescore and seven years: and this Law was called the Law of Saint Edward the King.

In the same Chronicle it is said that Will: the Conquerour *anno regni sui quarto apud Londinias*, had CONCILIIUM BARONUM SUORUM, a Councell of His Barons: And of this Parliament it is that his Son Hen. 1. speaks, saying, *I restore you the Laws of King Edward the Confessor, with those amendments wherewith my Father amended them by the COUNCEL of HIS BARONS.*

In the fifth year, as M. Selden thinks, of the Conquerour, was a Parliament or *principum conventus*, an assembly of EARLS and BARONS at Pinenden Heath in Kent, in the Cause between Lanfranke the Archbishop of Canterbury, and Odo Earle of Kent. The King gave Commission to Godfrid then Bishop of Constance in Normandy to represent His own Person for hearing the Controversie (as saith M. Lambard) and caused Egelric the Bishop of Chichester (an aged man, singularly commended for skill in the Laws and Customes of the Realme) to be brought thither in a Wagon for his assistance in Councell: Commanded Haymo the Sheriffe of Kent to summon the whole County to give in evidence: three whole daies spent in debate: in the end Lanfranke and the Bishop of Rochester were restored to the possession of Detling and other Lands which Odo had with-holden.

21. Ed. 3. fol. 60. There is mention of a Parliament held under the same King William the Conquerour, wherein, all the BISHOPS of the Land, EARLS and BARONS, made an Ordinance touching the exemption of the Abby of Bury from the Bishops of Norwich. Apud Selden.

In the tenth year of the Conquerour: EPISCOPI, COMITES, ET BARONES regni regia potestate ad universalem Synodum pro causis audiendis & tractandis convocati, saith the Book of Westminster.

In the second year of William 2. there was a Parliament *de Selden. cunctis regni Principibus*; another which had *quosque regni proceres: All the Peers of the Kingdome.*

In the seventh year was a Parliament at Rockingham Castle in Northampton-shire. *Episcopis, Abbatibus cunctique regni Principibus una coeuntibus.*

A

The Free-holders grand Inquest.

Selden.

A year or two after, the same King, *de statu regni acturus*, &c. called thither, by the command of his Writ, the Bishops, Abbots, and all the Peers of the Kingdome.

Selden.

At the Coronation of Hen. 1. All the people of the Kingdom of England were called, and Laws were then made; but it was PER COMMUNE CONCILIIUM BARONUM MEORUM, by the Common Councell of my Barons.

Selden.

In his third year, the Peers of the Kingdome were called without any mention of the Commons: and another a while after, *consensu Comitum et Baronum*, by the consent of Earls & Barons.

*Florentius Wigoriensis* saith, these are Statutes which *Anselme* and all the other Bishops in the presence of King Henry, by the assent of his BARONS ordained: and in his tenth year of Earls and Peers; and in his 23. of EARLS and BARONS. In the year following the same King held a Parliament, or great Councell with His Barons spirituall and temporall.

King Hen. 2. in his tenth year had a great Councell or Parliament at Clarendon, which was an Assembly of Prelats and Peers.

22. Hen. 2. saith *Hovenden*, was a great Councell at Nottingham, and by the COMMON COUNCEL of the Archbishops, Bishops, Earls and BARONS, the Kingdome was divided into six parts. And again *Hovenden* saith, that the same King at Windsor (*apud Windeshores*) COMMUNI CONCILIO of Bishops, Earls, and Barons, divided England into four parts. And in his 21 year, a Parliament at Windsor of BISHOPS, EARLS, and BARONS. And another of like persons at Northampton.

King Richard 1. had a Parliament at Nottingham, in his fifth year, of Bishops, Earls, and Barons: This Parliament lasted but 4 daies, yet much was done in it: the first day the King differeth *Gerard de Canvil* of the Sherifwick of Lincoln, and *Hugh Bardolph* of the Castle and Sherifwick of Yorke. The second day he required judgement against his Brother John who was afterwards King; and *Hugh de Novant* Bishop of Coventry. The third day was granted to the King of every Plow land in England 2s. he required also the third part of the service of every Knights fee for his attendance into Normandy, and all the Wooll that yeer of the Monks *Cisteaux*, which for that it was grievous, and unsupportable, they fine for money. The last day was for hearing of grievances:

The Free-holders grand Inquest.

vances; and so the Parliament brake up: And the same year held another at Northampton of the Nobles of the Realm.

King John, in his fifth year, *He and His Great men met. Rex Sclen. & Magnates convenerunt*: and the Roll of that year hath COMMUNE CONCILIIUM BARONUM MEORUM, the Common Councell of my Barons at Winchester.

In the sixth year of King Henry 3. the Nobles granted to the King of every Knights fee, two marks in silver.

In his seventh year he had a Parliament at London, an assembly of Barons. In his thirteenth year an Assembly of the Lords at Westminster. In his fifteenth year of Nobles both spirituall and temporall.

*M. Par.* saith that 20. H. 3. *congregati sunt Magnates ad colloquium de negotiis regni tractaturi*, the Great men were called to confer and treat of the businesse of the Kingdome. And at Merton, Our Lord the King granted by the consent of his great men that hereafter Usury should not run against a Ward from the death of his Ancestor.

21. Hen. 3. the King sent his Royall Writs commanding all belonging to His Kingdome, that is to say, Archbishops, Bishops, Abbots and Priors installed, Earls and Barons, that they should all meet at London to treat of the Kings businesse touching the whole Kingdome: and at the day prefixed, the whole multitude of the Nobles of the Kingdome met at London, saith *Mat. Westminster*.

In his 21. year, At the request, and by the Councell of the Lords, the Charters were confirmed.

22. Hen. 3. at Winchester the King sent His royall Writs to Archbishops, Bishops, Priors, Earls and Barons to treat of businesse concerning the whole Kingdome.

32. Hen. 3. the King commanded all the Nobility of the whole Kingdome to be called to treat of the state of His Kingdome. *Mat. Westm.*

49. Hen. 3. the King had a treaty at Oxford with the Peers of the Kingdome. *M. Westminster.*

At a Parliament at Marlborow 55. Hen. 3. Statutes were made by the assent of Earls and Barons.

Here the place of *Bracton* Chief Justice in this Kings time, is worth the observing, and the rather for that it is much insifted



on of late, to make for Parliaments being above the King. The words in *Bracton* are, *The King hath a superior, God; also the Law by which he is made King; also His Court,* vid. the EARLS and BARONS. The Court that was said in those daies to be above the King was a Court of *Earls and Barons*, not a word of the Commons, or the representative Body of the Kingdome being any part of the Superiour Court. Now for the true sense of *Bractons* words, how the Law, and the Court of *Earls and Barons*, are the Kings superiours; they must of necessity be understood to be Superiours, so far only as to advise, and direct the King out of his owne grace and good will onely: which appears plainly by the words of *Bracton* himself, where speaking of the King, he resolves thus, *Nec potest ei necessitatem aliquis imponere quod injuriam suam corrigat & emendet, cum superiorem non habeat nisi Deum; & satis ei erit ad poenam, quod Dominum expectat ultorem;* nor can any man put a necessity upon Him to correct and amend His injury unlesse He will Himself, since He hath no Superiour but God; it will be sufficient punishment for him, to expect the Lord an avenger. Here the same man, who speaking according to some mens opinion saith, the *Law and Court of Earls and Barons* are superiour to the King; in this place tels us himself, the *King hath no superiour but God*: the difference is easily reconciled according to the distinction of the School-men, *the King is free from the COACTIVE power of Laws or Counsellors*: but *may be subject to their DIRECTIVE POWER* according to his owne will: that is, God Can onely Compell, but the Law and his Courts may advise Him.

Rot. Parliament. 1 Hen. 4. nu. 79. the Commons expressly affirm, *Judgement in Parliament belongs to the King and Lords.*

These precedents shew, that from the Conquest untill a great part of Hen. 3. raigne (in whose daies it is thought the Writ for election of Knights was framed) which is about 200. years, and above a third part of the time since the Conquest to our daies, the *Barons* made the *Parliament* or *Common Councell of the Kingdome*: under the name of *Barons*, not only the *Earls*, but the *Bishops* also were Comprehended, for the Conquerour made the *Bishops Barons*. Therefore it is no such great wonder that in the Writ, we find the *Lords* only to be the *Counsellors*, and the *Commons*

*mons* Called only to perform and consent to the *Ordinances*.

Those there be who seem to believe that under the word *Barons*, anciently the Lords of Court Barons were Comprehended, and that they were Called to Parliament as *Barons*: But if this could be proved to have been at any time true, yet those Lords of Court Barons were not the representative Body of the Commons of *England*, except it can be also proved that the Commons, or Free-holders of the Kingdome chose such Lords of Court Barons to be present in Parliament. The Lords of Manors came not at first by election of the people, as Sir *Edw. Coke* treating of the institution of Court Barons resolves us in these words, *By the Lawes and Ordinances of ancient Kings, and especially of King Alfred it appeareth, that the first Kings of this Realm had all the Lands of England in Demean; and les grand Manors and royalties they reserved to themselves, and of the remnant they, for the defence of the Realm enfeoffed the Barons of the Realm with such jurisdiction as the Court Baron now hath, Cokes Institutes, 1. part. fol. 58.*

Here, by the way, I cannot but note that if the first Kings had all the Lands of England in demean, as Sir *Edw. Coke* saith they had; And if the first Kings were Chosen by the people, (as many think they were) then surely our Forefathers were a very bountifull (if not a prodigall) people, to give all the Lands of the whole Kingdome to their Kings, with liberty for them to keep what they pleased, and to give the remainder to their Subjects, clogg'd and cumbred with a condition to defend the Realm: This is but an ill signe of a limited Monarchy by originall Constitution or contract. But to conclude the former point, Sir *Edw. Cokes* opinion is, that in the ancient Laws under the name of *Barons* were comprised all the Nobility.

This doctrine of the *Barons* being the *Common Councell*, doth displease many, and is denied, as tending to the disparagement of the Commons, and to the discredit, and confutation of their opinion, who teach, that the *Commons* are assigned *Counsellors* to the King by the people, therefore I will call in Mr. *Pryn* to help us with his testimony: He in his Book of *Treachery and Disloyalty, &c.* proves that before the Conquest by the Laws of *Edward the Confessor*, cap. 17. the King by his Oath was to do Justice by the

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Councell of the Nobles of His Realm. He also resolves, that the EARLS and BARONS in Parliament are above the King, and ought to bridle Him, when He exorbitats from the Laws. He further tels us, the PEERS and PRELATS have oft translated the Crown from the right Heire.

1. Electing, and Crowning Edward, who was illegitimate; and putting by Ethelred, the right Heire after Edgars decease.

2. Electing, and Crowning Canutus, a meer foruiner, in opposition to Edmund the right Heire to King Ethelred.

3. Harold and Hardiknute, both elected Kings successively without title; Edmund and Alfred the right Heirs being dispossessed.

4. The ENGLISH Nobility, upon the death of Harold, enacted, that none of the Danish blood should any more Raigu over them.

5. Edgar Atheling who had best title was rejected, and Harold elected and crowned King.

6. In the second and third year of Edw. 2. the PEERS and NOBLES of the Land seeing themselves contemned, entreated the King to manage the affairs of the Kingdom by the COUNCEL of His BARONS. He gave His assent, and swore to ratifie what the NOBLES ordained; and one of their Articles was, that He would thenceforward order all the affairs of the Kingdome by the Councell of His CLERGY and LORDS.

7. William Rufus finding the greatest part of the NOBLES against Him, swore to Lanfranc that if they would chase Him for King, He would abrogate their over-hard Laws.

8. The beginning, saith Mr. Pryn, of the Charter of Hen. 1. is observable, Henry by the grace of God of England, &c. Know ye that by the mercy of God and COMMON COUNCEL of the BARONS of the Kingdome, I am Crowned King.

9. Maud the Emperesse, the right Heire, was put by the Crown by the PRELATS and BARONS, and Steven, Earl of Mortaine, who had no good title, assembling the BISHOPS and PEERS, promising the amendment of the Laws according to all their pleasures and liking, was by them all proclaimed King.

10. Lewis of France Crowned King by the BARONS, in stead of King John.

All these testimonies from Mr. Pryn may satisfie, that anciently

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ently the Barons were the Common Councell, or Parliament of England. And if Mr. Pryn could have found so much antiquity, and proof for the Knights, Citizens, and Burgeses, being of the Common Councell: I make no doubt but we should have heard from him in Capitall characters: but alas! he meets not with so much as these Names in those elder ages. He dares not say the Barons were assigned by the people, Counsellours to the King; for he tels us, every Baron in Parliament doth represent his own Person, and speaketh in behalf of himself alone: but in the Knights, Citizens, and Burgeses, are represented the Commons of the whole Realme: therefore every one of the Commons hath a greater voice in Parliament then the greatest Earl in England. Neverthelesse Master Pryn will be very well content if we will admit and swallow these Parliaments of Barons for the representative Body of the Kingdome; and to that purpose he Cites them, or to no purpose at all. But to prove the Treachery and Disloyalty of Popish Parliaments, Prelats, and Peers, to their Kings: which is the main point that Master Pryn by the Title of his Book is to make good, and to prove.

As to the second point; which is that untill the time of Hen. 1. the Commons were not Called to Parliament: besides, the generall silence of antiquity which never makes mention of the Commons coming to Parliament untill that time; our Histories say, before His time only certain of the Nobility were called to consultation about the most important affairs of the State: He caused Knights, Citizens, and Burgeses, of their own appointment: much to the same purpose writes Sir Walter Raleigh, saying, it is held that the Kings of England had no formall Parliaments till about the 18. year of King Hen. 1. for in his third year, for the Marriage of his Daughter, the King raised a Tax upon every Hide of Land by the advise of His Privy Councell alone. And the Subjects (saith he) soon after this Parliament was established, began to stand upon tearms with their King, and drew from him by strong hand, and their swords, their Great Charter; it was after the establishment of the Parliament, by colour of it, that they had so great daring. If any desire to know the cause why Hen. 1. called the people to Parliament, it was upon no very good occasion, if we believe Sir Walter Raleigh, The Grand Charter (saith he) was not originially granted Regally  
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and freely, for King Hen. 1. did but usurp the Kingdome, and therefore the better to assure Himself against Robert His elder Brother, He flattered the people with those Charters: yea, King John that confirmed them, had the like respect: for Arthur D. of Brittain was the undoubted Heire of the Crown, upon whom John usurped: so these Charters had their originall from Kings, De FACTO, but not DE JURE: and then afterwards his conclusion is, that the Great Charter, had first an obscure birth by Usurpation, and was fostered, and shewed to the world by Rebellion: in brief, the King called the people to Parliament, and granted them *Magna Charta*; that they might confirm to Him the Crown.

The third point consists of two parts: First, that the Commons were not constantly called unto Parliament untill Hen. 3. daies, this appears by divers of the precedents formerly cited, to prove that the Barons were the Common Councell. For though Hen. 1. called all the people of the Land to His Coronation, and again in the 15. or 18. year of His Raigne; yet alwaies He did not so; neither many of those Kings that did succeed Him, as appeareth before.

Secondly, for calling the Commons by Writ, I find it acknowledged in a Book, intituled, *The Priviledge and practice of Parliaments*, in these words, in ancient times after the King had summoned His Parliament, innumerable multitudes of people did make their access thereunto, pretending that Priviledge of right to belong to them. But King Hen. 3. having experience of the mischief, and inconveniences by occasion of such popular confusion, did take order that none might come to His Parliament but those who were specially summoned. To this purpose it is observed by Master Selden, that the first Writs we find accompanied with other circumstances of a Summons to Parliament as well for the Commons as Lords is in the 49 of Hen. 3. In the like manner Master Cambden speaking of the dignity of Barons, hath these words, King Hen. 3. out of a great multitude which were seditious and turbulent, called the very best by Writ or summons to Parliament, for he after many troubles and vexations between the King Himself, and Simon de Monefort, with other Barons: and after appeased, did decree and ordaine that all those EARLS and BARONS unto whom the King Himself vouchsafed to direct His Writs of summons should come to His Parliament and no others:

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others: but that which He began a little before His death, Edward 1. and His Successours constantly observed and continued: The said prudent K. Edward summoned alwaies those of ancient Families, that were most wise, to His Parliament; and omitted their Sons after their death if they were not answerable to their Parents in understanding. Also Master Cambden in another place saith, that in the time of Edw. 1. select men for wisdom and worth among the Gentry were called to Parliament, and their posterity omitted if they were defective therein.

As the power of sending Writs of summons for elections, was first exercised by Hen. 3. so succeeding Kings did regulate the elections upon such Writs, as doth appear by severall Statutes, which all speak in the name and power of the Kings themselves; for such was the language of our Forefathers.

In 5. Ric. 2. c. 4. these be the words, THE KING WILLETH AND COMMANDETH all persons which shall have summons, to come to Parliament; and every person that doth absent himself (except he may reasonably and honestly excuse him to OUR LORD THE KING) shall be amerced, and otherwise punished.

7. Hen. 4. c. 15. OUR LORD THE KING at the grievous complaint of His Commons, of the undue election of the Knights of Counties, sometimes made of affection of Sheriffs, and otherwise against the forme of the Writs, to the great slander of the Counties, &c. OUR LORD THE KING, willing therein to provide remedy by the assent of the Lords and Commons, HATH ORDAINED, that election shall be made in the full County Court, and that all that be there present, as well suitors as others, shall proceed to the election freely, notwithstanding any request, or command to the contrary.

11. Hen. 4. c. 1. OUR LORD THE KING ordained, that a Sheriff that maketh an untrue return, &c. shall incur the penalty of 100l. to be paid to OUR LORD THE KING.

1 Hen. 5. c. 1. OUR LORD THE KING, by the advise and assent of the Lords, and the speciall instance and request of the Commons, ORDAINED that the Knights of the Shire, be not chosen, unlesse they be resiant within the Shire the day of the date of the Writ: and that Citizens and Burgeses be resiant dwelling, and free in the same Cities and Burroughs, and no others in any wise.

6 Hen. 6. c. 4. OUR LORD THE KING, willing to provide remedy

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medy for Knights chosen for Parliament and Sheriffs, HATH ORDAINED that they shall have their answer, and traverse to Inquest of office found against them.

8 Hen. 6. c. 7. Whereas elections of Knights have been made by great outrages, and excessive number of people, of which most part was of people of no value, whereof every of them pretend a voice equivalent to worthy Knights, and Esquires; whereby man-slaughters, riots, and divisions among Gentlemen shall likely be. OUR LORD THE KING HATH ORDAINED, that Knights of Shires, be chosen by people dwelling in the Counties, every of them having Lands or Tenements to the value of 2l. the year at the least, and that he that shall be chosen, shall be dwelling, and resident within the Counties.

10 Hen. 6. OUR LORD THE KING ORDAINED, that Knights be chosen by people dwelling, and having 2l. by the year within the same County.

11 Hen. 6. c. 11. THE KING, willing to provide for the ease of them that come to the Parliaments and Councils of the King by His commandment, HATH ORDAINED, that if any assault, or fray be made on them, that come to Parliament or other Council of the King; the party which made any such affray or assault, shall pay double damages and make fine and ransom at the Kings will.

23 Hen. 6. c. 15. THE KING considering the Statutes of 1 Hen. 5. c. 1. & 8 Hen. 6. c. 7. and the defaults of Sheriffs in returning Knights, Citizens, and Burgesses, ORDAINED;

1. That the said Statutes should be duly kept.
2. That the Sheriffs shall deliver Precepts to Majors, and Bayliffs to chuse Citizens and Burgesses.
3. The penalty of 100l. for a Sheriffe making an untrue return concerning the election of Knights, Citizens, and Burgesses.
4. The penalty of 40l. for Majors or Bayliffs, making untrue returns.
5. Due election of Knights must be in the full County Court, between the howrs of 8. and 11. before noon.
6. The party must begin his suit within 3 moneths after the Parliament began.
7. Knights of the Shire shall be notable Knights of the County, or such notable Esquires, or Gentlemen born of the said Counties as shall be able to be Knights, and no man to be such Knight which standeth in the degree of a Yeoman, and under.

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The last thing I observe in the Writ for election of Members for Parliament, is, that by the expresse words of the Writ, Citizens and Burgesses for the Parliament were eligible at the County Court as well as Knights of the Shire; and that not only Free-holders, but all others, whosoever were present at the County Court, had voices in such elections: see the Stat. 7 Hen. 4. cap. 15.

I have the longer insisted on the examination of the Writ, because the power, and actions of the House of Commons are principally justified by the trust which the Free-holders commit unto them by vertue of this Writ.

I would not be understood to determine what power the House of Commons doth, or may exercise if the King please: I confine my self only to the power in the Writ, I am not ignorant that King Hen. 7. in the cause of the Duke of Britaine, and King James in the business of the Palatinate asked the Councill of the House of Commons; And not only the House of Commons, but every Subject in particular by duty and allegiance, is bound to give his best advise to his Sovereign, when he is thought worthy to have his Councill asked.

13. Edw. 3. nu. 10. All the Merchants of England were summoned by writ to appear at Westminster in proper person, to confer upon great business concerning the Kings honour, the salvation of the Realme, and of themselves.

In passages of publique Councill it is observable (saith Sir Rob. Cotton) that in ancient times the Kings of England did entertain the Commons with weighty causes, thereby to apt and bind them to a readiness of charge, and the Commons to shun expence have warily avoided to give advise.

13. Edw. 3. The Lords and Commons were called to consult how the domestique quiet may be preserved, the marches of Scotland defended, and the sea secured from enemies. The Peers and Commons having a part consulted, the Commons desired Not to be charged to counsell of things of which they had no cognisance: *de queux ils n'ont pas cognisance.*

21 Edw. 3. Justice Thorp declaring to the Peers and Commons that the French war began by their advise: the Truce after by their assent accepted, and now ended: *the Kings pleasure was to*

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have their counsell in the prosecution; the Commons being commanded to assemble themselves, and when they were agreed, to give notice to the King, and the Lords of the Councell: after four daies consultation, *Humbly desire of the King that He would be advised therein by the Lords and others of more experience then themselves in such affairs.*

6. Ric. 2. The Parliament was called to consult whether the King should go in Person to rescue *Gaunt*, or send an Army; The Commons, after two daies debate, crave a Conference with the Lords, and Sir *Th: Puckering* (their speaker) protefts, that *Councels for War did aptly belong to the King and His Lords*; yet since the Commons were commanded to give their advise, *they humbly wished a voyage by the King.*

7. Ric. 2. At the second Session, the Commons are willed to advise upon view of Articles of peace with the French; whether war or such amity should be accepted; *they modestly excuse themselves as too weak to counsell in so weighty causes.* But charged again as they did tender their honour and the right of the King, they make their answer, giving their opinions, *rather for Peace, then War.*

For fuller manifestation of what hath been said touching the Calling, election, and power of the Commons in Parliament, it is behoofull to observe some points delivered by Sir *Edw. Coke* in his Treatise of the Jurisdiction of Parliaments; where,

First, he fairly begins, and laies his foundation, that *the High Court of Parliament consisteth of the Kings Majesty sitting there, and of the three Estates,*

1. *The Lords spirituall.*

2. *The Lords temporall.*

3. *And the Commons:* Hence it is to be gathered, that truly and properly it cannot be called the *High Court of Parliament*, but whilst the King is sitting there in Person: so that the question now adaies, whether the *Parliament be above the King*, is either false, or idle: false, if you exclude; and idle if you include the Kings Person in the word *Parliament*: The case truly put, and as it is meant, is, whether the three Estates (or which is all one, the Lords and Commons) assembled in Parliament be above the King: and not whether the King with the three Estates be above the

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the King: It appears also that they are much mistaken, who reckon the King one of the three Estates, as Mr. *Pryn*, pag. 20. and many others doe, for the three Estates make the Body, and the King is *Caput, principium, & finis Parliamentor'*, as confesseth Sir *Edw. Coke*.

Secondly, Sir *Edw. Coke* delivers, that *certain it is, both Houses at first sate together, and that it appears in Edw. 3. time, the Lords and Commons sate together, and the Commons had no continuall Speaker.* If he mean, the Lords, and Commons did sit, and Vote together in one Body; few there be that will believe it, because the Commons never were wont to loose, or forgo any of their Liberties, or Priviledges; and for them to stand now with their Hats in their hands (which is no Magistraticall posture) there, where they were wont to sit, and vote, is an alteration not imaginable to be indured by the Commons. It may be, in former times when the Commons had no constant Speaker, they were oft, and perhaps for the most part, in the same Chamber, and in the presence of the Lords, to hear the debates and consultations of that *Great Councell*: but not to sit, and vote with them: for when the Commons were to advise among themselves, the Chapter house of the *Abby of Westminster* was oftentimes their place to meet in, before they had a settled House, and their meetings not being very frequent may be the reason I conceive, why the name of the House of Commons is not of such great antiquity, or taken notice of; but the House of the Lords was only called the *Parliament House*: and the Treatise called, *Modus tenendi Parliamentum*, speaks of the *Parliament* as but of one House only. The House, where now the Commons sit in *Westminster*, is but of late use, or institution: for in *Edw. 6.* daies it was a Chappell of the Colledge of *Saint Steven*, and had a Deane and secular Canons and Chorists, who were the Kings Quire at his Palace at *Westminster*, and at the dissolution were translated to the Kings Chappell at *Whitehall*.

Also I read that *Westminster-hall* being out of repair, Ric. 2. caused a large house to be builded betwixt the clock tower, and the gate of the great old hall in the midst of the Palace court: the house was long and large, made of timber, covered with tiles, open on both sides that all might see, and heare what was both

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said and done: four thousand Archers of *Cheshire*, which were the Kings own Guard, attended on that House, and had *bouche a-Court*, and 6d. by the day.

Thirdly, he saith, the *Commons* are to chuse their *Speaker*, but seeing after their choice the King may refuse him, the use is (as in the conge d'esslier of a Bishop) that the King doth name a discreet learned man whom the *Commons* elect: when the *Commons* have chosen, the King may allow of his excuse, and disallow him, as Sir John Popham was, saith his margine.

Fourthly, he informs us, that the first day of the Parliament 4 Justices assistants, and 2 Civilians, (*Masters of the Chancery*) are appointed receivers of Petitions which are to be delivered within six daies following: and six of the Nobility and 2 Bishops, calling to them the Kings learned Councell, when need should be, to be triers of the said Petitions, whether they were reasonable, good and necessary to be offered and propounded to the Lords. He doth not say, that any of the *Commons* were either receivers, or triers of Petitions: nor that the Petitions were to be propounded to them, but to the Lords.

Fifthly, he teacheth us, that a Knight, Citizen, or Burgesse, cannot make a proxy, because he is elected, and trusted by multitudes of people: here a question may be, whether a Committee, if it be trusted to act any thing, be not a proxy? since he saith the High Power of Parliament to be committed to a few, is holden to be against the dignity of Parliaments; and that no such Commission ought to be granted.

Sixthly, he saith, the King cannot take notice of any thing said, or done in the House of Commons, but by the report of the House. Surely if the Commons sate with the Lords, and the King were present, He might take notice of what was done in His presence. And I read in *Vowel*, that the old usage was, that all the degrees of Parliament sate together, and every man that had there to speak, did it openly before the King and his whole Parliament.

In the 35 *Eliz.* there was a report, that the *Commons* were against the Subsidies, which was told the Queen: whereupon, Sir Henry Knivet said, it should be a thing answerable, at the Bar for any man to report any thing of speeches or matters done in the House. Sir John Wolley liked the motion of secrecy; except onely the Queen,

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Queen, from whom, he said, there is no reason to keep any thing: And Sir Robert Cecil did allow, that the council of the House should be secretly kept, and nothing reported in malam partem. But if the meaning be, that they might not report any thing done here to the Queen, he was altogether against it.

Sevently, he voucheth an enditement or information in the Kings Bench against 39 of the *Commons*, for departing without license from Parl: contrary to the Kings inhibition: whereof six submitted to their fines, and Edmund Ployden pleaded, he remained continually from the beginning to the end of the Parl: Note, he did not plead to the jurisdiction of the Court of Kings bench, but pleaded his constant attendance in Parliament, which was an acknowledgement, and submitting to the jurisdiction of that Court: and had been an unpardonable betraying of the Priviledges of Parliament by so learned a Lawyer, if his Case ought only to be tried in Parliament.

Eightly, he resolves, that the House of Lords in their House have power of Judicature, and the *Commons* in their House: and both Houses together. He brings Records to prove the power of Judicature of both Houses together, but not of either of them by it self. He cites the 33 *Edm. 1.* for the judicature of both Houses together: where Nicholas de Segrave was adjudged per Prelatos, Comites, & Barones, & alios de concilio, by the Prelats, Earls and Barons, & others of the Councell. Here is no mention of the judgement of the *Commons*. OTHERS OF THE COUNCEL may mean, the Kings Privy Council, or his Council learned in the Laws, which are called by their Writs to give Counsel, but so are not the *Commons*. The judgement it self saith, Nicholas de Segrave confessed his fault in Parliament and submitted himself to the Kings will: thereupon the King, willing to have the advise of the Earls, Barons, great men, and others of His Councell, enjoyned them by the homage, fealty, and allegiance which they owed, that they should faithfully counsel Him what punishment should be inflicted for such a fact: who all, advising diligently, say, That such a fact deserves losse of life, and members. Thus the Lords (we see) did but advise the King what judgement to give against him that deserted the Kings Camp to go fight a Duel in France.

Ninthly, he saith, of later times, see divers notable judgements at

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the prosecution of the Commons by the Lords: where the Commons were prosecutors they were no Judges, but (as he tearms them) generall Inquisitors, or the grand Inquest of the Kingdome. The Judgements he cites are but in King James his daies, and no elder.

Tenthly, also he tels us, of the *Judicature in the House of Commons alone*, his most ancient precedent is but in Queen Elizabeths Raige, of one Tho: Long, who gave the Major of Westbury 10l. to be elected Burgesse.

Eleventhly, he hath a Section, entituled, *The House of Commons (to many purposes) a distinct Court*: and saith, *Nota, the House of Commons to many purposes a distinct Court*: of those many purposes he tels but one, that is, *it uses to adjourn it self*. Commissioners that be but to examine Witnesses may adjourn themselves, yet are no Court.

Twelfthly, he handles the *Priviledges of Parliament*, where the great wonder is, that this great Master of the Law; who hath been oft a Parliament man, could find no other, nor more Priviledges of Parliament but one, and that is, *freedom from Arrests*: which he saith holds unlesse in three cases, *Treason, Felony, and the Peace*: And for this freedom from arrests, he cites ancient precedents for those in the House of Lords, but he brings not one precedent at all for the Commons freedom from arrests.

IT is behooful for a Free-holder to consider what power is in the House of Peers; for although the Free-holder have no voice in the election of the Lords, yet if the power of that House extend to make Ordinances that bind the Free-holders, it is necessary for him to enquire *what* and *whence* that power is, and how far it reacheth: The chief Writ of summons to the Peers was in these words,

**C**AROLUS Dei Gratia, &c. Reverendissimo in Christo patri G. eadem gratia Archiepiscopo Cantuariensi, totius Angliæ Primati & Metropolitanano, salutem. Quia de advisamento & assensu concilii nostri,  
pro

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pro quibusdam arduis & urgentibus negotiis, Nos & statum & defensionem regni nostri Angliæ, & ecclesiæ Anglicanæ concernentibus, quoddam Parliamentum nostrum apud W. &c. teneri ordinavimus, & ibidem vobiscum, & cum cæteris Prælatibus, Magnatibus & Proceribus dicti regni nostri Angliæ colloquium habere, & tractatum: Vobis in fide, & dilectione quibus nobis te nemini firmiter injungendo mandamus, quod consideratis dictorum negotiorum arduitate, & periculis imminentibus, cessante quacunque excusatione dictis die & loco personaliter interstitis, Nobiscum & cum cæteris Prælatibus, Magnatibus, & Proceribus prædictis, super dictis negotiis tractaturi, vestrumque concilium impensuri, & hoc sicut Nos & Honorem Nostrum ac saluationem regni prædicti, ac ecclesiæ sanctæ, expeditionemque dictorum negotiorum diligitis, nullatenus omittatis Præmonentes Decanum & Capitulum ecclesiæ vestræ Cantuariensis, ac Archidiaconos, totumque Clerum vestræ Diocesis, quod idem Decanus & Archidiaconi in propriis personis suis, ac dictum Capitulum per unum, idemque Clerum per duos procuratores idoneos, plenam & sufficientem potestatem ab ipsis Capitulo & Clero habentes, prædictis die & loco personaliter interstint, ad consentiendum hiis quæ tunc ibidem de Commune Concilio ipsius Regni Nostri, divina favente Clementia, contigerit ordinari. Teste Meipso apud West. &c.

**C**HARLES by the Grace of God, &c. To the most Reverend father in Christ W. by the same grace Archbishop of Canterbury, Primat and Metropolitan of all England, health. Whereas by the Advise and Assent of Our Councell, for certaine difficult and urgent busineses concerning Vs, the State, and Defence of Our Kingdome of England, and of the English Church:

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Church: We have ordained a certaine Parliament of Ours to be holden at W. &c. and there to have conference, and to treat with you the Prelats, Great men, and Peers of Our said Kingdome. We straitly charge and Command by the faith and love by which you are bound to Vs, that considering the difficulties of the busineses aforesaid, and the imminent dangers, and setting aside all excuses, you be personally present at the day and place aforesaid, with Vs and the other Prelates, Great men, and Peers aforesaid, to treat and give your Counsel concerning the said busineses: And this, as you love Vs and Our Honour, and the safegard of the foresaid Kingdome and Church, and the expedition of the said busineses, you must no way omit. Forewarning the Deane and Chapter of your Church of Canterbury, and the Archdeacons and all the Clergy of your Diocesse, that the same Deane, and the Archdeacon in their proper persons, and the said Chapter by one, and the said Clergy by two fit Proctors having full and sufficient power from them the Chapter and Clergy, be personally present at the foresaid day and place to Consent to ththose things, which then, and there shall happen by the favour of God, to be ordained by the Common Council of Our Kingdome. Witnesse Our Self at W.

The same form of writ *mutatis mutandis*, concluding with, *you must no way omit*. Witnesse, &c. is to the temporall Barons: But whereas the spirituall Barons are required by the faith and love, the temporall are required by their Allegiance or Homage.

The difference between the two Writs is, that the *Lords* are to treat and to give counsel; the *Commons* are to perform and consent to what is ordained.

By this Writ the *Lords* have a *deliberative* or a *consultive* power to treat, and give counsel in difficult busineses: and so likewise have the Judges, Barons of the Exchequer, the Kings Council, and

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and the Masters of the Chancery by their Writs. But over and besides this power the Lords do exercise a *decisive* or *judiciall* power which is not mentioned or found in their Writ.

For the better understanding of these two different powers, we must carefully note the distinction between a *Judge* and a *Counsellor* in a Monarchy: the ordinary duty, or office of a *Judge* is to give judgement, and to command in the place of the King; but the ordinary duty of a *Counsellor* is to advise the King what He Himself shall do, or cause to be done: The *Judge* represents the *Kings Person in His absence*, the *Counsellor* in the *Kings presence* gives his advice: *Judges* by their Commission or institution are limited their charge and power, and in such things they may judge, and cause their judgements to be put in execution: But *Counsellors* have no power to command their consultations to be executed, for that were to take away the sovereignty from their Prince, who by his wisdom is to weigh the advise of His Council, and at liberty to resolve according to the judgement of the wiser part of His Council, and not alwaies of the greater: In a word, regularly a Counsellor hath no power but in the Kings presence, and a Judge no power but out of His presence: These two powers thus distinguished have yet such correspondency, and there is so neer affinity between the acts of judging, and counselling; that although the ordinary power of the Judge is to give judgement; yet by their Oath they are bound in causes extraordinary, when the King pleaseth to call them, to be His Counsellors; and on the other side, although the proper work of a Counsellor be only to make report of his advise to his Sovereign, yet many times for the ease onely, and by the permission of the King, Counsellors are allowed to judge, and command in points wherein ordinarily they know they mind of the Prince; and what they do is the act of the Royall power it self: for the Council is alwaies presupposed to be united to the Person of the King, and therefore the Decrees of the Council are stiled, *By the King in His Privy Council*.

To apply this distinction to to the House of *Peers*; we find originally they are called as Counsellors to the King, and so have only a *deliberative* power specified in their Writ, and therefore the Lords doe onely then properly perform the duty for which

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they are called when they are in the Kings presence, that *He may have conference and treat with them*: the very words of the Writ are, *nobiscum ac cum Prelatis, magnatibus & Proceribus predictis super dictis negotiis tractaturi vestrumque concilium impensuri*, with Us and with the Prelats, great men and Peers to treat and give your councill: the word *Nobiscum* implieth plainly the Kings presence. It is a thing in reason most absurd to make the King assent to the judgements in Parliament, and allow Him no part in the consultation; this were to make the King a Subject. Councill looseth the name of *councill*, and becomes a Command if it put a necessity upon the King to follow it: such imperious Councils, make those that are but Counsellors in name to be Kings in fact: and Kings themselves to be but Subjects. We read in Sir Robert Cotton, that towards the end of the Saxons, and the first times of the Norman Kings, Parliaments stood in custome-grace fixed to Easter, Whitsontide, and Christmas; and that at the Kings Court, or Palace, Parliaments sate in the Presence, or Privy Chamber: from whence he infers, an improbability to believe the King excluded His own presence; and unmannerly for guests to bar Him their company who gave them their entertainment. And although now a daies the Parliament sit not in the Court where the Kings household remains, yet still even to this day, to shew that Parliaments are the Kings guests, the Lord Steward of the Kings household keeps a standing table to entertain the Peers during the sitting of Parliament; and he alone, or some from, or under him, as the Treasurer, or Comptroller of the Kings Household takes the Oaths of the Members of the House of Commons the first day of the Parliament.

Sir Richard Scroop Steward of the Household of our Sovereign Lord the King, by the commandement of the Lords sitting in full Parliament in the Great Chamber, put *7. Lord Gomeniz and William Weston* to answer severally to accusations brought against them.

The necessity of the Kings presence in Parliament, appears by the desire of Parliaments themselves in former times, and the practise of it Sir Robert Cotton proves by severall precedents: whence he concludes, that in the consultations of State, and decisions of private plaints, it is clear from all times, the King was not

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Cotton.

Selden.

onely present to advise, but to Determine also. Whensoever the King is present, all power of judging, which is derived from His ceaseth: The Votes of the Lords may serve for matter of advise, the finall judgement is onely the Kings. Indeed, of late yeares, Queen Mary, and Queen Elizabeth by reason of their sex, being not so fit for publique Assemblies, have brought it out of use, by which means it is come to passe that many things which were in former times acted by Kings themselves, have of late been left to the judgement of the Peers, who in quality of Judges extraordinary are permitted for the ease of the King, and in His absence to determine such matters as are properly brought before the King Himself sitting in Person, attended with His great Councill of Prelats and Peers. And the Ordinances that are made there, receive their establishment either from the Kings presence in Parliament, where His Chair of State is constantly placed; or at least from the confirmation of Him, who in all Courts, and in all causes is supream Judge. All judgement is by, or under Him, it cannot be without, much lesse against his approbation. The King only and none but He, if He were able, should judge all causes, saith Bra-  
Brafton. ton, that ancient Chief Justice in Hen. 3. time.

An ancient precedent I meet with cited by Master Selden, of a judiciall proceeding in a criminall cause of the Barons before the Conquest, wherein I observe the Kings will was, that the Lords should be Judges, in the Cause wherein Himself was a party, and He ratified their proceedings: The case was thus, Earl Godwin having had a triall before the Lords under King Hardicanute, touching the Death of Alfred (Son to King Ethelbert, and Brother to him who was afterward Edward the Confessor) had fled out of England, and upon his return, with hope of Edward the Confessors favour, he solicited the Lords to intercede for him with the King; who (consulting together) brought Godwin with them before the King to obtain His grace and favour: But the King presently as soon as he beheld him, said, *Thou traytor Godwin, I do appeal thee of the Death of my Brother Alfred, whom thou hast most trayterously slaine*; Then Godwin excusing it, answered, *My Lord the King, may it please your Grace, I neither betrayed nor killed your Brother, whereof I put my self upon the judgement of Your Court*: Then the King said, *You noble Lords, Earls, and Barons*

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of the Land, who are my Liege men now gathered here together, and have heard My appeal, and Godwins Answer, I WILL that in this appeal between Us, ye decree right judgement, and doe true Justice: The Earls and Barons treating of this among themselves, were of differing judgements, some said that Godwin was never bound to the King either by homage, service, or fealty, and therefore could not be His traytor, and that he had not slain Alfred with his own hands: others said, that neither Earle nor Baron, nor any other Subject of the King could wage his war by law against the King in his appeal; but must wholly put himself into the Kings mercy, and offer competent amends. Then Leofric Constable of Chester, a good man before God and the world, said, Earle Godwin next to the King, is a man of the best Parentage of all England, and he cannot deny but that by his counsel Alfred the Kings Brother was slain, therefore for my part I consider, that He and his Son, and all we twelve Earls who are his friends and kinsmen, do go humbly before the King, laden with so much gold and silver as each of us can carry in our armes, offering Him That for his offence, and humbly praying for pardon, And He will pardon the Earle, and taking his Homage and fealty, will restore him all his lands. All they in this form lading themselves with treasure, and coming to the King did shew the manner and order of their consideration, to which The King not willing to contradict, did ratifie all that they had judged.

Selden

23 Hen. 2. In Lent there was an Assembly of all the spirituall and temporall Barons at Westminster, for the determination of that great contention between Alfonso King of Castile, and Sancho King of Navarre, touching divers Castles, and Territories in Spaine, which was by compromise submitted to the judgement of the King of England. And the King consulting with His Bishops, Earls, and Barons, determined it (as he saith) Himself in the first person in the exemplification of the judgement.

Idem.

2 Of King John also, that great controversie touching the Barony that William of Moubray claimed against William of Sturvil, which had depended from the time of K. Hen. 2. was ended by the Councell of the Kingdome, and Will of the King: Concilio regni, & voluntate Regis.

Selden.

The Lords in Parliament adjudge William de Weston to death for

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for surrendring Barwick Castle, but for that Our Lord the King was not informed of the manner of the judgement, The Constable of the Tower ALLEN BUXALL was commanded safely to keep the said William untill he hath other commandement from Our Lord the King, 4 Ric. 2.

Also the Lords adjudged John Lord of Gomentz for surrendring Selden. the Towns, and Castles of Ardee: and for that he was a Gentleman, and Bannaret, and had served the late King, he should be beheaded, and for that our Lord the King was not informed of the manner of the judgment, the execution thereof shall be respited untill our Lord the King shall be informed. It is commanded to the Constable of the Tower safely to keep the said John untill he hath other commandement from Our Lord the King.

In the case of Hen: Spencer Bishop of Norwich, 7 Ric. 2. who was accused for complying with the French, and other failings; the Bishop complained, what was done against him, did not passe by the assent and knowledge of the Peers; whereupon it was said in Parliament, that The cognisance and punishment of his offence did, of common right and ancient custome of the Realme of England, solely and wholly belong to Our Lord the King; and no other: Le cognisance & punissement de commune droit & ancienne custome de Royalme de Engleterre, seul et per tout appertene au Roy nostre Seigneur & a nul autre.

In the case of the Lord de la Ware, the judgement of the Lords was, that he should have place next after the Lord Willougbe of Erisbe, by consent of all, except the Lord Windsor: and the Lord Keeper was required to acquaint Her Majesty with the determination of the Peers, and to know Her pleasure concerning the same.

The inference from these precedents is, that the decisive or juditiell power exercised in the Chamber of Peers is meerly derivative, and subservient to the Supream power, which recides in the King: and is grounded solely upon his grace and favour: for howsoever the House of Commons do atledge their power to be founded on the Principles of Nature, in that they are the representative Body of the Kingdom (as they say) and so being the whole, may take care, and have power by Nature to preserve themselves: yet the House of Peers doe not, nor cannot make any such the least pretence, since there is no reason in Nature why

amongst a company of men who are all equall, some few should be picked out to be exalted above their fellows, and have power to govern those who by Nature are their companions. The difference between a *Peer* and a *Commoner* is not by *nature*, but by the *grace of the Prince*: who creates honours, and makes those honours to be hereditary (whereas he might have given them for life onely, or during pleasure, or good behaviour) and also annexeth to those Honours the power of having Votes in Parliament as hereditary Counsellours, furnished with ampler privileges then the Commons: All these graces conferred upon the Peers, are so far from being derived from the law of Nature, that they are contradictory and destructive of that naturall equality and freedom of mankind which many conceive to be the foundation of the Priviledges and Liberties of the House of Commons: there is so strong an opposition between the liberties of *grace*, and *nature*, that it had never been possible for the two Houses of Parliament to have stood together without mortall enmity, and eternal jarring, had they been raised upon such opposite foundations: But the truth is, the Liberties and Priviledges of both Houses have but one, and the selfsame foundation, which is nothing else but the meer and sole grace of Kings.

Thus much may serve to shew the nature and originall of the *deliberative* and *decisive* power of the Peers of the Kingdome.

The matter about which the *deliberative* power is conversant, is generally the consulting, and advising upon any urgent business which concerns the King, or defence of the Kingdom: and more especially sometimes in preparing new Laws; and this power is grounded upon the Writ.

The *decisive* power is exercised in giving judgement in some difficult cases; but for this power of the *Peers* I find no warrant in their Writ.

Whereas the Parliament is stiled the *supream Court*, it must be understood properly of the King sitting in the House of Peers in Person; and but improperly of the Lords without him: Every *supream Court* must have the *supream power*, and the *supream power* is alwaies arbitrary; for that is arbitrary which hath no *superiour* on earth to controll it. The last appeal in all government

ment must still be to an arbitrary power, or else appeals will be *in infinitum*, never at an end. The *legislative power* is an *arbitrary power*, for they are *termini convertibiles*.

The main question in these our daies is, *Where this power Legislative remains?* or is placed; upon conference of the Writs of summons for both Houses, with the Bodies and titles of our ancient Acts of Parliament, we shal find the power of making Laws rests solely in the King. Some affirm that a part of the *legislative power* is in either of the Houses; but besides invincible reason from the nature of Monarchy it self, which must have the *supream power* Alone; the constant ancient declaration of this Kingdom is against it. For howsoever of later years in the titles and bodies of our Acts of Parliament it be not so particularly expressed who is the Authour and maker of our Laws, yet in almost all our elder Statutes it is precisely expressed that they are made by the *King Himself*: The generall words used of later times, that *Laws are made by authority of Parliament*, are particularly explained in former Statutes, to mean, *That the King ordains, the Lords advise, the Commons consent*, as by comparing the Writs with the Statutes that expound the Writs, will evidently appear.

*Magna Charta* begins thus, *Henry by the grace of God, Know ye that WE OF OUR MEER AND FREE WIL HAVE GIVEN THESE LIBERTIES.*

In the self-same stile runs *Charta de foresta*, and tels us the Authour of it.

The Statute *de Scaccario*, 41 Hen. 3. begins in these words, *The KING COMMANDETH that all Baylifs, Sherifs, and other Officers, &c.* And concerning the Justices of Chester, the KING WILLETH &c. and again, *HE COMMANDETH the Treasurer and Barons of the Exchequer upon their Allegiance.*

The Stat. of *Marliborough*, 52 Hen. 3. goeth thus, *THE KING HATH MADE these Acts, Ordinances, and Statutes which HE WILLETH to be observed of all His Subjects, high, and low.*

3 Edw. I. the Title of this Statute is, *These are the ACTS OF KING EDWARD*, and after it follows, *The KING HATH ORDAINED THESE ACTS*; and in the first Chapter, *The KING FORBIDDETH AND COMMANDETH that none doe hurt, damage or grievance to any religious man, or person of the Church.*

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Church: and in the 13 Chap. *The KING PROHIBITETH* that none doe ravish or take away by force, any Maid within age.

6 Edw. 1. it is said, *Our Sovereigne Lord the King hath established these Acts, commanding they be observed within this Realm:* and in the 14 Chap. the words are, *The King of His speciall grace granteth, that the Citizens of London shall recover in an assise damage with the land.*

The Stat. of West. 2. saith, *OUR LORD THE KING HATH ORDAINED, that the Will of the giver be observed:* and in the 3. Chap. *OUR LORD THE KING HATH ORDAINED* that a woman after the Death of her Husband shall recover by a Writ of *Entrie.*

The Stat. of *Quo Warranto* saith, *OUR LORD THE KING at His Parliament of His speciall grace, and for affection which he beareth to His Prelats, Earls, and Barons, and others, Hath granted that they that have liberties by Prescription shall enjoy them.*

In the Stat. *de finibus Levatis*, the Kings words are, *WE intending to provide remedy in our Parliament have ordained, &c.*

28 Edw. 1. c. 5. *THE KING WILS* that the Chancellor, and the Justices of the Bench shall follow Him, so that He may have at all times some neer unto Him that be learned in the Laws: and in Chap. 24. the words are, *OUR LORD THE KING after full conference and debate had with His Earls, Barons, Nobles, and other Great men by their whole consent, HATH ORDAINED, &c.*

The Stat. *de Tallagio* (if any such Statute there be) speaks in the Kings Person, *No Officer of OURS: No tallage shall be taken by US; WE WILL AND GRANT.*

1 Edw. 2. begins thus, *OUR LORD THE KING WILLETH AND COMMANDETH.*

The Stat. of 9. the same King, saith, *OUR LORD THE KING by the assent of the Prelats, Earls, and other great States HATH ORDAINED.*

10 Edw. 2. It is provided by our Lord the King and His Justices.

The Stat. of *Carlile* saith, *WE HAVE SENT OUR COMMAND in Writing firmly to be observed.*

1 Edw. 3. begins thus, *King Edw. 3. at His Parliament at the request of the Commonalty by their Petition before Him, and His Council*

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cell in Parliament, Hath granted, &c. and in the 5 Chap. *THE KING WILLETH* that no man be charged to arm himself otherwise then he was wont.

5 Edw. 3. *Our Lord the King, at the request of his people, hath established these things which HE WILS TO BE KEPT.*

9 Of the same King there is this Title, *Our Lord the King by the Assent &c. and by the Advise of His Councell being there, Hath ordained, &c.*

In his 10 year, it is said, *Because OUR LORD KING EDW. 3. hath received by the complaint of the Prelats, Earls, Barons, also at the shewing of the Knights of the Shires, and His Commons by their Petition put in His Parliament, &c. HATH ORDAINED* by the assent &c. at the request of the said Knights and Commons, &c.

The same year in another Parliament you may find, *these be the Articles accorded by the Lord Our King with the assent, &c. at the request of the Knights of the Shires and the Commons by their Petition put in the said Parliament.*

In the year-book 22 Edw. 3. 3 pl. 25. It is said, *THE KING MAKES THE LAWS* by the assent of the Peers and Commons, and not the Peers and Commons.

The Stat. of 1 Ric. 2. hath this beginning, *RICHARD the 2. by the assent of the Prelats, Dukes, Earls, and Barons, and at the instance and speciall request of the Commons, ORDAINED.*

There being a Stat. made 5 Ric. 2. c. 5. against *Lollards*, in the next year the Commons petition Him, *Suppliant les Cōmons que come un estatut fuit fait, &c. The Commons beseech that whereas a statute was made in the last Parliament, &c. which was never assented to, nor granted by the Commons, but that which was done therein was done without their assent. In this Petition the Commons acknowledg it a Statute, and so call it, though they assented not to it.*

17 Ric. 2. nu. 44. *The Commons desire that some pursuing to make a Law, which they conceive hurtfull to the Common-wealth; That His Majesty will not passe it.*

As for the Parliaments in Hen. 4. Hen. 5. Hen. 6. Edw. 4. and Ric. 3. Reigns, the most of them doe all agree in this one Title, *OUR LORD THE KING by the advise and assent of His Lords, and at the speciall instance and request of the Commons, HATH OR-*

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DAINED.



DAINED. The precedents in this point are so numerous that it were endlesse to cite them.

The Statutes in Hen. 7. daies do for the most part agree both in the Titles and Bodies of the Acts in these words, OUR LORD THE KING by the assent of the Lords spirituall and temporall, and the Commons in Parliament assembled, And by the authority of the same, HATH ORDAINED.

Unto this Kings time we find the Commons very often petitioning, but not petitioned unto. The first Petition made to the Commons that I meet with among the Statutes, is but in the middle of this King Hen. 7. raign, which was so well approved, that the Petition it self is turned into a Statute: It begins thus, To the RIGHT WORSHIPFUL COMMONS in this present Parl. assembled: Sheweth to your discreet wisdoms, the Wardens of the Fellowship of the craft of Upholsters within London, &c. This Petition, though it be directed to the Commons in the Title; yet the prayer of the Petition is turned to the King, and not to the Commons: for it concludes, therefore it may please the Kings Highness by the advise of the Lords spirituall and temporal, and His Commons in Parliament, &c.

Next for the Statutes of Hen. 8. they do most part agree both in their Titles, and the bodies of the Acts with those of his Father King Hen. 7.

Lastly, in the Statutes of Edw. 6. Q. Mary, Q. Elizabeth, K. James, and of our Sovereign Lord the King that now is, there is no mention made in their titles of any Assent of Lords and Commons, or of any ordaining by the King, but only in generall tearms it is said, Acts made in Parliament: or thus, At the Parliament were enacted: yet in the bodies of many of the Acts of these last Princes, there is sometimes mention made of consent of Lords & Commons, in these or the like words, It is enacted by the King, with the assent of the Lords and Commons; Except onely in the Statutes of our Lord K. Charles, wherein there is no mention that I can find of any consent of the Lords and Commons; or ordaining by the King: But the words are, Be it enacted by Authority of Parliament: or else, Be it enacted by the King, the Lords spirituall and temporall, and Commons; as if they were all fellow Commissioners.

Thus it appears, that even till the time of K. Edw. 6. who lived but in our Fathers daies, it was punctually expressed in every Kings

Kings Laws that the Statutes and Ordinances were made by the King. And withall we may see by what degrees the stiles, and titles of Acts of Parl: have bin varied, and to whose disadvantage. The higher we look, the more absolute we find the power of Kings in ordaining Laws: nor do we meet with at first so much as the assent or advise of the Lords mentioned. Nay, if we cast our eye upon many Statutes of those that be of most antiquity, they will appear as if they were no Laws at all; but as if they had been made only to teach us, that the punishments of many offences were left to the meer pleasure of Kings. The punitive part of the Law, which gives all the vigor and binding power to the Law, we find committed by the Statutes to the Kings meer will and pleasure, as if there were no law at all. I will offer a few precedents to the point:

3 Edw. 1. c. 9. saith, that Sheriffs, Coroners, and Baylifs, for concealing of Felonies, shall make grievous FINES AT THE KINGS PLEASURE.

Chap. 13. ordains that such as be found culpable of ravishing of Women, shall FINE AT THE KINGS PLEASURE.

Chap. 15. saith, the penalty for detaining a Prisoner that is mainpernable is a FINE AT THE KINGS PLEASURE, or a grievous amercement to the King, and he that shall take reward for deliverance of such, shall be at the GREAT MERCY OF THE KING.

Offendors in Parks or Ponds, shall make FINES AT THE Cap. 20. KINGS PLEASURE.

Committers of Champerty, and extortioners, are to be PUNISHED AT THE KINGS PLEASURE. Cap. 25.

Purveiors not paying for what they take, shall be GRIEVOUSLY PUNISHED AT THE KINGS PLEASURE. Cap. 31.

The KING SHAL PUNISH GRIEVOUSLY the Sheriffe, and him that doth maintain quarrels. Cap. 32.

The King shall grant attaint in Plea of land where it shall seem to him necessary. Cap. 37.

7 Edw. 1. saith, Whereas of late before certain persons deputed to treat upon debates between Us and certain Great men, it was accorded that in our next Parliament provision shall be made by Us, and the common assent of the Prelats, Earls, and Barons, that in all Parliaments for ever, every man shall come without force, and armour.

And now in our next Parliament the Prelats, Earls, Barons, and Commonalty have said, that to US IT BELONGETH THROUGH OUR ROYALL SIGNORY, STRAITLY TO DEFEND FORCE OF ARMOUR AT ALL TIMES, WHEN IT SHALL PLEASE US, AND TO PUNISH THEM WHICH SHAL DO OTHERWISE, AND HEREUNTO THEY ARE BOUND TO AID US THEIR SOVERAIGN LORD AT ALL SEASONS WHEN NEED SHAL BE.

13 Edw. 1. Takers away of Nuns from religious Houses, FINED AT THE KINGS WIL.

If by default of the Lord that will not avoid the Dike, Underwoods, and bushes in high-maies, murder be done, the Lord shall make FINE AT THE KINGS PLEASURE.

28 Edw. 1. If a Gold-Smith be attainted for not assaying, touching, and working Vessels of Gold, he shall be PUNISHED BY RANSOME AT THE KINGS PLEASURE.

2 Hen. 4. The Commons desire they may have Answer of their Petitions before the gift of any Subsidy; to which the King answers, He would confer with the Lords, and do what should be best according to their advise, and the last day of Parliament He gave this answer; that THAT MANNER OF DOING HAD NOT BEEN SEEN, NOR USED IN NO TIME OF HIS PROGENITORS OR PREDECESSORS, that they should have any answer of their Petitions, or knowledge of it before they have shewed, and finished all their other businesse of Parliament, be it of any grant, businesse, or otherwise, and therefore the KING WOULD NOT IN ANY WAIES CHANGE THE GOOD CUSTOMS AND USAGES MADE AND USED OF ANCIENT TIMES.

5 Hen. 4. c. 6. Whereas one Savage did beat, and maim one Richard Chedder Esquire, meniall Servant to Tho: Brook Knight of the Shire for Somerset-shire, the Statute saith, Savage shall make FINE AND RANSOME AT THE KINGS PLEASURE.

8 Hen. 4. it is said, *POTESTAS PRINCIPIS NON EST INCLUSA LEGIBUS*, the power of the Prince is not included in the Laws.

13 Hen. 4. nu. 20. we read of a restitution in bloud, and Lands of William Lafenby, by the King by the assent of the Lords spirituall, and Commons; omitting the Lords temporall.

2 Hen. 5.

2 Hen. 5. in a Law made, there is a clause, that it is the Kings regality to grant or deny such of their Petitions as pleaseth Himself.

6 Hen. 6. c. 6. An Ordinance was made for to endure AS LONG AS IT SHAL PLEASE THE KING.

11 Hen. 7. c. 1. hath this Law, The King our sovereign Lord, calling to His remembrance the duty of Allegiance of His Subjects of this His Realm, and that by reason of the same they are bound to serve their Prince and sovereign Lord for the time being in His wars, for the defence of Him, and the Land, against every rebellion, power, and might reared against Him, and with Him to enter and abide in service in bataile if case so require; and that for the same service, what fortune ever fall by chance in the same Battaile against the mind and will of the Prince (as in this land sometimes passed hath been seen) that it is not reasonable, but against all laws, reason, and good conscience, that the said Subjects, going with their sovereign Lord in wars, attending upon Him in His Person, or being in other places by His commandement within the land, or without, any thing should lose or forfeit for doing their true duty and service of Allegiance, It be therefore enacted, that no person that shall attend upon the King, and doe Him true service shall be attainted therefore of Treason, or any other offence by Act of Parliament, or otherwise.

Also the 18. Chap. of the same year saith, Where every Subject by the duty of his Allegiance is bounden to serve and assist his Prince and sovereign Lord at all seasons when need shall require, and bound to give attendance upon His Royall Person, to defend the same when He shall fortune to go in Person in War for defence of the Realm, or against His rebels and enemies, for the subduing and repressing of them, and their malicious purpose.

Christopher Wray Serjeant at Law, chosen Speaker, 13. Eliz. in his Speech to Her Majesty, said, that for the orderly government of the Common-wealth, three things were necessary:

1. Religion.
2. Authority.
3. Law.

By the first, we are taught not only our duty to God, but to obey the Queen, and that not onely in temporall but in spirituall, in which Her power is absolute.

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Mr. Grivel

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Mr. Grivel in the 35. Eliz. said in Parliament, he wished not the making of many Laws; since the more we make, the lesse liberty we have our selves; Her Majesty not being bound by them.

Coke.

For further proof that the Legislative power is proper to the King, we may take notice that in ancient time, as Sir Edw. Coke saith, All Acts of Parliament were in form of Petitions: if the Petitions were from the Commons, and the Answer of them the Kings, it is easie thereby to judge who made the Act of Parliament: Also Sir Jo. Glanvil affirms, that in former times the course of petitioning the King was this, The Lords and Speaker either by words or writing, preferr'd their Petition to the King; this then was called the Bill of the Commons, which being received by the King, part He received, and part He put out, part He ratified, for as it came from Him, it was drawn into a Law.

Glanvil.

Also it appears that provisions, Ordinances, and Proclamations made heretofore out of Parliament have been alwaies acknowledged for Laws, and Statutes: We have amongst the printed Statutes, one called the Statute of Ireland, dated at Westminster, 9 Feb. 14 Hen. 3. which is nothing but a Letter of the King to Gerard son of Maurice Justicer of Ireland.

Chanc. Egerton.

The explanations of the Statute of Gloucester made by the King and His Justices only, were received alwaies for Statutes, and are still printed with them.

Also the Statute made for the correction of the 12. Chap. of the Statute of Gloucester, was signed under the Great Seale, and sent to the Justices of the Bench after the manner of a Writ patent, with a certain Writ closed, dated by the Kings hand at Westminster, 2 Maii. 9 Edw. 1. requiring that they should doe and execute all and every thing contained in it, though the same doe not accord with the Stat. of Gloucester in all things.

The provisions of Merton made by the King at an Assembly of Prelats, and the greater part of the Earls and Barons for the Coronation of the King, and His Queen Elinor, are in the form of a Proclamation, and begin *provisum est in Curia domini Regis apud Merto.*

19 Hen. 3. a provision was made, *de assisa ultima presentationis*, which was continued and allowed for a Law untill the Stat. of West. 2. which provides the contrary in expresse words.

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## The Free-holders grand Inquest.

In the old Statutes it is hard to distinguish what Laws were made by Kings in Parliament, and what out of Parliament: when Kings called Peers only to Parliament, and of those how many, or whom they pleased, (as it appears anciently they did) it was no easie matter to put a difference between a Councel table, and a Parliament: or between a Proclamation, and a Statute: Yet it is most evident that in old times there was a distinction between the Kings speciall or Privy Councell, and His Common Councell of the Kingdome: and His speciall Councell did sit with the Peers in Parliament, and were of great and extraordinary authority there.

In the Stat. of West. 1. it is said, these are the Acts of K. Edw. I. made at His first Parliament by HIS COUNCEL, and by the assent of Bishops, Abbots, Priors, Earls, Barons, and all the Commonalty of the Realm.

The Stat. of Aeton Burnell hath these words, The KING FOR HIMSELF, AND BY HIS COUNCEL, HATH ORDAINED AND ESTABLISHED.

In articulis super Chartas, when the Great Charter was confirmed at the request of the Prelats, Earls, and Barons, are found these two provisions,

1. Neverthelesse the KING AND HIS COUNCEL doe not intend by reason of this Statute to diminish the Kings right.
2. Notwithstanding all these things before mentioned, or any part of them, both the King and His Councell, and all they that were present, Will and intend that the right and Prerogative of His Crown shall be saved to Him in all things.

The Stat. of Escheators hath this title, At the Parliament of our sovereign Lord the King, By His Councell it was agreed, and also by the King Himself commanded.

1 Edw. 3. where Magna Charta was confirmed, this preamble is found, At the request of the Commonalty by their Petition made before the KING AND HIS COUNCEL in Parliament, by the assent of the Prelats, Earls, and Barons, &c.

The Stat. made at York, 9 Edw. 3. goeth thus, Whereas the Knights, Citizens, and Burgeses desired Our sovereign Lord the King in His Parliament by their Petition, &c. Our sovereign Lord the King desiring the profit of His people, By the assent of His Prelats,

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lats, Earls, Barons, and other Nobles of His Realm, and by the advice of HIS COUNCEL being there, Hath ordained.

25 Edw. 3. In the Stat. of Purveyors, where the King, at the request of the Lords and Commons, made a Declaration what offences should be adjudged Treason: It is there further said, if per-case any man ride Armed with Men of Armes against any other to slay him, or rob him, It is not the MIND OF THE KING, OR OF HIS COUNCEL: that in such cases it shall be adjudged Treason. By this Stat. it appears, that even in the case of Treason, which is the Kings own cause, as whereas a man doth compassse, or imagine the Death of Our Lord the King, or a man doe Wage War against Our Lord the King in His Realm, or be adherent to the Kings enemies in His Realm, giving to them aid or comfort in the Realm, or elsewhere; in all these cases it is the Kings declaration onely that makes it to be Treason: and though it be said that difficult points of Treason shall be brought and shewed to the King, and His Parliament, yet it is said, it is the mind of the King and His Councell, that determines what shall be adjudged Treason, and what Felony, or trespassse.

27 Edw. 3. The Commons presenting a Petition to the King which the Kings Councell did mislike, were content thereupon to amend and explain their Petition: the Petition hath these words, To their most redoubted Sovereign Lord the King, Praying, Your said Commons, that whereas they have prayed him to be discharged of all manner of Articles of the Eyre, &c. which Petition seemeth to His Councell to be prejuditiall unto Him, and in Disinherison of his Crown if it were so generally granted. His said Commons not willing nor desiring to demand things of Him, or of His Crown perpetually, as of Escheats, &c. But of trespassses, misprisions, negligences, ignorances, &c.

And as in Parliaments the Kings Council were of supereminent power, so out of Parliament Kings made great use of them.

King Edw. 1. finding that *Bogo de Clare* was discharged of an accusation brought against him in Parliament, commanded him nevertheless to appear before Him and His Councell, *ad faciendum & recipiendum quod per Regem & ejus Concilium fuerit faciendum*, and so proceeded to the examination of the whole cause, § Edw. 1.

Edw. 3. In the Star-chamber (which was the ancient Councel-table

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table at Westminster) upon the complaint of *Eliz. Audley*, commanded *James Audley* to appear before Him and His Councell, and determined a controversie between them touching land contained in her Jointure, *Rot. claus. de An. 41. Edw. 3.*

*Hen. 5.* in a sute before Him and His Councell, For the titles of the Mannors of *Serre* and *Saint Laurence* in the Isle of *Thenet* in *Kent*, took order for the sequestering the profits till the right were tried.

*Hen. 6.* commanded the Justices of the Bench to stay the arraignment of one *Verney* in *London*, till they had other commandment from Him and His Councell, 34 *Hen. 6. rot. 37. in banco.*

*Edw. 4.* and His Councell in the Star-chamber heard the cause of the Master and poor Brethren of *Saint Leonards* in *Yorke*, complaining that *Sir Hugh Hastings*, and others, withdrew from them a great part of their living, which consisted chiefly upon the having of a thrave of corn of every plow-land within the Counties of *Yorke*, *Westmorland*, *Cumberland*, and *Lancashire*, *Rot. pat. de an. 8. Edw. 4. part. 3. memb. 14.*

*Hen. 7.* and His Councell in the Star-chamber, decreed, that *Margery* and *Florence Becket* should sue no further in their cause against *Alice Radley* Widow, for lands in *Wolwich* and *Plumsted* in *Kent*, for as much as the matter had been heard first before the Councell of *Edw. 4.* after that before the precedent of the Requests of that King *Hen. 7.* and then lastly before the Councell of the said King, 1 *Hen. 7.*

In the time of *Hen. 3.* an order or provision was made by the Kings Councell, and it was pleaded at the Common Law in Bar to a Writ of Dower; the Plaintifs Atturney could not deny it, and thereupon the judgment was, *ideo sine die*. It seems in those daies an Order of the Kings Council, was either parcell of the Common Law, or above it.

Also we may find, the Judges have had regard that before they would resolve or give Judgement in new cases, they consulted with the Kings Privy Council.

In the case of *Adam Brabson* who was assaulted by *R. W.* in the presence of the Justices of Assise at *Westminster*, the Judges would have the advice of the Kings Councell: for in a like case, because *R. C.* did strike a Juror at *Westminster* which passed against one of his

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his friends, It was adjudged by all the Council that his right hand should be cut off, and his lands and goods forfeited to the King.

Green and Thorp were sent by the Judges to the Kings Council, to demand of them whether by the Stat. of 14 Edw. 3. 16. a word may be amended in a Writ and it was answered that a word may be well amended, although the Stat. speaks but of a Letter or Syllable.

In the case of Sir Tho: Ogbred, who brought a formedon against a poor man and his wife; they came and yielded to the demandant, which seemed suspicious to the Court; whereupon Judgement was staid, and Thorp said that in the like case of Gyles Blacket it was spoken of in Parliament, and we were commanded that when any like should come we should not go to judgment without good advice; therefore the Judges conclusion was, Sues au conseil & comment ils voilent que nous devomus faire, nous volums faire & autrement nient en cest case, sue to the Council, and as they will have us to do, we will do; and otherwise not in this case, 39 Edw. 3.

Thus we see the Judges themselves were guided by the Kings Council, and yet the opinions of Judges have guided the Lords in Parliament in point of Law.

All the Judges of the Realm, Barons of Exchequer of the Quoif; the Kings learned Council, and the Civilians, Masters of Chancery, are called Temporall Assistants by Sir Edm. Coke, and though he deny the voices in Parliament, yet he confesseth, that by their Writ they have power both to treat, and to give Counsel. I cannot find that the Lords have any other power by their Writ: the words of the Lords Writ are, That you be present with Us the Prelats, Great men, and Peers, to treat and give your Counsel: The words of the Judges Writ are, that you be present with Us, and others of the Council (and sometimes with Us onely) to treat and give your Counsel.

The Judges usually joyned in Committees with the Lords in all Parliaments, even in Q. Eliz. Raign, untill Her 39 year; and then upon the 7. of November, the Judges were appointed to attend the Lords. And whereas the Judges have liberty in the upper House it self, upon leave given them by the L. Keeper, to cover themselves, now at Committees they sit alwaies uncovered.

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The power of Judges in Parliament is best understood, if we consider how the juditiell power of Peers hath been exercised in matter of judicature: we may find it hath been the practice, that though the Lords in the Kings absence give judgement in point of Law, yet they are to be directed and regulated by the Kings Judges, who are best able to give direction in the difficult points of the Law; which ordinarily are unknown to the Lords. And therefore, if any errour be committed in the Kings bench, which is the highest ordinary Court of Common Law in the kingdome, that Errour must be redressed in Parliament. And the manner is, saith the Lord Chancellour Egerton, if a Writ of Error be sued in Parl. upon a Judgement given by the Judges in the Kings bench, the Lords of the higher House alone (without the Commons) are to examine the Errours. The Lords are to proceed according to the Law, and for their Judgements therein they are to be informed by the advice and counsel of the Judges, who are to inform them what the Law is, and to direct them in their Judgement; for the Lords are not to follow their own discretion or opinion otherwise.

28 Hen. 6. the Commons made sute that W. de la Poole D. of Suffolke, should be committed to prison for many Treasons, and other crimes; the Lords of the higher House were doubtful what answer to give: the opinion of the Judges was demanded, their opinion was, that he ought not to be committed, for that the Comons did not charge him with any particular offence, but with generall reports and slanders: this opinion was allowed.

31 Hen. 6. A Parliament being prorogued, in the vacation the Speaker of the House of Commons was condemned in a thousand pounds damages in an action of Trespas, and committed to Prison in execution for the same: when the Parliament was re-assembled, the Commons made sute to the King, and Lords, to have their Speaker delivered. The Lords demanded the opinion of the Judges, whether he might be delivered out of Prison by priviledge of Parliament; upon the Judges answer it was concluded, that the Speaker should remain in Prison according to the Law, notwithstanding the priviledge of Parliament, and that he was Speaker: which resolution was declared to the Commons by Moyle the Kings Serjeant at law, and the Commons were commanded

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manded in the Kings name by the Bishop of *Lincolne* (in the absence of the Archbishop of *Canterbury*, then Chancellour) to chuse another Speaker.

7 *Hen. 8.* A question was moved in Parliament, *Whether Spirituall persons might be convented before Temporall Judges for criminall causes?* there Sir *John Fineux* and the other Judges delivered their opinion, that they might and ought to be, and their opinion allowed and maintained by the King and Lords, and Dr. *Standish* who before had holden the same opinion, was delivered fro the Bishops.

I find it affirmed, that in causes which receive determination in the House of Lords, the King hath no Vote at all, no more then in other Courts of ministeriall jurisdiction. True it is, the King hath no Vote at all if we understand by vote, a voice among others: for He hath no partners with Him in giving judgement. But if by no vote is meant He hath no power to judge; we despoile Him of His Sovereignty: It is the chief mark of Supremacy to judge in the highest causes, and last appeals. This the Children of *Israel* full well understood, when they petitioned for a King to judge them: if the dernier resort be to the Lords alone, then they have the Supremacy. But as *Moses* by chusing Elders to judge in small causes, did not thereby lose his authority to be Judge himself when he pleased, even in the smallest matters; much lesse in the greatest which he reserved to himself: so Kings by delegating others to judge under them, do not thereby deaude themselves of a power to judge when they think good.

There is a distinction of these times, that Kings themselves may not judge, but they may see and look to the Judges, that they give judgement according to Law; and for this purpose onely (as some say) Kings may sometimes sit in the Courts of justice. But it is not possible for Kings to see the Laws executed, except there be a power in Kings both to judge when the Laws are duly executed, and when not; as also to compell the Judges if they do not their duty. Without such power a King sitting in Courts is but a mockery, and a scorn to the Judges. And if this power be allowed to Kings, then their judgements are supream in all Courts. And indeed our Common Law to this purpose doth presume that the King hath all Laws within the Cabinet of His breast, in *Scrinio pectoris*, saith *Cromptons* Jurisdiction, 108.

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When severall of our Statutes leave many things to the pleasure of the King, for us to interpret all those Stat. of the will and pleasure of the Kings Justices only, is to give an absolute arbitrary power to the Justices in those cases wherein we deny it to the King.

The Statute of 5 *Hen. 4. c. 2.* makes a difference between the King, and the Kings Justices in these words, *Divers notorious Felons be indicted of divers Felonies, Murders, rapes: and as well before the Kings Justices, as before the King Himself, arraigned of the same Felonies.*

I read that in an. 1256. *Hen. 3.* sat in the Exchequer, and there set down order for the appearance of Sheriffs, and bringing in their accounts; there was five marks set on every Sheriffs head for a fine, because they had not destrained every person that might dispend five-teen pounds lands by the year, to receive the order of Knighthood, according as the same Sheriffs were commanded.

In Michaelmas terme 1462. *Edw. 4.* sat three daies together in open Court in the Kings bench.

For this point there needs no further proofs, because Mr. *Pryn* doth confesse, that Kings themselves have sat in Person in the Kings bench, and other Courts, and there given judgement, p. 32. Treachery and disloyalty, &c.

Notwithstanding all that hath been said for the Legislative and Iudiciall power of Kings, Mr. *Pryn* is so far from yeilding the King a power to make Laws, that he will not grant the King a power to hinder a Law from being made; that is, he allows Him not a negative voice in most cases, which is due to every other, even to the meanest Member of the House of Commons in his judgement.

To prove the King hath not a negative voice, his main, and in truth his only Argument insisted on, is a Coronation Oath, which is said anciently some of our Kings of *England* have taken, wherein they grant to defend and protect the just Laws and Customs, which the vulgar hath, or shall chuse: *Iustas leges & consuetudines quas vulgus elegerit*: hence Mr. *Pryn* concludes, that the King cannot deny any Law which the Lords, and Commons shall make choice of; for so he will have *vulgus* to signifie.

Though neither our King, nor many of His predecessors ever

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took this Oath, nor were bound to take it for ought appears; yet we may admit that our King hath taken it; and answer, we may be confident that neither the Bishops, nor Privy Councell, nor Parliament, nor any other whosoever they were that framed, or penn'd this Oath, ever intended in this word *vulgus* the *Commons* in Parliament, much lesse the *Lords*: they would never so much disparage the Members of Parliament, as to disgrace them with a title both base, and false: it had been enough, if not too much to have called them *populus*, the *people*; but *vulgus*, the *vulgar*, the *rude multitude* (which hath the Epethite of *ignobile vulgus*) is a word as dishonourable to the Composers of the Oath to give, or for the King to use, as for the Members of the Parliament to receive; it being most false: for the *Peers* cannot be *Vulgus*, because they are the prime persons of the Kingdom: next, the *Knights of the Shires* are, or ought to be *notable Knights*, or *notable Esquires*, or *Gentlemen*, born in the Counties, as shall be able to be *Knights*: then the *Citizens and Burgesses* are to be most sufficient, none of these can be *vulgus*: even those *Free-holders* that chuse *Knights* are the best, and ablest men of their Counties; there being for every *Free-holder*, above ten of the *Common people* to be found to be tearmed the *Vulgar*: Therefore it rests that *vulgus* must signifie the *vulgar* or *common people*, and not the *Lords and Commons*.

But now the doubt will be, what the *Common people*, or *vulgus* out of Parliament, have to do to chuse *Laws*? The Answer is easie and ready; there goeth before, *quas vulgus*, the antecedent *consuetudines*, that is, the *Customs* which the *Vulgar* hath, or shall chuse; Do but observe the nature of *Custom*, and it is the *Vulgus* or *Common people* only who chuse *Customs*: *Common usage* time out of mind creates a *Custom*, and the *commoner* an *usage* is, the stronger and the better is the *Custom*: no where can so *common* an *usage* be found, as among the *Vulgar*, who are still the far greatest part of every *multitude*: if a *Custom* be *common* through the whole Kingdom, it is all one with the *Common Law* of *England*, which is said to be *Common Custom*, thus in plain tearms to protect the *Customs* which the *Vulgar* chuse, is to swear to protect the *Common Laws* of *England*.

But grant that *Vulgus* in the Oath, signifies *Lords and Commons*,

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*mons*, and that *Consuetudines* doth not signifie *Customs*, but *Statutes*, (as Mr. Pryn for a desperate shift affirms) and let *elegerit Pryn* be the future, or preterperfect tense, even which Mr. Pryn please, yet it cannot exclude the *Kings negative voice*; for as *Consuetudines* goeth before *quas vulgus*, so doth *justas* stand before *leges & consuetudines*: so that not all *Laws*, but only all just *Laws* are meant. If the sole choice of the *Lords and Commons*, did oblige the King to protect their choice, without power of Deniall, what need, or why is the word *justas* put in, to raise a scruple that some *Laws* may be unjust? Mr. Pryn will not say that a Decree of a *Generall Councell*, or of a *Pope* is infallible, nor I think a *Bill* of the *Lords and Commons* is infallibly just, and impossible to erre; if he do, Sir *Edm. Coke* will tell him that *Parliaments have been utterly deceived*, and that in cases of greatest moment, even in case of *High Treason*: and he calls the Statute of 11 Hen. 7. an unjust and strange Act. But it may be Mr. Pryn will confesse that *Laws* chosen by the *Lords and Commons* may be unjust, so that the *Lords and Commons* themselves may be the Judges of what is just, or unjust. But where a King by Oath binds his Conscience to protect just laws, it concerns Him to be satisfied in His own conscience, that they be just, and not by an implicit faith, or blind obedience: no man can be so proper a Judge of the justnesse of laws, as he whose soul must lie at the stake for the defence and safeguard of them.

Besides in this very Oath the King doth swear, to do equall and right justice and discretion, in mercy and truth in all His Judgements: *facies fieri in omnibus judiciis tuis equam & rectam justitiam & discretionem in misericordia & veritate*: if we allow the King discretion and mercy in His Judgements, of necessity he must judge of the justnesse of the *Laws*.

Again, the clause of the Oath, *quas vulgus elegerit*, doth not mention the assenting unto, or granting any new *Laws*, but of holding, protecting, and strengthening with all his might, the just laws that were already in being: there were no need of might or strength, if assenting to new *Laws* were there meant.

Some may wonder, why there should be such labouring to deny the King a negative voice, since a negative voice is in it self so poor a thing; that if a man had all the negative Voices in the Kingdom,

dome, it would not make him a King; nor give him power to make one Law: a *negative voice* is but a *privative* power, that is, no power at all to do or act any thing; but a power only to hinder the power of another. *Negatives* are of such a malignant or destructive nature, that if they have nothing else to destroy, they will, when they meet, destroy one another, which is the reason why two negatives make an affirmative, by destroying the negation which did hinder the affirmation: A King with a *negative voice* onely, is but like a *Syllogisme* of *pure negative propositions*, which can conclude nothing. It must be an *affirmative voice* that makes both a *King*, and a *Law*, and without it there can be no imaginable government.

The reason is plain why the *Kings negative voice* is so eagerly opposed: for though it give the King no power to doe any thing; yet it gives Him a power to hinder others: though it cannot make Him a King, yet it can help Him to keep others from being Kings.

For conclusion of this discourse of the *negative voice* of the *King*, I shall oppose the judgement of a *Chief Justice* of *England*, to the opinion of him that calls himself an *uter Barister* of *Lincolns Inne*, and let others judge who is the better Lawyer of the two: the words are *Bractons*, but concern Mr. *Pryn* to lay them to heart; *Concerning the Charters and deeds of Kings, the Justices nor private men neither ought, nor can dispute; nor yet if there rise a doubt in the Kings Charter, can they interpret it; and in doubtfull and obscure points, or if a word contain two senses, the Interpretation, and will of our Lord the King is to be expected, seeing it is His part to interpret who makes the Charter: full well Mr. Pryn knows, that when Bracton writ, the Laws that were then made, and strived for, were called the Kings Charters, as Magna Charta, Charta de Foresta, and others: so that in Bractons judgement the King hath not only a negative voice to hinder, but an affirmative to make a law, which is a great deal more then Master Pryn will allow him.*

Not only the *Law-maker*, but also the *sole Judge* of the people is the *King*, in the judgement of *Bracton*, these are his words, *Rex & non alius debet judicare si solus ad id sufficere possit*, the King and no other ought to judge if He alone were able. Much like the words

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words of *Bracton*, speaketh *Briton*, where after that he had shewed that the *King is the Viceroy of God*, and that He hath distributed his charge into sunder portions, because He alone is not sufficient to hear all complaints of His people, then he addeth these words in the person of the *King: Nos volons que nostre jurisdiction soit sur tous Jurisdictions, &c. We will that Our Jurisdiction be above all the Jurisdictions of Our Realm, so as in all manner of Felonies, trepasses, contracts, and in all other actions personall or reall we have power to yeild, or cause to be yeilded, such judgements as do appertain without other processe, wheresoever we know the right truth as Judges.*

Neither was this to be taken, saith Mr. *Lambard*, to be meant of the *Kings bench* where there is only an *imaginary presence* of His *Person*, but it must necessarily be understood of a *Jurisdiction remaining and left in the Kings royall body and breast*, distinct from that of His *Bench* and other *ordinary Courts*, because He doth immediately after, severally fet forth by themselves, as well the authority of the *Kings bench*, as of the other *Courts*.

And that this was no new made Law, Mr. *Lambard* puts us in mind of a *Saxon law* of *K. Edgars. Nemo in lite Regem appellato. &c. Let no man in sute appeal unto the King, unlesse he cannot get right at home, but if that right be too heavy for him, then let him go to the King to have it eased.* By which it may evidently appear, that even so many years ago there might be *appellation made to the Kings Person* whensoever the *cause* should enforce it.

The very like Law in effect is to be seen in the Laws of *Canutus* the *Dane*, sometimes King of this Realm, out of which Law *Master Lambard* gathers, that the *King Himself had a High Court of Justice*, wherein it seemeth He sat in *Person*, for the words be, *let him not seek to the King*, and the same Court of the King did judge not only according to meer right and law, but also after equity and good conscience.

For the close I shall end with the suffrage of our late Antiquary Sir *Hen: Spelman*, in his *Glossary*, he saith, *Omnis Regni Justitia solus Regis est, &c. all Justice of the Kingdom is only the Kings, and He alone if He were able should administer it, but that being impossible He is forced to delegate it to Ministers whom he bounds by the limits of the Laws; the positive Laws are onely about generals, in particular*

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icular cases they are sometimes too strict, sometimes too remisse, and so oft wrong in stead of right will be done if we stand to strict Law: also Causes hard and difficult daily arise which are comprehended in no Law books, in those there is a necessity of running back to the King, the fountain of Justice, and the Vicegerent of God himself, who in the Common-wealth of the Jews took such causes to His own cognisance, and left to Kings not onely the example of such Jurisdiction, but the Prerogative also.



### Of Priviledge of PARLIAMENT.

What need all this adoe, will some say, to sift out what is comprised in the Writ for the election of the Commons to Parliament, since it is certain, though the Writ do not, yet *Priviledge of Parliament* gives sufficient power for all proceedings of the two Houses? It is answered, that what slight esteem so ever be made of the Writ, yet in all other cases the *originall* Writ is the foundation of the whole businesse, or action: and to vary in substance from the Writ, makes a nullity in the cause, and the proceedings thereupon: and where a Commissioner exerciseth more power, then is warranted by his Commission, every such act is void, and in many cases punishable: yet we will lay aside the Writ, and apply our selves to consider the nature of *Priviledge of Parliament*. The task is the more difficult, for that we are not told what the number of Priviledges are, or which they be; some do think that as there be dormant Articles of faith in the *Roman Church*, which are not yet declared; so there be likewise Priviledges

ledges dormant in the House of Commons not yet revealed, we must therefore be content in a generality to discourse of the quality or condition of Priviledge of Parliament, and to confine our selves to these three points:

1. That Priviledge of Parliament gives no power, but onely helps to the execution of the power given by the Writ.

2. That the Free-holders by their elections give no priviledge.

3. That Priviledge of Parl. is the gift of the King.

First, the end or scope of priviledge of Parliament is not to give any power to do any publick act, not warranted by the Writ: but they are intended as helps only to enable to the performance of the duty enjoyned, and so are subservient to the power comprised in the Writ: For instance, the *grand priviledge of freedome from Arrests* doth not give any power at all to the *House of Commons* to do any act; but by taking away from the Free-holders and other Subjects the power of Arrests, the Commons are the better inabled to attend the service to which they are called by the King.

In many other cases the Servants, or Ministers of the King are priviledged, and protected much in the same nature. The Servants in household to the King may not be Arrested without special license: Also the Officers of the Kings Courts of Justice, have a priviledge not to be sued in any other Court but where they serve and attend, and to this purpose they are allowed a *Writ of priviledge*. Likewise all such as serve the King in His wars, or are employed on forrain affairs for Him, are protected from actions, and sutes. Nay the Kings protection descends to the priviledging even of *Laundresses, Nurses, and Midwives,*

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wives, if they attend upon the Camp, as Sir Edw. Coke saith, *quia lotrix, seu nutrix, seu obstetrix*. Besides the King protects His debtors from Arrests of the Subject till his own debts be paid.

These sorts of protections are priviledges the Common Law takes notice of, and allows: and hath severall distinctions of them; and some are *protections, quia profecturus*, and others are, *quia moraturus*: some are with a clause of *volumus* for stay of suits: others with a clause of *Nolumus* for the safety of mens persons, servants, and goods: and the Kings Writs do vary here in according to the nature of the businesse.

But none of these Priviledges or Protections do give any power; they are not *positive*, but *primative*: they take away and deprive the Subject of the power, or liberty to arrest, or sue in some cases only: no protection or priviledge doth defend in point of *treason, felony, or breach of the peace*: priviledges are directly contrary to the Law, for otherwise they should not be priviledges, and they are to be interpreted in the strictest manner, as being *odious and contrary to Law*: we see the use of priviledges, they doe but serve as a dispensation against law, intended originally, and principally for the expediting of the Kings businesse; though secondarily, and by accident there do sometimes redound a benefit by them to the parties themselves that are protected. Strictly, and properly every priviledge must be against a publick or common law, for there is no use or need of a *private law* to protect, where there is no *publick law* to the contrary: favours and graces which are only *besides*, but *not against* the law do not properly go under the name of *Priviledges*, though common use doe not distinguish them: I know no other priviledge that can be truly so called, and  
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to belong to the House of Commons, which is so vast and great, as this priviledge of their *persons, servants, and goods*: this being indeed against the Common law, and doth concern the whole Kingdome to take notice of it, if they must be bound by it.

Touching this grand priviledge of freedom from Arrests, I read that in the 33 *Hen. 8.* The Commons did not proceed to the punishment of offenders for the breach of it, until the Lords referred the punishment thereof to the Lower House. The case is thus reported, *George Ferrers* Gentleman, servant to the *King*, and Burgesse for *Plymouth*, going to the Parliament House was arrested in *London*, by Proccesse out of the Kings Bench for debt, wherein he had before been condemned as surety for one *Welden* at the sute of one *White*: which arrest signified to Sir *Tho: Moyl* Speaker, and to the rest; the Serjeant called *Saint-Johns* was sent to the Counter in *Breadstreet* to demand *Ferrers*: The Officers of the Counter refuse to deliver him, and gave the Serjeant such ill language that they fall to an affray: the Sheriffe coming taketh the Officers part, the Serjeant returned without the Prisoner: This being related to the Speaker and Burgesse, they would sit no more without their Burgesse, and rising repaired to the Upper House, where the case was declared by the Speaker before Sir *Tho: Audely Chancellor, and the Lords and Judges* there assembled, who judging *the contempt to be very great, referred the punishment thereof to the House of Commons it self.*

This priviledge of freedom from Arrests is the onely priviledge which Sir *Edw. Coke* finds to belong to the House of Commons; he cannot, or at least he doth not so much as name any other in his section of the *priviledges of Parliament*: neither doth he bring so much as one

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precedent for the proof of this one priviledge for the house of Cōmons, which may cause a doubt that this sole priviledge is not so cleer as many do imagine. For in a Parliament in the 27 *Eli*z. *Richard Coke* a Member being served with a *Subpena of Chancery*, the Lord Chancellor thought the House had no such priviledge for *Subpenas* as they pretended, neither would he allow of any precedents of the House committed unto them formerly used in that behalf, unlesse the House of Commons could also prove the same to have been likewise thereupon allowed, & ratified also by precedents in the Court of Chancery,

In the 39 of *Eli*z. *Sir Edw. Hobby*, and *Mr. Brograve* Attorney of the Dutchy, were sent by the House to the Lord Keeper, in the name of the whole House, to require his Lordship to revoke two Writs of *Sub penas*, which were served upon *M. Th: Knevit*, a Member of the House, since the beginning of Parliament. The Lord Keeper demanded of them, whether they were appointed by any advised consideration of the House, to deliver this message unto him with the word *Required*, in such manner as they had done, or no: they answered his Lordship, Yea: his Lordship then said, as he thought reverently and honourably of the House, and of their liberties, and priviledges of the same, so to revoke the said *Sub penas* in that sort, was to restrain Her Majesty in Her greatest power, which is justice in the place wherein he serveth under Her, and therefore he concluded, as they had required him to revoke his Writ, so he did require to deliberate.

Vpon the 22 of *February*, being Wednesday, 18 *Eli*z. Report was made by Mr. Attorney of the Dutchy upon the Committee for the delivering of one *Mr. Halls* man; that the Committee found no precedent for setting at large by the Mace any person in Arrest but only by Writ, and that

that by divers precedents of Records perused by the said Committee, it appeareth that every Knight, Citizen, or Rurgeffe which doth require priviledge, hath used in that case to take a corporall Oath before the Lord Chancellor, or Lord Keeper, that the party for whom such Writ is praied, came up with him, and was his Servant at the time of the arrest made. Thereupon *M. Hall* was moved by the House to repair to the L. Keeper and make Oath, and then take a Warrant for a Writ of priviledge for his Servant.

It is accompted by some to be a Priviledge of Parl: to have power to examine *misdemeanours* of Courts of Justice, and Officers of State: yet there is not the meanest Subject but hath liberty upon just cause to question the misdemeanour of any Court or Officer, if he suffer by them; there is no law against him for so doing; so that this cannot properly be called a Priviledge, because it is not against any publick law: It hath been esteemed a great favour of Princes to permit such examinations: For when the Lords were displeas'd with the greatnesse of *Pierce Gaveston*, it is said that in the next Parliament, the whole Assembly obtain of the King to draw Articles of their grievances, which they did. Two of which Articles were, First, that all strangers should be banished the Court, and Kingdome: of which *Gaveston* was one. Secondly, that the businesse of the State should be treated of by the Councell of the Clergy and NOBLES.

In the Raig'n of King *Hen. 6.* one *Mortimer* an instrument of the Duke of *York*, by promising the *Kentish* men a reformation, and freedome from taxations, wrought with the people, that they drew to a head, and made this *Mortimer* otherwise *Facke Cade* their Leader: who stiled himself Captain *Mend-all*: He presents to the Parliament

liament the complaints of the Cōmons, and he petitions that the Duke of York, and some other Lords might be received by the King into favour, by the undue practises of Suffolke and his complices, commanded from his presence; and that all their opposites might be banished the Court, and put from their Offices, and that there might be a generall amotion of corrupt Officers: These Petitions are sent from the *lower House to the Upper*, and from thence committed to the *Lords of the Kings Privy Councell*, who, having examined the particulars, *explode them as frivolous, and the Authors of them to be presumptuous Rebels.*

Concerning *liberty, or freedome of speech*, I find, that at a Parliament at *Black Fryers* in the 14 of *Hen. 8.* Sir *Tho. More* being chosen Speaker of the House of Commons: He *first disabled himself, and then petitioned the King, that if in communication and reasoning, any man in the Commons House should speak more largely then of duty they ought to do, that all such offences should be pardoned, and to be entred of record; which was granted.* It is observable in this Petition, that liberty, or freedom of speech, is not a power for men to speak what they will, or please, in Parliament; but a priviledge not to be punished, but pardoned for the offence of speaking *more largely then in duty ought to be*; which in an equitable construction must be understood, of rash, unadvised, ignorant, or negligent escapes, and slips in speech: and not for wilfull, malicious offences in that kind; And then the pardon of the King was desired to be upon record, that it might be pleaded in bar to all actions. And it seemeth that *Ric: Strood* and his complices, were not thought sufficiently protected, for their free speech in Parliament, unlesse their pardon were confirmed by the King in Parl: for there is a printed *statute* to that purpose in *Hen. 8. time.* Touch-

Touching freedome of speech, the Commons were warned in *Q. Eliz.* daies not to meddle with the *Qu. Person, the State, or Church-government.* In Her time the discipline of the Church was so strict, that the *Letany* was read every morning in the House of Commons, during the Parliament: and when the Commons first ordered to have a *Fast in the Temple upon a Sunday*, the Queen hindred it.

21. Jan. Saturday 23. *Eliz.* The case is thus reported: *M. Paul Wentworth* moveth for a publick set Fast, and for a preaching every morning at 7 of the clock, before the House sat: the House was divided about the Fast, 115 were for it, and a 100 against it; it was ordered, that as many of the House, as conveniently could, should on Sunday fortnight after, Assemble and meet together in the Temple Church, there to hear preaching, and to joyn together in prayer, with humiliation and fasting, for the assistance of Gods spirit in all their consultations, during this Parliament, and for the preservation of the Queens Majesty and Her Realms: And the Preachers to be appointed by the Privy Councell that were of the House, that they may be discreet, not meddling with innovation or unquietnesse. This Order was followed by a Message from Her Majesty to the House, declared by Master Vice-chamberlain, that Her Highnesse had great admiration of the rashnesse of this House, in committing such an apparent contempt of Her expresse command, as to put in execution such an innovation without Her privity or pleasure first known. Thereupon Mr. Vice-chamb. moved the House to make humble submission to Her Majesty, acknowledging the said offence, and contempt, craving the remission of the same, with a full purpose to forbear the committing of the like hereafter: and by the consent of the whole House, Mr Vice-chamberlain carried their submission to Her Majesty.

35 *Eli*. Mr. Peter Wentworth, and Sir Henry Bromley, delivered a Petition to the L. Keeper, desiring the Lords of the upper House to be suppliants with them of the lower House, unto Her Majesty for *entailing the succession of the Crown*. Whereof a Bill was ready drawn by them. Her Majesty was highly displeas'd herewith, as contrary to Her former strait command, and charged the Council to call the parties before them: Sir Tho: Henage sent for them, and after speech with them, commanded them to forbear the Parliament; and not to go out of their severall lodgings; after, they were called before the Lord Treasurer, the Lord Buckhurst, and Sir Tho: Henage, Mr. Wentworth was committed by them to the Tower, Sir Hen: Bromley with Mr. Richard Stevens, to whom Sir Hen: Bromley had imparted the matter, were sent to the Fleet, as also Mr. Welch the other Knight for Worcester-shire.

In the same Parliament Mr. Morrice Attorney of the Court of Wards, moved against the hard courses of the Bishops, Ordinaries, and other Ecclesiasticall Judges in their Courts, used towards sundry learned, and godly Ministers, and Preachers, and spake against subscription, and Oaths: and offer'd a Bill to be read against imprisonment for refusal of Oaths: Mr. Dalton oppos'd the reading of it, as a thing expressly against Her Majesties command, to meddle in: Doctor Lewin shewed that subscription was used even at Geneva: At two of the clock the same day the Speaker, M. Coke (afterwards Sir Edw. Coke) was sent for to the Court, where the Queen Her self gave him in command a Message to the House: She told him *it being wholly in Her power to call, to determine, to assent, or dissent to any thing done in Parliament: that the calling of this was only, that the majesty of God might be more religiously observed, by compelling by some sharp laws*  
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*such as neglect that service: and that the safety of Her Majesties Person, and the Realm might be provided for: It was not meant they should meddle with matters of State, or causes Ecclesiasticall (for so Her Majesty tearmed them) she wondred that any could be of so high commandement, to attempt (they were Her own words) a thing so expressly contrary to that which She had commanded: wherefore with this She was highly offended: And because the words spoken by my L. Keeper, are not now perhaps well remembred, or (some be now here that were not then present. Her Majesties present charge and expresse Command is, that no Bill touching the said matter of State or reformation in causes Ecclesiasticall, be exhibited, and upon my allegiance (saith Mr. Coke) I am charged if any such Bill be exhibited not to read it. I have been credibly informed that the Queen sent a Messenger, or Serjeant at Armes into the House of Commons, and tooke out Mr. Morrice, and committed him to prison: within few daies after, I find Mr. Wroth moved in the House, that they might be humble suitors to Her Majesty, that She would be pleas'd to set at liberty those Members of the House that were restrained. To this it was answered by all the Privy Counsellors, that Her Majesty had committed them for causes best known to Her self, and to presse Her Highnesse with this suit, would but hinder them whose good is sought: that the House must not call the Queen to accompt for what she doth of Her Royall Authority, that the causes for which they are restrained may be high and dangerous, that Her Majesty liketh no such Questions, neither doth it become the House to search into such matters.*

In the 39 *Eli*. The Commons were told, their privilege was *Yea*, and *No*: and that Her Majesties pleasure was, that if the Speaker perceived any idle heads which would not stick to hazard their own estates; which will

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meddle with reforming the Church, and transforming the Common-weal, and do exhibit Bills to that purpose; the Speaker should not receive them till they were viewed and considered by those, whom it is fitter should consider of such things, and can better judge of them: and at the end of this Parliament, the Queen refused to passe 48 Bills which had passed both Houses.

In the 28 of *Eliz.* the Queen said, *She was sorry the Commons medled with chusing and returning Knights of the Shire for Norfolk, a thing impertinent for the House to deal withall, and only belonging to the office and charge of the L. Chancellor, from whom the Writs issue, and are returned.*

4 *Hen. 4.* The 10 of *October*, the Chancellor before the King declared, *the Commons had sent to the King, praying Him that they might have advice, and communication with certain Lords about matters of businesse in Parliament, for the common good of the Realm: which prayer Our Lord the King graciously granted, making protestation, He would not do it of duty, nor of custome, but of his speciall grace at this time: and therefore Our Lord the King charged the Clark of the Parliament, that this Protestation should be entred on record upon the Parliament Roll: which the King made known to them by the Lord Say, and his Secretary; how that neither of due, nor of custome, our Lord the King ought to grant any Lords to enter into communication with them of matters touching the Parliament, but by His speciall grace at this time he hath granted their request in this particular: upon which matter, the said Steward & Secretary made report to the King in Parliament; that the said Commons knew well that they could not have any such Lords to commune with them, of any businesse of Parliament, without speciall grace and command of the King Himself.*

It hath heretofore been a question, whether it be not an infringing,

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infringing, and prejudice to the liberties and priviledges of the House of Commons, for them to joyne in conference with the Lords in cases of benevolence, or contribution, without a Bill.

In the 35 *Eliz.* on Tuesday the 1 of *March*, Mr. *Egerton*, Attorney generall, and Doct. *Carey* came with a Message from the Lords; their Lordships desired to put the House in remembrance of the Speech delivered by the L. Keeper, the first day, for consultation and provision of treasure, to be had against the great and imminent dangers of the Realm; thereupon their Lordships did look to have somthing from the Houses, touching those causes before this time (and yet the Parliament had set but 3 daies, for it began *Feb. 26.*) and therefore their Lordships had hitherto omitted to doe any thing therein themselves. And thereupon their Lordships desired, that according to former laudable usages between both Houses in such like cases a Cōmittee of Commons may have conference with a Cōmittee of Lords touching provision of Treasure against the great dangers of the Realm; which was presently resolved by the whole House, and they signified to their Lordships the willing, & ready assent of the whole House. At the meeting, the Lords negatively affirm, not to assent to lesse then 3 Subsidies, and doe insift for a second Conference. *M. Francis Bacon* yeilded to the Subsidy, but opposed the joyning with the Lords, as contrary to the priviledges of the House of Commons; thereupon the House resolved to have no Conference with the Lords, but to give their Lordships most humble and dutifull thanks with all reverence for their favourable, and courteous offer of Conference, and to signifie that the Commons cannot in those cases of benevolence, or contribution joyne in conference with their Lordships without prejudice to the liberties and priviledges of the House: and to request their Lordships to hold the Members of this House excused in their not-assenting to their Lordships said motion for conference, for that so to have assented without a Bill had been contrary to the liberties and priviledges of this House, and also contrary to the

former presidents of the same House in like cases had. This answer delivered to the Lords by the Chancellor of the Exchequer, their Lordships said they well hoped to have had a Conference according to their former request, and desir'd to see those precedents by which the Comons seem to refuse the said Conference. But in conclusion it was agreed unto upon the motion of *S<sup>r</sup> Walter Raleigh*, who moved, that without naming a Subsidy, it might be propounded in generall words, to have a Conference touching the dangers of the Realm, and the necessary supply of Treasure to be provided speedily for the same, according to the proportion of the necessity.

In the 43 *Eliz.* Serjeant *Heal* said in Parliament, *he mervail'd the House stood either at the granting of a Subsidy or time of payment, when all we have is Her Majesties, and She may lawfully at Her pleasure take it from us, and that She had as much right to all our Lands and Goods, as to any Revenue of the Crown, and he (said he) could prove it by precedents in the time of Hen. 3. K. John and K. Stephen.* The ground upon which this Serjeant at Law went, may be thought the same *Sir Edw. Coke* delivers in his *Institutes*, where he saith, *the first Kings of this Realm had all the Lands of England in Demesne, and the great Manors and Royalties they reserved to themselves, and of the remnant for the defence of the Kingdome enfeoffed the Barons:* from whence it appears, that no man holds any lands but under a condition to defend the Realm, and upon the self-same ground also the Kings Prerogative is raised, as being a preheminance, in cases of necessity, above, and before the law of property, or inheritance. Certain it is before the Commons were ever chosen to come to Parliament, Taxes or Subsidies were raised and paid without their gift. The great and long continued subsidy of *Dane-gelt* was without any gift of the Comons, or of any Parliament at all that can be proved: in the 8 *Hen. 3.* a Subsidy of 2 Marks in silver upon every Knights fee was granted to the King by the *Nobles* without any Commons. At the passing of a Bill of Subsidies, the words of the King are,  
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*The King thanks His loyall Subjects, accepts their good will, and also will have it so: le roy remercie ses loyaux subjects, accept leur benevolence, & aussi ainsi le veult: which last words of ainsi le veult, the King wills it to be so, are the only words that makes the Act of Subsidy a Law to bind every man to the payment of it.*

In the 39 *Eliz.* The Commons, by their Speaker, complaining of *Monopolies*, the Queen spake in private to the L. Keeper, who then made answer touching *Monopolies*, that *Her Majesty hoped Her dutifull and loving Subjects would not take away Her Prerogative, which is the chiefest floure in Her Garland, and the principall and head pearl in Her Crown and Diadem, but that they will rather leave that to Her disposition.*

The second point is, that the Free-holders, or Counties doe not, nor cannot give priviledge to the Commons in Parliament. They that are under the law cannot protect against it, they have no such priviledge themselves as to be free from Arrests, and Actions: for if they had, then it had been no priviledge, but it would be the Common Law: And what they have not, they cannot give; *Nemo dat quod non habet*, neither do the Free-holders pretend to give any such priviledge, either at their election, or by any subsequent Act; there is no mention of any such thing in the return of the Writ; nor in the Indentures between the Sheriff, and the Free-holders.

The third point remains, That priviledge of Parliament is granted by the King. It is a known rule, *that which gives the form, gives the consequences of the form*, the King by His Writ gives the very essence, and form to the Parliament: therefore priviledges which are but consequences of the form, must necessarily flow from the King.

All other priviledges and protections are the acts of the King; and by the Kings Writ *Sir Edw. Coke* saith, that the *protection of mens persons, servants, and goods, is done by a Writ of grace from the King.* At the presentment of the Speaker of the House of Commons to the King upon the first day of Parliament, The  
Speaker

Speaker in the name and behoof of the Commons, humbly craveth that His Majesty would be graciously pleased to grant them their accustomed liberties and priviledges: which Petition of theirs, is a faire recognition of the primitive grace and favour of Kings in bestowing of priviledge, and it is a threwd argument against any other title: For our Ancestors were not so ceremonious nor so full of complement as to beg that by *Grace* which they might claim by *Right*. And the renewing of this Petition every Parliament argues the grant to be but temporary during onely the present Parliament, and that they have been accustomed, when they have been accustomedly sued, or petitioned for. I will close this point with the judgement of King *James*, who in His Declaration touching His proceedings in Parliament 1621. resolves, *that most priviledges of Parliament grew from precedents which rather shew a toleration then an inheritance, therefore He could not allow of the stile, calling it Their ancient and undoubted right and inheritance, but could rather have wished that they had said, their priviledges were derived from the grace and permission of His Ancestors and Him: And thereupon He concludes, He cannot with patience endure His Subjects to use such Antimonarchicall words concerning their liberties except they had subjoyned, that they were granted unto them by the grace and favours of His Predecessors: yet He promiseth to be carefull of whatsoever Priviledges they enjoy by long custome and uncontrolled and lawfull Precedents.*

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*ERRATA.*

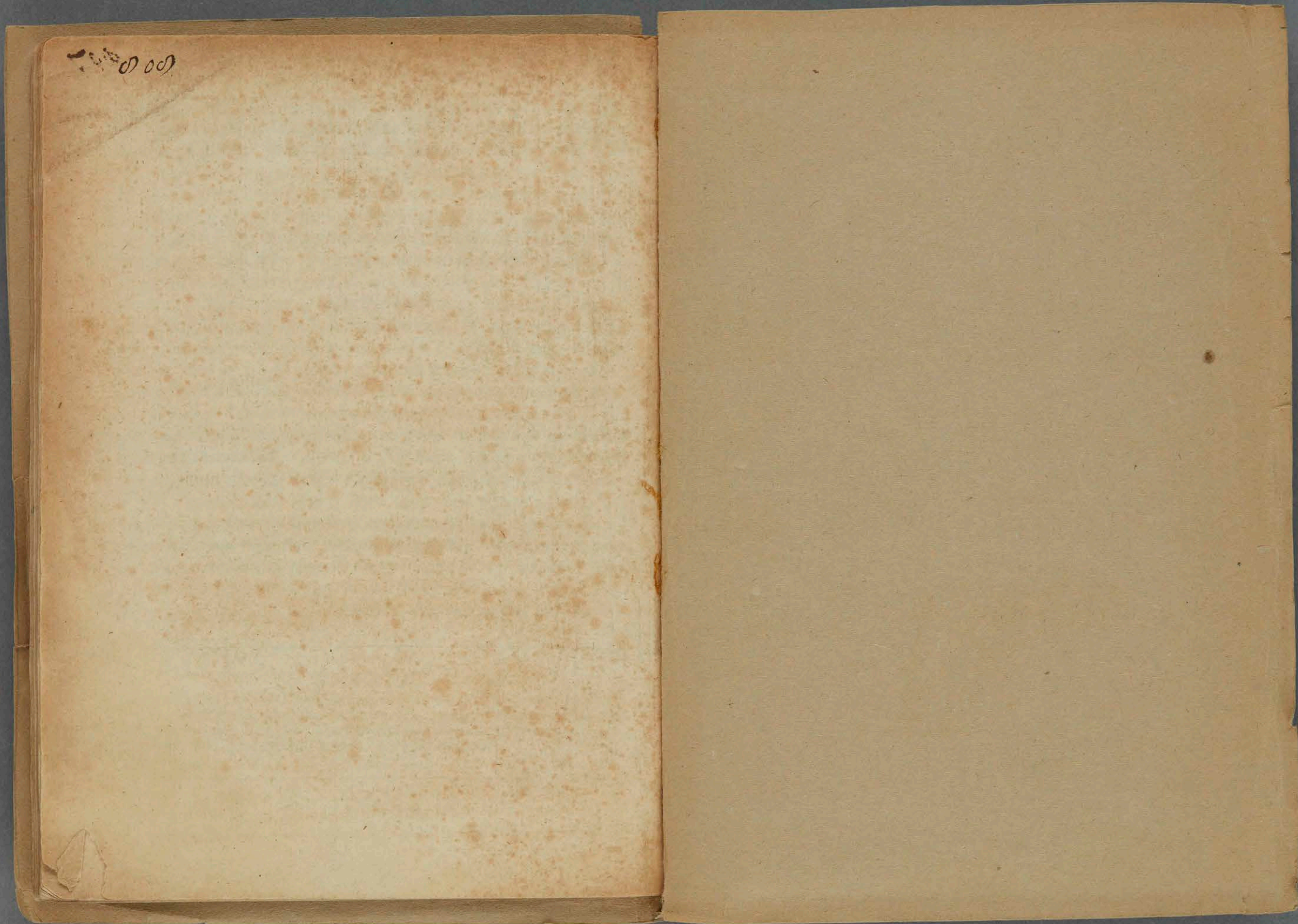
p. Ag. 2. lin. 24. read *interfuerint* p. 5. l. 15. r. appear in a court p. 6. l. 37. r. *concilio* p. 13. l. 25. r. he caused the Commons also to be assembled by Knights p. 24. l. 17. r. Archdeacons p. 25. l. 30. r. the mind p. 33. l. 15. r. Our Lord the King p. 42. l. 25. r. deny them p. 47. l. 33. r. strengthning. ib. l. 35. r. strength p. 16. l. 11. & 14. for 2l. r. 4os.

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