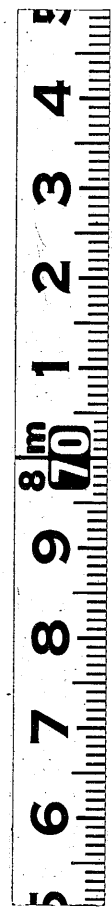


132-2



THE
LIBERTIE

OF THE
Subject:

AGAINST THE
PRETENDED POWER
OF
IMPOSITIONS.

Maintained by an Argument in
Parliament An^o. 7^o. JACOBI Regis.

By { WILLIAM HAKEVVIL }
of Lincoln's Inne Esq.



LONDON,
Printed by R. H. An. Dom. 1641.



To the Reader.

Being very sensible of a
 great Injury lately
 done mee, by the ex-
 treme false printing
 of a smal Treatise of
 my Composing, stoln
 out without my consent, and hearing
 accidentally that some part of this also
 had passed the Presse, I thought good
 for the preventing of the like wrong to
 stay the forwardnesse of the printer un-
 till I had reviewed and corrected it by
 mine owne Notes. For my part, I
 should have been contented altogether
 to have restrained it, if I might, But
 now seeing it must abroad, I shall not
 bee ashamed to let it beare my name,
 and owne the errors of it my self (those

To the Reader.

of the Presse excepted) though heretofore it had gayned so much reputation by some, as it was attributed to a worthier Author. Some there are yet surviving that heard this Argument about thirty yeeres since in the *Commons-House of Parliament*, but it hath now extended it selfe beyond the probable proportion of a Speech or Argument, by the insertion of many Records and Acts of Parliament more at large, which at the delivery of it, were but meerey quoted.

The Endeavour of it is to prove that the just Prerogative of our Kings never warranted them to raise monies at their pleasure, by laying a charge on Merchandize to bee Exported or Imported, without assent of Parliament. But, on the contrary, the settled Lawes of the Land, the Presidents of former Ages, the Acts of our most necessitous and powerfull Princes, and indeed every thing requisite to make the Truth

ap-

To the Reader

apparent, doe as it were unanconsent to discharge us of this unjust and heavy Burthen.

And you shall see herein how the policy of active Princes hath by many waies attempted to undermine those Fortifications which the wisdom of our Ancestors hath rayfed to maintaine themselves from this kinde of Assault. You shall see with how great difficulty their prevailing was withstood: And (which is the glory of Truth) you shall finde those designs which were laid to overthrow our Right, mainly to make for the evidence and confirmation of it. For, whatever unjust Impositions were either exacted by a pretended lawfullnesse, or set up by a commanding power, were by complaint in Parliaments presently following taken down, and remain on Record as (witnesses against themselves) unlawfull, and against our Libertie.

These Reasons and Arguments of

A 3

mine

to the Reader.

How meane soever) those times wherein I urged them, accepted favorably; and since, in their private passage in manuscripts, were entertained in many judicious hands, which made mee somewhat enlarge the conceit that before I had of them; And now seeing necessitie enforceth mee to make them more publique, I must adventure them to the censure of these nice times. Beneficiall (happily) they may be to some, prejudiciall I hope to none: In which confidence (having the leave of Authority) they have likewise my leave to goe abroad.

Vale.
W. H.

The



The Contents.

- 1 **T**hat there was ever some Custome due to the King by the Common-Law. folio 6.
- 2 That it was a sum certaine by the Common-Law. 10.
- 3 That all the Revenues which the Common Law giveth to the King (out of the interest of the Subject) are certaine, or reducible to a certainty by some legall course, and none left to the Kings pleasure. 11.
- 4 The reasons why the Law requireth such certainty in those Revenues which the King hath out of the interest of the Subject. 12.
- 5 Examples of Revenues given by the Common Law to the King, out of the interest of the Subject, and that they are all certaine. 13.
- 6 Answer to an Objection, that the King may lay Impositions upon extraordinary occasions. 21.
- 7 Arguments drawne from the actions of our Kings, that they had no power to impose. 25.
- 8 Arguments drawn from the forbearance of our Kings to lay Impositions, notwithstanding their urgent occasions. 34.
- 9 The difference between the Presidents urged, of Impositions laid by the ancient Kings, and those which are now laid. 29.
- 10 A particular answer to the Imposition of 3^d in the pound, laid upon Merchant-strangers by Charta Mercatoria, 31 Ed. 1. 42, 43.
- 11 The urgent occasions which Ed. 2. had to lay Impositions, and yet how he forbore. 48.
- 12 The severall policies used by Ed. 3. for the introducing of the power of Imposing: 1. Impositions taken by colour of a voluntary Grant from Merchants, 49. 2 By way of dispensation with penall Lawes, 59. 3 By way of Ordinance in Parliaments, 61. 4 By colour of a Loane by Merchants, 64. 5 By Grants of Merchants for Liberties granted to them, 65. 6 By expresse and direct commandment, 66. with severall answeres to all these severall wayes.
- 13 In what Statutes Impositions are mentioned after Edw. 3. time, untill Qu. Maries; and upon what occasions, and how to be interpreted. 73.
- 14 The signification of the words Imposition, Toll, Maletolt, Custuma & Consuetudo magna & parva. 73, 108.

15. No

The Contents.

- 15 No Imposition laid from Edw. 3. time till Qu. Maries. 78.
- 16 What urgent occasions all the Kings from Edw. 3. till Qu. Maries time, had to lay Impositions, and yet did it not. Rich. 2. f. 79. Hen. 4. f. 82. Hen. 5. f. 84. Hen. 6. f. 85. Edw. 4. f. 87. Hen. 7. f. 86. Hen. 8. f. 89. Edw. 6. f. 92. with a Corollary of all those times and occasions. 92.
- 17 The Impositions laid by Qu. Mary, and how answered. 93.
- 18 Admitting the Kings had power by the Common Law to lay Impositions, yet how they are barred by Statutes. 98.
- 19 Magna Charta, cap. 30. urged against Impositions, and the objections made against it, answered. 1. Objection, That it extendeth only to Merchant-Strangers, f. 100. 2. That it was made only against Taxes within the Land, f. 101. 3. That by the exception in the end of the Statute, the Kings Prerogative is saved. 111.
- 20 The Statute de Tallagio non concedendo urged, with the answers to the objections, made thereunto, 113. The exposition of the words Tallage, Ayde, Subsidie. 112, 114.
- 21 The Statute of 25 Ed. 1. cap. 7. urged against Impositions, and cleared from Objections: 1. That it is against the excesse of Impositions, and not against the Right, f. 115, 116. 2. That it is only against Impositions on woolls. 118.
- 22 The Statute of 14 Ed. 3. cap. 21. urged against Impositions, and cleared from Objections: 1. That it extendeth only to Impositions within the Land, and not upon merchandizes, with an exposition of the word Charge. 118, 121.
- 23 Answers to the Reasons urged in maintenance of Impositions: 1. That because it cannot appeare that the ancient Customes were set by Parliament, therefore they were impos'd by the King. 125. The Antiquity of Parliaments. 128.
- 24 Answer to the the second Reason urged for Impositions, That the King may totally restraine importation and exportation, and therefore may restraine sub modo by laying Impositions. 124, 125, &c.
- 25 Answer to the third Reason, That the Ports are the Kings, and that he may open and shut them on what conditions he pleaseth. 136.
- 26 Answer to the fourth Reason, That the King is bound to protect Merchants, and safeguard the Seas, and that therefore he may lay moderate Impositions, for raising of money to defray his charges. 138.
- 27 Answer to the fifth objection, That all forreign Princes have power to impose; and if our King should not have the like, it might be very inconvenient to this State. *ibid.*
- 28 A summary Conclusion of the whole Argument. 141.

Mr.

(I)



Mr. SPEAKER:

THE Question now in debate amongst us, is, Whether his M^{tie}. may, by his Prerogative Royall (without assent of Parliament) at his own will and pleasure, lay a new Charge or Imposition upon Merchandizes, to be brought into, or out of this Kingdome of England; and enforce Merchants to pay the same.

I Must confesse, that when this Point was first stirred amongst us, and that wee, not contented to seeke redresse for the excesse of the present Impositions, resolved to proceed farther, by calling his Majesties right of Imposing into question, I was very sory: for I saw we were then in a fair way to have obtained a very great abatement of the Impositions that now

B

are;

(2)

are; and besides, we had his Majesties promise never to lay any more but in Parliament time, by the advice and free consent of his Subjects, repaying hither from all parts of the Realme; This hope of a present ease, and gracious promise for the time to come, gave me (I confesse) a full satisfaction; especially, seeing I was confidently perswaded that his Majesties right to impose was very cleere and not to be disputed, and that therefore by drawing into question the right, wee might give his Majesty just occasion to withdraw from us his gracious purpose of the present abatement, as also his promise for the time to come: For Syr, when the Case of *Bates* (who as you know was called into question for refusing to pay the Imposition laid upon *Curraus*) was argued in the Exchequer, in which Case his Majesties right to Impose, was solemnly disputed (and there resolved for his Majesty) I was then present at all the Arguments both at the Bar and at the Bench; And I doe confesse that by the weighty and unanswerable reasons (as I then conceived them) of those grave and reverend Judges, sitting in their seate of Justice. I was much perswaded; but by those many records vouched by them, I was altogether overcome, and as it were vanquish't to yeeld to them; for Syr, *Ratio suadet, Auctoritas vincit*: But though I were then, and when the Question was first moved in this house, very confident, yet as you shall perceive anon, I was

Fleming Ch.
Bar.
Clarke.
Savil.

(3)

was not very constant in that opinion; for being (amongst others) imployed by this house to make search in the Exchequer for Records, which (by the practise of former ages) might guide our judgements in this weighty point, and having diligently collected the Arguments made in the Exchequer, and not only so, but compared my owne collections with Reports thereof made by divers other of my friends, & finding that some of the Records urg'd in those Arguments were untruly vouched (and many misaplyed) I then began to stagger in my opinion, and presently fell to examine the weight of the Reasons which had been alledged, which in my poore censure, I found not of strength sufficient (without the full concurrence of cleere Presidents of former times) to maintaine the Judgement given, or my Opinion grounded thereupon: And therefore (Syr) In love to the truth I did forsake my former opinion as erroneous, and do now embrace the contrary, that is, *That his Majesty hath no right to impose*, and so am now become a convert. Those Reasons that moved mee thus to change, and the weakenesse which I discovered in the Reasons alledged against the opinion which I now hold; I will, with your patience, open unto you, and will therein follow the commandement of *Christ* to *Peter*. *Being converted, seeke to convert my brethren,*

As touching the Judgement in the Exchequer

(4)

quer standing yet in force, so often cast as a block in our way, though I much reverence the persons of those yet living, and the memory of those that are with God, who gave the Judgment: Yet seeing (as I hope I shall be able evidently to prove) the same to be against the great *Charter* of our Liberties, I can esteeme no otherwise of it then the Statute of 25. *Ed.* 1. cap. 10. pronounceth of all such Judgements, that is; that it is void and to be held for nought. Thus much I thought good to say by way of Preamble or Introduction to the matter: now (by your favors) I will enter into the debate of the Question; in handling of which I will purposely avoid the repetition of any thing that hath been spoken by any man that hath argued before, as knowing in what presence I speake. That I may the better convey my selfe through my Argument, and be the better conceived of you that are to heare me, I will divide that which I have to say into certain parts, which I will prosecute in order.

First, I hold it necessary to consider whether Custom were due to the king by the Common-Law.

Secondly, admitting it to be due by the Common-Law, whether it were a summe certain, not to be increased at the kings pleasure, or otherwise.

Thirdly, supposing that by the Common-Law the king might, by way of imposition, have

(5)

have increased his Custom at his owne will, by his absolute power, without assent in Parliament, whether or no hee be not bound to the contrary by Acts of Parliament; In the handling of which part, I will consider the strength of every Act of Parliament hitherto vouched to this purpose, answering, as I goe, such objections as have been made against those Statutes by such as have mainteined that the king is not bound by them. I will also add a Statute or two as yet not remembred by any. Lastly, I will discover unto you the weaknesse of such Reasons as have been made in maintenance of the Kings right to Impose; in the prosecuting of which parts I will (as occasion is offered) give some answeare to that which hath been last spoken; as knowing it to be expected at my hands.

By Sir Robert
Hitsham.

First then to consider *Whether there were by the Common-Law any duty belonging to the King upon Merchandize to be caried into or out of the kingdom, known by the name of Custom.* Though the maintenance of Custome to be due by the Common-Law be a point of such consequence to them that mainteined the Kings right to Impose, as without the upholding of which their opinion (as I conceive) is not so much as colourably to be mainteined, and that to maintein the same it be not at all necessary to induce my conclusion; and although to admit it, it may seem perhaps no good policy of Argument, but

B 3. rather

(6)

rather a great disadvantage to me to admit that, without which the contrary part cannot uphold their opinion, and which being admitted cannot make any thing for me; yet because we are here not as Arguers at the Bar, but as Judges in a high-Court, and that all our ends tend to the discovery of the truth: I will therefore not only admit it, but will maintein it as well as I can.

That there was ever some Custom due by the Common Law.

That Custom is due by the Common-Law I collect, first by the name thereof, for though at this day it bee (and so hath beene for more then 350 yeeres as I shall have occasion more fully anon to open unto you) called in our law-Latin *Custum*, yet in ancient time it had no other name here amongst us (for I meane not to wander into forreign-learning) then *Consuetudo*, as may appeare by the Statute of *Magna Charta* cap. 30. *Per rectas & antiquas Consuetudines* (for I shall anon directly prove unto you that *Consuetudo* in that place is not to be understood, a usage, as hath been said; but in that sence which I take it.) This name *Consuetudo* in the same sence is also found in many ancient Records brought into this house upon the late search; That this name then *Consuetudo*, which implies an approved continuance without a known beginning should by the Common-Law be given to this Revenue more then to any other Revenue belonging to the King, nay, that this terme which is the common and generall

(7)

all name to all common and approved usages, of what nature or kinde soever should be applied to this dutie rather then to any other amongst all the ancient usages and Customes which the Common-Law imbraceth, cannot but denote the great antiquity thereof, and more then so, the allowance and approbation thereof by the Common-Law; for doubtlesse, if, beside the antiquity of this dutie, the Common-Law had not also allowed the reasonableness of it, and in a manner the necessity of it, it would never have denoted it unto us by this name of excellency above all other Customes which require reasonableness as well as antiquity: Therefore doubtlesse this duty, thus favored, is a Childe of the Common-Law; nay farther, it is of the very essence of a Custome to have his only beginning by allowance of the Common-Law; for that which beginneth by private contract of partie, or by Act of Parliament, & dependeth not wholly upon the allowance of the Common-Law (by one of which three waies, all things considerable in Law, have their commencements) cannot bee called or bee a Custome, in Name or Deede; moreover considering that this Custome is not limited to any one place within the Realme, wee shall so little neede to be curious in affirming it to bee due by the Common-Law, as wee may boldly pronounce it to be part of the Common-Law it selfe. Thus you see that the very name

Com-

(8)

Consuetudo proves Custome to bee a dutie by Common-Law : To this may bee added that *Magna Charta* cap. 30. which (Statute was made little more then 150 yeeres after the Conquest) termeth this not only *Consuetudo* (which as I have said, implies Antiquity beyond all remembrance of a beginning) but *Antiqua Consuetudo*; not onely Custome; but old and ancient Custome. And in comparison to this old Custome due at Common-Law, the Custome upon Staple Commodities, given or increased by act of Parliament, 3 E. 1. not printed, was called *Nova Consuetudo* : Before the making of which Statute of 3 E. 1. you may further see, that Custome was due: For *an. 52. H. 3.* in the Statute of the Exchequer, printed, you may read, that the Collectors of the Custome of Wools were to yeeld their accompt twice every yeere into the Exchequer. But that which most of all moveth me to beleve that this duty was and is due by the Common-Law, is this; That in all Cases where the Common-Law putteth the King to sustaine Charge for the protection of the Subject, it alwayes yeeldeth him out of the thing protected some gaine towards the maintenance of the Charge : As for the protection of Wards, Lunariques, and Ideots, the profits of their Lands; For the maintenance of the Courts of Justice, it giveth him Fines for purchase of Originall writs, and Fines *pro licentia Concordandi*, which in supposition of Law are no other than

(9)

than Fines paid for not proceeding according to the surety by pledges, put in upon purchase of the Originall ; and for troubling without cause the Kings Justices, who are maintained in their places at the Kings charge: There are many the like profits of Court given by the Common-Law to the King for the maintenance of his charge in the administring of Justice.

This observation, which might be further proved by divers other instances in things of other nature, maketh me to think, that because the Common-Law expecteth that the King should protect Merchants in their Trades, by maintaining, repairing, and fortifying the Havens at home; by clearing the Sea of Pirates and Enemies in their passage; and by maintaining Ambassadors abroad to treat with forreigne Princes upon all such occasions: That it also giveth him out of Merchandizes exported and imported, some profit for the sustentation of this publique charge; otherwise were the Law very unreasonable and unjust. So as to prove that by the Common-Law Custome is due to the King, I shall need to say no more, especially considering it hath not onely been yeilded to, but proved by those which maintain a contrary Conclusion. I will therefore proceed to my second Consideration : *Whether that profit upon Merchandizes, which the Common-Law for these respects gave unto the King, were a duty certaine, not to be increased or enhanced at the Kings*

(10)

Kings will and pleasure, without a common assent in Parliament? Or otherwise, Whether the Common Law hath left an absolute power in the King, to demand in this case more or lesse at his owne pleasure, and to compell his Subjects to pay it? The resolving of which question will as I conceive, make an end of this controversie between us; for what are these Impositions which wee complaine of, other than the enhauncing of the Custome by the Kings absolute pleasure?

That Custome due by Common-Law, was a Sum certain.

That this duty given by the Common-Law (as I have proved) unto the King, was and is a duty certain, not to be enhaunced by the King at his owne pleasure, without assent in Parliament, I hope I shall be able cleerly to prove unto you: In maintainance of which, I will use some Arguments of direct prooffe, and others of great presumption and probability. And first, I lay this as a ground which will not be denyed me by any man; *That the Common-Law of England (as also all other wise Lawes in the World) delight in certainty, and abandon incertainty, as the mother of all debate and confusion, than which nothing is more odious in Law:* And therefore the rule is, *Quod certum est retinendum est, quod incertum est dimittendum;* nay further, *quod incertum est nihil est:* This is the censure of Law upon all the acts of men which fall under the judgment of the Law. If then the Law so judge of the acts of men, holding them for nought and voyde,

(11)

voyde that are incertaine; how much more then doth the Law require certainty in her own Acts, which are to binde all men: And if in any of the acts of Law certainty be to be specially expected, most of all is it requisite that bounds of limitation and certainty be set between the King and his poor Subject, between the mighty and the weak, between the Lion and the Lamb. And if in any Case between the King and his Subject more than other, this certainty be required, most of all it is requisite in Cases where the Common-Law giveth the King a perpetuall profit or revenue to be raised out of the interest and property of his poor Subjects estate, either in lands or goods. If in all other things the Law (as I have said, and wherein I suppose you have yeelded to me) doe require certainty and limitation, and onely in this case where it is most requisite, it hath omitted and neglected it, we must conclude the Law to be most unreasonable, improvident, and contrary to it selfe, which to say, were to conclude it to be no Law. Out of these grounds I may then in my opinion safely and with some confidence deduce and maintain this position; *That the Common-Law of England giveth to the King, as to the head of the Commonwealth, no perpetuall revenue or matter of profit out of the interest or property of the Subject, but it either limiteth a certainty therein at the first, or otherwise hath so provided, that if it be uncertaine in it selfe, it is reduceable to a certainty*

That all the Revenues which the Common Law giveth to the King out of the interest of the Subject are certain, or reduceable to a certainty by a legall course: and none left to the Kings pleasure.

(12)

only by a legal course, that is to say, either by Parliament, by Judges, or Jury; & not by the Kings own absolute will and pleasure. Though this Position be grounded upon those sure foundations out of which I have (as you perceive) drawn it, and needs no farther proof: yet because you shal see how plentiful the truth is in reasons to maintain it selfe, I will further open unto you the particular reasons of this position, which are these:

The Reasons why the Law requireth such certainty in those Revenues.

First, the Law requireth certainty in matter of profit, between the King and the poor Subject, because to make any man Judge in his own case, especially the mighty over the weake, and that in a point of profit to him that judgeth, were to leave a way open to oppression and bondage.

Secondly, because by reducing it to a certainty, the King may know what certainty to expect; that so he may order his charge accordingly.

Thirdly, that the Subject may know likewise what he is to pay, that so he may know certainly what shall remaine to him as his own.

Finally, that the King may not depend upon the good will of his Subject for his revenue, seeing the Law expecteth he should beare the charge, but may know in certainty what to claime as due to him, and may accordingly compell the Subject to pay it; and that the Subject may not be under the Kings absolute power to pay what the King pleaseth, which may perhaps

(13)

perhaps extend to the whole value of the Merchandize.

You see in generall, how the Law by requiring certainty in matter of profit between the King and the Subject, preventeth many mischeifes which would fall out if the Law were otherwise; and therefore without more saying, I might here conclude, that Custome being due by the Common-Law, was and is a sum certain, not to be increased at the Kings pleasure by way of Imposition: but because there are many other revenues due to the King by the Common-Law, as well as Custome; if they all, or as many as we can call to minde, shall fall out to bee (as I have said) summes certaine and not subject to bee increased at the kings will, this will bee a forcible Argument, that custome is likewise certain and not to be inhannced at the kings pleasure; for, this Argument drawne à simili is of great force, and the most usuall of any other in debate of things doubtfull in Law. *Que Legibus decisa non sunt Index ex his que decisa sunt statuet, & de similibus ad similia procedat.* May it please you to consider in this respect other revenues which the Common-Law of this Land giveth the King; and according to the rule, to decide that which is in question by the same rule and measure by which other things of the same nature have been decided and ordered. The Common-Law giveth the King a Fine for the purchase of an original writ;

Examples of Revenues given by the Common-Law to the King, out of the interest of the Subject; that they are certaine.

(41)

Is it certaine? it is; and ever hath been; if the debt or damages demanded amount to above forty pounds, the Fine is, and ever hath been fixe shil. eight pence, and no more: if to a hundred pounds, then ten shillings, and no more: May the King increase this Fine at his pleasure? there is no man that will say he may. There is a Fine due by the Common-Law, *pro Licentia concordandi*; is it not certainly known, and so hath alwayes been, to be the tenth part of the Land comprised in the writ of Covenant? And is not also the Post-Fine thereupon due certainly known to be once and a halfe as much more as the Fine *pro licentia concordandi*, or Pre-Fine? As for example, when the Pre-fine is ten shillings, the Post-fine to be fifteen shillings: and can the King demand any more of the Subject? So likewise, when in a writ of Right, the Demandant alleadging the seisin of his Ancestor, will not be compelled to prove the seisin alleadged, is he not to tender to the King a summe certain of a demy-mark, to have this benefit? was it ever more or lesse? or can it now be more if the King would? these, amongst many others, are duties belonging to the King by the Common Law from the Subject, for the maintainance of his Charge in the administration of Justice, which the Civilians call *Veſtigal Judicarium*. There are also in divers other Cases duties certain, belonging to the King by the Common-Law: As for example; the reliefe for an Earledome is certainly

(15)

tainly knowne to be a hundred pounds; for a Barony a hundred markes; for a Knights fee a hundred shillings: all which in the Statute of *Magna Charta, cap.* are called old and ancient duties: this is *Veſtigal Patrimoniale*; of which sort I could produce many others, all which have like certainty. Nay, there is one duty well known to us all, which the Common-Law giveth to the King; and is in his nature a Custome (our very case) in which the King is bound to a certainty which he cannot exceed; and that is *Prisage*, a duty given by the Common-Law to the King, upon every shiploading of Wine brought into the kingdom by English Merchants; and is one Tun of Wine before the Mast, and another behinde. I am unwilling to trouble you with any more particulars of this kinde: but let any man shew me one particular to the contrary, and I will then yeeld, that my position being false in one, may be in more: But till my position hath been in this point infringed, this generall concordance of the Law in all these particulars, is argument enough for me, without having alleadged other reasons, to conclude, that Custome being as all these are, a revenue due to the King by the Common-Law, arising out of the property and interest of the Subject, is (as all these are) limited and bounded by the Common-Law to a certainty, which the King hath not power to increase: *Ubi eadem Ratio, eadem Lex*. It may perhaps be here objected,

(16)

jected, that the Ayd paid to the King upon the Knighting of his eldest Sonne, or marriage of his eldest Daughter, was by the Common-Law uncertaine; and that the King did take more or lesse at his pleasure, untill he was bound to the contrary by Statute. To this I make divers answers: Though it were indeed a summe uncertaine, yet the Common-Law did in some sort give it a limitation; for it is by a speciall name called *Reasonable Ayd*: So as if the summe demanded doe exceed Reason, it became from a *Reasonable Ayd* an unjust exaction. Besides, this revenue was a thing happening very rarely, and therefore the certainty thereof not so much regarded by the Law: and yet it is to be observed how the frame of this Common-wealth could not long indure incertainty even in this casuall Revenue; but it was reduced to a certainty of twenty shillings upon a Knights fee, and twenty shillings upon every twenty pounds Soccage land, by the Statute of 25.E.1. If in this casuall Revenue they were so carefull to be at a certainty, to avoid unreasonable exactions (as the words of the Statute are) how much more carefull would they have been, for the same cause to have reduced the great and annuall Revenue of the Custome to a certainty, if they had not thought it to have been certaine by the Common-Law, or limited by Statute-Law before that time made? But (Sir) that which I rely upon for answer to this objection, is this: Reasonable

(17)

sonable Ayd was and is by the Common-Law due as well to meane Lords as to the King: But meane Lords were not limited to a certainty, otherwise than in generall, that it must be reasonable, as I have said; therefore to limit the King any further, was no reason: And this answer may be given for all uncertaine Revenues belonging to the King, the like of which meane Lords have of their Tenants, for the incertainty of which there may also be given especiall reason, because these duties first began by speciall contract and agreement between the Lord and the Tenant, and not directly by operation of the Common Law, and so were certain and uncertain as they did at first agree: and therefore you may be pleased to remember, how in laying my positio I was wary to say, *That such revenues as are due to the King as to the head of the Common-wealth* (by which I purposely excluded such revenues as are common to him with other meane Lords) *are alwayes certaine.* I am now according to promise, and in maintenance of a second part of my positio, to shew you, *That where the Common-Law giveth the King a Revenue not certaine at the first, that is alwayes reduceable to a certainty by a legal course, as by act of Parliament, Judges, or Jury, and not at the Kings pleasure.* Every man that by his tenure is bound to serve the King in his warres, and failerth, is to pay according to the quantity of his Tenure, a fine by the name of Escuage; this cannot be assessed

D

but

but in Parliament : Upon forfeitures for treason, or otherwise, to the King; though it be a kinde of a certainty that the Law giveth, in giving him all the estate of the party convict, both in goods and Lands, or in goods onely, as the case is; yet for reducing it to a more expresse certainty, the Law requireth that it be found by Office. *Wayfe, Stray, Wreck, Treasure-Trove,* and such like, are no lesse certaine; for the King hath the things themselves in kinde. Fines for misdemeanors are alwayes assessed by the Judges, Amercements in all cases are to be assessed by the Country, and not to be assessed by the King, though the forme of the Judgement be, *Et sit in misericordia Domini Regis,* in the Kings mercy *pro contemptu predict.* Nay, though for punishment of an offence it be by Statute-Law enacted, that an offender shall make Fine and Ransome at the Kings pleasure, the Law even in this case (which is as strong a case as may be) will not leave the assessing of the Fine to the Kings pleasure, to be by him rated privately in his Chamber; but it must be solemnly and legally done in an open Court of Justice by the Judges, who in all other cases are to judge between the King and his people, where the interest or property of the Subject, or any charge or burden upon them doth come in question, as may be proved by the booke of 2 R. 3. fo. 11. Infomuch that I am of opinion, that if a Statute were made, that the King might raise the Customs

stomes at his pleasure, yet might it not be done as now it is, by the Kings absolute power, but by some other legall course, of which the Common-Law doth take notice; as in the case of the Fine and Ransome: much lesse then will the Common-Law permit, that it should depend upon the Kings absolute pleasure, there being no such Statute in the case.

You have heard out of what grounds I first deduced this my position, *That the Law requireth certainty in matter of profit between the King and his people.* You have heard likewise the particular reasons of that position: you have also heard what prooffe I have made by particular cases of like nature to this in question, and how I have applyed them to the point: And so leaving the Judgement of the whole to your wisdomes, who can best discern whether the Argument be of weight, I proceed to my second Reason, which is drawne from *the policy and frame of this Common-wealth, and the providence of the Common-Law.* The which, as it requires at the Subjects hands loyalty and obedience to their Sovereigne; so doth it likewise require at the hands of the Sovereigne, protection and defence of the Subject against all wrongs and injuries whatsoever offered either by one Subject to another, or by the Common Enemy to them all, or any of them.

This Protection, the Law considereth, cannot be without a great charge to the King;

And because, as Christ saith, *[No man goeth to warre upon his owne charge]*, the Common-Law therefore hath not onely given the King great Prerogatives and favours touching his own patrimony, more (I beleeve) than any other Prince in the world hath; but also hath, for the sustentation of his great and necessary expences in the protection of his Subjects, given him out of the interest and property of the Subject an ample, and very honorable revenue in very many particular cases, some of which I will call to your remembrance.

He receiveth out of the Subjects purse for wardships and the dependances thereupon, as we have of late accounted, about forty five thousand pounds by the year. This is a Revenue which no other King of the world hath: And as it appears by the Statute of 14. E. 3. c. 1. *It ought to be employed in maintenance of the warres;* and so doubtlesse was the first institution of the Common-Law: For the Lord hath the profit of the Wardlands to no other end, than to maintain a man in the warre during the infancy of him who otherwise should serve in person.

He hath likewise all forfeitures upon Treason and Outlawry, and upon penall Lawes, Fines and Amerciaments, Profits of Courts, Treasure-Trove, Prifage, Butlerage, Wreck, and so many more, as the very enumeration of the particulars would take up long time.

time. To what other end hath the common-Law thus provided for the maintenance of the Kings charge, by all these wayes and meanes of raising profit out of the Interest and property of the Subjects estate in lands and goods, but onely to this end, That after these duties paid, the poore Subject might hold and enjoy the rest of his estate to his owne use, free and cleare from all other burdens whatsoever? To what end hath the Law given a part to the King, and left the rest to the Subject, if that which is left be also at the Kings will, to make his profit thereof as he pleaseth? To give a small portion to him that may at his pleasure take more, or all, is a vain and an idle act; which shal never be imputed to a wise Law. But it may be objected that as the revenues are ordinary, so are they by the Law provided onely for the susteyning of the kings ordinary charge; and that if the Law have not taken further consideration and limmited some certain course, how upon sudden and extraordinary occasions the kings charge may bee susteined, that there is yet no reason shewed to the contrary, why the king may not upon such occasion take some extraordinary course for the raising of money, as by the laying of Impositions upon Merchandizes, or by a tax within the Realme, rather than the Common wealth for want thereof, should perish or be indangered. And hereupon by the knight that last spake, it was held that

Answer to an objection, that the King may lay Impositions in times of extraordinary occasions.

Sir Robert Hitcham.

(22)

upon occasion of a sudden and unexpected war, the King may not only lay impositions, but levy a tax within the Realme, without assent of Parliament, which position in my opinion is very dangerous; for to admit this were by consequence to bring us into bondage. You say that upon occasion of suddaine warre the king may levy a Tax; who shall be Judge between the king and his people of the occasion? can it be tried by any Legall course in our Law? it cannot: if then, the king himselfe must be the sole Judge in this case, will it not follow that the king may levie a tax at his owne pleasure, seeing his pleasure cannot be bounded by Law? You see into what a mischief the admittance of one error hath drawne you. But for a full answer to the objection, I say, that the providence of the Common-Law is such, and so excellent, as that for the defraying of the kings charge upon any occasions of a suddain warre, it hath, over and above all the ordinary Revenues which it giveth the king (which in the time of warre cannot indeed but fall short) made an excellent provision; for (Sir) *The warre must needs be either offensive or defensive: Offensive*, must either be upon some Nation beyond the Seas, or against the *Scots*; or *Welsh*, or other borderers within the Iland: If it be an *offensive* warre upon some Nation beyond the Seas, it cannot be a sudden Accident, for it is the kings own act; and he may, and 'tis fitting he should take deliberation; and

(23)

and if it be a just and necessary warre, he may crave, and easily obtaine assistance of his Subjects, by grant of Ayd in Parliament: *If an offensive warre upon some of his neighbors within the Continent of this Iland*, as the *Scots*, or the *Welsh*, which also cannot be sudden or unexpected to the king, being his own act; you know how politikely the kings of this Realme have provided, by reserving Tenures, by which many of their Subjects are bound to serve them in those warres in person, at their owne charge: Only a *Defensive warre*, by invasion of forreign enemies, may be sodain: in which case the Law hath not left the king to warre upon his owne expence, or to rely upon his ordinary Revenue, but hath notably provided, That every Subject within the Land, high and low, whether he hold of the king or not, in case of forreign Invasion may be compelled at his own charge to serve the king in person, as it appeares by the opinion of Justice *Thirning*, in 7 H.4. The reason of which, in my opinion, was to no other end, than that the king might have no pretence whatsoever for the raising of money upon his Subjects at his owne pleasure, without their common assent in Parliament. I doe then conclude this Argument, that seeing the Common-Law for maintenance of the Kings ordinary charge, hath given him such an ample Revenue out of the interest and property of the Subject, and provided also for sodaine occasions;

(24)

ons ; that in so doing it hath secluded and secured the rest of the Subjects estate from the Kings power and pleasure ; and consequently, that the King hath not power upon any occasion at his pleasure to charge the estate of his Subjects by Impositions, Tallages, or Taxes (for I hold them all in one degree) or any other burden whatsoever, without the Subjects free and voluntary assent, and that in Parliament : If it were otherwise, you see how it were to the utter dissolution and destruction of that politike frame & constitution of this Common-wealth, which I have opened unto you, and of that excellent wise providence of the Common-Law, for the preserving of property, and the avoydance of oppression. These two Arguments used by me, that of *Certainty*, and this of *the provision made by the Common-Law*, are in my poor opinion, Arguments of direct prooffe, that the King cannot Impose. I will now, according to my division, urge an Argument or two of Inference and presumption; the rather, because Arguments of this nature have been much enforced by those who have maintained the contrary opinion, (especially by Mr. Solicitor:) I call them Arguments of inference, and yet in my opinion, those which I shall urge are also of good prooffe; such as they are, you shall judge of them. *They are drawn neither from the actions or forbearances of the Kings of this Realme, or, from the actions and forbearances of the people.*

Sir Francis
Bacon.

First,

(25)

First, in the actions and forbearances of the Kings, I observe, that all the Kings of this Realm since *Hen. 3.* have sought and obtained an increase of Custome; more or lesse, by the name of Subsidie, of the gift of their Subjects in Parliament: Nay, some of them, and those not the weakest in Spirit, or power, but the most courageous and potent in that whole ranke, even that mighty and victorious Prince, King *Ed. 3.* being to undertake a just and honorable warre, than which there could not happen a better or juster occasion to have made use of his Prerogative of Imposing, did nevertheless at that time stoope so low in this point, that he did in full assembly of the three States, pray his Subjects to grant him a Reliefe in this kinde for the maintenance of his warre, and that to endure but for a short time; and further, was well content to suffer his prayer in that behalfe to be entered of Record to the memory of all posterity: And the succeeding Kings have also suffered the same to be printed, as may appeare by the printed Statutes at large, *An. 14. Ed. 3. cap. 21.* Is it likely, that if any or all these Kings had thought they had had in them any lawfull power by just Prerogative to have laid Impositions at their pleasure, that they would not rather have made use of that, than have taken this course by act of Parliament, so full of delay, so prejudiciall to their Right, so subject to the pleasure of their people, who never undergoe Burdens but with

Arguments
drawne from
the actions of
the Kings, that
they have no
power to Im-
pose.

E

MUR-

(26)

murmuring and much unwillingties: Can there be any thing more hatefull to the high Spirit of a King, than to subject himselfe to the pleasure of his people, especially for matter of Reliefe, and that by way of Prayer, having lawfull power in his hands to relieve himselfe without being beholding to them?

If perhaps the Kings themselves were ignorant of this great Prerogative, which cannot be imagined; had they not alwaies about them wise Counsellors to assist them, and such as for the procuring of favor to themselves would not have failed to have put them in minde of it? Nay, if they had known any such lawfull Prerogative, had they not been bound in conscience so to have done? What an oversight was it of King *Ed. 3.* and all his Counsell, so much to prejudice his right in so beneficiall a Prerogative, as to suffer him upon Record, and that in Parliament, to pray for that which he might have taken out of his absolute power? Can there almost be a more direct disclaiming in the Right, (to compare great things with lesse) if the Lord by matter of Record claime any thing of his villaine, it is a disclaimer of the villenage.

The Kings of England have other noble and high Prerogatives; I will only name two of them, The making of warre and peace, and the raising and abasing of Coyne at their pleasure: Did they ever crave the assent of their Subjects in Parliament to make a warre? Their advice indeed

(27)

indeed they have sometimes sought, and their ayd for treasure to maintaine it. The Prerogative of raising and abasing the value of money hath been oftentimes put in practise by them, and sometimes strayned to such a height, that the King might well suppose the Subjects could not but be much discontent therewith: And yet never any King of this Realme did it by assent of Parliament, which perhaps some one milde King among so many would have done, and it may be, would also have prayed his Subjects to yield thereto, only to avoid the grudging of the people, if the seeking of assent in Parliament had not been thought to have been prejudiciall to the absolute power of their Successors: and yet, as for some of these Kings, it may be supposed, they made little conscience to prejudice a Successor in one point, that made no scruple totally to depose a Predecessor from his Throne, and all his Regalities, and to usurp it to themselves.

And so I proceed to my next Argument of Inference drawn from the actions of our Kings. Some of the Kings of England, as namely *Ed. 2.* Edward the 2. in the yeere of his Reigne, and *Ed. 3.* in the 1. and 24. yeere of his Reigne, as may appeare by the Records here amongst us, were contented to accept an increase of their Custome by way of *Loane* from the Merchants, and solemnly binde themselves to repay it againe. Would any wise man in the world, that thought he had

but

but a colour of Right, so much prejudice his himself, as to borrow that which he might take without leave, and binde himselfe to repay it. If a poore man perhaps through feare might be enforced so farre to yeeld to a mighty adversary, yet that a powerfull man should stoope so low to one much weaker than he; nay, that a King, in a point of such consequence, should so farre discend from his Greatnesse, as to borrow of his poore Subject that which without being beholding to him he might obtaine as his Right; and binde himselfe to repay it againe: I say, it cannot with any reason be imagined; but withall it must be concluded, that a king that shall so doe, doth not thinke that he hath so much as colour of Right to impose.

I will not much presse or enforce the actions of *Ed. 2.* who (I confesse) was but a weake Prince; But as for his Sonne and successor, *Ed. 3.* *Edward the 3.* there was not (as I have said) a stouter, a wiser, a more noble and couragious Prince than he, and none more carefull to preserve the Rights of his Prerogative, as may evidently appeare by all his answers in Parliament, on any complaint of the Subject. Besides, never had king of this Realme more occasion than he to straine this Prerogative of imposing to the utmost: For besides his excessive expence in the warres of France and Scotland, he had also a continuall charge of many expensive children, his wife *Queene Philip* had also for her maintenance a large

large allowance out of his Revenue; but the dowry of *Queen Isabell* his mother (who lived till about the 27. yeere of his Reigne) was so great, as it is reported by some writers, that little more than the third part of the certaine Revenue of the kingdome was left to him: In so much, as through these occasions of extraordinary expence, and the diminution of his Revenue, he was driven to such necessity, as his Queen in the yeere of his Reigne, was enforced to pawne her Crowne and Jewels to procure money for him, as may appeare by the Record of that yeere in the Office of the Clerke of the Pels. Nay, the king himselfe in these extremities, was oftentimes driven to lay his Jewels to pawne for money: And in *An. 17.* did also pledge his Crown for 4000. pound, to certaine Merchants of *Florence*, as by the Records of that yeere, in the Office of the Lord Treasurers Remembrancer in the Exchequer, is manifest. By this you may see, that this powerfull king wanted not urgent and just occasion (if any occasion may be just) to have put in practise his absolute power of Imposing; and yet, as you see, it appeares of Record, that in the midst of his great wants he tooke an increase of Custome by way of *Loane*, and bound himselfe to repay it.

It may be here objected, that he did lay Impositions.

What Impositions they were, and how to

be compared with the Impositions now in question, I purpose to tell you, when I come to answer objections, which I have referred to the end of my speech: In the meane time I will goe on with my course, and urge one Argument more, drawne from the actions of our kings, touching the increase of Custome.

A man would thinke, that the taking of the increase of Custome by all the kings, both one and other, with the assent of their Subjects in Parliament, and sometimes by way of Prayer and Intreaty, for a short time; nay, the taking of it by way of Loane, and binding themselves to repay it; and that to have been done by the most powerfull kings, in their greatest necessities, were Argument enough that they did not beleve they might justly claime it as their right by their absolute power.

And yet is not this all: For, some of them, *Edward the 1.* by name, *Ed. 1.* did not onely take it by assent in Parliament, or *by way of Loane*, but (as one that buyes for his mony in the Market) did give for it a reall and valuable consideration, and that to Merchant-strangers, of whom there was more colour to demand it as a duty, than of his naturall Subjects. In prooffe of which I produce *Charta Mercatoria*, made *Anno 31. Ed. 1.* where by it is recited, that in lieu of certaine liberties and immunities granted by the king to the Merchant-strangers, as also for the release of *Prisage*, they granted to the king an increase of Custome.

Custom. What were all the special liberties that were granted them, I know not, nor whether they continue; but sure I am, that by vertue of thar Grant they are at this day free of *Prisage*, paying onely 2^s. upon a Tun of Wine, by the name of *Butlerage*, which they granted by the same Charter: whereas English-men pay *Prisage in specie, viz.* one Tun before the Mast, and one Tun behinde.

And it is very worthy the observation, how the same King, *E. 1.* in the same yeer of his reign did command his Customers throughout *England*, That whereas certain English Merchants were, as he was informed, of their own accords willing to pay him the like increase of Custome which the Merchant strangers had granted unto him, so as they might enjoy the like liberties and benefits; that neverthelesse they should not compell such English Merchants, against their wils, to pay it: the words are worth the hearing: *Cum quidam Mercatores de regno & potestate nostri, ut ipsi dicunt libertat. (having before recited Charta Mercatoria) uti & gaudere, & de prisnis nostris quieti esse possint; prestationes & Custumas huiusmodi, de bonis & mercandizis suis nobis dare & solvere velint; ut accepimus, assignavimus vos ad prestationes & Custumas predictas, de his qui prestationes & Custumas illas grater & absque cohercione solvere voluerint, colligendum; & ad opus nostrum recipiendum; ita tamen quod aliquem Mercatorem de dicto Reg-*
no

(32)

no nostro ad huiusmodi prestationes & Customas nobis invite solvendum nullatenus distringatis. What stronger inference can there almost possibly be against the Kings absolute power of Imposing, than this: that he was contented, and so specified to all his Officers of the Ports, That if the Merchants did of their own accords pay more than their ancient Customes, they should have consideration for it; But if they themselves were not willing to pay more, then they should not be compelled thereunto.

One other observation I draw from the actions of the kings touching the increase of their custome, which is this, that those kings which did lay Impositions (which as I will shew you by and by, was very rarely) though it were never but in time of great necessity, and but to indure for a short time; yet they alwayes did it, not with the advice alone of the Merchants, as at this day, but *the Merchants did alwaies solemnly grant an increase of Custome*; and the kings were alwayes wary, for the better justification of their actions to the people, in their Commissions for collecting of Custome, to recite not onely the great necessity which moved them to take an increase of Custome, but also *the grant of the Merchants*, as may appeare by the Records, of which we have the copies amongst us; I dare confidently say, there is not above one or two at the most that are otherwise, if the Impositions be of that nature which these

(33)

these are of which we complaine; And yet these Impositions also, by the *grant of Merchants*, though raised upon never so great a necessitie of State, and to indure but for a short time, were always complained of by the Commons, when they met in Parliament, as may appeare amongst other Records, by the Parliament Roll of 27. Ed. 3. No. 27. where in a Petition of the Commons, exhibited to the King in Parliament, are these words, *Les Commons monstrerent coment que les Marchants dyent grant per eux sans assent de Parliament, un subsidie de XLs. de sacc. de Layn, outre le droituel male tout de demy marke. Et priou que soit amend a rest Parliament. Car est encounter reason, que le Comialtie de lour biens soient per Marchants charges*; Which I English thus, *The Commons shew how the Merchants have granted by themselves, without assent of Parliament, a Subsidie of 40s. upon a sack of Wooll, over and above the rightfull custome of halfe a Marke, and pray that it may be redressed at this Parliament; for it is against reason that the Comminalty should be charged in their goods by Merchants*: with this agreeth the printed Statute of 36. Ed. 3. cap. 11. in the Statutes at large, where you shall finde an expresse Provision against the rayling of Impositions upon Woolls, *by grant of Merchants*, In which Petition I doe observe, that the Parliament in those dayes did distinguish, even as we now doe, between Impositions laid by act of Parliament, and Impositions

(34)

positions laid only by the grant of Merchants, acknowledging that Impositions laid by Parliament, are onely lawfull, and condemning all other as unlawfull, for otherwise why should they tearme the demy-Marke, which was laid by Act of Parliament. 3. Ed. 1. (*Droituel male-tout*) a lawfull Imposition: but with relation to the unlawfulness of these Impositions granted by Merchants, which they then did complaine of; Besides, I observe that they say, That it is against reason, that Merchants should by their grant, *without assent in Parliament*, charge the whole Commonaltie, by which it plainly appears, that they complained not so much of the excesse or greatnesse of the Impositions, as of the unlawfull manner of the raising of it by grant of merchants, *without assent in Parliament*.

Hitherto I have, according to my division, drawne Arguments from that which our Kings have done, and put in practise for the increase of their Custome.

I will now make some observations of their forbearance, to put this pretended power in practise, considering the severall occasions of the times, which I will prosecute in order.

First therefore in generall, I observe, that from the Conquest, untill the Reign of Queen *Mary*, being no lesse then 480. yeeres space, (whatsoever the occasions were) whatsoever the disposition of the Kings were, yet in the practise of this pretended Prerogative of Im-

Arguments drawn from the forbearance of our Kings, to lay Impositions notwithstanding their great occasions.

(35)

Imposing. the Kings have been so sparing, as notwithstanding, this curious search, that hath been made (wherein I suppose nothing that might make for the clearing of the Question, hath escaped us) it cannot be found or proved by matter of Record, that six Impositions (such as we now complaine of) were laid by all those Kings (who were in number 22. And those six (if they were so many) though they were unlawfull, yet were they in some sort to be borne withall. First, by reason they were very moderate; Secondly, that they were laid in the times of great and apparant necessitie, and that they were to endure but for a yeer or two. For none of them, except onely that upon Wine, laid 16. E. 1. lasted longer. They were (I say) notwithstanding their unlawfulness) yet in these other respects, so farre to be borne withall, as if the impositions which are now laid, had been so qualified, we should I suppose, never have complained of them; and yet not one of these few impositions laid in former times, but was complained of, and upon complaint taken away, as may appear by the Records here amongst us: How much more reason is there then, that we should expect the like Justice now? considering that not one Merchandise alone, as then, but very neere all the sorts and severall kindes of Merchandises that are, are charged; that not a moderate and easy charge is laid upon them, but such, as though we should confesse his Maje-

F 2

ties.

(36)

ties absolut power, to lay what he list, yet we had just cause to complain of the excessivenesse of the Burden: For first, the rates of Merchandises, for the Subsidies of Poundage and Tonnage, are extreamly rayfed (a thing also though lawfull, yet hath been rarely put in practise) then comes the Impost upon the back of that, and is as much as the Subsidie it selfe is; in some few Merchandises, 'tis true, the Impost is perhaps lesse then the Subsidy, but 'tis as true, that in divers others, the Impost is farre more. Besides, these Impositions were not laid in the time of warre, but even then when we were at peace with all the world, except perhaps there were some sparks of Rebellion in *Ireland*, then not fully quenched. Lastly these Impositions are not (as those in former time were) limited to endure for a yeere or two, but are to come to his Majestie, his Heires and Successors for ever, as may appeare by his Majesties Letters Patents in print, prefixed before the new book of Rates. So as if those few Impositions laid in former times, had been lawfull, yet can they not by any means be a warrant or president for our present Impositions, differing so far from them in all these points of consequence. But if even those few, so quallified as they were, were complained of and taken away, what shall we then say of ours, so farre exceeding them in all the degrees of Irregularitie; Besides, if so few Presidents, as five or six in so many yeers space, and

(37)

and those in times of so great necessitie, without any expresse Judgment in Law, or good authoritie in approbation of them, but accompanied with as many complaints against them, be argument enough to prove the lawfulness of the act, I dare undertake, that as well taxes within the land, as Impositions upon Merchandises may be proved to be lawfull: But to alledge the acts of kings, in rayfing a profit to themselves upon their Subjects, to prove thereby their right, is of all other arguments that are, the weakest, and so I leave it, and call to minde, that when I told you, it could not be proved by the Records amongst us, that from the Conquest to *Queen Maries* time, there had been any more then sixe Impositions laid; I did in that number, limit my selfe to such Impositions as those are which we now complain of, for I must confesse, that in that space, many more Impositions were laid, but they were of a farre differing nature from ours, differing I say, not only in those circumstances, by which I did even now compare the Impositions of these times to those five or six of former ages, but in very essence and propertie, insomuch as they may not properly be called Impositions, and yet the frequent practise of them hath been objected and relyed upon, as so many Presidents, to prove the lawfulness of the Impositions now complained of: It behoveth me therefore, that in maintenance of my assertion, that so few Im-

positions have been laid, as I have affirmed, that I open unto you the difference betweene the one and the other, which being done, your selves will easily judge that the greater part make nothing towards the defence of these present Impositions; For these Impositions which now are in question, are no other then an increase of Custome, at the Kings pleasure, and commanded by him to be taken, the passage being free and open to all men. Those other which make such a great shew in number, and are produced as so many Presidents in maintenance of these, are no other then so many Dispensations or Licences for money, to passe with Merchandizes prohibited by Act of Parliament to be exported, as will evidently appeare by comparing the times, and examining the Statutes. I will therefore in this place, as shortly as I can, runne over those Presidents that have been, or may be alledged by the contrary part, out of those Records which are here amongst us, and leave it to your judgement, whether I maintaine my assertion, or be not rather better then my word for the number.

Urged by
Flem. Clark.
Doderidg.

The first Imposition by them alledged, is that of 16. Ed. 1. which as it appears by the Record, was 4. shillings upon a Tun of Wine. This indeed, for ought I know to the contrary, was a meere Imposition, such as are now in question; and yet if I did deny it, and say that it was layd by assent of Parliament, I know not how the

the contrary could be proved, for though indeed the words of the Record are (*Cum Rex precipisset, ut de singulis dolis vini caperentur 4. solidi*) it follows not that it was laid therefore only by the kings commandment, for we see that even some Acts of Parliament, in those auncient times, though they were made by the full assent of all the three Estates, yet they have these words in their preambles, (*Rex precepit: Rex vult.*) But as for Recitalls of Acts of Parliament by the King, in his Commissions, and otherwise, it was in those times usuall to say, (*Cum nuper ordinaverimus*) and therefore notwithstanding the Recitall be (*Cum nuper Rex precipisset*) it is no cleere proof, that therefore it was done onely by the Kings Commandment. Neverthelesse I will, I say, admit this to be a meere Imposition, and to be one of the number, and indeed, as this is the first they produce, so is it their best, only this (amongst all the rest) is not limited to indure for a time certain: but give me leave (I beseech you) to open unto you, with what circumstances this Imposition was accompanied, and what followed of it, and then I will leave you to judge (who best are able) how far the present Impositions may be justified by this; The first circumstance to be observed in this Imposition, is that it was laid immediately after the warre against *Wales* was ended, and at the time, when for the setting of the Estate of *Gascoigne*, the King

king himself was in person enforced to undertake a voyage thither, as may appeare by our Histories of those times, which also may be collected by the very words of the record which are these, *Cum Rex ante ultimum Recessum suum ab Anglia precepisset, &c.* That as these times were troublesome, they were also very chargeable to the king, and did put him to try all meanes for the levying of money, I shall not need to urge it, it cannot be otherwise.

One other circumstance is this, that this imposition laid in this time of great necessity was not, as now, upon all Merchandizes, nor so much as in generall upon one kinde of Merchandize, comming from all the parts of the world, but onely upon such wines as were brought hither from two Towns in *Gascoigne, Bergerac.* and *St. Emilians*, as may appear by the Records, and it is probable that these Towns were then in revolt, & that the sooner to reduce them to obedience, the King laid this burden upon their commodities, thereby to hinder the vent of them.

Another circumstance is this, that though that this Imposition were indeed laid without limitation of any time, as touching the continuance thereof, yet within six years following, *viz. 5. Decemb. a. 22.* upon complaint of the Merchants the king released two shillings of the foure shillings, as may appear by the Records

16. E. 1.
22. E. 1. in
Scacario.

ords of 22 E. 1. with which the Merchants not holding themselves contented, the very same yeare within eight or nine months following, *viz. 23. Julii an. 22.* the whole Imposition was released, as may appear by a recital in the accompt of one *William Randall* receiver of the Impost money entred, *an. 26 E. 1.* And within three years after the release, *viz. an. 25.* there followed an act of Parliament against all Impositions in generall, as when I come to shew you what Statutes there are, in the point, I shall I hope cleerly prove unto you; In the meane time I will proceed to examine the rest.

The next president urged is an imposition of 40. shillings upon a sack of wooll laid by E. 1. *an. 21.* For the prooffe of which, a record of the Exchequer of that year hath been vouched. I must confesse I have not seen that Record, but by another Record of the same Court, *an. 26. E. 1.* it is evident that the said Imposition was not raised by the kings absolute power, but by grant, and that also the same was in the time of warre, and to endure but two or three yeare, if the warre should so long continue, as will best appear by the words of the Record. *Cum custuma 40^s nobis in subsidium guerra nostrae contra Regem Francia de quolibet sacco lane exeunte regnum nostrum percipiendum per biennium vel triennium si tantu durasset guerra illa nuper concess. fuit, &c.*

G

By

By this you perceive, by what means, upon what occasion, and with what limitation this imposition was laid: if you will further know, what followed of it, May it please you to read the Printed Statute of *an. 21. E. 1. c. 7.* where it is said that the more part of the Commonalty found themselves sore agreed therewithall; And by the same Statute, not only that imposition of 40. shillings upon a sack of wooll, which was the occasion of the great grief & complaint was taken away; but upon occasion thereof, there was at the same time provision also made, against all other impositions whatsoever, as I say, I hope I shall anon clearly prove unto you, Inasmuch as this imposition of 40. shillings upon a sack of wooll, ought to be so farre from being urged as a president for the present imposition and consequently of the grievance of the Common wealth which followes thereupon, as that rather on the contrary part it may be thought to be the happiest accident in the consequence thereof, that ever befell the Common wealth in this kinde. For it was the occasion of the making of the first law that ever was made against impositions, and other charges and burdens of that nature to be imposed by the kings absolute power without assent of Parliament.

Vouched by
Fleming, Clark
Dodderidge,
Bacon, Attorney
Hobart.

And so I leave their second President, and come to the third, which in time was 31. of the same King E. 1. It is no other then that increase of

of Custome, which by the Merchant strangers was granted to king *Ed. 1.* by that Charter now familiarly known unto us by the name of *Char-ta Mercatoria*, which by all that have maintained his Majesties right to impose, hath been stood upon and urged, as an imposition by the kings absolute power; but more especially hath Master *Solicitor* been strongly inforced with all the advantage possible for the maintenance of his opinion. Neverthelesse I doubt not but I shall give it a very full answer, such as yet this objection hath not received, though divers that have spoken before, and some this day, have undertaken to cleere it; wherein I will arrogate nothing to my selfe, but leave it wholly to your censure. It hath been said by Master *Solicitor*, that though this increase of Custome may seem to some, to proceed from the grant of Merchants, yet that this grant of theirs was to no other purpose, nor had other effect, then only thereby to declare their assent; For that, that those which did grant were no Corporation or body in the estimation of Law, and so could not binde any but themselves alone, and not such as should succeed them. And that it was only the authority of the kings pleasure to accept and take this increase of Custome that gave it life at the first and strength to continue as an Imposition till this very day. For even at this day saith he, the 3. pence upon the pound granted by the said Charter, is paid

(44)

by the Merchants strangers, and they likewise enjoy some priviledges granted by the said Charter. And it was further by him observed; that notwithstanding all the Statutes that have been urged against impositions, yet this imposition hath continually stood and hath never been denyed to be paid by any man; And that therefore it is likely that no man till now ever conceived that these Statutes were made against impositions upon Merchandizes, but were rather to be understood to extend onely to impositions within the Realme.

27 E. 3. No. 27
13 E. 3. c. 26.

To this objection, I make this Answer, that it is indeed true, that the grant of Merchants in this case, cannot binde the whole Common wealth; as I have heretofore proved by the Petition exhibited in Parliament by the Commons 27 Ed. 3. No. 27. and by a Statute of 36 E. 3. c. 26. And therefore I cannot but confesse that this increase of custome may very truly be called an imposition, For that indeed it did at first take strength, onely by the kings pleasure to accept it (as hath been said) and not by the grant of the Merchants, admitting it therefore to be a meer imposition; Let us consider with what extraordinary circumstances it is accompanied.

First (as you may perceive by the Record it self, and as it hath partly been said already, the King took it not without yeelding recompence for it; For the Merchants strangers, by submitting

(45)

mitting themselves unto this charge, obtained divers libertics and immunities from the King, by the same Charter, amongst which freedome from Prifage is one which at this day they enjoy, In which respect this imposition is in some sort tollerable, though not at all Lawfull.

Another considerable circumstance, and difference from our present Impositions is this, that it was a composition made by the King with Merchant strangers, which though it be by strictnesse of our common law, not of force to binde in perpetuie; yet how farre by the Civill Law this doth binde strangers, which are governed by these lawes, is not so easily decided, and this may be a good colour to uphold it.

These speciall reasons, though they may well serve the turne, to make an evident difference betwixt this, and our present impositions, and so consequently to avoid the conclusion, drawn from the President, and may also seem colourable, and particular reasons to uphold the Imposition it self; yet is not this that which I mean to relie upon for Answer; For even this Imposition, in recompence of which the King parted with so large priviledges and benefits, and which because it concerned only merchant strangers, did neither in the burden thereof, nor in the president, so directly touch the English, yet in the detestation, as it seems of all impositions.

(46)

tions, of what nature or kinde soever, and upon what pretext or colour soever they were grounded, I say, even this imposition also was complained of in Parliament within few yeeres following; and upon complaint, taken away, as may appeare by the close Roll of 3. *Ed. 2. Membrana 23.* Where you shall finde inrolled a *Supersedeas*, commanding that the new Custome, granted by the Merchant strangers (reciting the particulars, as they are contained in *Charta Mercatoria*) shall cease at the Kings pleasure, and this is there said to be yeelded to at the request of the Commons which cannot be but in Parliament; but because the renewing of it again rested at the Kings pleasure, therefore within two yeeres after, by a publike Ordinance made by the principall Prelates, Earles and Barons, and other great men of the Kingdome, authorised by the Kings Commission, dated the 16. of *May*, the same third yeere of his reigne, the Charter it selfe was declared to be utterly void, For that it was hurtfull to the Commonwealth, against *Magna Charta*, and made *without assent in Parliament*; and not only that Charter, but all other new Customes or Impositions whatsoever, imposed since the Coronation of *Ed. 1.* till that time were also taken away, saving onely the old custome upon Wooll, Wooll-felts, and Leather, And further it was ordained, That if any man should presume to take any more then the auncient custom rightfully due, and

(47)

and should be thereof convict, he should answer to the partie greeved his Costs and Damages, be imprisoned according to the quantitie of his offence, and be further punished, as an offender against *Magna Charta*, according to the discretion of the Justices. *Ro. ordinatum 5. Ed. 2. in the Tower.*

Though the force and authoritie of this Ordinance, may perhaps be doubted and blemished because it was made by the Barons, at the time when they had the better hand of the King, as hath been in part objected, yet you see that they deliver not their censures, without alledging also their reasons; and this their Ordinance is no more in effect, then that which was thought fit by all the Commons in the Parliament of 5. *Ed. 2.* before mentioned. 37. E. 3. 20.

But it hath been yet further said, that notwithstanding this Ordinance, the imposition doth neverthelesse continue in force, and is at this day paid by the Merchant strangers, and that therefore in likely hood, the ordinance prevailed not against it. Tis true that at this day the Merchant stranger doth pay three pence more in the pound for Subsidie of poundage, then the English doth, and that by vertue of *Charta Mercatoria*: But let me tell you that *Charta Mercatoria* in it selfe, had not strength and vertue sufficient to subsist for so long a time: It was as I have said suspended by the king himself,

self, *an. 3.* condemned by the ordinance of *5 E. 2* and had at this day been of no more force, then it was all the time of *Ed. 2.* after *3^o.* that is, of none at all; had it not been confirmed by act of Parliament *an. 36. Ed. 3. cap.* This was onely that which protected *Charta Mercatoria* against all those Statutes made against impositions; and that hath kept it in life till this day; And this indeed (I mean an act of Parliament) is the only meatis that our Law acknowledgeth, for the laying or establishing of impositions, and without which they cannot long last.

You have now heard opened three of those six presidents, which are most relied upon for maintenance of these present impositions which are all that have been urged, or can be found to have been practised from the Conquest till the reigne of *Ed. 3.* during which time there are as you see, as many publique acts in opposition of them, which are of so much the more force in that they are the Legall regular Acts of great Counsell, whereas on the contrary part, those three impositions were the acts of powerfull Kings wills, in the times of extream necessity, As for *Ed. 2.* his siccessor, there hath not been one Imposition alledged to have been laid by him of one kinde or other. Nay all the records touching this businesse found in his time being onely foure make directly against them.

The first is *anno 3.* which was (as you have heard) a release at the Kings will; upon complaint

Edw. 2.

plaint of the Commons, of the Impositions raised by *Charta Mercatoria.*

The second was the Ordinance made *an. 5.* declaring *Charta Mercatoria*, and all other impositions to be void, and inflicting punishment upon such as should demand any.

The third was, *an. 11.* which is a *Superseas* to discharge certain comodities from yeelding an increase of Custome granted by Merchants, by way of loane, which in great probability the King would never have released, but upon complaint; the rather I think so, because as the Record recites, it was granted in a time of great necessity.

The fourth is, *anno 12.* and is much of the same nature, the recitall of which contains some very observable things, which I will open unto you: It shewes first in very effectuall words the greatnesse of the Kings wants, and the causes thereof, the words are, *Cum pro expeditione guerra nostra Scotie, & aliis arduis necessitatibus nobis multipliciter incumbentibus, pro quarum exoneratione quasi infinitam pecuniam profunderi oportebit, pecunia plurimum indigeamus in presenti; ac insuper, pro eo quod exitus Regni & terra nostra simul cum pecunia nobis in subventionem premissorum tam pro Clerum quam pro Comunitatem Regni nostri concessa ad sumptus predictos cum festinationem qua expediret faciend. non sufficiunt:* Here was cause, (if any cause may possibly be just) for the King

H

pre-

(50)

presently to put in practise his Prerogative of Impositions, his expence by reason of a necessary Warre in *Scotland* was so great, as the whole Revenue of the kingdome, together with an ayd which had been lately granted him, could not with that expedition that was requisite supply his present want, doth hee for all this make use of his Prerogative of imposing? or doth hee hastily for want of advised proceedings, take some other course prejudiciall to his right? No, the record further sayes, that he enquired by all wayes and meanes how he might most commodiously and fitly levy money for these occasions. After which advised deliberation, the course at last resolved upon, was not by absolute power to lay Impositions, which of all other courses (if it had been lawfull, had been the most speedy and beneficiall) but a course more justifiable; which was, that Merchants should be called together, and that they should be intreated to lend the King upon every sack of wooll 10. shillings and upon every last of Lether 5. shillings, above the ancient custome, and that for their security of true repayment, *without fiction or delay*, which are the words of the Record, (whereby it seems that onely a pretence of a Loane and repayment had been before that time used to colour Impositions, commandment should be given to the Customers to certifie into the Exchequer, the names of every particular Merchant

(51)

chant, that should so lend unto the King, that they might accordingly receive full satisfaction. And tis worth the observing, that this Loane was for no longer time, Then from Aprill, till October following; thus much is warranted by the Record: So as you see that in all this time of this *King, Ed. 2.* Impositions were not only altogether forbore even in the times of his greatest necessity, but they were also condemned as unjust and utterly unlawfull.

We come now to the reigne of *King Ed. 3. Ed. 3.* in whose time there was no practise or meanes, that by the policy of man could be thought on to bring the people under this yoke of Impositions, without assent of Parliament, but it was by him attempted: Infomuch, as I have in my observation out of the Records collected no lesse then five or six severall waies all of them very colourable, which in his time were put in practise for the raising of impositions, and yet none of them but was resisted by Parliament and condemned.

That which was most usuall with him was that Merchants should grant to pay him so much upon every Commodity exported or imported by way of increase of Custome; this seems not unreasonable, for that every man might grant of his own what he listed, and this also to make it more colourable was never attempted, but in the time of warre: And yet as it hath been partly said already, this was al-

Impositions by way of Grant of Merchants.

ways held unlawfull, as may appeare by the Record of 17 E. 3. where the Commons in Parliament say that it is a great mischiefe, and against reason, that they should be enforced to pay the deerer for Commodities, by reason of a charge upon Merchandizes, by the grant of Merchants, anno 25. Edm. 3. the which is a charge to the people, though none to the Merchant; the Commons reciting, that whereas Merchants have granted a new increase of Custome to the King, pray that Commissions to collect such new increase of Custome, by singular grant of Merchants be not awarded, anno 36 Ed. 3. cap. 11. (Amongst the printed Statutes) Grants of Subsidies upon Wools by Merchants without assent of Parliament are declared to be void, which act was made upon a Petition of the Commons in anno 36 Ed. 3. desiring a Law to be made to the same effect. If impositions raised by the Grant of Merchants, (which I suppose to have been by some publike and solemne instrument, under the hands and seals of the principall Merchants of all the great Towns of England, being called together for that purpose; were not of force in this behalf) much lesse, was their bare assent without any such solemnity, which also was a course in practise in the dayes of Ed. 3. And was also used in the laying of these present impositions, which wee now complaine of.

17 E. 3. No. 27. Ro. Parl.

25 E. 3. No. 22. Ro. Parl.

36 E. 3. No. 26. Ro. Parl.

Another meanes of raising impositions used by

by Ed. 3. was by way of dispensation for money with some Statute in force, which restrained the passage of Merchants; most of his impositions of one kinde or other, laid after 11. were of this nature, for anno 11. cap. 1. amongst the printed Statutes, you shall finde it enacted, that *no man upon paine of Death, losse of Lands, and Goods should export Wools*: immediately after the making of this Statute Impositions, by way of Dispensations for money, came to be so frequent and burdensome that the very yeere following the King being in person to undertake a Warre in Scotland, and for the raising of treasure having laid heavy impositions in this kinde, which he perceived to be very burdensome to the people; he wrote to the Arch-bishop of Canterbury (his Letter is extant upon Record) to this effect; that whereas the people were much burdened with divers charges, tallages, and impositions (which he could not mention but with much grieffe) but being enforced by inevitable necessity could not as yet ease the people of them, he required the Arch-bishop to exhort the people patiently and humbly to beare the burden for a while, and to excuse him towards the people, hoping he should ere long recompence his said people, and give them comfort in due time. His necessities were neverthelesse so great, and this means of raising money was so colourable (seeing no man was compelled to pay that did not himself desire to be dispensed with, for the breach of

Impositions by way of Dispensation with a penal Law.

Stat. 11. Ed. 3. cap. 1.

12 E. 3. No. 22. Ro. Aleman.

(54)

a penall Law, by which his life, goods and lands were forfeited) as he spared not to lay on load in this kinde; Inſomuch as you ſhall finde that in *An. 13.* he took for diſpenſations to paſſe only to *Antwerp* of Engliſh-men 40. ſhillings upon a ſack of Wooll, 40. ſhillings upon 300. Wooll-fells, and 4. pound upon a Laſt of Leather; Of ſtrangers 3. pound upon a Sack of Wooll, 3. pound upon 300. Wooll-fells, and 6. pound for a Laſt of Leather, whereas the ancient and due cuſtome was no more then 6. ſhillings upon a ſack of Wooll, the like upon 300. Wooll-fells, and 13. ſhillings 4. pence upon a Laſt of Leather; Immediately hereupon, even this very yeere, was this complained of in Parliament, and a Petition exhibited by the Lords and Comons, that it might be enacted, that this *Maletolt* or Impoſition, becauſe it was taken without aſſent of Parliament, might be taken away, and that a Law might be made, that no ſuch charge might be laid, but by aſſent of Parliament: And they further prayed, that they might have a Charter under the great Seal, confirmed and enrolled in Parliament, to the ſame effect, which was performed the next Parliament, as may appeare by the Statutes printed, where, *An. 14. Ed. 3. cap. 21.* you ſhall ſee an act of Parliament to this effect, and that a moſt effectuell one. And immediately after, follows the Charter to the ſame effect, of both which I ſhall have more occaſion to ſpeak hereafter;

But

13 Ed. 3. Orig. de Scac. Ro. 3. & 12.

13 Ed. 3. no. 5. Ro. Parliam.

14. Ed. 3. cap. 21.

(55)

But ſuch were the Kings wants, that even in the meane time, between the petition, and the making of the act, he could not forbear to raiſe money by this meanes, For in *An. 14.* the Eleventh day of *March*, in the end of which moneth the next Parliament began (as may appeare by the Preamble to the Statutes of that Parliament) he tooke by way of diſpenſation, 40. ſhillings upon a ſack of Wooll, when it ſhould be ſafely landed at *Bruxells*, and 40. ſhillings at the port within *England*, which was indeed an intollerable charge: but the better to colour it, the King in his Commissions for collection thereof, pretended that the Merchants had been humble ſuiters to him, that the paſſage for Woolls might be open till *Whitſontide* following, and that to obtaine the ſame, they had of their free wills offered to give him the ſaid ſummes, as may appeare by the recitall, in the beginning of the ſaid Record.

In further prevention of this miſchiefe, in an Act of Parliament printed, made *An. 27. Ed. 3. cap. 2.* there was a ſpeciall proviſion made againſt all Licenſes to Transport: Nevertheleſſe as it may be collected by a Record of the ſame yeere, the King raiſed 40. ſhillings upon a ſack of Wooll, 40. ſhillings upon 300. Wooll-fells, and 4. Pound upon a Laſt of Leather, by the ſame means (I meane by way of diſpenſation.) For though indeed it be recited to be granted by Merchants, yet was it no otherwiſe granted by

14. Ed. 3. Ro. 3. orig. de Scac.

Orig. de Scac. 27. E. 3. Ro. 7.

by them, then for Licenses to transport, For at that time the Staple of Wooll was in *England*, as may appear by the printed Statute of 27. *Ed. 3. cap. 1. & 2.*

27. Ed 3. cap. 1. & 2.

And here I thinke it fit to make this observation in generall, that whereas in some other of the Records of *Ed. 3.* there is mention made of Impositions upon Woolls, granted by Merchants, because the passage of Woolls was in those daies so often restrained by Statute, as may appear by very many printed Statutes of that time, it is very likely that these grants of Merchants, were also for dispensations to transport, as appears that this of 27. was, and it may well be, that some of the Statutes, being but temporary, were not committed to the Presse;

Yet you shall finde an act of Parlia. for free passage. *An. 15. Ed. 3.*

This kinde of Imposition, by way of dispensation, I finde not to have been at all practised from 27. till 39. where without any colouring of the matter, with pretence of the grant or guist of Merchants, or any recitall of suite made by Merchants, to have the passage open, as usually in formertimes, but plainly and aptly the King recites, *That whereas English Merchants were by Act of Parliament restrained to transport Woolls, Newerthelesse, upon advice with his Counsell, he thought fit to give leave that such as would, might transport Woolls, paying 46. shillings 8. pence upon a sacke, which the King commandeth to be levied.* This Imposition lasted a very little while, For the next Parliament following, the Sub-

39. Ed. 3. Ro. 2. Orig. Scacario.

Subjects granted to the King a Subsidie, upon Woolls, Wooll-fells, and Leather, to endure for a very short time; and yet, as it appears by the words of the Record, the King doth thank his people for it, *with all his heart*: at which time, for the maintenance of his warres in *Scotland*, he obtaineth the continuance thereof for *two yeeres*, at the end of which *two yeeres*, he further obtaineth, in Parliament, a continuance of the same from *Michaelmas* following, for *three yeeres*, for the supplie of treasure for the warre.

43. Ed. 3. 9. & 10. Ro. Parl.

Two yeers following, *viz.* in *An. 45.* the Commons doubting, as it seemeth, that the King had secretly concluded to increase (by way of Imposition) this Subsidie, which was yeilded to in Parliament, and granted for three yeeres, made a conditionall petition, that if any Imposition be laid upon Woolls, Wooll-fells, or Leather, more then the Subsidie granted in Parliament, that it may be taken away: the King answereth, That if any be laid since the Statute, it shall be taken away; and then follows the printed Statute, *An. 45. Ed. 3. cap. 4. That no Impositions be laid upon Woolls, wooll-fells, or Leather*; which is the first place where I finde *Impositions* named in our printed Books; I finde them first named upon my Latine Record, *12. Ed. 3.* in the Kings Letter to the Archbishop: and first upon any Record in French, not printed, *An. 21. Ed. 3. Num. 16. Ro. Parliament.*

Num. 42. Ro. Parl.

I

But

6. Ed. 3. Nu.
o. Ro. Parl.

But to proceed: about a yeere following this Parliament of 45. (neere which time, the Subsidie granted, *An. 43.* for three yeeres, was expired) there was another Subsidie of Forty three shillings foure pence upon a sack of wooll, as much upon Twelve score Wooll-fells, and Five pounds upon a Last of Leather, above the ancient customes, granted in Parliament, for the maintainance of the warre in *Guyen*, to endure for two yeeres; For which, the King likewise gave thanks.

47. Ed. 3. Nu.
12. Ro. Parl.

48. E. 3. Ro. 2.
Orig. de Scac.

The next yeer following, the Subsidie granted the last Parliament, was continued from *Michaelmas*, for a yeere, without any condition, and for the next yeere, upon condition (amongst other things) That no Imposition be laid during the two yeeres, and that the money levied, be employed upon the warres. In the next yeere following, the King took, as by the grant of Merchants, upon a sack of Wooll, of Denizens Fifty shillings, and of strangers foure Marks; upon 240. Wooll-fells, of Denizens Fifty shillings, and of Strangers Foure Marks, and upon every Last of Leather, of Denizens Five pounds, and of Strangers Eight Marks; Though this Record pretendeth nothing but the grant of Merchants, yet it is upon the matter no other then a dispensation for so much money. For at this time, the passage was not open, other then to *Callice*, where the staple then was, as may appeare by the two Records of 38.

Ed.

Ed. 3. Ro. Parl. & 50. Ed. 3. Num. 24. And yet you may see how hatefull, even these Impositions, by way of Dispensation (which are farre more tollerable then our present Impositions) were in those dayes: For within two yeeres following, one *Richard Lions*, Farmer of the Customes (amongst other things laid to his charge) was accused in Parliament for setting or procuring to be set, new impositions (not shewing of what nature) without assent of Parliament, and was adjudged to forfeit his Goods and Lands; but more particularly the Lord *Latimer*, Lord Chamberlaine of *England*, was expressly accused, that he combined with *Richard Lions* and others, who for their own profit, had procured and Counselled the King to grant many Licences for the transporting of great quantities of Wooll beyond the Seas, other then to the Staple at *Callice*, against divers Ordinances and Commandements to the contrary, and had put upon Wools and Wooll-fells new impositions; Here you see that the device of Dispensations for money, had the name of an Imposition in those dayes, though indeed it be not in its nature a meere imposition, or at least not such a one as those are which we complain of: But such as it was, you see how from time to time it hath beene condemned, and how it is reckoned up amongst the most hainous faults of those two great offenders, who though perhaps they were condemned

50 Ed. 3. Nu
17, 18, 19, 20.
Ro. Parl.

50 E. 3. No. 24
Ro. Parl.

ned also for other offences, yet the laying of these to their charge, did shew the great hate generally conceived against impositions of this kinde; I might here further adde in prooffe of the invalidity of these Dispensations, that certain Merchants having obtained some of these, and having also the advantage of the Kings Proclamation to dispense with the Statute, which restrained their passage, yet they never thought themselves secure from the punishment of the Statute, till they were provided for by Act of Parliament, as may appeare by a Statute printed, *anno 35 Ed. 3. cap. 21.* To alledge therefore any of this kind, thereby to prove the lawfulness of ours cannot but argue a weak cause.

For first (as I have said) there is farre more reason and colour for these, then for ours; for in this case no man was compelled to pay, that did it not to avoide a greater mischeife, for by paying the Imposition, he was free from a grievous punishment for breach of a penall Law, which restrained his passage; whereas in our case a charge is laid upon him for exercising his lawfull Trade, where no Statute Law, or Common Law is to the contrary, but rather both the one and the other make for him.

But it may bee here objected, that the King may Lawfully restraine, the breach of which restraint, is a contempt and against Law, and that to impose doth imply a restraint upon a penalty. Suppose it were so, yet if in case where the

the restraint is not onely by the King, but the whole Estate assembled in Parliament, for some urgent cause it be unlawfull to give License for money (as you perceive it is) how much more is it so, where the restraint is for no other purpose then to raise an imposition as in our case; but of this more largely hereafter.

Another devise of raising impositions without assent of the Commons in Parliament, practised by *Ed. 3.* was by way of Ordinance, which indeed is in the next degree of strength unto a Statute. For it is a Constitution made by the king himselfe, and all the Prelates, Earls, and Barons, not at the Connell Table, or in the Kings Chamber; but sitting solemnly in Parliament, and hath also the like solemnity of inrolement that a Statute hath, onely it is enrolled in a Roll by it selfe, which hath the name of the Roll of the Ordinances; But the only essentiall difference between this and an Act of Parliament, is, that this hath not the assent of the Common.

Impositions raised by way of Ordinance in Parliament.

Some Ordinances have had that estimation amongst us, that they have at this day; the force of Statutes as the Ordinance of *Merton*, made 20 *Hen. 3.* (which though it were no other then an Ordinance made by the King, the Prelates, Earls, and Barons, without assent of the Commons, yet hath it by continuance of time gotten not onely the strength, but the name also of a Statute. There be some others of this

(62)

nature, and we finde it usuall, that the names of Statutes and Ordinances, have been indifferently and confusedly used, to expresse the one or the other. So as there was not any other more probable devise or invention to have brought the people under the yoke of Imposition, without their own assent, then was this, by the way of Ordinance; Nay to adde yet a further strength to this high authority of an Ordinance in Parliament, the assent also of Merchants was usuall joyned therewithall, to make it have the cleerer passage with the Subject; and further it was never, but in the time of warre.

7 Ed. 3. R. 9.
Orig. de Scac.

The first imposition of this kinde by way of Ordinance, which I finde amongst the Records was 7 E. 3. amongst the Originals of the Exchequer, where it is said by way of recital, that the King considering how Merchants (which make great gaine by trading) ought aswell as others to assilt him with treasure for his Warre, especially considering how at their intreaty he had placed the staple in *England*: Therefore at his Parliament held at *Torke*, by the Prelates, Earls and Barons, it was ordained that the Merchants should yeeld unto the King a Subsidie upon Merchandizes: This Subsidie or rather Imposition, thus solemnly ordained, and in the times of so great necessity, was no sooner established then revoked, as may appeare by the words imediately following in the same Record

(63)

cord, whereupon the Merchants of their own accord, whereupon the Merchants of their own accord yeelded, and freely gave ten shillings upon a sack of Wooll, as much upon three hundred Woolfels, and twenty shillings upon a last of Lether, for a short time by way of Dispensation or Licence towards the maintenance of the Warre.

The like is found, *anno 20. E. 3.* where the Commons complaining of an imposition of this kinde, laid by the Prelates, Earles, and Barons in Parliament, and by the agreement also of Merchants; It was not denyed unto them, but that their suit was just; onely it was answered them, that as yet it was not convenient to take it away; For that the King had taken up great summes of money of divers Merchants, for his present necessity, to be repayed out of the said Subsidie, and therefore it could not be as yet discharged without great damage to the King and the Merchants. But the most materiall Record against Impositions by way of Ordinance, is the yeere following, where the King in excuse of impositions complained of, answereth that they were laid in times of great necessity, *and by the assent of the Prelates, Earles and Barons, and other great men, and some of the Commons then present, neverthelesse his pleasure is, that such impositions not duly laid, be not drawn into consequence, but taken away 21 E. 3. No. 17.*

20. Ed. 3. Nu.
18. Ro. Parl.

There are some others of this kinde, but never

ver any that did abide the triall, though they have allwayes been accompanied with all such circumstances, as were most likely to give them passage without controllment, as to be laid in the time of warre, to be limited to a short time, with consent of Merchants. If the authoritie of an Ordinance in Parliament, joyned with the assent of Merchants, were in those dayes not of force sufficient to uphold Impositions, much lesse will an Order of the King and his Counsell out of Parliament, uphold them at this day, especially after so many yeeres discontinuance.

Impositions rayfed by way of Loane by Merchants.

Another invention to raise impositions, practised by *Ed. 3.* and in former times, was by way of a pretended or feined Loane from the Merchants, of so much above the old custome upon Merchandise exported or imported, which Loane was never repaid to the Merchant. That this was an old practise, may be collected by the president, 12. of *Ed. 2.* already cited, where the King promiseth, that *without fiction*, or delay, he would repay them their money, implying thereby, that sometimes fiction had been used, and doubtlesse that loane which was 11. *Ed. 2.* the very yeere before, was such a feined Loane as I speake of, for otherwise (without question) the King would not have released part of it, as may appeare by that Record that he did; For if the money be, *bona fide*, borrowed, and truly intended to be repaid, then doubtlesse

lesse the course is lawfull; if otherwise, I hold this kinde also as unlawfull as any of the rest.

Edward the Third did once or twice borrow in this kinde, as may appeare by Records already cited to another purpose, with which I will not again trouble you.

There was yet another Device for raising of Impositions (begun indeed by *Ed. 1.*) and condemned in the time of *Ed. 2.* but revived, and much practised by *Ed. 3.* which was also by way of grant of Merchants, and yet not altogether the same that I first observed to have been so much practised by *Ed. 3.* but is much more colourable and tollerable. For whereas that was a grant, or rather a meere gift, without any thing granted back againe in lieu thereof; this I now speake of, is a solemne grant indeed, made by Merchants, of an increase of custome, for liberties and freedoms, and other valuable priviledges, and exemptions, granted unto them by the King: that former was, *date nihil expectantes*; this is, *date & dabitur vobis*, and indeed the recompence that the Merchants had by this Charter granted unto them, made their grant to the King lesse subject to controll, then otherwise without such recompence it would have been; I mean the grant of Merchant strangers, so often remembered amongst us, by the name of *Charta Mercatoria*, which though it were damned all the time of *Ed. 2.*

K from

from the third yeer of his reign, yet was it revived by E. 3. (*Even that very yeer, when he likewise deposed the King his father, and usurped to himselfe his Crown.*) For it appeares by the Records, that he commanded the same to be levied the very first yeere of his Reigne. What hath been said against this kind of Imposition, I shall not need here againe to repeate, only let me call to your remembrance, how this Charter, as needing a better prop than his owne strength, and Validity in Law, was in the same Kings Reigne confirmed by Parliament, and onely by that strength continueth in force at this day.

Ed. 3. Ro. Fin.

You have heard five or sixe severall politique Inventions and Devises for the easie drawing on, and sweetning of this yoak of Impositions, all practised by this prudent and potent King, Ed. 3. whose times were indeed so troublesom, and his charge every way so excessive, as it is no marvell, that he left not any way unattempted, to raise money, without the assent of the Commons, whom he always found unwillingly and hardly drawne to matters of charge.

Impositions laid by expresse and direct Commandment.

One other way of Impositions he used, not coloured or masked under any such pretence, or politick Invention, as you have heard, but plain and direct, only his owne expresse commandment to his Officers, to collect of every Merchant so much for such a commoditie, exported or imported, and to answer it into his Exchequer,

quer, without any recitall in his Commissions, of Grant, Assent, Guist, Loane of Merchants, Dispensation, or Ordinance in Parliament, or any other such colourable pretext whatsoever.

These indeed, and onely these are meer Impositions, and may be aptly compared with these of our times; Of this kind, amongst all the Records of *Edward* the Thirds time, I finde onely two, which I will truly open unto you; The first is in the Twenty one of his Reigne, where it appears that *Lionell* afterwards *Duke of Clarence*, named upon the Record, *Lionell of Antwerp*, because I suppose, he was there borne, the Kings second sonne being then Guardian of *England*, whilst the King his father was at the siege of *Callice*, at a counsell by him held the same yeere, which I take to be no other then the Privie Counsell, assessed without assent of Parliament, upon every sack of Wooll Two Shillings, upon every Tun of Wine Two Shillings, upon every Pound of *Aver de poys* of Merchandizes imported, Sixe pence. This Imposition was, I must confesse (for ought I know to the contrary) such as our present Impositions are, I meane, in that it was imposed onely, and simply by the Kings absolute power, and may in that respect be the Fourth (of that number of Sixe) which I told you were all that could be found in any degree like to ours, ever to have been practised in this Com-

Ed. 3. no. 1. Ro. Parliam.

Poundage imposed.

(68)

monwealthe, from the Conquest, till Queene Maries time. But though in the authoritie of imposing, it be like, yet in circumstances very materiall, you shall finde an apparant difference between them.

First, this Imposition is very moderate in the sum, as you may perceiue, for it was but Two Shillings upon a sack, whereas in 13. Ed. 3. forty Shillings upon a sack of wooll was usuall, and sometimes fifty shillings.

Secondly, it was to continue no longer then till Michaelmas following.

Thirdly, it was laid in the time of a most chargeable warre, and ordained to be employed for the maintenance of Ships of warre at Sea, for the safeguard of Merchants in their passage, of which it is apparant, there was at this instant very great necessitie; for it was (as I have said) imposed then, when King Ed. 3. lay at the siege of Callice.

Besides, such as it was, and so qualified as you perceiue, it was neverthelesse complained of in Parliament, by a Petition from the Commons, as may appeare be the Records of the same Parliament of 21. Ed. 3. To which Petition or complaint, this answer was given, *That all the said Impositions were already taken away, save only the Two Shillings upon a sack of Wooll, which should last no longer then Easter, and seeing the same was ordained for the safeguard of merchants, in which there had been greater sums of*

me-

(69)

money expended by the King, then could be collected between that and Michaelmas, therefore to continue the same till Easter, he hoped it would not seem over-burdenfome or grieuous unto them. In the Parliament following, viz. anno 22. the Commons pray that writs may bee directed to the Customers to forbear at Easter next to take the two shillings upon a sack, according as it was granted at the last Parliament, and that it be not any longer continued by the procurement of any Merchant. The King answereth, *Let it cease at Easter, as it was agreed the last Parliament.*

22 E. 3. N 16.
Ro. Par.

Here you see it was absolutely taken away, and therefore though it had wanted these qualifications and circumstances which I have observed it had, yet it being a thing so publicly condemned, it ought to be of little force with you to justifie these present Impositions. But that which I observe out of this last Record, maketh me rather to incline that this Imposition was onely by way of dispensation, then that it was an absolute Imposition, such as Ours are. For to what end (I pray you) should the Commons pray that it might not be any longer continued by the procurement of any Merchant, except it were likely that Merchants for their benefit should pray the longer continuance thereof; and what benefit can any imposition whatsoever bee to a Merchant except it bee by way of Dispensation

K 3

to

to give him leave to trade where before such dispensation given, he stood altogether restrained. If then it be an Imposition by way of dispensation with a penall Statute of restraint, then is it no president for our present impositions. But whether or no it be a Dispensation or absolute Imposition I leave it to your judgments; you have heard my observation.

24 E. 3. N. 12.
Orig. de Scac.

And so I come to the next president in the times of *Ed. 3.* produced for maintenance of our Impositions, which was in the 24 yeere of his Reigne, the Record of which and that which followed thereupon, I will without any enforcement at all, open unto you, and so leave it to your censures. The King reciting, that whereas the Spanyard and French had joyned in league to make Warre against him, and that for the withstanding of his said adversaries, as also for the safeguard of Merchants against Pirats, he had ordained that certaine ships should be set forth, and that for maintenance of the said Ships, there should be paid by Merchants two shillings for every sack of Wooll, two shillings for three hundred Woolfels, foure shillings for a last of Lether, a Scute of Gold, or foure shil. for a tunne of Wine, and six pence of the pound upon all other Merchandizes for one yeere following. He commandeth his Customers to levy the same accordingly.

Poundage imposed.

25 Ed. 3. No. 12
Rot. Par.

The very next yeere and Parliament following, the Commons exhibite a Petition in Parliament

liament against Impositions and other like charges, without assent of Parliament: To which answer is given that, *it is not the Kings intention they should be charged.*

I have now gone through all the materiall Records here amongst us, of the times of *Ed. 3.* in which, though his reign were very long, and by reason of his Warres, and other excessive charge, more occasion was given him to try the strength of this point of the Prerogative, then ever any King before or since; though oftentimes, and by many politicke inventions (as you have heard) he attempted to establish this Prerogative, of laying impositions without assent in Parliament; yet can there not be produced in all his time, any more then two Presidents of Impositions like to these of ours, (that is) *imposed by the Kings absolute authority*; and yet these two were also, as you perceive, qualified with such circumstances, as if ours were such, we should have held them tolerable though perhaps not lawfull, yet they, such as they were, escaped not without being complained of, and condemned also in Parliament, as you have heard.

It may perhaps be that some one or two of these Impositions which were by assent or grant of Merchants, in this time of *Ed. 3.* were in times when the passage was open, and not restrained by act of Parliament, and so to be compared to our impositions: but whosoever shall
by

by looking over the Statutes and Records with never so much heed consider the times of opening and shutting of the Sea by Statutes, shall finde it so intricate, as hee shall bee very hardly able directly to say, that at the time when any of these impositions were granted, the passage was open.

If in my observation I had found any such, I should have admitted it for an absolute imposition, as I have done *Charta Mercatoria*, which was by grant of Merchants; For certainly (as I have yeilded) the grant of Merchants is in this case of no other effect, then the declaration only of their assent; and the Imposition resteth meerly upon the kings authority: But I finde none such, if any such could be produced, you have heard how they have beene from time to time controlled in Parliament.

And so I passe from *E. 3.* to the times follow- From the end of the Reign of *E. 3.* till the reign of Queen *Mary*, who was the eleventh Prince of this Realme, after *Ed. 3.* (as *Ed. 3.* was the eleventh after the Conquest) being the space of 170. yeers or thereabouts. It hath been confessed by all those that have argued in maintenance of his Majesties Right to Impose, that there hath not been found one Record that proves any one imposition to have been laid; there are indeed in our printed bookes some three or foure Statutes during that time, in which mention is made of Impositions, but ther

they are (as I shall prove) Impositions of another nature then those are which we complaine of; and so make nothing at all to the prooffe of his Majesties Right: or if they were such as ours are, yet are they nowhere found mentioned but with disgrace, and to the end to be taken away, which may be the reason, that notwithstanding the great use that might have been made of three or foure Presidents of Impositions in these times, for the patching up of a continuance of the practise, which otherwise by this long discontinuance receives a great blemish: those which argued for impositions did not take hold of these, but chose rather to confesse that no Impositions at all were laid during all this time, and labored to seek out the reasons of the discontinuance.

I will briefly shew you what Statutes they are, during that time which, mention imposi- tions, the first is, *11 R. 2. cap. 9.* No Imposition nor charge shall be put upon Wools, Lether, or Woolfels, other than the Custome and Subsidie granted to the King this present Parliament, and if any be, the same shall be repealed and annulled, as it was another time ordained by Statute, saving alway to the King his ancient right. If by this saving the pretended right of imposing should be excepted (as was said in the Exchequer) the saving should then be contrary to the body of the Act, and therefore it must needs have some other interpretation, that

11 R. 2. cap. 9. Statutes in which there is mention made of Impositions after the end of *Edw. the thirds* raigne untill *Queen Maries Ed. 3.*

L

it

(74)

it may stand with the rest of the Act, and not condemn the Law makers of so much want of discretion: therefore doubtlesse this (saying) is no other then an exception of the ancient Right, full Customes, due upon those staple Commodities. And for my part I am of opinion that the Statute was made, not so much to take away any Imposition laid by this King *Ed. 2.* as out of a provident and prudent care in the Law makers, proceeding from the fresh memory of the practise of *Ed. 3.* in this kinde; For all those that were of this Parliament, did live and were at mans age in *Ed. 3.* time, and could not but well remember the grievousnes of his Impositions: Besides, I observe that they desire, that no Imposition be laid by way of addition to the Subsidie, upon Wools and Lether then granted: It was never heard till of late, that an Imposition upon any Merchandize, was charged at the same time with a Subsidie, and therefore without question, this was no other then an abundant provision by them wherein they were no more carefull then any wise man would be in the like case; when they had of their own free wils given the King a liberall gift, they were carefull not to be further charged by him.

23 H. 6. cap. 18. The next Statute in these times, where Impositions are found mentioned is, *23 H. 6. cap. 18.* By which it appears that English Merchants being restrained from repaying to *Gascoigne*

(75)

Gascoigne and *Guien*, to buy the Wines of that Country, they were neverthelesse suffered to repaire thither paying certaine *new Impositions*, which were demaded of them. Upon complaint hereof, it was enacted that all English Merchants might freely passe into those parts, and buy Wines there at their pleasure without any *new Imposition* or charge to be put upon them; For that *such Impositions were to the damage of Merchants, and to the hinderance of all the Kings people: if any were demanded by the King Officers, the officers so demanding them should forfeit twenty pound, besides treble damages to the party grieved.*

That these Impositions were by way of dispensation with a Statute, which restrained the repaire of English Merchants into those parts, and not by the kings absolute power, thereupon to ground an Imposition, is evident by the Statutes in Print. For from *27 Ed. 3.* till this *23 H. 6.* there are five, or sixe Statutes in Print to this purpose some more strict then other, which continued in force till *23 H. 6.* The reason of the restraint by *Ed. 3.* I suppose to have been because *Gascoigne* and *Guien* were then in his possession, and he was desirous his Subjects, the Merchants of those Countries should have the sole profit of their own Commodities; and that they onely should import them into England, and not the Merchants of England: whatsoever the cause of the restraint

27. E. 3. c. 6.
38. Ed. 3. c. 10 &
38 Ed. 3. cap.
42 E. 3. cap. 8.
43 E. 3. c. 12.

L 2

was

(76)

was, it is very cleer *the restraint was by Statute,* and that this Imposition raised by way of Dispensation was condemned, which nevertheless (suppose it had not been controled) yet as I have said oftentimes, it is in nature so farre differing from ours, as the practise thereof will not so much as help to salve this long discontinuance.

1 R. 3. cap. 12.

The next mention of Impositions is found, *1 R. 3. cap. 12.* The words are, *the Subjects and Cominallty of this Realme shall not from henceforth be charged by any such charge or Imposition called a Benevolence, nor by such like charge;* you perceive by the words of the Statute, what Impositions are intended within that Statute.

7 H. 7. cap. 7.

The next mention of Impositions in these times, I finde to be, *7 H. 7.* where a charge of eighteen shillings, laid upon a But of Malmesie by Parliament is called an Imposition.

22 H. 7. cap. 6.

Another mention of Impositions, I finde to be *12 H. 7. cap. 6.* In the preamble of the Statute; the words are, *That every person ought to use himselfe to his most advantage without exaction, Fine, Imposition or contribution to be had, or taken of him, to, or by any English person, or persons.*

Though some that have argued before me against Impositions have urged this Statute, as making against our present Impositions, yet for

(77)

for my part, I am not of that opinion, but upon perusing the Statute, doe rather thinke, that it extendeth only to impositions laid by the Merchants of *London*, upon the Merchants of other Cities and Townes not incorporate into their Companies, as will evidently appeare by the Statute: so as notwithstanding this Statute, that which I have averred, and hath been yeilded to by the Kings Counsell, that no Imposition was laid from *Ed. 3.* to *Queene Maries* reigne, is not yet impeached.

There is yet one other Statute of later time, in which mention is made of Impositions, and that is, *14. H. 8. cap. 4.* The words are, *Every Subject borne in England, and sworne to be Subject of other Princes, as long as they shall so abide Subjects to the other Princes, shall pay such Customs, Subsidies, Tolls, and other Impositions, within this realme, as Strangers doe.* I hold that this word *Impositions*, in this place is used as a generall to all the particulars before mentioned, and no otherwise, and is no more in effect then *charges*, a thing usuall in Statutes of this nature, to adde generall words for the more securitie, which I collect by the word (*other*) going next before it, For to what end should it be said, *no (other) Impositions*, if those particulars first named, were not contained within that generall word of *Impositions*. This word (*other*) is a Relative, and must needs be answered with words going before, when there are no other words following.

Besides, it is common in the Statutes and Records of *Ed. 3.* *No Imposition upon wools shall be laid, but in Parliament.* By which it appears, that a charge laid by Parliament, may be called an Imposition, which is very evident by a Statute made not above 28. yeeres before this, I meane the Statute of *7. H. 7. cap. 7.* which I spake of even now, where a charge of Eighteen Shillings upon a Butt of Malmsey, laid by that Act of Parliament, is called an *Imposition*; And as I have shewed you, the word *Imposition* hath been applyed to all these severall Inventions, used by *Ed. 3.* for the charging of Merchandizes, Nay, the word *Maltoll*, which is Englished by *Rastall, a newill Toll* (as indeed it signifies) and in that respect, is of a farre harder sense then the word *Imposition*) is used indifferently for a charge set by Parliament, or a charge set by the Kings absolute power upon Merchandises.

7 H. 7. 7.

The signification of the words *Maltoll*, and *Imposition*, or *Impos.*

No Imposition laid from *Ed. the Thirds* time, till *Q. Maries.*

Impositio derived from the verbe *imponere*, is no other then the Act of laying on, or imposing, and therefore in my opinion, Impositions are more properly by the Merchants called *Imposts* which signifieth the things Imposed. But I shall not need any further to enforce this, considering it hath so liberally been confessed by the Kings Counsell, that there is no Record or Statute from *Ed. 3.* till Queen *Maries* reigne, that giveth any assurance that *impositions*, or so much as any one *Imposition* was laid, during all that space of above 170. yeeres, only it behoves me

me for further opening the truth, to testifie, that being one of those that were by you imployed to make search in the ancient custome Books of those times, remaining in the Exchequer, together with some of the best experienced Merchants of this house, some of which had sate at the receipt of Custome, wee had many meetings, and spent many whole dayes in turning over the old Custome books, and as carefully as we could, did survey some books of every age and time; But after all our search ended, could not finde any one Imposition from the time of *Ed. 3.* till Queen *Maries* reigne, to have been received by any Customer or Collector. And if you please to give me leave to remember to you the passages of those times, you cannot but marvell, that none of all those Princes should so much as attempt to trie the strength of this so beneficiall a Prerogative, so much practised by *Ed. 3.* and when you have heard their occasions, and compared their other actions, with their forbearance in this kinde, you will, I think, conclude, and say in your hearts, that surely none of all those Kings had so much as any imagination, that any such Prerogative belonged unto them, as to raise money at their pleasure, by laying a charge upon merchandizes, to be exported or imported without assent in Parliament.

What great occasions all the Kings from *Ed. 3.* till *Q. Ma.* had to lay Impositions, and yet did is not.

Richard the Second, being the Grand-child and next Successor of *Ed. 3.* (in whose times im-
po-

Rich. 2.

positions of all sorts did so much rage) had little lesse occasion then his Predecessor had: For first, he had little treasure left him, and he was no sooner in his Throne, but news was brought that the *French* had invaded the Realme, they had burned *Rye* and *Hastings* in *Sussex*, they had taken, and possessed the *Ile of Wight*, they had besieged *Winchelsey*: From the Northern parts, That the *Scots* had burned *Roxborough*, and were ready to overrunne all the North parts of *England*. Being thus beset with warre on all sides, doth his Counsell (which in all likelihood, had most of them been of Counsell to his Grandfather) advise him to raise money by impositions, as his Grandfather had done (for this course of raising money by way of Impositions, was yet fresh in all their memories?) they do not, but he taketh the ordinary course, by calling a Parliament, which for mainteinance of his charge in the war, the second yeer of his reign, granteth him a Fifteenth; he calleth another Parliam. and hath another Fifteenth granted, the Fourth yeere of his reigne, the warres increasing, his necessities were such, and so conceived by the Parliament, as they granted him a most unusuall Taxe throughout the whole Kingdome, upon every Ecclesiasticall person, one and other, Sixe shillings Eight pence, upon every other man or woman within the Realm, Four pence, which when it came to be levied, caused (though causelesly, because it was legal-

yl

ly granted) that notorious Rebellion of which *Wat Tyler* was the Captaine. This Taxe as it was levied not without that great Rebellion, so questionlesse was it unwillingly yeelded to in Parliament; and yet because there was no other course thought lawfull for the raising of treasure upon the Subjects goods, then by their own assent in Parliament, onely that course was thought fit to be practised, which was such as ought to be obeyed.

From the 5. to the 18. yeere of his Reigne, he obtained every other yeer one aide or other in Parliament, sometimes a taxe, sometimes a Fifteenth, sometimes a Subsidie of Tonnage & Poundage: In the eighteenth yeer, he was enforced to go in person into *Ireland*, to settle the state of that Country then in Rebellion: all these troubles he had from abroad besides those famous Rebellions here at home, which afterwards cast him out of his Seat; yet did he never for all this attempt to lay impositions, though he wanted not about him, to put him in minde of his absolute power: For *Edward Strafford*, Bishop of Exeter, Lord Chancellor of England, in a Sermon made to the Parliament held, *anno 21.* as our Chronicles report, did publicly maintaine that the King was not bound by any Law; but was of himself absolute & above Law, and that to controle any of his actions was an offence worthy of Death, at which Parliament all that were present came

armed for fear of the King; and the Parliament House it selfe was beset with 4000. Archers by his appointment. I will speak no more of him then this; though he were a King of a weak spirit, yet did he not spare to practise upon his people the most grievous things that were; In-
 somuch that he so farre discontented them that they deposed him by common consent in Parliament, the onely desperate example of that kinde, that our Histories doe afford, or I hope ever shall.

Hen. 4.

His successor *Henry* the fourth, in respect he held the Crown by so weak a title, had cause to give the people all the content he could possible, and yet he was so oppressed with warrs on all sides, from *France* and *Scotland*, but especially by continuall and dangerous invasions made by the *Welsh*, as without the aide of his people for the supply of his treasure; it had not been possible for him to have held his Crown on his head, and therefore he pressed his people so farre, that in a Parliament held the fifth yeere of his reigne, they yeilded to him so great and so unaccustomed a tax, as that the grantors thereof, as our Chroniclers say, tooke speciall order that no memory thereof should remaine of record onely to avoide the president; and yet the very next yeere following, his wants were againe grown so great as his Subjects being assembled in Parliament to give him further ayde, did resolve that there was no other way

way to supply his want, then to take from the Clergie their temporall Lands and goods, and to give them all to the King, which being withstood by the Clergie, a resumption of all the gifts of *Ed. 3.* and *Ric. 2.* was propounded: at last (after they had sate a whole yeere) they gave him two Fifteenths; at this time, most of his Counsell, and the great Officers of the Kingdome were Spirituall men; had they not now, (if ever) a just occasion given them to have put the King in minde of his Prerogative of laying impositions, not onely to the intent to have diverted him from the harkning to that desperate motion that had been made against them to all their utter undoings, but were they not also bound in duty and conscience, in this time of so great necessitie (seeing the Parliament knew not otherwise how to supplie the Kings wants) to have advised him to have made use of his lawfull right of imposing, by which means, he might, without troubling the Parliament, quickly have raised great summes of money: certainly it was not because they were ignorant of any such practise in former times; For none of them that were then of the Counsell to *Henry* the Fourth, but they lived in *Ed. 3.* time, and most of them doubtlesse, were in *Ed. 3.* time men of age and discretion; But in all likelyhood as they knew that *Edward* the Third did lay impositions, so likewise they knew that impositions had been from time to time, in those daies

condemned as unlawfull, and were become hatefull to the people, and onely for that reason, they did forbear to advise the King to take that course, though the necessitie were never so great.

Another Prerogative, as much concerning the interest of the Subject, as this of Impositions, namely the abasing of Coyne, this King made no scruple at all to put in practise, because he held it to be lawfull.

Hen. 5.

His Sonne, and next Successor, *Hen. 5.* who by his many victories over the *French*, and his noble disposition and behaviour towards his people, was so farre beloved of them, as never was King of this Realme more, though the Kingdome were now, by one degree of discent, more firmly setled upon him then it was on his Father (who usurped it) though also his expence of treasure, by reason of that great warre in *France*, were as much, as any king's of *England* ever were, though he had troubles also from his Neighbours the *Scots*, and within his owne Realme, by Rebellions: and lastly, though he spared not for supplie of treasure, to suppress above a 100. Priories of Aliens; yet neither out of the strength of his love with the people, nor in his extreame necessity, by reason of these honorable warres in *France*, for the maintenance of which, the people would willingly have undergone any burden which he would have laid upon them, especially after the victory

-1105

M

at

at *Agencourt*, did he ever so much as attempt the laying of Impositions.

His Successor *Hen. 6.* (though indeed of a meek spirit) yet he was so followed with troubles within the Realme, and from abroad, that he was inforced to crave such an extraordinary aide of his Subjects in Parliament, as the levieing thereof was the cause of that famous Rebellion of *Jack Cade* in his time. Besides, in the 18 yeer of his Reign, for the ease of his charge and supply of his wants, all Grants by him made of any Lands, Rents, Annuities, or Fees whatsoever, since the first day of his Reigne, were resumed: and this is never yeilded to, but in cases of extreame necessity. As for Impositions, notwithstanding his great wants, he thought not of them.

Hen. 6.

Edw. 4. that succeeded him, was no lesse free from troubles, for he was (as you know) driven to forsake his Kingdome, and to live for a while like a banished man with the Duke of *Burgundy*. He was also inforced in the 5 yeer of his Reign to make a Resumption; and the same yeer to abase his Coyne: And *Comines* observeth of him, that he obtained a Subsidie of his Subjects in Parliament, upon condition that he should himselfe in person undertake the war in *France*; and, that only to get the Subsidie, he passed the Seas into *France*, but presently returned without doing any thing. What should such shifts as these have needed, if he might (without being

Edw. 4.

M 3

be-

beholding to his Subjects) lawfully, and without controll have raised Treasure by laying of Impositions? It is well worth the remembring, that which the same *Comines* (speaking in commendation of the frame of this Commonwealth) saith; *That this State is happy, in that the people cannot be compelled by the King to sustain any publique charge, except it be by their own consent in Parliament.*

Hen. 7.

H. 7. had a Subsidy of Tunnage and Poundage granted to him for his life, as may appear by the Parl. Roll 1 H. 7. which appears no where in our printed books.

I proceed from *Ed. 4.* to *Hen. 7.* (omitting *Ed. 5.* and *Ric. 3.* because of the shortnes of their Reignes.) *Hen. 7.* had indeed a more peaceable time than any of his Predecessors; and yet he was not altogether free from troubles both within the Realme, and from abroad: But his naturall inclination was rather to embrace Peace; he was so provident and politique in the gathering and storing up of Treasure, as never any Prince of this Realme was therein to be compared to him: He did himselfe take the accounts of his Revenues, (which I have seen under his own hand:) He had for his Assistants about him, *Empson* and *Dudley*, men learned in the Lawes, and by all probability, very cunning in all the profitable points of the Prerogative; men that that intended or studied little else than the advancing of their Masters profit; men even till this day infamous for their wicked counsell, in perswading that good King to lay such heavy Exactions and Burdens upon his people, as he did: If these men who in all likelihood should have best knowne the

the Kings right (especially in so high a point of profit) had but had the least notice of so profitable a Prerogative as this, would they not have been at strife which of them should first have put the king in minde thereof? Or if they had held it questionable, would they not have put it to some trial? Certainly there can be no cause imagined that should make them thus to forbear, but either they were utterly ignorant of any such Prerogative, or, that knowing such a thing to be claimed by some of the ancient kings (especially by *Ed. 3.*) they knew likewise that it was in the same times continually complained of in Parliament, and alwayes condemned; and that there were acts of Parliament directly against it, and this is more probably to be conceived of them being men of such searching spirits, and so well studied in point of Prerogative, then that they were ignorant of the practise of *Ed. 3.* considering also that they were nerer to those times by 120 years then wee are.

But that which most of all moves me herein is that there was in *H. 7.* time such an occasion offered of making use of this Prerogative, as there could not possibly happen any other that might better have justified the laying of Impositions; which was this: The Venetians, to the intent to drive our Merchants from fetching sweet wines at *Candy*, that they might the better imploy their owne ships and Merchants, did impose upon every But of Malmesey brought thence by English

English Merchants foure Duccats, by which means the English wholly lost that Trade, and the Venetians made the whole profit thereof: This mischief was no other way better to be remedied, than by imposing the like, or a greater charge upon Merchants of *Candy* bringing Malmesey into England; that so they of *Candy* not being able to afford them better cheape than the English, the English might still fetch them from *Candy* as they had went to doe. I say, there could not possibly be a more justifiable occasion of laying Impositions, than this was: And did this king (so carefull in other things of preserving his Prerogative, and most of all in matters that concerned his profit) take hold of this occasion to lay an Imposition by his absolute power: Nay rather, though he saw it convenient, and in a manner necessary, yet he conceived it to be unlawfull so to doe; and therefore did it not by his absolute power, but by assent of Parliament, as may appear by the Statute of 7 *Hen. 7. cap. 7.* printed; where, in the preamble of the Act, you shall see the occasion of the making of the Act to be as I have opened it unto you: and you may perceive by the body of the Act, that for the counterpoysing of the imposition of foure Duccats laid by the Venetians upon our Merchants, there was imposed 18^s. for a But of Malmesey, upon their Merchants bringing it hither, to last as long as the imposition of foure Duccats (which, as appears by the Act, came but to 18^s. of our mony) should endure.

endure. It is not probable that this king, considering his other actions, would have suffered this to have been done by Parliament, if he had thought he might have lawfully done it by his absolute power: And therefore it cannot almost be gaine-said, that in these times this pretended Prerogative of laying Impositions without assent of Parliament was held to be against Law.

Hen. 8. his sonne and successor, was so farre from the disposition of his father, in this point of thrift and providence, as there was not in the whol ranke of our kings any one like to him, for excessive prodigality; the great riches stored up by his father, with so much care, and left unto him, hee so sodainly consumed in Triumphs, Maskes, Mummeries, Banquets, pompous and braving Warres, as was that of *Turwin* and *Turney*, and in the satsfying of his lust, as he was out of very necessity enforced to crave most unreasonable aids of his Subjects in Parliament, such as never before had been granted, which through very dread and feare were yeilded to him; yet not so satisfied, that no meanes for the rayfing of money might be neglected or unattempted, in the 15 yeere of his Reigne, by the councill of that proud Prelate Cardinall *Woolsey*, hee spared not to send out Commissions into every shire throughout the whole Realme, with privy instructions to the Commissioners, how they should with most advantage behave themselves, in perswading the people to contribute to the

Hen. 8.
Hen. 8. had a Subsidie of Tunnage and Poundage granted to him for his life, the first yeare of his Reigne, as appears by the *Parl. Roll.*

N king

king the fixt part of their whole estates, to bee paid presently, either in money or plate, whereupon followed extreme cursing, weeping and exclamation against the king and his counsell, and the people were in point to rebell had not the king stayed the proceedings of the commissioners by his Letters. Finding that this way would not serve his turne, hee demanded a benevolence, which not answering his expectation, hee did the same yeere raise unto himselfe a great deale of treasure by abasing his gold.

Such things as these Princes never put in practise but when all other meanes faile them, and yet hee went many degrees beyond this: For, in the 27. yeer of his reigne he suppressed above 370 Religious houses, the yeerly value of whose revenues I have read to be no lesse than 32000^{l.} *per annum* in those dayes: and that of their goods (sold at very low prizes) he made above 100000^{l.} in present money. About 4. yeares after he dissolved all the Monasteries, Abbeies, Priories, Nunneries, and all other Religious houses of what kinde soever throughout England. By which meanes, and by the sale of their goods he gathered such a masse of Treasure, as it might have been imagined that never any king of this Realme should have needed to have sought reliefe at his Subjects hands: Yet he himselfe, no longer than within 3. yeeres after following, craved and obtained (as may appeare by the Statutes of that time) an excessive great Ayde by Parliam^{ent}.

ment, and yet the yeere following hee did also abase his coyne, more then halfe in halfe, such an abasement as never before or since was heard of, and could not but bee very grievous to the people; but because perhaps they held it lawfull so to doe, they made no pubilque complaint thereof, and it is worth the observing, That though this Prerogative of abasing Coyne be a thing which trencheth as deeply into the privat interest of the Subject as the laying of Impositions; for, by this meanes a man, that this day is worth in revenues a hundred pounds *per an.* hee shall to morrow, if the king be so pleased, be worth but fifty or forty, or lesse, in reall value; and though also the practise of this Prerogative hath not been forborne by any of the kings of this Realm, and that some of them have used it very immoderately, yet cannot there be found any one publique complaint, that ever I have met withall, upon Record against it, as from time to time there have beene many against Impositions, which argues that the Subject did make a difference between thesetwo Prerogatives; this, of laying Impositions; and that, of abasing coyne; thinking the one lawfull and the other not. But to conclude my observations upon the actions of Hen. 8. The next yeere after this unconscionable abasement of his money, hee craved a benevolence. The yeere following he tooke the profits of all the Chantries, Colledges and free Chappels, &c. during his life, which ended the

next yeere : Can any man imagine that during this kings Reigne it was held lawfull (or any such thing so much as dreamed of) to rayse treasure by laying Impositions ; I will enforce it no farther, but leave it to the judgement of any reasonable man that shall consider these things which I have remembred, whether or no it bee likely.

Edm. 6.

Out of the time of his Sonne and Successor Ed. 6. I can observe little, because of the shortnesse of his Reigne; but methinkes, if his Governours had imagined that any such Prerogative had been due unto him, they should not in honor have forborn the practise thereof for the supplying of the Kings great necessities, and instead thereof have craved of the Subjects that uncustomed and unreasonable Subsidy, granted an. 2. of a certaine sum of money upon every sheep and every Cloth within the Realme, for 3. yeeres; which afterwards for the unreasonablenes thereof was released.

Corolary or connexion of the times before mentioned.

I have now gone through in such sort as you have heard, the times of all the Kings from Ed. 3. till Q. Maries Reigne : during which time what can there be more imagined, that might possibly have happened to have awakened Impositions, if they had not been more than asleepe? Neither the necessity of just and honorable warre, nor the subtleties and curiositie of Peace, nor the prodigality of some of these Kings for the better satisfying of their pleasures, nor the covetousnesse of others, nor the softnesse of some of their dispositions,

ncs

nor the nonage of others apt to be abused by evill Counsellors, nor the dreadfull and fearefull ave in which some of them held their Subjects, nor the assurance of the peoples extraordinary affliction, which might have emboldened some others; nor the evill conscience of Usurpers, nor any other motive whatsoever which happened during this long time, could revive them; untill Q. Mary did at last raise them out of the grave, after they had been so many yeeres dead and rotten.

Qu. Mary.

The first Imposition that she layd, was that upon Cloth, continued till this day, which grew upon a speciall reason, as may appeare by the printed booke of the rates of her Customes and Subsidies; in the end whereof you shall finde a declaration expressing the losse susteined by reason of the difference between the Customes and Subsidies of Wool and cloth, by which it appeares that a sack of Wool yeelded in custome six shillings eight pence, and in Subsidie thirty three shillings foure pence; that the custom upon a short cloth was fourteene-pence, and that a sack of Wool did commonly make foure short clothes, the custome of which was foure shillings eight pence; so that the custome of Wool made into cloth, was lesse then the Custome and Subsidie of so much Wool not cloathed; In every sack in short clothes thirty five shillings foure-pence: which difference was reduced to an equality by rating upon every short-cloth ten shillings: After this declaration made of the difference and of the rate which reduced both to an

N 3

equali.

(94)

equality, follow these words; Which difference considered, and the great losse sustained by Us in the same, by reason that cloathing is much increased, It is thought convenient by Us, with the advice of our Councell, towards the reliefe of the losse, for to asseſse upon the Clothes carried out, by way of Merchandize, some larger rate then heretofore hath been used, and though it were reason to appoint such a rate as might recompence the full of the losse sustained, yet upon divers considerations, at this time, Us and Our Councell moving, Wee are pleased only to asseſse upon every short-cloath, by the name of custome, six shillings eight pence, &c.

I thought good to open this at large unto you that you might see upon what speciall reason of equity this Imposition was grounded, and how it differeth from ours: And it is worthy the observing, how the Queene commandeth this increase of Custome to be yeelded unto her, not as an Imposition, or by the name of Impost, but by the name of Custome, because it cometh in lieu of the ancient Custome upon Wooll, which is the reason that at this day it is demanded and paid by that name, whereas no other new raised duty hath that priviledge, but they are either called Subsidie of Tonnage or Poudage, if they be raised by act of Parliament; or Impost, if by the Kings absolute power.

The name of Custome was anciently given to none but to Wools, Wool-fells, and Leather; and

(95)

and upon this occasion, to Cloth also.

This Imposition, though grounded upon such equity as you have heard, yet in *Dyer*, 1 *Eliz.* fo. 165. a. & b. it was, as appeares by my *L. Dyer*, complayned of by the Merchants of *London*, with great exclamation (which are his words) and suit to the Queen to be unburdoned of it, because it was not granted in Parliament, but asseſsed by Queen *Mary* of her absolute power: whereupon there were divers assemblies and conferences of the Justices and others, but their resolution is no where to be found, at least by Us; It is very probable that if they had given judgement for the Queen, it would not have beene kept close, but howsoever the profit was too great to be taken from the Crowne and therefore it continues till this day.

Howsoever the reason in equity in the laying this Imposition upon Cloth may seeme to be found unto some men, and so to allow of this Imposition as differing from ours, yet for my part, I hold it not so, when I consider what course was taken by *Ed. 3.* upon the same occasion, *an. 11. E. 3. c. 1. & 2.* It was enacted, that no wooll should be caried out of *England*, but by the Kings licence; and that no man should weare Cloth, other than such as should be made in *England*: this Law tooke such effect, as within ten yeeres the greatest part of the Wooll in *England* was made into Cloth; and it became to be transported in such abundance, by reason that there was no Custome

Plowdens argument against it, in *M. Tates* hand.

stone at all due upon Cloth, and the Custome and Subsidie upon Wools was very high, that in the 21 yeere, the King finding his Custome of Wools so much decreas'd, doth seeke to remedy it, not by imposing a new charge upon Cloth by his absolute power, as *Qu. Mary* did, but did it by assent of his Subjects in full Parliament, as I collect partly by my *L. Dyer* in the place last mentioned, but more fully by a recitall in a Record amongst us, of 24. E3. ro. 13. *orig de Scaccar.* to this effect: *That whereas the Customes and Subsidies due and granted upon Wools are much decreas'd, because a great part of the Wooll of England is made into Cloth, for which no Custome is due; and whereas in consideration thereof, at our Councel held the 21 yeere of our Reigne, by the common assent of the Prelates, Earles and Barons, and others, it was ordeined and accorded, that 14^d. by Denizens, and 20^d. by Strangers should be paid for every cloth of Assise, &c. made of English wooll, and transported; upon paine of forfeiture of the Clothes: And so followeth an authority given to collect the same.*

The next Imposition laid by *Q. Mary*, was forty shillings upon a Tun of French wines, imposed in the 5 yeere of her Reigne: at which time there was first a Proclamation made, that no wines at all should be brought from France, being then in enmity with England, upon paine of forfeiture of the Wines; (which, by the way, is a strange clause in a proclamation.) Immediately after this restraint there was an order made by the *Qu.*

Qu. and her privy Counsell, that such as would might bring in French wines, notwithstanding the Proclamation, paying forty shillings upon every Tun by the name of Impost, as doth appear by Record in the Rolls of Easter Terme, 1 *Eliz.* in the office of the *K. Remembrancer* of the Exchequer, in the case of one *Germane Ciol*, against whom an Information was exhibited for not paying the said Imposition: Whereunto (taking it by way of Traverse, that there is no Law of the Land by which he may be charged with Impost) he pleads a licence made unto him, *an. 1. & 2. Ph. & Mar.* to import a certaine number of Tunnes of Wine within a certain time, any restraint then made, or afterwards to be made to the contrary, notwithstanding; Provided alwayes, that the Custome, Subsidie, and other duties due and accustomed to be paid to the King and Queen, were duly satisfied; He shewes, that for all Wines brought in by him during the life of *Queen Mary*, he paid the Subsidie of Tonnage, *viz.* three shillings for every Tun, which was all that was due and accustomed to be paid: Upon this plea a demurrer was joyned; and judgement given thereupon against the Queen: This judgement hath been enforced in the maintenance of Impositions: Whether or no it make not rather against them, I leave to your censures.

Neere about the same time there were Impositions laid also by *Queen Mary* upon all French commodities whatsoever to be imported, as may

appear by the Port-bookes of those times in the Exchequer; which Impositions were received to the use of Queene *Eliz.* in the beginning of the 1 yeere of her Reign, but ere the yeer ended they were all taken away, as may appear by the same Port-bookes; which in my opinion is a great argument that they were not then held lawfull: For, Princes doe not so easily give over their hold in matters of profit, if they be any way able to maintain it. What hath hitherto upheld the Imposition upon Wines, I know not, except it be the great profit that comes by it to the Crown, and because there was never any late Judgement given directly against Impositions.

Admitting the king had power by the common-Law to lay Impositions, yet hee is barred by Statutes.

You have hitherto heard what reason and direct prooffe I have used, to maintaine, that by the Common-Law the King cannot at his will increase his Custome by way of Imposition: You have, secondly, heard what the practise of former ages hath been in this kinde, till this day; from which I have also drawn reasons of Inference, that prove the Common-Law so to be. But now, admitting that by the Common-Law it had been cleere and without question, that the King might at his will have laid Impositions, and that also the same could have been cleerly proved by the practise of the ancient Kings, yet I affirme, that so stands the Law of England at this day (by reason of Statutes directly in the point) as the Kings power, if ever he had any to impose, is not onely limited, but utterly taken away; as I hope

hope I shall be able evidently to prove, notwithstanding any objection that hath been made against the interpretation of the Statutes to this sense.

The first Statute is in *Magna Charta, cap. 30.* *Magna Charta cap. 30. Enforced, and the objections made against it, answered.*
 The words are; *All Merchants, if they were not openly prohibited before, shall have their safe and sure conduets, to enter and depart, to goe and tarrie in the Realme as well by Land as by water, to buy and sell without any evil tolls, by the old and rightfull Customes (except in the time of Warre.) And if they be of the Land making warre against us, and be found in our Realme at the beginning of the warre, they shall be attached without harme of body, or goods, untill it be knowne to us, or our Justices, how our Merchants be intreated there in the Land making war against us, &c.*

The Statute of which this is a branch, is the most ancient Statute-Law we have, wonne and sealed with the blood of our Ancestors; so revered in former times, that it hath been by Parliament provided, that Transcripts thereof should be sent to all the Cathedrall Churches of England, there to remaine; that it should be twice every yeere publicly read before the people; that likewise twice every yeere there should be excommunication solemnly denounced to the breakers thereof; that all Statutes and all Judgements given against it shal be held as void; that it should be received and allowed as the Common-Law, *25 E. 1. cap. 2. 2. 3. 4.*
 by all such as have the administration of Justice; and it hath been no lesse than 29 times solemnly

confirmed in Parliament: I will therefore with so much the more care endeavor to free this Law from all the objections that have been made against it.

The first objection, that it extendeth only to Merchant-strangers, answered.

The first objection doth tend to the diminishing of the extent of this Statute, as touching the persons whom it may concerne; for it hath been collected out of the latter words of the Statute, that it should extend onely to Merchants-Aliens, and not to Denizens.

First, it is improbable that the makers of the Law should be more carefull to provide for the indemnity of Merchant-strangers, than of English; except perhaps they might imagine that English Merchants were already sufficiently provided for by the Common-Law: If that were their reason (as there could be no other that I can imagine) it doth as much maintaine my opinion, as if they had been contained within the Statute.

Again, the words are generall: All Merchants; and, *Qui omnes dixerit, nullos excipit.*

Besides, the Statute is a beneficiall Law; in which case particular and speciall words doe alwayes admit a generall extent: And therefore, to restraine generall words, as the Objectors would, is against all reason, and rule of Law. As for the latter words, 'tis true, they doe indeed extend onely to Merchant-strangers; but the sense of the first sentence is perfect without this: and as long as no absurdity nor contradiction doth follow by interpreting the first words to extend to all Mer-

Merchants in generall; and the latter onely to Merchant-strangers, the most ample and beneficiall construction is ever the best, as in all other Statutes of this nature.

But this objection is, in my opinion, cleerly removed by 2. Statutes made by *Ed. 3.* in declaration of this very clause: The first is, *2 Ed. 3. c. 8.* the words are, *All merchants, Strangers and Privies may goe and come with their merchandizes into England, after the tenure of the Great Charter.* I take it, that *Privies* in this place, being the very word that is found in the Originall, which is in French, ought to be understood Denizens; for, otherwise I suppose it would have been joyned to the word [Strangers] by a conjunction disjunctive, which is usuall where the words are of one sense; and not by a copulative, as here it is. Besides, I take the word [Privy] to be derived from the Latine, *Privatus*, which signifieth a particular property; as *res privata*, a mans owne private estate: so, *mercatores privati*, our own Merchants. That Merchant-strangers should be first named, is common in Statutes and Records.

The next Statute explaining this of *magna Charta*, is, *14 Ed. 3. c. 2.* The words are, *Whereas it is contained in the Great Charter, that all Merchants shall have safe conduct, &c. Wee grant that all Merchants, Denizens and Forreins, may freely passe, &c.* which I take to be no other than a meere declaration of *Magna Charta*.

The second Objection made against this branch

The second
Objection.
That *Magna
Charta* cap 30.
was made only
against Taxes
within the
Land, an-
swered.

branch of *Magna Charta*, is, That the meaning thereof was to secure the Merchants, not from a new increase of Custome to be imposed by the King, to be paid at their entrance or going out of the Ports, such as our Impositions are; but from certaine petty exactions, as Tolls and such like, which were then usuallly demanded of them within the Land, by the Townes through which they were to passe and where they sold their Merchandize; for the farther remedy of which there were afterwards divers Statutes made which doe evidently manifest that such was the mischief, and they doe the rather make this collection because of the words, *buy and sell without evill tolls*; For, say they, Impositions are not paid upon the buying and selling of Merchandize, but when they are to ship or unship: they take hold of the word Toll, which properly is an exaction for passage within the land, or for sale in markets or faires. These objections, notwithstanding I hold it somewhat cleere that the meaning of this Statute was principally to secure Merchants touching Impositions. My first argument is drawn *ab Auctoritate*, from the authority of the wisest and most sage men in greatest places and offices within this kingdom, in the times wherein they lived, and who also could so much the better judge of the true meaneng of this Statute in that they lived so nere the time of the making thereof, even in the beginning of the reigne of the

the next King (save one) to him that made this Statute: I meane those who made the Ordinance in 5. *Ed. 2.* heretofore divers times mentioned by me, who in alledging their reason against *Charta Mercatoria*, doe amongst other things say that the same was made against *Magna Charta*; What was the cause of the griefe conceived against *Charta Mercatoria*, other then the Impositions by colour thereof, laid upon forraine commodities; It appeares by the Ordinance, that was the onely cause: if then *Charta Mercatoria* were by them adjudged to be against *Magna Charta*, only because by colour thereof, new Impositions were raised, without assent of Parliament, it is evident, that they interpreted the Statute of *Magna Charta* to be made against impositions; if they had thought it to have extended onely to petty tolls and exactions within the land, as is objected, then could it not have extended to *Charta Mercatoria*. As for the words *Buy* and *Sell*, without any manner of evill Toll; I denie not but the words may perhaps have that sense, which hath been collected out of them, *viz.* that in buying and selling, they should be free also from unjust exactions within the land. But I say further, that these words, without any manner of Evill Toll, by the old and rightfull Customes, do extend not onely to the next precedent words (Buy and sell) but also to the former words, Enter and returne, and more principally to them then to any

any other; For to have provided that they should be free from those petty exactions of tolls in Markets, and for passing through Cities and Townes, and to leave them subject to Impositions, to be laid on at the Kings pleasure, had been but a slender securitie. This exposition of mine is confirmed by a Record here amongst us, of 16. Hen. 3. no longer then seven yeers after the making of this Statute. By which it appeares, that the King commanded his Officers, at the Ports, to signifie to all Merchants, that they might with safetie enter into his kingdom, paying the rightfull and ancient customes, *Nec timeant sibi de Maletollis quas faciet Rex.*

Derivation of the word Toll.

As touching the word Toll, which they say is to be understood of Toles for passages, and for buying and selling in Faires and Markets, it behoves me to say something of the derivation thereof; the rather because it is very often used in our ancient Statutes and Records in the same sense, as it is in this place; and by the derivation thereof the naturall and true meaning of the word shall be best understood; I hold it therefore to be derived from the Latine word *Teolonium*, which signifies custome, by cutting off the latter part of the word, and retaining onely the first part *Teol*, by contraction *Toll*, of which manner of derivation, there are infinite examples in our language, the Latine *Teolonium* (as saith Calvin in his *Lexicon Juris Civilis*) is derived from the Greek *Telos*, which
fig

signifies aswell Custom as it doth *Finis*: Hence it is that the Customers are called in Latine *Telonarii*.

Thus you see that the genuine, and primitive signification of our word *Toll*, is no other then Custome upon Merchandizes: from the word *Toll* are come those two barbarous Latine words found in our Statutes, and Records, *Tollium*, which is the word used in the Record of 16 H. 6. but even now vouched by me; and *Tolnetum*, the Originall word in the Statute now in question, which I must confesse is also in our Law Latine used by us for *Toll* in the Market, and *Toll* for passage, as may appear by the Register, and the Book of entries. But in this place, *Malum tolnetum* properly signifies not a Toll in the common sence, but an unlawfull charge laid by the King upon Merchandizes, as an increase of Custome, according to the Primitive signification, which is evidently proved in that it is here opposed to old and rightfull Customes; *sine omnibus malis Tolnetis per certas & antiquas consuetudines*; wherfore it ought so to have been translated, for so it signifies, without Impositions, by the old and rightfull Custome: This exposition and translation is further warranted by the use of the word *Maletoll*, so often found in our ancient Statutes & Records, which without scruple is derived from the Latine, *Malum Tolnetum*, the very word of our Statute; I finde it diversly
P writ-

written, *Maletout*, *Maletolt*, *Maletot*, and sometimes *Maletent*, but I never finde it any where used in any other sence then for an Imposition by way of increase of Custome upon Merchandizes: Sometimes indeed but that very rarely, It is taken in the best sence for lawfull and rightfull Custome, as the word Imposition sometimes is, but then commonly it is accompanied with another word to free it from the worst sence, as *Droituel Maletout*, &c. That *malis Tolnetis* in this place ought to be translated Impositions, may be farther proved by that which I finde in a writer of the french History, one *Jean Serres*, who saies, That in the time of *Philip le Beau* King of France, which was about the time of *Ed. 3.* King of England, there were rebellions in France because of Impositions laid by the K. which in those days, they did, saith he, call *Maletouts*, the very word then anciently used in Engl. for Impositions, as may plentifully appeare by the Statutes and Records of *H. 3. Ed. 1. Ed. 2. & Ed. 3.* for the word *Imposition* was not used in any French Record, Statute or other, for ought I have seene, till *Ed. 3.* I finde it once used in Latine, 12. *Ed. 3.* in the Letter which King *Edward* the Third writ to the Archbishop, to excuse him to the people, for laying Impositions, and as all that Letter throughout, is of an eloquent stile, so as it seemeth he was carefull to avoid also that barbarous word, *Malum tolnetum*, though common and famil-

The word
Imposition.

familiar, and in stead thereof, to use the pure Latine word *Impositio*. *Sylvius* writing upon *Tullies* Oration for *Marcus Fonteius*, where these words are used by *Tully*, *Imposuit vectigal*, (saith) *Ita usitatum vulgo est ut vectigalia nova appellent Impositiones*. The word *Vectigal*, in this place, though in a generall sence it may be applyed to any revenew whatsoever, yet with the Civill Lawyers, it is by way of Excellence, commonly used for Custome, as may appear by *Calvin* in his *Lexicon*, *Vectigal quod Fisco vel Reipubl. portorii nomine penduntur, id est, pro mercibus qua invehuntur vel evehuntur*. Sometimes they use to joyne with it for a more cleere distinction, the word *Portorium*, as a man would say, the revenue of the Ports, agreeable with which, upon some Records of *Henry* the Thirds time, I have found it to be called, *Exitus Portuum*. By this it is evident, that *Impositio* in pure Latine, and Imposition in English, is the same with *Maletolt* in French, and *Malum tolnetum* in our Law Latine; and they doe all signifie a new increase of Custome, and not any thing else; Wherefore I conclude, that these words, *sine malis Tolnetis*, in our present Statute, are naturally and properly to be expounded, and understood of *Impositions*, and so ought to have been translated, and not as they are; and although the word *Imposition* it self, as also the word *Maletout*, and *Malum tolnetum* may be (as I have confessed) taken as well for a

new increase of Custome, by a lawfull means (*viz.*) by assent in Parliament: as for an increase of Custome by the Kings absolute power, which is unlawfull, yet by the words that immediately follow, it is evident that this Statute doth onely intend unlawfull impositions, that is, impositions laid by the Kings absolute power, without assent in Parliament, otherwise would they not have been opposed to due and rightfull customes, as by the words of the Statute they are.

The word Custom, *Custuma*, and *Consuetudo* expounded.

But because there hath been some exception also taken to the exposition of the word *Custom* in that sence in which I take it (that is) for custome upon Merchandize, for that the word in the Originall is *Consuetudo*, which signifies an usage, and not *Custuma*, which is the Latine word we now use for Custome upon Merchandize; it behoves me therefore to say something touching these words, *Consuetudo*, and *Custuma*, for the clearing of this scruple. This word *Consuetudo* in his first and proper signification, doth, I confesse, signifie an usage, or practise of a thing time out of minde, but it is evident by the Records in the time of *H. 3.* and *Ed. 1.* this word in a more speciall manner, was applied to all, or most of the duties belonging to the Crowne, by reason of Trade, As *Consuetudo aque Thamesis*, *Consuetudo piscis venientis ad vicum Pontis London*, *Consuetudo que vocatur Scavagium*, *Consuetudo que vocatur Gauge*, But yet

yet more specially it was applyed to that dutie, which we following the same rule, because of the greatnesse of the Revenue, doe likewise *per Excellentiam*, call Custom; This may appeare by the Pipe Roll of *52. Hen. 3.* this title *Consuetudo Mercandizorum*, and by divers other Records of *Hen. 3.* times, the Rolls and Records of the beginning of *Ed. 1.* doe likewise prove the same very evidently, Insomuch, that not onely that which in this kinde belongs to the King by the Common Law, and by ancient prescription, was called *Consuetudo*; but in later time, if any increase were of that dutie, though it came not by prescription, but by grant in Parliament, or otherwise, yet it still retained the name *Consuetudo*, which by continuance of time, came to be the proper name to that kinde of dutie howsoever it began; And therefore in *3. Ed. 1.* you shall finde that after the old custome of Woolls was increased to a demy-Marke by Act of Parliament, yet the word *consuetudo* was nevertheless still retained, but with an addition, For it was then called *nova consuetudo*. Nay, though the increase were by the Kings absolute authoritie, and upon the matter, a meere Imposition, Yet the King in his Commission did alwayes call it *consuetudo*, as in *16. Ed. 1.* the Imposition of Foure Shillings upon a Tun of Wine, is in the Kings Commission to collect it, called *consuetudo*. Neverthelesse, I assure my self, the people called it by some worse name, as *Maletolt* or the like.

(110)

The severall applications of this word *Consuetudo* to all duties whatsoever belonging to the Crowne by reason of Trade, is the reason as I conceive that the word is used in the plurall number in the Statute of *Magna Charta*, *per antiquas & certas consuetudines*, that so they might bee secure against all unjust exactions upon Merchandizes whatsoever; but as I have said, the principall scope was to provide against Impositions, and by reason also that the word *Consuetudo* was taken as well for Impositions as for rightfull Customes, therefore to make all sure, they insert the words *antiquas & rectas*. This word *Consuetudo* in this sense continued till about the twentieth yeere of *Ed. 1.* after which time I cannot call to minde that I have seene it upon any Record: In stead and place thereof came in the word *Custuma*, which I find first in *Charta Mercatoria an. 31. Ed. 1.* where the increase of Custome by the grant of Merchant-strangers is called *parva custuma*, & that which before was called *nova Consuetudo* doth now begin to lose that name, and to bee called *magna Custuma*, which termes of *magna Custuma*, intending thereby that increase made by Parliament, *anno 3. Ed. 1.* upon the three staple commodities, Wools, Wooll-fells, and Lether: And *parva Custuma*, intending thereby the increase granted by the Merchants-strangers, *an. 31 Ed. 1.* are the termes used at this day by the Customers, and by which they distinguish their

Custuma.

(111)

their entries. This word *Custuma* I finde to have been also promiscuously used by *E. 1. E. 2.* and *E. 3.* in their Commissions, and applyed as well to increase of Custome by way of Imposition, or by acts of Parliament of those times, as to ancient custome upon the Staple commodities; but regularly none ought to be called *Custuma* but that which is due upon the Staple commodities, and so is it used at this day, except only cloath; for, if it bee laid by act of Parliament, it is called a *Subsidie*; if without assent of Parliament *Impos.* You see in what sense the words *malum Tolnetum*, and the word *Consuetudo* have been used in former times, and are thereby able to judge how they ought to be understood in this present Statute which, as I have said, ought to have the most benign interpretation that the words may beare.

But it hath beene likewise objected that in this Statute there is a speciall clause of exception which leaveth the king at his liberty to lay what impositions he pleaseth, this Statute notwithstanding, and that is the words in the beginning of the Statute. All Merchants (*if they were not openly prohibited before*) shall have their passage, &c. which implies, say they, that if they be prohibited (which rests wholly in the kings power) then they are not to have benefit of this Stat. touching the freedome from impositions; and they say farther, that the very laying of impositions doth imply a restraint *sub modo*.
Though

The third objection against *Magna Charta*, *cap. 30.* that by the Exception the Kings prerogative to lay Impositions is saved, answered.

Though I purpose to speake more fully in answer of this objection when I come to shew you the weaknesse of the reasons alledged for Impositions, yet I cannot forbear in this place to speake a word or two in answer thereof, having the Statute now before us: *Except they be prohibited they shall have free passage* (saith the Statute) *without paying Evill-toll*; This doth imply, say they, that if they be prohibited they may be compelled to pay Impositions; but that cannot be necessarily concluded; it implies indeede somewhat strongly, that they may be prohibited. The Statute of 1 R.2. cap.12. inhibiteth the warden of the Fleet to deliver any prisoner out of execution, unlesse it bee by writ or other commandment of the king. It may be as strongly implied out of this Statute that the king may, by his commandment without writ, deliver a prisoner out of execution; but the contrary hath alwaies been held. The same objection is made, and the same answer may be given to another exception in the latter end of this branch, *Except in the time of war.*

4 & 5 P. & M. fo. 162. b. Dyer.

The second Statute against Impositions, the Statute De Tallagio non cedendo, expounded and cleared.

I come to the second Statute against Impositions, which is the Statute *de Tallagio non cedendo*, touching the time of the making of which there is great variety of opinion; for it is not, for ought I could ever learne, found any where upon Record; Justice *Rastall* accounts it to have beene made 51 of H.3. and with him agrees an old manuscript which I have seen: It may

may well bee, for in one of the Statutes you shall finde a pardon to *Humfrey Earle of Boham* Earle of Hertford and Essex, Constable of England, and to *Roger Bygott* Earle of Norfolke and Suffolk marshall of England, who both lived in that time. *Tho. of Walsingham* in his history of England, saith it was made in the 25 yeere of Ed. 1. hee reciteth the Statute *de verbo in verbum* as it is in our printed bookes, otherwise I should have thought he had meant another Statute against Impositions made indeede 25 Ed. 1 and found upon the Records of that yeere, in our printed Statutes at large, it is placed last of all the Statutes of E. 1. Though there be some disagreement about the time of the making of this Statute, yet they all agree the occasion to be the laying of a great imposition upon Wool, the words of *Tho. Walsingham*, *Auxit Rex tributum Lane ad 40s. cum prius ultra dimidiam mercam non daretur tota autem comunitas sentit se gravatam de vectigali Lana enim Anglie fere extendit ad medietatem valoris terre & vectigal ad quintam partem terre.* The Custome of Wools as you perceive was in those dayes esteemed to bee the fift part of the value of the wholl land; it followeth, in him, that upon complaint the Subject at last obtained the Statute I now speake of, the words of which are, *No Tallage or Ayde shall bee rayseed or set by Us or our Heires in Our Realm, without the assent and good will of Arch-bishops, Earles, Barons, Knights, Burgeses,*

Q

gesse and other Freemen of the Land, after these generall words, by way of provision against all manner of burthens whatsoever to bee laid in time to come, without assent of Parliament, followeth in the next branch, save one especial provision for the taking away of the imposition then in demand upon Wools, which latter clause, as it doth cleerly shew the cause of their present griefe to bee the same which our Chronicles say it was, so doth it likewise make it evident what it was which they sought to be secured of for the times to come; neither are the words themselves so obscure, by reason of the generality of them, but that they also without knowing the occasion of the making of the law doe directly point at Impositions; for, though indeede the word *Tallage* be (as I conceive) to bee understood only of charges within the Land, yet the word *Ayde* extendeth to all charges of what nature soever; nay, that even Impositions themselves have beene called *Aydes* or *Subsidies* (which is all one) is evident by almost all the Records of the Exchequer here amongst us, especially by those of *Ed. 3.* time; in which, wheresoever you finde any mention made by the King, in his Commissions, of an imposition raised by him, hee ever calls it *Subsidium* or *Auxilium*; So likewise in the printed Statute of *36 Ed. 3. cap. 11.* you shall finde that the Imposition by grant of Merchants there mentioned is called a *Subsidie* or *Ayde*: This exposition

Tallage.

Aydes.

Subsidies.

position of the word *Ayde*, concurring with the occasion of the making of the Statute, doth in my opinion strongly enforce this Statute against Impositions; and 'tis to bee observed that in this Stat. there is *no saving or exception of the kings antient Right*, which (as our Chronicles say) was a point principally insisted upon at the making of this Law, earnestly pressed by the Subject to bee without that clause, and for a long while stood upon by the king, but at last yeilded unto in such sort as you have heard.

The next Statute against Impositions is *25 Ed. 1. cap. 7.* the words are, *Forasmuch as the more part of the Cominalty hath found themselves sore agrieved with the Male-tolt of Wools, viz. a toll of 40^s for every sack of Wool, and have made petition to bee released of the same, Wee at their requests have cleerly released it, and have granted for Us and our Heires, that Wee shall take no such things without their common assent and good will, saving to Us and our Heires the custome of Wools, Skins and Leather granted before by the Cominalty aforesaid.* I might, in enforcing this Statute, rely upon a rule of Law for the exposition of Statutes of this nature, *Omnia Impositio est odiosa, ideo stricta contra Impositiones, & large ad favorem gravatorum interpretanda est lex contra Impositiones data*, but there shall not need any such favorable construction; for the words are in themselves very cleere. The Law consisteth of three parts; the first is the kings grant of a

The third Statute against Impositions, 25 Ed. 1. cap. 7. cleared from objections.

Q 2

petition

petition made by the Commons, for the releasing of an Imposition of 40^s upon a sack of Wool, then in demand; when the present grief was ended, the next care was to prevent the like mischief in all times to come; It therefore followes, *And Wee have granted for Us and Our Heires that Wee shall take no such thing without their common assent*, which is the second part of the law; The saving in the end is the third part.

The first objection, that this Statute is only against the excessive of the Impositions then laid, and not against the right of Imposing, answered.

Against this generall provision, two objections have beene made. First, that the words *No such things* are to be understood only of the burthenfomnesse and excesse of Impositions, and not otherwise. *No such things* (that is, say they) *No such grievous* Impositions as this present Imposition is. It had beene a poore security for times to come, to have left it to interpretation, whether or no, Impositions which might happen to be laid in after ages be as grievous as the Imposition complained of in this time? by comparing one with the other; 'tis so uncertain a computation, as no man (when hee thinks throughly of it) can imagine that men, worthy to sit at the making of Laws, should suffer such a thing to passe them. Who can certainly say whether our Impositions be more or lesse grievous then the rate of 40^s upon a sack of Wool: Beside, how easily had this Lawe beene to have beene deluded by abating only 12^d, or but 1^d in the next Imposition; for, if it be but a penny lesse, it is *No such* Imposition,

on, for the burden; Therefore it must needes bee expounded of the quality and very nature of the thing complained of, and not of the quantity. *No such thing* (that is) *No such thing as this is* (that is to say) *an Imposition*: But that which will cleere this objection is a Proclamation made the very next yeer after the making of this Act, in which the king reciting this Act, instead of these words, Wee will take *No such thing*, useth these words *Nullam aliam Customam sine communi consensu Capiemus*, not only *No such*, but *no other*: By which you may see that the words were then interpreted in that sence in which I doe now interpret them.

26 Ed. 1. Inter brevia return. de Term. Mich. in Scac. in offic. Rem. Thesaurar. ibidem.

But admitting, say they, that it bee so to be expounded that the king will lay *No other Imposition* without assent in Parliament, that is to be understood, say they, *No other Imposition upon Wools*, and not otherwise, which is their second objection. It were a very strict construction for a Statute of so beneficiall an intent as this is so to restraine it; if there were no other words in the Statute that did inlarge the exposition, But by the words following it is most evident that the scope of this Law is more liberall then so, and that the kings intent was for ever to secure his Subjects against all charges of this nature, I meane Impositions, not upon Wools only but upon any other Merchandize whatsoever, which I collect from laying all the parts of the Law together.

The second objection, that is only against Impositions upon Wooll, answered.

The Petition for present ease is to be released onely of the *Maletolt* of foure shillings upon a sack of Wooll, which is yeilded to: The security for the time to come, is, *We will take no such thing*: The saving which followeth that, is, *Saving the Custome of Woolls, Woollfells, and Leather*. I observe, the saving extends not to woolls alone, as the Petition doth, but also to Woollfells and Leather, by expresse name; by which it is evident, that the securitie for the time to come is of a larger extent than to stretch onely to Woolls, as hath been objected: For else, to what end should Woollfells and Leather be excepted in the saving, if they had not been contained in the generall words, *no such thing*. An exception cannot be but of a thing contained in former words: If therefore the grant would have extended to Woollfells, if they had not been specially excepted; then doe I conclude by the same reason, that it doth extend to all other Merchandizes not excepted; for the words are generall. And so I leave this Law cleared of all objections, and very full against Impositions.

The fourth Statute urged against Impositions, 14 E 3. cap. 11. cleared from objections.

The next Statute made against them, is, 14 Ed. 3. cap. 21. By the first part of which Law you may perceive, that whereas the Commons had prayed the King not to take of Woolls, Woollfells, Leather, Tyn, or Lead any more than the ancient Custome, the King prayed them to grant him forty shillings upon a sack of Wooll

Wooll for a yeer and a halfe, which they granted: whereupon the King, by way of Retribution, and in answere of their Petition, as touching the Wooll causeth it to be enacted for their Security in time to come, *That neither he nor his heires would demand, asseffe, nor take more custome of a sack of Wooll than sixe shillings eight pence: And so likewise upon Woolls and Leather, no more than the ancient custome, without assent of Parliament*. All this while there is no answer given touching the Tyn and Lead mentioned in the Petition; upon which, as it appears, the King had also laid Impositions: But there doe follow certain generall words, by which, not onely Tyn and Lead, but all other Commodities whatsoever are freed from Impositions: The words are, *The King promised in the presence of his Earles, Barons, and others of his Parliament, no more to charge, set, or asseffe upon the Custome, but in manner aforesaid*. Except these words doe extend to Lead and Tyn, to free them from Impositions for times to come, as well as woolls, woollfells, and Leather are freed by the former speciall words, their Petition touching Tyn and Lead is no way answered: And if they doe extend to Tyn and Lead, by reason of the generality of the words, they doe by the same reason extend to all commodities: For what more liberall words can there be than these; *That the King will not charge, set, or asseffe upon the custome*: these words, *the custome,* being

being words indefinite, are (you know) equivalent to an Universall, according to the rule, *Indefinitum equipollet universali*: And although the King doe but promise, yet I doubt not but in this case his promise is a Law: And it is worth the observing, that the Lords doe in very extraordinary and unusuall manner solemnly undertake, as much as in them lyeth, that they shall procure the King to hold the same, and that they shall in no wise assent to the contrary, if it be not by the assent of the Prelates, Earles, Barons and Commons, and that in full Parliament; and for the greater surety, and to give cause to eschew all counsell to the contrary of this Ordinance, the Prelates have promised to give sentence upon them that counsell against the same in any point; which are the very words of the Statute in print.

13. Ed. 4. n. 5.
Ro. Par.

The Statute of 14 Ed. 3. cap. 21. was yeilded unto by the King, upon a Petition exhibited the Parliament before, both by the Lords and the Commons, praying that a Law might be made against Impositions, as may appeare by the Records of the 13 yeere of Ed. 3. at which time they likewise prayed, that the King would be pleased to grant them a Charter to the same effect, to be inrolled in Parliament: The Statute you have heard; the Charter followeth in our printed bookes immediately after the Statute, where the King (in the preamble thereof) reciting the great gift that he had given him at the

the same Parliament, that is to say, the 9th Fleece, 9th Sheep, & 9th Lamb throughout the Kingdom, which indeed, was a very extraordinary great gift; and therefore his grant, in regard thereof, is to be intended so much more beneficially doth in lieu thereof, for him and his heires, grant to his Subjects in these words; *From henceforth they shall not be charged, nor grieved, to make any ayde, or to susteine charge, if it be not by the Common assent of the Prelates, Earles, Barons and other great men, and the Commons of our said realme of England, and that in Parliament.* It hath been objected, that these words, *Aide and Charge*, are to be understood of Charges within the Land, such as are Taxes and Tallages; and not of Impositions upon Merchandizes; And this is the only Objection made, or indeed can be made against this Statute; For the clearing of which, I can say no more then already I have proved by matter of Record for the opening of the sense of this Statute, viz. That this Charter, and the last Statute were made upon a Petition exhibited in Parliament, for a law and Charter to be made against Impositions upon Merchandizes. And therefore that conjecture of theirs, that it should extend only to Taxes, and not to Impositions, cannot but fall to the ground, especially since there is not in the Petition, any mention at all of Taxes or Tallages, or of any other charge or aide but impositions onely, then which there cannot almost be a clearer proof,

R. then

An Objection that the stat. of 14 Ed. 3. An. 2 extendeth only to Impositions within the land and not to Imposition upon Merchandizes, is answered.

then that this Law being made upon this Petition, is to be expounded against Impositions; which, if this Petition had not been extant, would with no lesse cleernesse have been proved by considering the mischief at the time of the making of this law, which was not Tallage or Taxes, but those hevie Impositions of Foure pound, and five pound upon a sack of Wooll, by way of dispensation with the Statute of 11. E. 3. cap. 1. of which I have formerly made mention. So as this Statute, being made in the first intention against dispensations for money, with a penall law, though the occasion were particular, yet (the words being generall) *I hold that with reason it may be extended against all dispensations, with penall lawes for money*: in particular, I hold, that the raising of money by *dispensations*, with the Statutes against Ale-houses, is (if not by the Common Law) yet by the force of this law, unlawfull, For certainly, *quod prohibitum est una via, non debet alia permitti.*

The word
Charge.

As for the words *Ayde and Charge*, I have already proved that it was a terme by which Impositions were commonly called in those times; That they were also called *charges* is evident by very many Records of those times, where complaint is made against them, as 21. Ed. 3. Numb. 11. *Les commons priene que la charge de 2^s. sur sack de lane soit Ouste.* 21. Ed. 3. Num. 16.
“The Commons pray that no *charge* be set up-
“on them without assent of Parliament. The
Kings

kings answer is, if any *Imposition* be layed unduely it shall bee taken away; of this kinde there are very many Presidents, so as if the precedent Petition had not assured us of the scope of this Lawe as it doth, the very words themselves, rightly understood, would have made it cleere.

In the same Charter there is another clause as beneficiall as this, to this effect, *All Merchants Denizens & Forreins (except those which be of our enmitie) may without let safely come into the Realm of England with their goods and Merchandizes, and safely tarry, and safely returne, paying the customes, subsidies and other profits reasonably thereof due.* The objection to this clause is very obvious, for what (say they) can these words, *Other profits reasonably due* signifie other than *Impositions*; for, by the words going before, *Custome and Subsidies* are expressly named, and there is (say they) no other third profit upon Merchandize but *Impositions*, and indeed this Statute they themselves have vouched in maintenance of *Impositions*. To this objection it might serve for a full answer, that there are other duties then *Customes and Subsidies* due upon the landing of wares, for example *Wharfage, Cranage, Scavage* and such like, the which with more probability I may conjecture to be intended by these words, *Other duties*, then they can conjecture it to bee meant of *Impositions, sed in planis non opus est conjecturis.*
R 2

Juris. The best expositors of this Act are those that lived in the same times, and they doe cleerely expound this clause to be made against Impositions, as may appeare by the Record of 21 E.3. No.29. for you shall there finde a Petition exhibited in Parliament by the Commons to bee relieved touching an Imposition upon Wools, alledging for a reason of their Petition, that every *man ought freely to passe paying the ancient custome as it was ordained by the kings Charter.* This Petition against Impositions was exhibited by the whole Parliament, within six yeeres after the making of the Charter, as may appeare by comparing the times, and if they had not then thought that *Impositions* had been meant to have beene provided against by this Charter, they would not certainly have made such a speciall reference thereunto. In discovering the weakenesse of the reasons alledged in maintenance of Impositions, I shall not greatly neede to say any thing more then hath been said, because the state of the question hath beene already so thoroughly opened unto you, that whatsoever can with any colour of reason be said for Impositions, may receive an answer out of that which hath beene spoken against them: Neverthelesse, I will in a few words recall to your memories their reasons, and in as few apply the answers to them, with some additions of mine owne, that by laying both together in your view at one time, the weakenesse of

Answers to the Reasons urged in maintenance of Impositions

of the one, and strength of the other may the better appeare unto you.

It hath beene said that the old Custome of a Demi-marke upon a sack of VVool must have his beginning either by the kings absolute power, or by a legall assent of the people, which can bee no where but in Parliament, and cannot but appeare of Record; but because no such assent can be showne; therefore they conclude that it began by the kings absolute power, and inferre that the same power remaines still. The substance of this argument is found in my Lord Dyer in the place cyted by me; It was much enforced in the Exchequer: but as touching the particular of the old Custome of a Demi-marke upon a sack, and the other old custom upon Fels and Leather, it is now no longer urged because it appeares expressly by divers Records of 3 E. 1. in the Tower, That it was granted *per les grandes et al prier des Comons et de les Merchants de tout Englaterre*, and by a Record of 25.E.1. cap.7. Stat. printed, *per Communitatem Regni nostri Angliae*, which concurrese also with the Statute of 25 E.1. cap.7. in print. Saving to Us and our Heires the Customes of wools, skins and leather granted heretofore by the Comminality afore said. The Patent roll of 3 E.1. which hath these words *cum Prelati Magnates ac tota Comunitas Mercatorum Regni nostri nuper nobis concesserunt quandam novam consuetudinem, viz. de quolibet sacco Lanae 6^s 8^d, &c.* being something

The first argument, That because it cannot appear that the ancient Customs were set by Parliament, therefore they were imposed by the King, answered

Ro. Pat. 3. E. 3. M. 1. Stat. 25.

E. 1. c. 7. Ro. fin. intus 3. E. 1. M. 24.

3. E. 1. M. 1. Ro. Pat.

thing obscure are by the concurrence of all those other Records so cleerly expounded, as there cannot be, neither now is there, any question made but that the Custome of a Demy-marke, and the other old Customes, which by my Lord *Dyer*, and by all those who argued for, or against Impositions in the Exchequer, was held to bee due by the Common-Lawe, was by grant in Parliament; neverthelesse the strength of the argument they still retaine, though the Demy-mark and those old Customes upon the staple commodities were by Act of Parliament, yet (say they) before that increase by Parliament the king had Custome, and no doubt a some certaine, otherwise could not this increase be called *nova consuetudo*; besides (say they) the Custome reduced to a certainty by 3 *E. 1.* is only upon three commodities, wool, skins, and leather: there are many other commodities which did likewise pay Custome; How began that Custome (say they) if not by the kings absolute power? and when was that power taken away? I answer, admit it were by the kings absolute power, yet that the king hath cleerly discharged himself of that power by Act of Parliament, I hope I have cleerly proved: But this question, How began the first Customs? is best answered by another question, How began the Fine for purchase of Originall Writs? the Fine *pro licentia concordandi*? the certainty of prisage? nay, who reduced it first to certaintie that

that the tryall of issues should be by twelve Jurors, no more nor no lesse? that the full age of a man should bee accounted twenty one yeers? of a woman fourteene, twelve yeeres her age of consent, and nine yeeres capable to bee endowed? a yeere and a day given to sue an appeal, the like limitation of a yeere and day in very many other Cases? In effect, who reduced all the known grounds of the Common law to that certainty that now they are? Because wee cannot tell how or when they began, shall wee therefore conclude that they began by the kings absolute power, and inferre, that by the same reason, they may bee changed at his pleasure? If the king may increase his Fines upon the purchase of Originall writts (which by the same reason hee may doe, that hee may doe his Custome, nay, hee hath more colour for this then for that, because there is no Statute against this) hee might easily raise that revenue to the value of his Customes: But no man can, nor will I hope offer to mainteine it to bee lawfull. You see the weakenesse and the dangerous consequence of this argument, by comparing it to other cases of like nature. To say the truth, all these things began no man can say certainly when or how, but by a tacit consent of king and people, and the long approbation of time beyond the memory of any man, and yet no man can directly affirm but that most of them might begin by Act of Parliament, though now there
be

The antiquity of Parliaments

bee no Records extant of such antient Parliaments. The first Parliament was not kept 9 H. 3 though it be the first in our bookes. If we will give credit to other Records, and to our best Chroniclers, we shall heare and reade of divers Parliaments in the Reigne of King John, and of his Predecessor Rich. 1. and in the Reign of H. 2. of two famous Parliaments, one at Claringdon in Wiltshire, the other at Gedington in North-Hamptonshire: And although our Chronicles say, that the first Parliament kept in this Realm was held 19 Aprilis, 16 H. 1. yet I am of opinion, that William the Conqueror held Parliaments; for what can be else understood by these words, *Per commune consilium totius Regni nostri stabilitum fuit*, which I finde in Mr. Lamberts collection of the ancient Lawes of England, in the beginning of the Lawes of W. the Conqueror: Many of the Statutes of E. 1. have no other words: Nay, long before him, in the yeere of our Lord 712. in the time of Inas King of the West-Saxons, I assure my selfe there were Parliaments held, and that of the three Estates, as at this day; as may appeare by these words in the beginning of the Lawes of King Inas, in Mr. Lambert: *Suasus & Instituto Episcoporum nostrorum omnium, Senatorum nostrorum, & natu majorum populi nostri in frequentia magna*: And more plainly in the conclusion of some other of his Lawes; *Hoc factum fuit per commune consilium & assensum Procerum, Comitum, & omnium*

nium Sapientium, Seniorum, & Populorum totius Regni, & per preceptum Regis Ina, which are the same in Latine which ours is in English, *By the King, the Lords Spirituall and Temporall, and the Commons*. Why might not the Custome upon Woolls be first granted at one of these Parliaments, as well as to have it first begun by the Kings absolute power? There is no more probability of the one than the other: because most of the ancient Records were burnt in H. 2. time, when the Exchequer was burnt, shall we conclude therefore that there were never any such? You see the weaknes of this Argument in all the points thereof. I leave it, and passe to another.

The King may (say they) restrain the passage of Merchants at his pleasure, which they prove by divers Records; 2 E. 1. m. 18. Ro. Par. 2 E. 1. m. 17. Ro. fin. 31 E. 1. n. 44. Ro. Pat. 17 H. 6. Ro. Clo. in dorso: Upon which they inferre, that if he may restraine a Merchant that he shall not passe at all, he may much more so restraine him that he shall not passe except he pay a certaine sum of money: For this (say they) is lesse than totally to restraine him; And (*Cui licet quod majus, licet etiam quod minus.*) Of this Argument my L. Dyer gavelight in his case of Impositions, 1 Eliz. and this hath been diversly inforced by all that have argued for Impositions. In answer of which I will consider how farre the king may restraine the passage of Merchants; and then will

The second Argument, that the King may totally restrain the importing and exporting of merchandizes, therefore he may do it *sub modo* by laying of an Imposition, answered.

examine the consequence of the Argument.

For my part, I think the king cannot restrain the passage of Merchants, but for some speciall cause; wherein to define certainly and resolutely, to say for what causes he may, and for what not, I will not undertake: Onely let me inform you, that there is not one of these presidents vouched by them to prove the kings power to restraine, but they are upon speciall reasons; as by reason of Enmity with such a Nation from whence they are restrained, or because such a Commodity may not be spared within the kingdome: Besides, they are not restraints from all places, and of all manner of Merchandizes, but from certain places onely, and for certain sorts of Merchandizes: And for my part I thinke that restraints in all these cases, and of like nature, are by the Common-Law left to the kings absolute power; For if it were otherwise, it should be in the power of a Merchant, for a little private lucre, to enrich the kings Enemies, or to furnish them with munition to be employed against the State, or utterly to ruine the Common-wealth, by carrying out a Commodity which may not be spared, or by bringing in of some that may be hurtfull. Nay (which is more) such may be the occasion, that the king may, I doubt not, stop the passages of all Merchants from all places for a short time, as upon the death of the late Queene it was put in practise, to prevent Intelligence: there may likewise be
such

such necessary use of their ships, as the want of them, upon some sodaine attempts, may be a cause of the overthrow of the whole State. In such cases as these, if the Common law did not give the King leave to restraine their passage by his absolute power, it were very improvident in the highest points, which cannot be imagined of so wise a law; And yet the Kings of this Realme have alwayes been sparing in the practise of their absolute power in this point, For there are little lesse then 30. Acts of Parliament, touching the opening and shutting up of the passage of Merchants, most of which, as I conceive, were made rather for the increase of punishment, then for want of power in the King, For the breach of a restraint by absolute commandment, is punishable, as all other contempts, onely by Fine and Imprisonment, and not by forfeiture of the Merchandizes, as in the president of the Wines, *An. 5. of Queene Mary*, vouched by me, and is in some of those old presidents. If it be otherwise, I must confesse I know not the reason of the difference of this from other contempts. You see that I have yeelded to their proposition, *That the King may by his absolute power restraine the passage of Merchants*; and have therein granted, more then their presidents prove; But is the consequence good, that because the King may restrain, therefore he may impose upon such as passe? First I denie that in our case there is any restraint at

all, as there was in the case of the French Wines, by Queen *Mary*, by her Proclamation going before the imposition. For prooffe of which, I referre you to the Kings Letters Patents prefixed before the last Book of Rates, by which instrument, the impositions now complained of, were altogether raised, you shall finde it no other then a Declaration of the Kings pleasure so to have it, and a course prescribed for levying of it; But admitting that the very laying of an imposition, did implie a restraint, yet I denie the consequence, Because the King may restraine totally, that therefore he may restraine for a time, or from certaine places, or certaine commodities, or certaine Merchants. This indeed is a good Argument, *a majori ad minus*. But because he may restraine totally, therefore that he may give passage for money, is no good consequence; For in our case, there is no restraint at all, but it is rather a passage for money. If there be just occasion of a restraint, the law giveth the King power to restraine; but when Merchants may without hurt of the State, have passage, as in our case, to enforce them to pay for that passage, is in my opinion, as unlawfull as to enforce any man whatsoever, to pay for doing that which he may lawfully doe; Merchants have (as I may so say) as good inheritance in their trade, as any man in his lands, and when it may stand with the good of the state, that they may

passe,

passe, they ought to passe as freely without charge imposed on them, as any man ought to hold his inheritance, or any Artificer, or other Tradesman ought to exercise their lawfull trades, and means of living, free from burdens to be laid on by the Kings absolute power; if all others should be free, and onely Merchants, (who adventure their persons and estates in so many dangers, to bring us from farre places, such things, as without which we cannot subsist, and to returne us profit for our superfluities) should be subject to involuntarie burthens, their estate were of all other mens most unhappy and slavish, which of all other trades, is indeed the noblest, and most worthy to be cherished.

And here by the way I note, that in all other Nations of the world, where the Merchant is subject to impositions at the Kings pleasure, the Landlord, the Farmer, the Artificer, the very Plowman, and all others are in like sort subject to Taxes and burdens, when the King pleaseth, The Merchant is not the man alone that is subject to Taxes, and all other men free: if in the frame of our Common wealth, it were thought fit to free all other Trades and Professions from taxes, much more ought it to be thought reasonable, that our Merchants should be free, and by all means possible, encouraged in their Trade; For our case is not, as it is with other nations of the Continent; we are Islanders, and divided

by the Sea, from all the world, and in that respect, have such use of Merchants, as we cannot live without them; if therefore any should be free amongst us, it should be the Merchant, and not the quite contrary, onely the Merchant charged, and all others free: *Plato* in his 8. book *de Rep.* is of opinion, that the Merchant for his encouragement to trade, should be free from all Custome whatsoever, we seek only to be free of involuntary impositions. But to return to the Argument of restraint, from whence I am a little digressed; if it be a good Argument, that because the King may restraine in *Toto*, he may restraine in *Tanto*; It will not be denied unto me (for it followeth necessarily) that in cases where he cannot restraine in *Toto*, he cannot restraine in *Tanto*: But there is no man that will say that he may restraine the entrance and passage of all Merchants, to and from all the parts of the world whatsoever, without any limitation of time, but the restraint to endure for ever, and for all kinds of Merchandizes whatsoever, of most necessary and common use, to be brought into, or carried out of the Realme; There is no man I suppose will say, That the Law hath given the King power to make so unreasonable a restraint as this; for it were to give him a power to destroy merchandize, and consequently, to ruine the Common wealth, Beside, it were against the law of nations, and of reason it self; It cannot be imagined, that any
wise

wise law in the world should allow it. But if our Impositions (as it is said) doe implie a Restraint, and that a restraint be always the fore-runner of all Impositions, Then such an unreasonable restraint, as I have spoken of, must needs be presupposed to have been the ground or fore-runner of our present imposition, For in our impositions, are not all the merchandizes of necessary and common use charged? Are not all the Merchants Denizens and Strangers, importing from any part, or exporting to any part of the world, subject to the charge? is there any limitation of time, but to endure for ever? if I say such a restraint had been unlawfull, which I suppose no man will denie, then whatsoever implieth such a Restraint (which our impositions doe) is likewise unlawfull; But the ill consequence of this their argument drawne from the Kings power of restraint, will best appeare by comparing it to other cases.

I little doubt but the King upon some occasion, may lawfully restraine the passage of all men through the gates of *London*; as for the purpose, when the Citie shall be besieged, or in the time of an extreme plague; Nay is it not by authoritie derived onely from him, that the gates are shut every night? Doth it follow therefore, that because he may doe it upon some extraordinary occasion, or at some time that he may shut up the passage for ever? or that presupposing

ving such a restraint by his absolute power, he may lay an imposition upon every burthen of any thing brought in, or carried out, as the Duke of Florence, and many other States in Italy and Germany doe, or upon every man by the Poll, that shall passe through the gates?

You see the weaknesse and danger of the consequence of this Argument, and how it tends to justifie Impositions within the land. And so I leave it, and proceed to the next.

The Ports and Haven Townes of England, are (say they) the Kings, and in regard thereof, he may open and shut them upon what conditions he pleaseth; I answere,

The third Argument, that the Ports are the Kings, and that he may open them, and shut them upon what conditions he pleaseth, answered.

I. That the Position, that all the Ports are the Kings, is not generally true; For Subjects may also be owners of Ports, as may appeare by the Patent Roll of 3. E. I. M. I. Parl. where you shall finde, that King Ed. I. granted to the Lords of Port Townes, the forfeitures granted to him by Parliament, for not duly paying the new Custome of the demy-Marke within every severall Port, of theirs, where the Merchandizes should happen to be imported or exported. But admitting the truth of the position, yet is the consequence as weake and dangerous, as of any of the rest of their arguments; For are not all the gates of Cities and Townes, and all the Streets and Highwayes in England the Kings, and as much subject to be open or shut at his pleasure, as the Ports are? Nay, whensoever we

we speake of the Highway in any law businesse, we call it *via Regia*, the Kings Highway, and the King in his Commissions, speaking of London, or any other Citie, calls it *Civitas nostra*, London, or *Civitas nostra* Exon; Doth it follow therefore, that the King may lay Impositions upon every man, or upon all Commodities that shall passe through any of these places? Nay the gates of the Kings owne house (for the purpose, his Pallace of Westminster) are his in a farre nearer degree than any of these, may he therefore by his Proclamation impose upon every man that shall passe in or out at Westminster Hall doore a summe of money? Doubtlesse he may not; because the King is a person publike, and his Subjects ought to have accesse to him, as to the fountaine of Justice, and to the Courts of Justice, sitting by his authoritie; I make little doubt, but his Majestie may upon just occasion, cause any of these passages to be shut, as he may also the passage at the Havens; But when the Passage may without danger to the State, be open, and that the Subjects may passe, his Majestie may not then exact money for their passage; For the law hath given the King power over these things, for the good of the Common-wealth, and not thereby to charge and burden the Subject; If the King may not exact money for passage in and out of his Court gates, because of the publike use of his Person; Nor for passage through the gates of

himselfe
and
the
King
may
not
exact
money
for
their
passage
because
of
the
publike
use
of
his
Person

of
the
King
may
not
exact
money
for
their
passage
because
of
the
publike
use
of
his
Person

of Cities, much lesse may the for passage out at the Ports, which are the great gates of the Kingdom, and which the subject ought as freely to enjoy, as the ayre on the water.

The fourth argument that the King is bound at his owne charge, to protect Merchants, & therefore it is necessary it should be in his power to lay moderate Impositions upon Merchandizes for raising of money to defray his charge; Answered.

Another of their arguments is this, *The King is bound to protect Merchants from spoile by the enemy, he ought to fortifie the Havens, that their ships may there abide in safety; he ought, if occasion be, to send Ambassadors to forreign Princes, to negotiate for them;* and many the like charges is the King by the Law to undergoe for the protection of his Merchants. It is reason therefore that his expence be defraied out of the profit made by Merchants, and consequently, that he may impose upon Merchandize a moderate charge, thereby to repay himself.

The Fifth Argument that all forraigne Princes have power to impose, and if our King had not the like, it might be very inconveient to this State. Answered.

The consequence of this Argument is thus farre true, The law expects that the King should protect Merchants, therefore it alloweth him out of Merchandize a revenue for the maintenance of his charge, which is the old Custome due (as at first I said) by the Common law, But it is no good consequence, that therefore he may take what he list, no more then he may at his pleasure increase that old revenue, which the law giveth him for protecting of Subjects in their suits, or for protecting Wards, &c.

Another Argument of theirs is this, *All other Princes of the world may impose upon merchandize at their pleasure, and so may make our Merchandizes lesse vendible with them, by laying an Imposition*

upon them, to be paid by us; when they are brought into their Territories, whereby their owne Commodities of the same nature, may be sold more to the gaine of their Merchants, and our Merchant impoverished, or driven from his Trade; They may also lay Impositions upon our Merchants, fetching Commodities from thence, and leave their owne Merchants free from any Imposition in the same case, by which their merchants shall reape all the profit by that commoditie, in affording it better cheape to us here, then we can fetch it, and consequently our merchants shall be undone, Many the like cases have been put to prove, That if the King of England may not impose, as other Princes may, they shall be able at their pleasure to destroy our trading; This I conceive was the same as now it is, during all that time from Ed. 3. till Queen Mary, and doubtlesse it could not but sometimes (during that long space) so fall out, that forreine Princes did put their power in practise to our prejudice, and yet we heare not of any Imposition laid by any of our Kings, by their absolute power, which may give any man assurance, that they tooke some other course to meet with the inconvenience, and indeed, the meanes are divers, which these our Kings used to prevent it.

First they were carefull in all their Leagues and Treaties with forraign Princes, specially to provide for it, as may appeare by the Records of the ancient Leagues: Neither is there any

League of late time, that hath not had an Article for provision in this point; which Leagues for the most part, are upon oath on both parts. And yet for further securitie, our Kings have always had Ambassadors resident in the Courts of such forrain Princes, to put them in minde of their Leagues, if upon any occasion our Merchants have in that case happened to be never so little wronged by them, & if upon complaint of the Ambassador, our merchants have not found redresse, our Kings have held the League as broken, and denounced Warre, or seised all the goods of the same Princes Subjects within England; and I dare say there have been more warres undertaken by our Princes, against forrain nations, onely for this cause, then for any one other cause whatsoever.

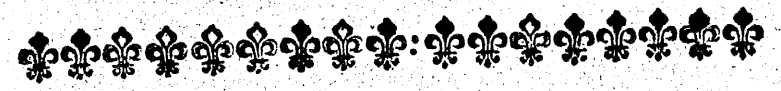
Besides, our Kings have in this case sometimes made use of that their Prerogative of restraint, either by prohibiting our Merchants from carrying our Commodities into those parts, where they are charged with Impositions, that so by the want of our Commodities, foraine Princes might be enforced to abate their Impositions laid upon them, or by restraining the Merchants of forrain Princes to import or export commodities from hence; By which meanes foraine Princes have been compelled to deale favourably with our Merchants for the good of their owne Subjects; All these are lawfull and ordinary means to prevent or redresse
the

the inconvenience which may grow by the Impositions of other Princes: If all these ordinary means should happen to faile, which can hardly so fall out, and that the laying of Impositions be indeed the only means that is left to redresse the inconvenience, why should not that be done by Act of Parliament as well in these times, as it was in 7. *Hi. 7. cap. 7.* to take downe the Imposition of Foure Ducates upon a But of Malmsey, imposed by the Venetians, And as it was done by Queen *Eliz.* the 19. yeere of her Reigne, to prevent the laying of Impositions by foraine Princes upon *Salt-fish*, as may appeare by the printed Statutes of 19. *Eliz. cap. 10.* But as I have said, the providence of the Prince, and ordinary power of restraint may very well meet with the inconvenience.

These are the chiefe reasons made in maintenance of impositions, the weaknesse of them, and their dangerous consequence, you cannot but perceive; For by the same reasons, Taxes within the Land, may be as well proved to be lawfull. On the contrary part, you have heard the reasons against impositions fortified by many Records and Statutes in the point; So as I conclude, that *Impositions*, neither in the time of warre, or other the greatest necessitie or occasion that may be (much lesse in the time of peace) neither upon foraine, nor inland Commodities of whatsoever nature, be they never so superfluous or unnecessary, neither up-

on Merchants, Strangers nor Denizens, may be laid by the Kings absolute power, without assent of Parliament, be it for never so short a time, much lesse to endure for ever, as ours: Though this be now my opinion, yet am not I so obstinate therein, but if yet I heare better reason, I will once againe change my minde; in the meane while; you see I had reason to alter my first opinion, as being grounded upon very weak Reasons, as now they appeare unto me. And so I suppose they doe also unto you.

FINIS.

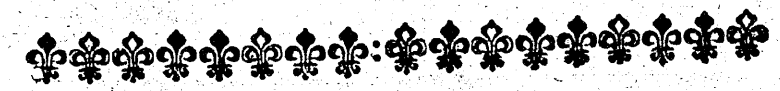


7^o. Julii 1641.

AT a Committee of the Honorable House of Commons, for Examination of books, and of the Licensing, and Suppressing of them, &c.

It is Ordered, That this Argument upon Impositions, be forthwith published in print.

EDWARD DERING.



of the

A Committee of the Ho-
norable House of Com-
mons for Examination of Books
and of the Printing, and sup-
plying of them, &c.

In Obedience to the Signi-
ficant Resolutions, be-
fore-mentioned, printed in Great

BRITAIN.
