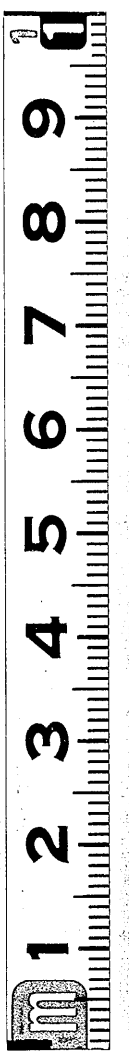
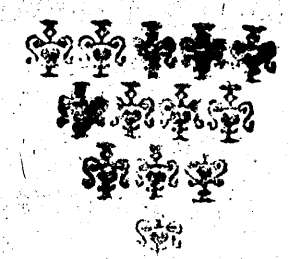


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THE *P. Winton*  
**Cafe stated**  
 OF THE  
**JURISDICTION**  
 OF THE  
 House of *LORDS*  
 In the point of  
**IMPOSITIONS.**



LONDON,  
 Printed in the Year 1676.

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*The Case stated of the Jurisdiction of the House of Lords in the point of Impositions.*

**A**S the Lords are of nothing more desirous, than of keeping a good correspondence with the House of Commons, so are they, and have ever been most careful to take nothing from the House of Commons, which belongs unto them, nor to assume any thing to themselves, but what hath ever been their undoubted right, and never so much as questioned to their Ancestors in any preceding Parliament.

And to have the free use of their reason, to disapprove and disallow all or any part of any thing propounded unto them for the Publick Service, which they in their Judgments believe not to be conducing to it, or so to alter and amend it as to make it such,

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is so proper, so essential, so necessary to the constitution of the House of Lords, as they do not think they are a House of Parliament, or can act as a House of Parliament if this be denyed them.

Now they conceive the point in question betweene them and the House of Commons, to be of this very nature. The House of Commons sent up a Bill to them to lay Rates and Impositions upon several sorts of Merchandize. The Merchants Petition the Lords against many particulars in that Bill, shew the inequality and disproportion of the Rates imposed upon certain Commodities to be such, as if not altered, and some which were too high, brought down to hold a true proportion with others, which the House of Commons had set low, it would have utterly ruined the whole Trade of those Commodities, and have brought an irreparable prejudice upon all our Plantations, and consequently upon the whole Kingdom; that of those Commodities being the principal Trade of the Plan-

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Plantations, and that of the Plantations a most considerable part of the Trade of the Kingdom.

The Lords were so fully convinced with the arguments and demonstrations of the Merchants, and thereupon judged it of such absolute necessity to make some alterations in the Bill, and to lower some of those rates, that they did so: and the Bill so altered and amended they returned to the House of Commons, giving withall their reasons for those Amendments and Alterations, which was done at a Conference.

The House of Commons took this ill, and presently passed a Vote, *Declaring it to be a fundamental right lodged in their House alone, to impose Rates upon Merchandize, as to Matter, Measure, and Time, and to pass Bills for that purpose, and this in exclusion of the House of Lords.* Which Resolution of theirs was by them delivered back at a Conference, and withal some particular reasons given to justify their Rates Imposed in opposition to the alterations made by the Lords:

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But the maine Objection, which they still urged, and with which they closed every Period of their Discourse was, *That the Lords had nothing to do with the altering of any Rate imposed by them upon Merchandize.*

The Lords easily apprehended the ill consequence of such a Maxim, how it did shake the very foundation of Parliament, and utterly overthrow the Being of their House, rendring it altogether uselesse to the general good of the Nation: Because it could then contribute nothing to what is of so great consequence to it, as is the carrying on of Trade, and the just balancing of it, if so be any slip or mistake, or error should happen to have been in what had passed to that purpose in the House of Commons, (as no Society of men but may erre) And therein consists the excellency of the constitution of our Government, that every Law hath first in each House of Parliament three Examens, like so many passings through the fire, to refine and purifie it. And that done in one House, then the other House takes it, and

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and examines it over again in like manner three several times: And if any dross remain, or any thing be yet wanting to make it better and fitter to pass, care is there taken to do all that is further needful; so one House is both a Check and a help to the other, which is the great security of the Kingdom. This the Lords saw must inevitably cease. And therefore they judg'd it, to be of absolute present necessity, in the first place to make that sure, and assert a Priviledg so undoubtedly theirs, and indispensably necessary for the good of the Publick, of King, People and Parliament; which they did by a Vote. *That the power exercised by the House of Peers in making the Amendments and Abatements in that Bill, was a Fundamental, inherent and undoubted right of the House of Peers, from which they could not depart.*

This Vote backt with many Reasons, and confirmed by Presidents, they communicate to the House of Commons likewise at a Conference, which yet did not satisfie, as appeared



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by what was delivered by them at an other Conference, which presently followed; For they begin with telling the Lords, *That three things did surprize the Commons at the former Conference: 1st. That expecting a discourse upon the Amendments of the Bill, they met with nothing but a debate for the Liberties of their House, and a demand of the delivering up of those Liberties by a Publick acknowledgment, before any further discourse upon the Bill. 2dly. That their Lordships should declare so fixed a resolution before hearing what could be replied by the Commons. 3dly. That their Lordships should be so easily induced to take up that Resolution, if they have no other motive, than the Reasons and Presidents which they had produced.*

But why they should be so surprized with these three things, is not easie to be imagined: For certainly no man ought to be surprized with what he might rationally expect. And first, that the Lords should trouble themselves to answer particular Objections to particular points, before they had removed

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removed one main one, which alone took off all possibility of Agreement, and was by the Commons generally applyed and pressed by them upon every point, as it had been a very fruitless labour of their Lordships, so it could not be with any reason expected from them.

And as little reason had they to be surprized with the second thing, for nothing is more ordinary in the proceedings of both Houses, than to be most jealous of their Priviledges, not to suffer them so much as to be disputed, but upon the least attempt against them, presently to assert them with vehemence. The House of Commons themselves gave an example of it, in this very business but at the foregoing Conference, when upon the Lords making an abatement in these Rates, they presently come and tell them, *That the question being concerning Rates and Impositions upon Merchandize, there is in this a Fundamental right in the House of Commons, both as to the Matter, and the Measure, and the Time unalterable, and which they*

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*not part with.* Here was a Resolution fixed, and settled sufficiently, and without hearing what the Lords could say against it: And why then should it seem so strange that the Lords should be as resolute in the asserting of their Right?

Their third surprize, (one may say) is a piece of Sophistry; for since they cannot answer the Reasons alledged by the Lords in the maintenance of their Assertion, nor disprove their Presidents, they would seem to slight them, and wonder their Lordships should be so easily perswaded by them, having no other Motives.

In the next place they would perswade the Lords, that in their Presidents there is a departure from the question, which is only concerning power of Abatement of Impositions upon Merchandize; whereas these Presidents go to a joint power of imposing and beginning of Taxes, which (say they) the Lords do not pretend to.

Nor indeed do they pretend to it, neither did they cite those Presidents for that purpose. And the House of Com-

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Commons should not put upon them any other or further construction, than they were produced for. This may pre-possess standers by with a prejudice, as if the Lords would assume to themselves a power of laying a charge upon the Nation at their pleasure; but is not the way to discover, who is in the right for his present pretensions. This is clear; They do prove that in those times, the Lords and the Commons did joyn in the gift, that the one could not give without the other, except they had otherwise agreed it among themselves, and that they would give separately, as they have sometimes done, and but rarely. Four times in *Edward* the thirds Reign, 13 *E. 3.* n. 7, 8. & 18 *E. 3.* n. 10. & 20 *E. 3.* n. 11. & 27 *E. 3.* n. 8. once in *E. 4*ths time. 12 *E. 4.* n. 8, 9. and in the 29th *Eliz.* the Commons having made humble suit to the Lords to joyn with them in a Contribution or Benevolence to the Queen: The Lords gave answer, that they would leave the Commons to themselves, and they would rate themselves, which they

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they did at 2 s. in the pound, after the rate of the valuation of the Subsidy.

But the ordinary way of Parliament, hath ever been for the two Houses to joyn in the gift. And this not to be understood by a figure of *Reddendo singula singulis* (as was said at the Conference by him that managed it for the House of Commons), as if the Lords gave one part, and the Commons another part, and the Lords to have nothing to do with what the Commons give, and the Commons nothing to do with what the Lords give: And though they say, We Lords and Commons grant to your Majesty this and this, and here we both of us joyntly make to your Majesty one Present, and give you one gift, we tell you so, yet it is not so, but your Majesty must *Reddere singula singulis*, and take one part of it as coming from your Lords, and the other part as coming from your Commons: And though your Majesty doth graciously return one thanks to us both, yet we shall likewise *Reddere singula singulis*, and divide the thanks between us,  
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and take each of us his part. Is this a Parliament stile? are Laws penned in such Ambiguous and sense-confounding terms? doth an Act of Parliament say, that the Lords and Commons grant a whole Subsidy to the King, when neither of them doth so, and each of them hath nothing to do with some part of the grant? No certainly: Acts of Parliaments, and Laws, speak distinctly, and their expressions are always literally true: And where they say the Lords and Commons grant, both have an interest, and both exercise a power in granting.

Besides, in a Subsidy of Tunnage and Poundage, in which only Merchants and Tradesmen are concerned, what singularity can be pretended of any thing belonging peculiarly to the Lords, that they should be said to give there but for themselves, and not to be at all concerned in what is done, as to the generality of the Kingdom? Therefore, if they joyn there in granting, it must be in reference to others, and not to themselves, and peruse all the Records, from the 17th of R. 2. n. 12. upwards

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upwards to the very first Subsidies of that nature given by Parliament, it will be found, that the stile was constantly, *We the Lords and Commons do grant, &c.* And though since it hath sometimes varied in form, the sense hath still been one and the same. For if it was true then, that the Lords had a part in the giving, as the words all along are plain they had, they must have a part still, having never quitted it by their own Act, nor lost it by the Act of any other. The Figure then of *Reddendo singula singulis* mends not the matter; yet some alteration hath been, as hereafter will be shewed, though not in the giving part, and that by which it comes to be a gift to the King.

But then, saith the Manager of that Conference for the House of Commons: *If it be not so to be understood, then to Grant signifies only to Assent, and to say the Lords grant, is as much as to say, the Lords Assent to what the Commons grant.* But will this Exposition hold? Can it be said, that to give, is to be content another shall give? If this

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this be giving, one may find givers enough, and a man may be charitable upon easie terms: Would any man (think we) be content, if another and he were bound to give such a man a hundred pounds, if he who were to give part of the Mony with him, as being together bound, should say, I am bound only to consent that you should give it all, not to give any myself: I believe if the Manager of the Conference were the man to whom it should be so said, he would then expound it otherwise, and say to his fellow-Obligee, that to give and grant is one thing, and to give consent another shall give and grant, is another thing, and you are bound Sir to give as well as I, and not to be willing only that I should give all: And by the same Grammar he might conclude, that where it is said, *That the Lords and Commons do give and grant so and so to the King,* the meaning is, That it is a Grant of the Lords, as well as of the Commons, and the Lords do give as well as the Commons; and certainly in good English it can have no other construction. But

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But then he will tell you, that therefore the stile was altered afterwards, and to declare the gift to come only from the Commons, it ran thus: *We the Commons by advice and consent of the Lords Spiritual and Temporal, do give and grant, &c.* Well, admit that to be now the settled constant form and not to be altered, which yet we know is not so; for sometimes the ancient form hath been observed in explicit terms, *We the Lords and Commons, &c.* Sometimes implicitly, *We your Loyal Subjects do give and grant, &c.* But be it, *The Commons with the Assent of the Lords, do give, &c.* It doth not at all follow, but that the Lords have still power to alter and qualifie the gift, before they will assent to it.

Nay, if it be so, that they must assent to it before the House of Commons can give it, (as that will not be denied) it doth then necessarily follow, that if it be not such, as they can approve of in their Judgments, when it comes from the House of Commons to them, they must have  
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power to alter it, and make it such, as that they may assent to it, except they must be denied the use of their reason; which would be a severe imposing upon a House of Parliament, and an absurd one: A Council not to be suffered to debate and consider of what is proposed to it, and what advice it shall give to him, who hath called it for that purpose to receive its advice; and so to frame it and mould it, as that it may be fit to be advised, This is to make a Council to be no Council, it is what the Logicians call *Contradictio in adjecto*, a quality inconsistent with the Subject; as an Orator to be dumb, an Auditor to be deaf, a Watchman to be blind; so a Council to be without power to consider, debate and satisfie it self of the Counsel that it must give. And it is directly contrary to the Writ which convenes and constitutes the Parliament. The Lords are summoned by it, *Ad tractandum & consilium impendendum de rebus arduis*; but they must sit there as so many Parish Clerks, only to say Amen to what the House of Commons

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mons hath resolved, and neither *trastare* nor *consilium impendere*. And what a Pageantry were this? to read a Bill of Subsidy solemnly, once, twice, thrice, commit it, perhaps to a Committee of the whole House, make a great business, and when all is done, after all this stir, they must assent to it, and pass it just as it came at first from the House of Commons, be the mistakes in it never so great, and the ill consequences of it never so ruinous.

Can a rational man believe that a House of Parliament should be so constituted, to act against the nature of a Parliament? Yes, will they say, for both Houses do the same in some cases; They can alter nothing in the Subsidy of the Clergy, nor in an Act for a General Pardon, and yet they give their Assents to pass them for Laws: Which is very true, but makes nothing to this Case; for those are things Eccentric to Parliament, they have their motion in an other Sphere: The Convocation gives the one, The King of his free Grace bestows the other;

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other; the Parliament only gives them the force of a Law, and may chuse whether or no it will do that, when they are prepared to their hands; but it cannot meddle with the things themselves, to make them this way or that way: But now what is said here, is to be understood of things properly within the cognizance of the Parliament, and that receive their rise and progress there, that is to say, in one of the two Houses, (for the two Houses make up but one Parliament.) And of such things, where either House is to give an assent to them, that House may debate them, and alter and change them as it thinks good: And it mends not the matter to say, That House may reject all, as the King may any Bill presented to him, which hath passed both Houses; For by the constitution of the Government, the King hath only a Negative voice, but by the same constitution of Government the Parliament (that is, either House in its Legislative capacity) hath not only a Negative, but also a Deliberative voice in all things of which it is

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cognizable : And of nothing is it more cognizable, than of what concerns Trade, which is the wealth and strength and support of the Kingdom, for which concernments they are principally called, and summoned by the King's Writ.

But how this particular of Trade, and Impositions upon Merchandize for the guarding of the Seas, and securing Merchants Ships in their passage out and home, for carrying on of Trade, came to be lodged in the care and power of the Parliament, and in what manner that power and care was first executed by them, (which was then equally in both Houses to begin and propose whatever either House thought fit) and how afterwards it came to be appropriated to the House of Commons to be the first movers in those Impositions, and the House of Lords to reserve to themselves only a power to qualify and moderate the Sums imposed, and bring them to that due measure and proportion, which would be most convenient and advantageous

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to the Trade of the Kingdom, and if any error had slipped in at the first framing and composing of a Bill passed for that purpose in the House of Commons, the Lords to reform and amend it; This, we say, is well worth the inquiry.

It appears by the Records, that it was at first a meer act of State, the King with the advice of his great Council the Spiritual and Temporal Lords contracting with Merchants, that they paying a certain rate for their Commodities whether exported or imported, he would undertake to waft over their Ships, and secure them from danger in their passage : Such was that agreement recited in the Patent Roll of 3 E. 1. m. 1. n. 1. which by him that managed the Conference for the House of Commons, was much mistaken; first upon point of Grammar, the words of it he acknowledges to be as we say, that *Magnates & Communitas concesserunt*; But *Concesserunt* he will have to relate only to *Communitas*, which is certainly false Grammar and then *Communitas*

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*nitas* he expounds to be the Commons, which is a mistake in the matter and true sence of the Record : As for his Grammatical mistake in the *Syntaxis*, and his so construing the Record, he must give us leave to say, that he goes contrary to an universal known Rule in the *Syntaxis* of all Languages, that ever were yet spoken, which is this, That where there are several Nominative Cases joyned together with a Conjunction copulative, they all do equally relate to the Verbe; so *Magnates* here must have the same influence upon the Verbe *Concesserunt* as *Communitas*, and they do alike *Concedere*.

But then what will be said, if *Communitas* in that Record be not the Commons, as is surmised, but *Communitas Mercatorum* the Community of Merchants, which any body would have seen, who had consulted the Record, and not relyed wholly upon Sir *Edward Cooke's* misreciting it in Print, in those two mentioned places,

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the 2<sup>d</sup>. part of the *Institutes*, p. 531. and the 4<sup>th</sup> part, p. 29. But to give a true account of the matter : There are two Records of this, one in the Patent Roll, 3 E. 1. m. 1. n. 1. in Latin, which is something defaced, yet so much of it legible, as to serve for the disproving of Sir *Edward Cooke's* allegation, and the Comment now made upon it; for it runs thus, *Rex omnibus, &c. cum Prælati, & Magnates ac tota Communitas Mercatorum Regni nostri nobis concesserint quandam* \_\_\_\_\_ *torn out,* \_\_\_\_\_ *coriis tam in Anglia, &c. in forma subscripta, videlicet de quolibet* \_\_\_\_\_ *torn out,* \_\_\_\_\_ *pellibus qua faciunt unum saccum dimid' Marc' de qualibet lesta coriorum unam Marc', &c.* Then persons are appointed to collect this duty; which is the sum of that Record : And this is againe Registred in *Rotulo Finium*, 3 E. 1. m. 24. tit. *de nova Custuma* in French, viz. *A la nouvelle Custume ke est graunte par tout les Graunt del Reaume, e par la priere des Communes*  
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*des Merchants de tut' Engleterre, &c.*  
 And lo goes on to tell what it is they  
 grant *de chescun sac de leyne demi*  
*mark et de chescun treiscent de peaus*  
*ke fuit un sac demi mark de chescun*  
*laste de kevir un mark,* and then  
 takes course for the collecting, &c.  
 This Record is perfect, from the be-  
 ginning to the end, which any man  
 may resort to when he pleases, to  
 satisfie himself, and the House of Com-  
 mons, that here was no gift of the  
 Commons in Parliament, but a pure  
 contract of the Commonalty of Mer-  
 chants with the King and Lords; which  
 way of imposing this duty at last came  
 to be grievous, and the Parliament  
 made great complaints of it several  
 times.

In the 21. of E. 3. at a great Coun-  
 cel held in the King's absence by *Lio-*  
*nel of Antwerp,* (as the Record stiles  
 him) the King's Son, where there was  
 no House of Commons) there had  
 been granted 2 s. upon every Sack of  
 Wool, 2 s. upon every Tun of Wine,  
 and 6 d. in the pound upon all Mer-  
 chandize for the payments of Ships  
 to

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to guard the Seas, and to Convoy  
 Merchants, and this duty to continue  
 till the *Michaelmas* following: The  
*January* after that, a Parliament was  
 called, at which the Commons com-  
 plained, that the payment upon the  
 Wool (which should have ended at  
*Michaelmas*) was still demanded; and  
 they desire the King to forbid his Of-  
 ficers the demanding of it any longer.  
 The answer is, *That that payment was*  
*prolonged until Easter, because the*  
*King had been at great charge in*  
*setting out ships, and was not yet*  
*reimbursed his money, which being*  
*for so short a time should not seem to*  
*be grievous,* 21 E. 3. n. 11. And they  
 complain again in the 25th E. 3. n. 11.  
 of such Impositions, which had been  
 laid on a-new by an Agreement with  
 the Merchants, and pray they may  
 cease, the Answer is, *Le Roy s'auisera*  
*et sur ceo les respandra en conuenable*  
*manere.* Then in the 5th E. 3. n. 25.  
 They come with a general desire, that  
 for the time to come the Prelates,  
 Earls, Barons, Commons, Citizens,  
 and Burgeses of the Kingdom may not

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be charged, molested nor grieved. *De Commune aide faire or Charge sustenir*, by granting a common Aid, or bearing any charge, except by the common assent of the Prelates, Earls, Barons, &c. and this in full Parliament. They desire also that no Impositions be laid upon Wool, and Wool fells, save the ancient one, of half a mark upon a Sack, &c. To the first is answered, *Le Roy nest mie en volonte de le faire sans grande necesceite, et pur la defens du Roialme, et la ou il le purra faire par reson*; and for the other point of the Wools, The answer is, *That there is a Statute in the case which the King wills to be in force*: So here is a disavowing of the thing, yet with a reserve upon urgent necessity: though in the 14<sup>th</sup>. of his Reign, he had consented to a Law, upon occasion of a Grant made to him of the ninth Sheaf and Fleece, and Lamb; wherein he declares, that willing to provide for the Indempnity of the Prelates, Earls, Barons, and Commons, the same Grant shall not be had in Example another time, nor  
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turn to their prejudice in time to come, &c. Further enacts, *That they shall not from henceforth be charged, nor grieved to make any aid, or to sustain charge, if it be not by the Common Assent of the Prelates, Earls, Barons, and other great men, and Commons of the Realm of England, and that in the Parliament*, which are the words of the Statute, c. 1. of the second Statutes made that year: The same in effect that he had bound himself to by a former Act, made in the preceding Parliament of the same year, c. 21. when a Subsidy had been granted to him of Wool, Leather, and other Merchandizes that passed the Sea between Easter and Pentecost, *That he nor his Heirs would for the future take more than the old Custom*. And in the 13<sup>th</sup> of his Reign part 1. n. 13. when he had by his own authority laid a charge upon Wool and Lead, the Commons come and pray it may be taken off, and that the Male-tot upon those Commodities may be taken as anciently it was accustomed, and not as then enhanced without  
their

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their assent, or of the Lords, *Desicome  
els est enhancee sanz assent de la  
Commune ou des Grands*, saith the Re-  
cord: Where is to be noted by the  
way, that the House of Commons  
then did not think, that the Lords  
were to be wholly excluded their  
Votes in those Impositions, when they  
made it a ground of their exception,  
that they had not agreed to them.

Certain it is, that though this King  
struggled all his time with his Parlia-  
ments about the exercise of this power,  
and sometimes did seem to yield, and  
would promise fair, at other times  
would deny any condescension to  
their desires of being eased of those  
Impositions, even when they com-  
plained, that notwithstanding those  
allowances and payments for guarding  
the Seas, and securing Merchants, yet  
Merchants were robbed, and the Seas  
unguarded, as is set forth 21 E. 3.  
n. 58. yet still the Parliament got  
some ground, and less and less was  
it practised in that Prerogative way:  
And after his time it was wholly  
remitted: and left to the Parliament,  
and

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and there was not the least attempt of  
reassuming it any more.

But ever after it was taken by the  
King as a pure gift of the Parliament,  
of which the stile was, *Wee the Lords  
and Commons doe give and grant, &c.*  
And the first variation of it was in the  
21th of R. 2d. when it was, *Wee the  
Commons with the assent of the Bi-  
shops and Lords, do give, &c.* which  
continued so for three or four Kings  
Reigns, and since hath been various,  
sometimes as anciently, *Wee the Lords  
and Commons*, sometimes without spe-  
cifying either, *Wee your Loyal Subjects*,  
and all signifying the same thing: That  
both joyned in the gift, as hath been  
already shewn. And so jealous were  
they of having it thought other than  
a pure gift of theirs, that they would  
sometimes grant this Subsidy with a  
short intermission of time, in which  
the King should not receive it, as  
5 R. 2. n. 40. there was to be an inter-  
ruption to the Kings taking of it for a  
week, between the Nativity and the  
Circumcision: And the like 9 R. 2.  
n. 11. for above a moneth, from  
Mid-

Midsummer to the first of *August*; and then 13 H. 4. n. 10. they speak out and say they give it the King for a year, so always as the same should be confessed to proceed of their own good will, and not duty.

27 E. 3. n. 9. Sir *Bartholomew Burghersh*, the Kings Chamberlain, made a long Speech to both Houses, the King present, declaring the wrong which the King received from his Enemy of *France* (as the Record stiles him) keeping from him that Crown which was his right, that the King was resolved to recover it by force, and therefore desired the Prelates, Lords and Commons to grant unto him the Subsidy of Wools, Wool-fells, and Leather, (which was then expired) for a longer time, *Sur quen priere* (saith the Record) *eue deliberation entre les ditz Prelatz Grauntz et Coes s'assenterent vnement et granterent au Roi le subsidie des Leyns Quirs et Peaux lanuz pur trois anz, &c. Et que les deniers sourdans de mesme le subsidie soient sauement gardez pur la dite guerre, sans ceo qils soient mis*

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*en autre oeps, Dequen Grante nostre S. le Roi enmerciales Seigneurs et Communes.* The King here makes it his desire to the Lords as well as to the Commons to grant it, They confer about it with the Commons, and together with them do grant it, then appoint how it shall be employed, only to the War and to no other use, and afterwards receive the Kings thanks for their granting it, as well as the Commons: How then can it be said, that the Lords must have nothing to do with these Grants?

But then will it not be inferred, that if it be as much in the gift of the Lords as of the Commons, the Lords may not only moderate and abate, but also augment the gift, and propose it first in their House, and give away the Peoples money at their pleasure? It was certainly so in the beginning, but now not at all so, as the saying is, *Modus & Conventio vincunt legem*, Agreement alters right. And though the certain time when this Agreement was first made, and when this was first altered, and all the circumstances of that

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that first Alteration, and of that Agreement cannot be made out by the Records yet it may be made out, that it was before the 9th of H. 4. n. 21, 22. when the Indempnity of the Lords and Commons (and of the Lords as well as of the Commons) was declared and settled by a Law made that Parliament for that purpose, and the Law hath that title *Indempnitee des Seigneurs et Communes*, and is abundantly sufficient to settle and establish the manner of granting Subsidies in Parliament, and the power of proceeding of either House in passing Acts of that nature, were there nothing else. The Record sets forth, That the King coming to the Lords House in the Abbey at *Glocester*, and communication there had of the state of the Kingdom then environed with Enemies, and how behooveful it was to give a notable aid to the King, to enable him to resist those Enemies, the Lords being demanded what aid, did severally give their opinions, *That less would not serve then a tenth and half of the Cities*  
and

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and *Burrongs*, and a fifteenth and half of the rest of the Laity, and to continue for two years the Subsidy of *Wools, Wool fells and Leather*, and the 3 d. *Tunnage*, and poundage for other Commodities, which the King commanded should be signified to the House of Commons. And a message was thereupon sent to them, that they should send up some of their number to heare what from the King would be said unto them: Who sent up a dozen of their Members, and to them was declared what had been moved to the Lords, and what their Lordships had answered, which they were willed to report to their House, that so they might come to a conformity with the sence of the Lords. The report being made to the Commons, *ils ent furent* (saith the Record) *grandement destourbez en disant et affermant ce estre en grant prejudice, et derogation de leur libertees*, they were greatly disturbed, saying and affirming, that this was a great prejudice and derogation to their liberties; which represented to the King, and he not willing



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willing that any thing should be done, that might at present, or in after times turn to the prejudice of their Liberties, *N'encontre les libertees de les seigneurs susdits*, nor against the liberty and freedom of the foresaid Lords, Wills, Grants, and Declares with the advice and consent of the Lords themselves, That in this and all future Parliaments it shall be lawful for the Lords to debate and commune among themselves of the State of the Kingdom, and the necessary remedies: And likewise the Commons to do the same by themselves: And that neither the Lords nor the Commons shall acquaint the King with any Grant made by the Commons, and by the Lords assented unto, nor with any of the Communications concerning that Grant, till the Lords and Commons themselves come to an Agreement and accord in that behalf, and then to be in the manner and form as hath been accustomed, that is to say, by the mouth of the Speaker of the House of Commons for the time being, *To the end that they the*  
*Lords*

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*Lords and Commons may receive their thanks from our Lord the King.* It being moreover the will of the King by the assent of the said Lords, that the foresaid Communication of this present Parliament, shall not be drawn into Example for the time to come, nor be made use of, neither in this nor in any future Parliament, to the prejudice or derogation of the liberty of the State: Then, n. 23. is added, How the last day of the Parliament, the Speaker of the House of Commons made it his prayer to the King, that he would grant unto that House leave to depart in as much freedome, as others had formerly done, The King answers, That it pleased him well; and that he had alwayes been of that mind.

Upon this memorable Record wee may make many Observations, and from them draw several Conclusions. As, 1. That it was even before that time held to be against the Priviledge of the House of Commons, and a derogation to them, for the Lords to be Beginners in moving  
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ving them to lay any charge upon the People : And that it is the Priviledge of the House of Commons, to have it arise from themselves. 2. That it is so acknowledged by the King and Lords. 3. That upon the Complaint of the Commons, that it is a breach of their Priviledge for the Lords to begin and propound the granting of a Subsidy, and the King and Lords joyning, and so declaring it likewise, It becomes here a Law, that is, a Declaratory Law of a thing which was before, not a Creating Law of a new thing. 4. For it appears to have been a thing formerly so settled, in regard it is here declared to be the manner and forme accustomed, for the Speaker of the House of Commons to be the Person from whom the King must receive the notice of such a Grant, and to be he that must present it; which shews that the House of Commons hath something proper and peculiar unto them in this Grant, since it must be received from their hand, (for it is their act the presenting of it, and their Speaker is but the Conduit-pipe to convey

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convey it from them.) And this can only be, that they are to have the beginning of it, to be the first Movers and Proposers of all such Grants : But all things else concerning those Grants, as the preparing and modelling and fitting them in all circumstances, and reducing the sums to a just and due measure (if there be cause for it) and then the giving them to the King, that is, making a Law whereby they are given to him : and that which was before part of the Estate of the Subject to be now transferred to the King, and made to be his Right, and his proper goods, and he impowered to levy it; this (wee say) to be still the joynt-work of both Houses, and equally in the one, as in the other. For in the fifth place it is manifest hence likewise, that the Lords have their share in the Grant, and that they have power to make such alteration in it, as may fit it for their assent; for that Act of Parliament saith, 1. That they shall debate it, and confer of it among themselves. 2. They may then so alter it and frame it, as that they may  
D 2                      assent

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assent to it, which is the end of their debating it. 3. They must assent to it, before the Speaker of the House of Commons can present it. 4. The King is to give thanks for it to them, as well as to the Commons: And it cannot be thought that he will thank them for nothing, that is, for a thing in which they have power to do nothing. 5. And lastly, The King by this Act provides for the preservation of the Priviledge and Liberty of the House of Lords in those Grants unto him, as well as of the House of Commons, which had been infringed: And what was this Liberty, but freedom of debate, not to be locked up any more with a previous Vote, as they were then, upon the King's propounding the matter to them, and they coming to a present resolution in the King's presence: and accordingly is the Act intituled, *Indemnitee des Seignours et Communes.*

But may it not still be objected, that by what hath been hitherto said, the Lords may adde to, as well as abate and take from the charge? Not at all:

For

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For it hath been said they cannot be the first movers and beginners of any charge upon the People; And then they cannot adde any thing: For so much as they adde to any Sum proposed by the Commons, they do for so much begin a new charge: therefore in all their communings and debates, the result can be only to moderate, and abate the charge, if there be cause for it, not to augment it.

As in 4 R. 2. n. 11, 12. A great Sum having been demanded by the King, and the great Officers and Council having delivered in a Schedule containing divers particular charges, amounting to 150000 l. The Commons come before the Lords, and desire of them a moderation of that Sum, and that it would please them to consider how it might be levied; So certainly it was then the opinion of the House of Commons, that the Lords had power to consider of and lessen the charge of the People, and to moderate demands; for they desire them to exercise that power:

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But it will be said, This was demand-  
 ed onely by the King; but the House  
 of Commons had not imposed that  
 Summe, for then their Lordships could  
 not have medled with lessening it :  
 This doth not at all alter the Case,  
 being it was in order to a Bill to be  
 passed for laying such a Tax upon the  
 People. But to prove that they have  
 abated of a Summe imposed by the  
 House of Commons, Wee will goe no  
 further then this very Parliament in  
 the 14<sup>th</sup> year of the King, in the  
 Bill for enlarging and repairing of  
 common High-ways, for which pur-  
 pose the House of Commons had a-  
 greed upon a Rate of 12 *d.* in the  
 Pound, to be levied upon the Inha-  
 bitants of Parishes contributory to  
 those Repairs, the Lords brought it  
 down to 6 *d.* And the House of Com-  
 mons agreed to it.

But perhaps they will say, That  
 this is not to the purpose, for that the  
 Point in controversie, is not con-  
 cerning the Abatement of any charge  
 that should be laid in general upon  
 the Subject; but only for that, which  
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is imposed upon Merchandize : As if  
 the one did not necessarily follow the  
 other : For if the Lords can abate  
 Taxes at large laid upon the People,  
 with much stronger reason may they  
 abate an Imposition upon Merchan-  
 dize exported or Imported; And if  
 they have not power to abate in this  
 which concerns only Merchants, much  
 less can it be thought they should doe  
 it in the other, which concerns the  
 whole Kingdome. Which the House  
 of Commons did well foresee, and  
 therefore it is that they are so Posi-  
 tive in their Assertion, that *It is their  
 fundamental right to impose all charge  
 upon Merchandize, for Matter, Mea-  
 sure and Time, unalterably as to the  
 Lords;* which how they doe make  
 good and maintaine, by their Presi-  
 dents and Arguments, wee will now  
 in few words examine, though by  
 what hath been already said, the  
 contrary seems to have been suffi-  
 ciently proved.

It is true, that at the former Con-  
 ference the Lords were told, *That the  
 House of Commons had narrowed the  
 ground,*

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*ground, and reduced the Question to this single point of laying rates and impositions upon Merchandize only, and not upon the subject in general.* Wherein the Lords conceive themselves very kindly dealt with, That the House of Commons hath been pleased to make choice of that to be disputed by them, whereto their Lordships have the clearest right, to be at least Joynt-tennants with them; and they the least pretensions to challenge it wholly to themselves: For in charging the People, the House of Commons will perhaps say, they ought to be the sole Arbiters, in regard they take upon them to be their sole Representatives, and to be Trustees for them, and trusted by them with all their concerns: (which yet will not be granted, that they represent all the People; for how many thousands are there in every County whom they doe not Represent, and who have no voice in their Elections, and so confer no trust upon them?) but they cannot have any the least pretensions to be sole in laying burthens upon  
Trade,

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Trade, and Rates upon Merchandize, which even for our Home-Commodities, and where the naturall borne Subject is concerned, is much depending upon, and regulated by Treaties, and Agreements, and Negotiations with other Princes and States, over which the House of Commons will not pretend to have any authority, either for governance or inspection, so cannot easily judge, what is fit or not fit to be imposed: But then for Merchants Strangers, and their Goods, what colour, what shadow of reason, can the House of Commons have to pretend any power to lay a charge upon them, and dispose of their Estates? The whole Parliament indeed hath power over them, as it hath upon whatsoever comes within the Kings Dominions, whether Persons or Goods, though never so forreign: All which (while here) owe a local Subiection to the Government and Laws of this Kingdom, but to either House singly, none at all; being only subject and bound to submit to what is imposed upon them by  
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the whole State making it a Law; but cannot be supposed to be within the disposition and gift of the House of Commons alone.

Yet they say, *They have been possessed of this power in all Ages, and find not one grant of Tunnage and Poundage, that is not barely the gift of the Commons.* And well is it proved by the Statute of 3 E. 1. as hath been shewed already, by reading *Communitas concesserunt*, and leaving out the principal word *Mercatorum*, which shews it to have been a Grant of the Merchants, not of the House of Commons, as they would understand it. And the several Presidents cited by the Lords, *When the two Houses did confer and advise together about granting of Aides to the King;* by which the Lords did prove the power exercised by their Ancestors, of delivering their advice and opinions, and giving their Votes in point of Subsidies and Taxes, they would evade by drawing a contrary inference, That is, *All Aydes (said they) must begin with the Commons,*  
for

*for else the Lords needed not to have conferred, but have sent down a Bill: So being begun by the Commons, the Lords can neither alter nor diminish, else why adjust matters by private Conference before-hand, if they might have reformed it afterwards?* The first part of this is acknowledged, and the ground-work is good, That the Grants must begin with the Commons, but the superstructure upon it is very false and deceitful: For cleane contrary, It is therefore good to adjust the matter beforehand, and then make but one worke of it, because else the Lords, if they be unsatisfied, will alter what the House of Commons had taken a great deal of pains to compleat and finish, which will be a new business, take up more time, and cause more trouble: Whereas if the Lords had not power to change any thing, it were to no purpose to confer and satisfie them before-hand, for satisfied or not satisfied, they could alter nothing, but must sit down and pass whatever the House of Commons had sent up to them. This was  
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the true reason of those previous Conferences, which sometimes were propounded by the King, sometimes desired by the Commons, but still to expedite, and facilitate the business, and only for that end. Which makes good all those Presidents, *viz.* 14<sup>th</sup>. 22<sup>th</sup>. 29<sup>th</sup>. 47<sup>th</sup>. and 51<sup>th</sup>. E. 3. the 4<sup>th</sup>. and 6<sup>th</sup>. R. 2. and the 7<sup>th</sup>. of King James, which were cited by the Lords concerning those Conferences between the two Houses about matters of Money, whether for raising or for disposing of them: and leaves them strong evidences and unshaken proofs of that Right, and Power, and Interest, which the House of Lords hath in all such matters, whether of Aides given to the King, or Moneys raised upon the People for the present defense of the Kingdom, and immediately ordered to be applyed to that purpose: And this acknowledged even by the House of Commons themselves, as appears by their often Addresses to the Lords desiring their help and assistance in it.

As for the Case of 14 E. 3. it was made

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made use of by the Lords only to prove, that there had been *Grand trete et parlance entre les Grantz et les Cöes*, great treating and conferring between them. As for what was said after of the Nones being then granted, or having been granted before to be then appointed to be sold for the present raising of Money, which was mentioned at the Conference, as if the Lords had committed some mistake in their citing of this President, alters not the Case. The Conference about the present raising of Money in that way, and the Commons of themselves not able to doe it without the Conjunction of the Lords, is a President undeniable of the Lords Power and Interest in matters of that nature: Yet who reads the Record thorough will find, that there was 40 s. upon the Sack of Wool granted for Custome, and 20000 Sacks of Wool to be taken up for the King, in whose hands soever found, and the price set, one mark upon a Sack less than was agreed at *Nottingham*, the Owners to be reimbursed

burfed out of the Nones of the fecond year. And this was a proposition made by the Lords, and affented to by the Commons.

Then their observation upon the 22 E. 3. n. 3. must not be passed by: They will have it to prove exprefly that the Commons granted 3 Fifteens, as if they had done it alone without the Lords; (which how impossible it is, need not be faid, it fpeaks it felf; for it cannot be imagined that one Houfe alone could make an Act of Parliament). But this was meerly a proposition of the Houfe of Commons, in Answer to what they had received in command from the King, as appears by the Record it felf. The words are, *Sur ce fut commande as Cheualers des Contees et autres des Communes qils se deuenoient treter ensemble, et prendre bon auys, &c. Et de se qils ent sentirent le deuenoient monftrer a nostre Seigneur le Roy et a les Grants, &c.* Then after some dayes debating it among themfelves, they came up to the Houfe of Lords, and firft make great complaints of their

their many preffures, then make feveral requests, and declare certain conditions, which conditions obferued, & their requests granted, they then fay, they give three fifteens. Let any mannow judge, if this was any more than a bare proposition of the Houfe of Commons, which they made to the King and the Houfe of Lords; And if this could be the Granting of a Subfidy: But indeed the King and Lords confenting and joyning in it; It was then a perfect grant, fetled by a Law. To fay the truth of this Parliament, no great formality was obferued in it; It was very fhort by reason of the Plague, as was declared at the opening of the next Parliament, which was 25. n. 5. in these words, *Cest affaver l'an de son Regne vintisme fecond il fist sommondre son Parlement a Westminster, lequel sembla puis a luy et a son Conseil, que ne se poeit bonement tenir adonques, pur cause de la pestilence q'estoit bien aspre a mefme temps, et par tant il fist releffer le dit sommons adonques, &c.* So as no good measure can well be

be taken from any thing done this Parliament.

Much need not be said neither to their endeavour of proving the *Communitas* 3 E. 1. to be understood to be the Communalty of England by the recital of that Statute, in a Statute made after in 25 E. 1. c. 7. called *Confirmationes Chartarum*, since it hath already been made out by the Record, That that Grant in 3<sup>thio</sup>. was by the *Communitas Mercatorum*. But however, a short mention made in a Recital, can be no Restrictive proof; that is to say, not a proof to limit and restrain the sense, when more is expressed, or may be understood in the Act it self at large.

And therefore their argumentation concerning those Statutes of E. 6. can no ways be allowed. In the 2 & 3 E. 6. c. 36. A Subsidy is given, and the stile is, *Wee the Kings Majesties faithful, loving and obedient Subjects the Lords and Commons doe grant, &c.* This Statute (he saith) is recited in 3 & 4 E. 6. c. 23. And there it is acknowledged to be only a Grant

Grant of the Commons: The words are these, *That where in the last Session of this present Parliament, your humble and faithful Subjects the Commons in the said Parliament assembled with the assent of the Lords Spiritual and Temporal Granted, &c.* Now first, This is not said to be onely the Grant of the Commons, for the Lords joyne and give their assent to it. Secondly, If the Commons only had been mentioned restrictively in this Recital, the Act it self saying expressly, *That the Lords and Commons Granted*, should the Recital be of more validity to declare what was enacted, than the Act it self? In the third place it may be observed, That the Act saying, *The Lords and Commons doe Grant*, And the Recital of that Act saying, *It was the Commons with the assent of the Lords*, It must follow that in the Judgement of the Parliament then, these two forms of expressing the Grant of a Subsidy did signifie one and the same thing, and they may be promiscuously used without any variation of the sense;



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so that in all Acts of Subsidies where wee find it said, *Wee the Commons doe with the assent of the Lords grant so and so*, it is as much as if it had been said, *Wee the Lords and Commons doe grant, &c.* which overthrows all that the House of Commons hath alledged or can alledge to make it to be *their gift alone, and the Lords to have no part in it; And to prove it (say they) the stile hath been altered, and the Acts doe now run for the most part, Wee the Commons with the assent of the Lords, &c.* But it is answered, though the stile be changed, the sense continues the same.

And 2 R. 2. n. 37. The House of Commons themselves are said but to *Give their assent* to an Imposition, which had his rise in the House of Lords. The Case was thus, Upon a Reference from the House of Lords to the Earl of Northumberland, and the Maior of London, with some Merchants joyned to them, six Vessels were appointed for the guarding of the Northern Seas infested by Pirates, who had landed and plundered the Town of

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of Scarborough: and for defraying the charge of those Vessels, an Imposition was laid upon Ships that passed through those Seas of 6 d. per Tun, excepting *Flemish* Ships bound for London, and such as carried Wools and Woolfells to Calais, and 6 d. per Tun a week upon Ships that fished for Herring; and upon all other Fisher-boats 6 d. per Tun every three weeks. This had passed in the House of Lords, unknown (it seems) to the House of Commons: for the Record saith, they petitioned the King, that care might be had of those Seas, and of the Town of Scarborough. The Answer is, *Remede ent est ordeinez, per maniere comme le Conte de Northumberland et le Mair de Londres qi furent assignez en Parlement de treter sur cette bisoigne le sachent plus au plein declarer*, That already there is a remedy ordeined in it, as the Earl of Northumberland and Maior of London, who were appointed by the Parliament to treat of that business, could more fully informe them; which they did, and the Commons gave their

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their Assent to it, as is expressed in a Schedule annexed, which contains the particulars of that transaction. So then the stile of *Giving an Assent* can not be said to be wholly and solely appropriated to the House of Lords, and made a mark of their having no part nor portion in the giving of those Subsidies, since the same is likewise said of the House of Commons.

As for the *Indemnity of the Lords and Commons* 9 H. 4. It hath been already spoken to, and clearly proved out of it, that the Lords are very far from being by it secluded to be noe parties to the Grant, but that they should not be the Beginners of it, is confessed: And that was it, which was then the Grievance to the Commons, that the Lords had already concluded the Aide to the King, and declared it so to the Commons, not for demanding a Committee to confer with about it, as was alledged at the Conference.

As for the Book-Case of 33 H. 6. which they say is the weakest of all,

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is a thing easily said, but not so easily made good; for others conceive it a very strong proof of the Lords assertion of their Interest in granting of Subsidies: it is brought there as an instance of the Proceedings of Parliament, of which the Judges desired to be informed, upon occasion of a business depending before them, in which there had passed an Act of Parliament, and therefore they sent for Kirkeby of the Rolls (as the Book stiles him) and for Faux the Clerk of the Parliament, to receive information from them: They come, and Kirkeby speaks and lays down this for a Rule, *That if the Lords make an alteration to a Bill, which may well stand with that which the Commons have done, they need not send this Bill back to the House of Commons.* And of this they give an instance, which is this, *If (say they) the Commons have sent up a Bill of Tunnage and Poundage to continue for four years, and the Lords they alter it to two years, it need not be sent down againe to the House of Commons:* And the

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reason is, because it may stand with the grant of the Commons, for both Lords and Commons have granted it for two years. This was the Case to which were taken several exceptions, 1. *That it was onely the opinion of the Clerk of the Parliament, not of the Judges*; To which is answered, That if it was so, none could better know the course of Parliaments, than the Clerk of the Parliament, who was therefore sent for by the Judges to informe them; nor durst he have delivered that in Court for an instance, of the course and usage of Parliament, if it had been a thing not practised in Parliament. Nor is it to be believed, that those Judges could be so ignorant of the proceedings of Parliament, particularly of the manner of granting Subsidies, in which every man is concerned, as not they to have known, if or no the Clerk did give a true instance of a matter in fact: And their allowing of it, was a kind of declaring their opinions in the Case. But it was not the Clerk of the Parliament, that gave

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gave that account to the Judges, though it be true that *Faux* the Clerk of the Parliament agreed to it, but *Kirkeby* (who was in truth Master of the Rolls) said it in the name of both: whose authority should be of weight, being one in that great place, which is ranked in the Statute 12 R. 2. c. 2. before the two Chief Justices, by the name of Clerk of the Rolls, by which name that Officer was anciently called, and was first in any Statute stiled Master of the Rolls, 11 H. 7. c. 18. *Kirkeby* held this Office, which was granted to him in reversion after *John Stopindon*, by a Patent confirmed by Parliament, bearing date 20 Martii 25 H. 6. p. 1. m. 7. And so *Brooke* stiles him, Clerk of the Rolls of Parliament, not Clerk of the Parliament (as he was termed at the Conference slightly enough) which title *Brooke* gives to *Faux*, as the Year-booke doth. Nor is the authority of the Year-booke it self to be set so light by, having been compiled by the ablest Students at Law appointed for that worke, allowed and approved

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by the Judges then, and by all the Judges and Lawyers ever since. Their second exception is, *That it was a Case put by the By, and not pertinent to the matter there in hand*: Which may be urged rather an Argument for it than against it, there being the less reason to apprehend, that there was any byas of affection or prejudice to lead them to such a declaration, as too often there is, when men come to speak their opinions concerning things in contest between party and party. Thirdly, *That it is against the constant usage of Parliament, for that then the Lords may chuse whether they will send downe the Bill, after they have made an Abatement*. It is acknowledged, that the Lords doe now use to send back a Bill, if any the least alteration be made in it; but why formerly it might not have been sometimes otherwise practised, no convincing reason can be given: Wee know many things have been changed in Parliaments, and every where else: Some things have been used heretofore, which are not now; and some

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some things are now, which may not be hereafter. One that should move now in Parliament, to have a Bill read again, which hath already been read three times, would not speed with his motion, but be laughed at for his labour: Yet heretofore Bills, especially Bills of Subsidy were commonly read four times, and sometimes oftener. So Conferences between the Houses were commonly demanded to be by a certain number, which is now never done; nay, would it not be thought a breach of Priviledge, and an imposing upon the other House, if it should be demanded? Heretofore the House of Commons could not punish any of their own Members, nor any body else, that had broken their Priviledges; but they made their complaints to the House of Lords, and they did them justice; but they will tell you, it is not so used now: and yet because it is not so now, they will not make it an Argument that it was not so then, nor deny the truth of an instance brought of what was done then: No more can they with reason  
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say, the Clerk of the Parliament, or the Master of the Rolls, who by that Book Case appears to have declared such a thing to have been in those times the usage of Parliament, said false, because it is not so in these times. The fourth objection is, that the Clerk saith, *The Lords may increase Impositions also, which part of the Case (they said) their Lordships thought not fit to cite.* It is true they did not cite it, because that part of the Book-Case was out of the present Case, the Lords not pretending to a power of increasing Impositions. Nor is it strange, if it was not then so clear, but that the Lords might adde, when once the Commons had begun a Tax, though not begin one themselves, which now is out of question upon better consideration by a necessary inference, that as much as the Lords doe adde to any Imposition, they doe for so much begin an Imposition, though the Bill which charges the Subject, begin not in their House.

And certainly they misplace the *Querie* in *Brooke*, if they apply it to that

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that part of this Case, which concerns the Lords abating two years, when the Commons had given four, as any body may see, that will peruse the passage. It is *Part 2. fol. 116. Tit. Parliament and Statutes, 4.* The *Quærie* there is put onely to what is said of sending the Bill back againe to the Commons, the words are, *Comme si les Commons graunte poundage pur quatuor ans, et les Seigneurs graunt nisi pur deuxans, ceo ne sera rebaile as Commons, (Quære inde)* It appears what it is that he makes his *Quære* by that which follows, where he delivers his opinion of the forme used in the transmitting Bills from one House to an other. He saith, *That if a Bill begin in the House of Lords, and there pass, they doe not use to indorse it, but send it downe to the Commons, and if they pass it, it is then indorsed Les Commons sont assentans; and this shews it had already passed the Lords, and their assent is to what the Lords had passed; upon which he infers, Et ideo cest acte supra nest bon pur ceoque il ne fuit rebaile as Commons.* Therefore

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forè the Act above-mentioned is not good, because it was not sent back to the Commons: And this he makes to be his reason, why it was not good, because it was not sent back. But he makes not any scruple at all of the Lords cutting off the two years. This seems very plaine to have been his meaning: Yet a *Quære* may be put upon what *Brooke* himself saith, that the Lords doe not use to endorse it, if it begins with them, for they doe write upon it now, and certainly did then, *Soit baille aux Communs*.

Then for *Dyer Mic. 30 H. 8. 22.* It is true the words are as they were quoted at the Conference, and no body can deny what they import, That the Commons doe grant; but *Dyer* saith not, that they doe it singly and alone without the Lords. To give a true judgement of his meaning, one must consider his end and scope in saying this, it was to shew the difference betwixt the old Customes, and a Subsidy of Tunnage and Poundage; The Customes he saith are the Kings inheritance, and due to him by the  
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Common Law, and therefore the first Statute that mentions Customes, 14 E. 3. he saith, doth not grant any thing, but abridges the Kings power, that he shall not take more than half a mark for a Sack of Wooll, and half a mark for a last of Leather: But the Subsidy is a Tax assessed by Parliament, and Granted to the King by the Commons for his life onely, for defence of the Seas; The one is Inheritance, the other is a Grant; but to define and describe what kinde of Grant, and in what manner granted, whether by one or both Houses, with all the circumstances of it, was certainly not at all in that Reverend Judges thought. This then is no such Judicial determination of the Question, as they would make it.

From thence they come to the Provisoës in the Bill of 1 H. 8. in which, as in the Bill it self, and their conclusion upon it, *viz. That they are of no force, unless it be against the Lords,* there is certainly a great mistake; They say, that by the Lords Journal the Case is this, *That the Bill did not pass till*

till the 3 of H. 8. That the Lords assented to it the 43d day of the Parliament, That the 45th day two Provisoes came in; one touching the Merchants of the Hans Towns, the other touching the Merchants of the Staple at Calais, both signed by the King; And that the Chancellor and Bishop of Winton did declare that the signing of those Provisoes by the Kings own hand, was enough without the consent of either House: Then they give reasons why they prove nothing. 1. For that they were signed by the King. 2. For that they were brought in against all course of Parliaments, after the Bill passed. 3. That the Provisoes were nothing but a saving of former rights. 4. That the Journal declares, that the King without those Provisoes might have done the same thing by his Prerogative. This is the Narrative which they gave us.

The truth is this, In the first place, the Lords did not cite, nor insist upon two Provisoes, but onely upon one, that which concerned the Merchants of

of the Staple, which Proviso was added then by the House of Lords, who meddled not with that which concerned the Hans Towns, which was a Proviso sent up with the Bill from the House of Commons. The progress of this Bill was thus, all of it in the Parliament of 1 H. 8. for that which was said at the Conference, that the Bill it self passed not till the 3 H. 8. is a gross mistake: That was another Bill of Subsidy, which was given that Parliament 3 H. 8. and it is true; wee find in the Journal that the 45th day of that Parliament of 3tio. the Chancellor and Bishop of Winchester did declare such a thing concerning the Merchants of the Hans Towns, in these words, *Et dictum & decretum est per Dominum Cancellarium & Episcopum Winton. quoad Provis. pro Mercatoribus de Hansa quod Provis. pro ipsis per ipsum Regem signatum sufficet eis absq; assensu Dominorum & Domus Communis*; These were strangers with whom the Parliament had nothing to doe, so such a Declaration might be concerning them: But the Pro-

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Proviso insisted upon by the Lords was concerning the Merchants of the Staple natural borne Subjects: And besides, that which the House of Commons went upon at the Conference, was clean another thing, a Proviso relating to an other Bill, and passed in an other Parliament: For 1 H.8. 23<sup>d</sup> day of the Parliament, and 16<sup>th</sup> of Febr. upon a *Saturday* this Bill which is now in question came up to the Lords from the House of Commons, *cum Proviso pro Mercatoribus de la Hansa Theutonorum*; at the head of this Proviso, are these words, *Soit baille aux Seigneurs*, and at the foot, these, *Les Seigneurs ont assentus*. Then the 27<sup>th</sup> day of the Parliament, which was *Thursday* the 21 of Febr. the Lords passed the Proviso for the Merchants of the Staple which had begun in their House, the words are, *Item Proviso pro Mercatoribus Stapule de Calais, lecta est secundo & tertio, & missa in Domum inferiorem per Clericum Coronæ*, and these words at the top of it; *Soit baille aux Communs*, and at the foot these, *A Cette provison les C<sup>o</sup>es sont*

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*sont assentus*. Then the 29<sup>th</sup> day, which was the last day of the Parliament, the Bill with the two Provisoes annexed were delivered to Sir *Thomas Lovel* at the Bar, *Actus Subsidii cum duabus Provis annex. liberati Thome Lovel militi cum Sociis ad Barram*, saith the Journal.

This bare relation justifies enough the Lords citing of that Proviso, by which the Merchants of *Calais* are excepted from their being lyable to any of the payments imposed by that Bill of Subsidy of 1<sup>mo</sup>. H.8. To say it was but a Saving of former rights signifies nothing: for no question, the Lords would not have done it without good cause for it, (nor will they at any time make any abatement, but for good cause:) but still they saved to the Merchants of *England*, their right, which the Commons had taken away. And then here was nothing against the course of Parliaments, the Proviso regularly added by the Lords, and sent down to the House of Commons in due manner, and afterwards passed by the King with the Bill. F Then



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Then for the Kings signing it, which the Manager of the Conference made to be so great a matter: if he would have perused the Records of H. 8. he would have seen, that in those times the King still signed all the Bills he passed, and all the Provisoos annexed he signed likewise with his own hand, only Bills of Subsidy he signed not: But the Provisoos annexed to Bills of Subsidy, which were to ease and discharge any persons, those he also signed; and therefore the other Provisoos concerning the *Hans-Towns*, which was annexed to the Bill, when it came up from the House of Commons, was likewise signed by the King. So as the Kings signing this Provisoos concerning the Merchants of *Calais*, cited by the Lords alters not the Case, and makes nothing against its proving an inherent Power and Authority to be in the House of Peers of adding such Provisoos, or making abatements in Bills of Subsidy, whensoever they see cause for it. As they did 1 *Eliz.* when they gave respite to the Counties

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ties of *Wales*, and the County Palatine of *Chester*, for paying the Subsidy (given that Parliament) a year after all the rest of the Kingdom, which was an easing of them for that time.

And for what is said of the Grant 1 H. 8. that it was of the Commons alone, it was, as many other Grants then were, *The Commons by the assent of the Lords, &c.* which expression is sometimes used, as signifying the same thing with the other, *We the Lords and Commons do grant, &c.* as 37 H. 8. the only printed Act of Subsidy in all his reign, which begins thus, *We the Kings Majesties most humble, faithful, and obedient Subjects, the Lords spiritual and Temporal, and the Commons in this present Parliament assembled, &c. have consulted together, and determined to beseech His Majesty most humbly to accept, and graciously to receive, at our hands the simple token or gift which we do herewith present to His Majesty, freely with one consent granting the same; most humbly beseech-*

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ing His Majesty to accept the same, as it pleased the great King Alexander to receive thankfully a Cup of water of a poor man by the high-way-side, &c. And a little after they say, Wherefore we the said Lords and Commons do by our mutual Assents and Agreements with one whole voice and hearty good will, by the authority of this present Parliament give and grant to the Kings Highness, &c. Here then is but one consent, one whole voice, one hearty good-will to give and grant, and one Act of giving and granting of the Lords and Commons, and yet the Lords must have no hand in this giving, as was told them at this Conference. And they are told further, That the thanks was given to the Commons alone, and that is true; it was it seems the Kings pleasure so to do: But this course was not always observed, sometimes both were thanked, and the Law is they should be so in the Indemnity of Lords and Commons, 9 H. 4. Nor can the Act of a King, using his pleasure, sometimes to vary from the exactness

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ness of a Law, make an alteration in the nature and force of that Law, but that still it remains the same, to shew what then should have been done, however the King was pleased to do otherwise, and what will be done, or at least ought to be done at an other time.

And now we will go with them to *Walsingham*, and see if History makes more for them than Records; though neither is History a sufficient proof for things of this nature, neither is *Walsinghams*, or any of those *Moncks* Writings, the most authentick History in the world: But let us see what *Walsingham* saith, p. 475. he saith, *His diebus Clerus & populus primo quintam decimam, & postmodum tricesimam bonorum suorum Regi Angliæ in subsidium concesserunt.* And p. 488. he saith, *Pro confirmatione harum rerum omnium dedit Populus Anglicanus Regi denarium nonum bonorum suorum, & Clerus Cantuariensis decimum, & Clerus Eboracensis quintum, quia propior damno fuit.* What doth this signifie?

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but that the Laity gave so much, and the Clergy so much; and certainly the Lords will be acknowledged to be part of the Laity, therefore the Laity giving they are comprehended. An other quotation was urged from p. 566. The words are, *Eo tempore incobatum est Parliamentum, quod protelabatur inutiliter fere per annum, quia postquam Parliamentales milites distulissent diu concedere Regi Subsidium, in fine tamen fracti concessere taxam petitam grandi Communitatis damno.* But how they will prove hence, that the Commons gave this Subsidy alone is difficult to tell. All that can be gathered from it, seems to be but this, the Knights in Parliament (which may be taken for the whole House of Commons) held off a long time, but at last yielded, and gave the Tax demanded to the great prejudice of the Commonalty? doth it follow therefore, that when the House of Commons had passed it at last, the Lords did not assent and joine in the Grant? Certainly no man will say it. And for their last quo-

quotation, out of p. 564, in H. 4. <sup>th</sup> time, that *Subsidium denegatum fuit Proceribus renitentibus*, the words are these, *In quadragesima sequente Rex convenire fecit apud sanctum Albanum Clerum Regniq; Barones, sed proceribus renitentibus nil actum fuit:* And no wonder that the Lords dissenting nothing was done; yet whether this was a Parliament, or only a Great Council *non constat*, more like to have been only a Great Council, and that the King had propounded matter of money to them, as he did afterward in the Parliament of the 9th of his Reigne to the House of Lords, and as this very Writer saith, that he had done a little before to these same Barons at London, viz. *Post Festum Purificationis Rex accersitis Londiniis regni Baronibus, tractabat cum eisdem de Regni regimine, deque pecuniali subventionem sibi ferenda, sed proceres Regis votis tum minime parvere.* All this was but a great Council, and no Parliament, if so be *Walsingham* gave a true account of what passed; for he doth not mention

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tion the Commons to have been summoned at all, or that they were there: However, were they, or were they not there, it makes nothing for the Managers purpose, to prove the Commons sole givers: And then for what he observes, that the Lords not Agreeing an Act doth not pass, is what no man yet did ever doubt of.

The Statute of 1 E. 3. c. 6. where the Commons complain, that when they have granted an Aid, and the Taxers had taxed them, and they had paid the money, there was Inquisitions afterwards, and the Taxers put to fine and ransome, signifies nothing to prove they were the sole Granters of that Aid.

And the 18th of E. 3. n. 14. It was by Agreement, that the Lords should accompany the King, and pass the Seas with him; And the Commons they grant for the Commonalty at large, in the Counties two Fifteens, and for the Cities and Burroughs two Tenths; the Record saith, *Et par ceste cause les ditz Grants grantent de passer & leur auenturer oves-*  
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*que lui, & la dite Commune luy granta pur meisme la cause sur certaine fourme deux Quinzismes de la Communaltee, & deux Dismes des Citees & Burghs, &c.* This was sometimes practised, as hath been already shewed both in this Kings time, and in E. 4th and once in Queen Eliz. that the two Houses did agree to act severally, as here the Lords to serve in person, when the Commons gave money: So some times the Lords would charge themselves and their Tenants apart (which in those times was a great part of the Kingdom, and taking in the Clergy, that is, Bishops, and Abbots, and Priors, who held *per Baroniam*, more than half the Kingdom) and the Commons did charge themselves a-part, this in an extraordinary way, which altered not the Case of their joint Gift, when they would grant Aides in the ordinary Parliamentary manner.

As for what is said of the 36 E. 3. c. 11. was but taken out of *Poultons* Collection of Statutes in Print; there indeed it is said, *That the three years*  
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*Subsidy granted by the Commons to the King shall be no example for the time to come.* But if the Record it self had been consulted with, it would have shewed that the Lords and Commons granted this Subsidy, it is n. 35. where is said, *Les dits Grants et Communes grantent d'un assent a nostre dit Seigneur le Roy un Subside de Leines Cuirs & Pealx lanutz, &c. pur terme de trois ans pleinement accompliz.* It is true, that in the end of the Record it is said, *Purquegrant nostre Seigneur le Roy a la requeste de sa Commune lour ad fait Pardon de plusour Articles d'Eyre.* For which Grant the King at the prayer of the Commons, remits unto them many things for which they were or might be questioned in his Courts. And so among the Petitions of the Commons in that Parliament, n. 26. they pray, That after the three years expired onely the old Custome may be levied; And they pray, *Que nul Subside n'autre charge soit mis, ne grante sur les Leines par les Marchaunts ne par nul autre de sorenant sans assent du Parlement,*  
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That no Subsidy nor other Charge be laid, neither by the Merchants, nor any body else granted upon Wools henceforward without consent of Parliament. And the answer is, *Il plest au Roy;* the King approves it. Is there one word in this Record which makes for the Managers pretenses? Doth it not expressly say, That this Subsidy was granted by the Lords and Commons? What the Commons make to be their desire afterwards upon it, is nothing to the Grant. But this appears by it, that the Merchants sometimes granted such things without the Parliament, as hath been said before; for the Commons complain of it, and petition against it here.

So the Subsidy granted 21 R. 2. n. 15. was not by the Commons alone, for it was by the assent of the Bishops and Lords granted to the King during life; those are the words of the Record, and they signifie the same thing, as if it had been said, That the Lords and Commons had granted it. This hath been already made out to the full, and those Statutes

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tutes of E. 6. formerly cited by the Manager himself are a proof of it irrefragable. For that of 2 and 3 E. 6. says, *The Lords and Commons granted a Subsidy*; and the Statute of 3 and 4 E. 6. reciting that saith, *The Commons granted it with the assent of the Lords*. Which shews the meaning of the Parliament in those two differing expressions to be one and the same: But the Manager tells us not what followed upon the grant of this Subsidy, which was that the King gave a general Pardon, and withall the Record saith, *Fist overt Declaration per son bouche de mesme, que sles Seigneurs ou Czes du Roialme qui viendront as Parlments en temps advenir mettent ou facent impediment ou distourbance a contraire del Grante du dite subside des Leins Quirs & Peaux lanutz ensi grauntez a luy a terme de sa vie, que adonques la dite Grace & Pardon soit tout voide, & tout outrement adnulle*; Declared with his own mouth, that if either the Lords or Commons should afterwards in any Parliament give impediment  
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or disturbance to this Subsidy of Wool, Leather, and Woollfells so granted to him for his life, that then the said Free Grace and Pardon should be wholly void and totally annulled. So it seems the King thought that the Lords might make some alteration in the Subsidy, as well as the Commons and feared it: And the Commons themselves did not gainsay it, which they would certainly have done, if it had then been a general received Position, that which hath now been so confidently asserted, nay, if it had then been but a question, that the Lords might not meddle in any of these Subsidies, nor hinder nor alter any thing, which the Commons would do concerning them. This was not for his turn, and therefore he would take no notice of it. But in truth the very Grant it self shews it to be the joint act of both Houses, and that the Lords had an interest in it, as well as the Commons: For whoever must assent to a thing, and that it cannot be disposed of without his assent, must  
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questionless have an interest in it.

The same is to be said of 2 H. 6. n. 14. 31 H. 6. n. 7, 8, 9, 10. and 8 E. 4. n. 30. all run, The Commons by assent of the Lords. In the two first of H. 6. The Manager hath it seems been misled by the Exact Abridgement, and not consulting the Rolls; But that of 8 E. 4. is so *in terminis* in the Abridgement it self, therefore it is some wonder how he came to mistake this, and ranck it amongst those, which he makes to run in the stile of being Granted by the Commons alone without any mention of the Lords.

As he doth also mistake that of the 3 E. 4. relying meerly upon the Print of 12 E. 4. c. 3. where it is indeed recited to be by the Commons alone: But if he had resorted to the Record (which only is an Authentick President) he had seen, that there it is in the same stile as all the rest. It is n. 24. both in the *Memorandum* which is in *Latin* in these words, *Communes in presenti Parlamento, &c. de assensu Dominorum Spiritualium & Temporalium*

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*lium concesserunt, &c.* And in the Indenture it self, which is English, *We your poor Commons by the assent of all the Lords Spiritual and Temporal in this Parliament assembled grant, &c.* And in the same Parliament two other Subsidies are granted in the same form, one for a Fifteenth and a Tenth, the other for 37000 l. And it may be boldly affirmed, that ever since there hath been a House of Commons, not one Subsidy hath ever been granted by them alone without the Lords.

But what he means by his President of *Ireland*, 15 H. 7. we understand not. For how can it signifie any thing as to the Parliament of *England*, to be any rule to it, or evidence of it, or to hold any proportion with it, be it never so much such as they would have it? But then what will be said, if it be found to be nothing so? For there is a wide difference betwixt saying, *The Commons give a Subsidy*, and saying, *That at the prayer of the Commons it is granted and enacted by authority of Parliament, that a Subsidy be given.* And by that form of Expression they can

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can no more be said to be the sole givers of a Subsidy, than to be the sole makers of all the other Acts of Parliament in *Ireland*, that were then made, for they all run in the same stile, c. 16. *Prayen the Commons that it be enacted this present Parliament that every Lord shall appear in his Parliament Robes.* And c. 17. *Prayen the Commons that it be enacted, That there be no Peace nor War made in the Land without the Lieutenants or the Deputies license.* So c. 20. *Prayen the Commons that it be enacted, that no persons use these words, Cremabo, Butlerabo* (words it seems which were used when they Robbed and Plundered). And all the other Acts of Parliament run so, yet sure nobody can think, it was only their House of Commons that made those Laws, but such was then the form and stile in the making of all their Laws.

All the rest of the Presidents cited by him, in the times of *H. 8. E. 6. Qu. M. Qu. Eliz. Car. 1. and Car. 2.* are by his own confession still with the assent of the Lords, and how little that

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that makes for his purpose, needs not that any more be said to it.

As for that of *1. Qu. Eliz.* when the Lords did respite the payment of the Subsidy for some time as to *Cheshire* and *Wales*, (which is an undeniable President of their easing the Subject upon occasion) it doth not at all alter the Case, what was said of their address to the Queene, and of the Entry in the Journall Booke of her pleasure signified for it: For that was but a civill respect to her, that they would not diminish her profit in any thing without acquainting her with it, and the having her leave: But still it was done by their authority, and it was an Act of that House: And the power to doe it was then well knowne, as appears by the Petition of all the Inhabitants of *Wales* and *Cheshire*, presented to the Lords for that purpose by the hands of the Knights and Burgeses serving for them in the House of Commons that Parliament, nor would they else have Petitioned the Lords, nor durst the Members of the House of Commons

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that represented them in that House have delivered it.

But admit there were no Presidents of the Lords giving ease to the People, and making abatements of a Charge laide by the Houe of Commons, whether upon Merchandize or any thing else, and that noe complaint had ever beene, and so no alteration or amendment ever made : It doth not follow, that therefore they have not power to doe it, when there is cause for it, and that there are complaints of Excesse or Inequality in a Tax, as now there were complaints sufficient by all sorts of People, who dealt in those Commodities upon which the Impositions had beene laide, Planters, Merchants and Trademen. Therefore the Lords say, they insist and rely more upon the Rationality, and intruth Necessity of the thing for the good of the King and Kingdome, then upon any President that can be for it : And yet Presidents wee see there are several ones ; However, they say it were enough for their justification, if there be none  
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against it, and there could be but of one of these two kinds, either that the Lords have of themselves disclaimed such a power, or that it hath beene denyed them when they have claimed it, and whoever sheweth one of either, *Erit mihi magnus Apollo.*

By what hath beene said, appears, how little reason the Manager had to brag of a 300 years uninterrupted possession of this Priviledge claimed by the House of Commons to be the sole absolute and uncontroled Taxers of the People, not only in their Commerce and Trading ; but in all Money matters : For to that large extent hath he now stretched the question, which he narrowed in the beginning : And so the Lords must not in any case interpose, to give relief and ease to the People, if there be never so much cause : But either they must not joyne to give any Aide to the King, and so the King be unsupplied, or they must be made Instruments against their Judgements, and against their certaine knowledge, to oppress the People, which all unequal Taxes doe ; So if  
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they deny passage to the Bill, the King suffers; If they give it passage, and make it a Law, it wrings the People. Yet this must be, or else saith the Manager, *The Lords doe what in them lyes to put an end to all further Transactions betweene the Houses in matter of Money*, he might as well have said in all matters of Parliament, for that must be the consequence: And he is desired to consider where the fault will lye, and who demands unreasonable things, such as *Nabash* did of the men of *Jabesh Gilead* to thrust out their right eyes: So would this even thrust out one of the eyes of the Parliament, make the House of Lords to be nothing, an insignificant thing, of no use, no advantage to the Kingdome: Therefore it is hoped the consideration will be taken on the other side, though an *Item* be given to the Lords to consider of it; implying, that since, *It may put an end to all transactions betweene the Houses in matter of Money*, the Lords should apprehend, that the House of Commons might perhaps admit of no more Conferences

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ees in any business of this nature, but would doe it of themselves, without communicating it to them, who then could not so much as take notice, that such a thing was in agitation. But there are Presidents, that the Lords have of themselves uncalled, taken notice of, and interposed in debates of that nature, which have beene in the House of Commons; And when contests and differences have risen there, and that the House of Commons could not come to any resolution among themselves, they have composed and settled the business, and have directed and appointed what should be done. As 3 H. 6. The Commons with the Lords assent had granted a Subsidy of 33 s. 4 d. upon every Sack of Wool, as much upon every 240 Woolfells, 3 s. upon a Tun of Wine, and upon all other Merchandize 12 d. in the pound, under the condition (saith the Record) That every Merchant stranger coming into the Kingdome should within 15 dayes be under Hooft, and within 40 dayes after his being so under Hooft, should

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sell off all his Merchandize, and what after that remained unsold, should be forfeited to the King; and likewise should pay forty three shillings four pence (that was 10 s. more than the *English*) upon every Sack of Wool, and every 240 Woolfells: And if these conditions were not observed, the whole grant of Tunnage and Poundage of the *English* Merchant to be void and of no value: These Conditions it seems were not observed; and great stir there was about it in the House of Commons the next Parliament, which was 4 H. 6. as appears by the Record, which saith thus, *Item pro eo qd. inter Cōes Parlamenti prædicti. diverse opiniones de & super concessione & levatione Subsidii Tonnagii & Pondagii Domino Regi in Parlamento suo ultimo tento concessi motæ fuerunt ut dicebatur & subortæ, visa tandem & diligenter examinata forma concessionis Subsidii prædicti in præsentì Parlamento, habita quoq; inde, Justiciar. & aliorum Legis peritorum deliberatione matura, consideratum fuit & plenius declaratum*  
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*per magnificum Principem Ducem Bedeord Commissarium Domini Regis ac feteros Dominos Spirituales & Temporales in eodem præsentì Parlamento existentes, qd. Subsidium prædictum ad opus præfati Domini Regis omnino esset solvendum & levandum, aliquibus conditionibus in concessione ejusdem Subsidii contentis in aliquo non obstantibus.* The Lords eased the Merchants strangers, and yet the House of Commons was not angry at it, nor did they threaten them, that they would have no more to doe with them, and that there should be no further transactions between the Houses in matter of Money; but *Tempora mutantur, &c.*

And so we have gone through the Presidents for the matter of Subsidies, which were cited at the Conference by him that managed it for the House of Commons. Let us now see what will be offered by him in point of Reason, in answer unto their Lordships reasons, He begins with a terrifying general Position, which he puts in the front, as a Caveat to their Lordships,

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That it is a very unsafe thing in any settled Government to argue the Reasons of the Fundamental Constitutions : for that (saith he) can tend to nothing that is profitable to the whole. As if their Lordships were now unravelling a settled Government, whereas their Lordships are now argueing against the unsettling of an ancient Government, and the setting up of a new one, altogether unknowne to our Ancestors, which is, To have the Trade and the Treasure, and the strength of the Kingdome to be wholly in the hands, and in the absolute dispose of one of the Houses of Parliament, be it either of them. This certainly would be the unsafety of the Kingdome, and the arguing against it, and opposing it, is for the safety of the Kingdome.

Then he brings in (if one may say so) a little improperly the Question of Judicature, a point formerly controverted by the House of Commons, in which he will have no better luck, than in all the rest : mistaking or misciting his Presidents. He first brings

in the Booke Case of 22 E. 3. to shew, that sometimes it was not in the whole House of Lords, but such as the King would please to appoint, to exercise that Power. The Case is this, A Judgement had beene given in the Kings Bench for the King against *Edmond Hadelow* and his Wife, they bring a Writ of Error in Parliament ; *Sur que le Roy assigne certain Countz et Barons et auesq; eux les Justices, &c. de terminer le dit besoignes* : The King appointed certaine Earls and Barons with the Judges to end the matter : But this might be a Committee appointed by the House and Judges to attend it, (which were regular enough) and yet might be said to be done by the King, as in all their Judicial proceedings, things were said still to be done by the King, if the King were present, as sometimes he was, when such matters were in agitation, and that the House acted as a Court of Justice, and not in its Legislative capacity. And the rather it seems to have then beene so, by way of Committee, because the Parliament

ment ending, the Booke saith, they could proceed no further, and the business fell to the ground, whereas if they had beene Referrees appointed by the King their authority had beene the same after the Parliament as during the Parliament.

As to the next quotation of the Parliament Roll 25 E. 3. n. 4. it must be some mistake, for nothing is to be found there relating in any sort to the matter in hand: but n. 10. there is something to this purpose, which perhaps the Manager meant, though if duely considered it makes against him. The Case is, That the King caused to be brought into Parliament the Record of the proceeding against Sir *William Thorp* Chief Justice, *Et le fit lire ouvertement deuant les Grauntz du Parlement*, and caused it to be read openly before the Lords, to have their advice upon it, who Judged it to be rightly and duely made, and approved of the Judgement given against him, because he had bound himself by Oath to undergoe such punishment, if he did contrary to what he had sworne,

sworne, which was not to take any bribes: *Et sur ceo y fut accorde par les Grauntz de mesme le Parlement; que si nul tiel cas auigne desorenavant que nostre seigneur le Roy preigne luy des Grauntz que lui plerra et per leur bon avis fait outre ceoq; pleise a sa Royale Seigneurie.* The Lords doe agree, that if any such case happen afterwards, the King may take such of his Lords as he please, and by their advice further doe what seems good unto him. Is there any thing here that doth derogate from the Lords power of Judicature? or rather can any thing be more in affirmance of it. One who out of Parliament had beene tryed and condemned by a Special Commission, the King the next Parliament brings the whole business before the Lords before any Execution be of that Judgement, to have their Judgement upon that Judgement: they confirm it, and further (as it seems by the Record) give the King power in the like Case to call what Lords he thinks good, and by their advice to determine it. (which is to be

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be supposed meant by them, if the Case happen out of Parliament.) And certainly there cannot be a stronger argument for the Judicature of the House of Peers in Parliament.

Then he brings Presidents to shew, that by the Kings good pleasure, the Commons have beene let into a share of the Judicature, His first is the 42 E. 3. n. 20, 21. The business was this, The King the last day of the Parliament, invited all the Lords and *Plusours des Commnes*, many of the Commons to dinner, *Et apres manger vindrent les Prelats Counts Barons et ascuns des Communes en la dite Chambre blanche*, And after they had eaten, the Prelates, Earls, Barons, and some of the Commons (probably not all they that had dined there, for the Record is *Ascuns*) went into the fore-said Chamber blanche, (which is now the Court of Requests, where the House of Lords then sate, as the Commons *En la petite sale*, (the Record saith) in the little Hall) and thither was brought Monsieur *John de la Lee*, and tryed for several Crimes  
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laid to his charge, the Articles read by the Chief Justice *Robert de Thorp Del commandement des Seigneurs illoques assemblez*, by the Commandment of the Lords who were there assembled; so likewise the Record saith that his answer, *Fust avis aux Seigneurs non resonable*, seemed to the Lords not to be reasonable. And then n. 22. the Record saith further, that he was, *Mis a reason devant les Seigneurs*, tryed by the Lords upon an other point. The Conclusion was, That he was sent to the Tower, and made Fine and Ransome to the King; But all was done by the Lords, who sate there as a House in their Judicature, the few Commoners who were present, being but so many private persons, and lookers on, and not the least colour of their bearing any part in the Judicature.

As to his next quotation of 31 H. 6. n. 10. nothing can be said: it must be mistaken. For in that Parliament, wee find nothing of this nature. The Complaint of the Commons to the House of Lords for their  
Speaker



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Speaker being imprisoned, and their desire to have him released, which would not be granted, was indeed that Parliament.

But to *Hugh Brice's Case*, 8 E. 4. a clear answer may be given, That what was therein done, was by Act of Parliament, in a Legislative way. The Commons Petitioning in these words, *Please it therefore your Highness by the Advice and Assent of the Lords Spiritual and Temporal in this Parliament assembled, and by authority of the same, to assign, name and appoint the full reverend Fader in God Thomas Cardinal Arch-Bishop of Canterbury, &c.* Then names several Lords both Spiritual and Temporal, the three Chief Judges of the three Courts, and some of the House of Commons to be the persons to examine that business, and heare those complaints against *Brice* the Master of the Mint, The King's Answer is, *Le Roy le voet* with a saving to his Prerogative Royal: conceiving it (it seems) to be some derogation to it, that the Commons should be admitted to any part of  
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Judicature, though by a special Law for it. For this was a perfect Act of Parliament, in which the three Estates concurred in their Legislative capacity, which had no affinity with the Judicial Power exercised by the Lords in their House, as the highest Court of Judicature.

As for his President of 2 H. 5. where he saith, It was assigned for error in the House of Peers, that the Lords gave Judgement without the assent or a Petition of the Commons, It was the Earle of *Salisbury's Case*, to reverse the Judgement given upon his Father, and it is true indeed, it was assigned for an Error, but it is as true, it was not allowed to be one, for his Writ of Error was rejected, and that Judgement was affirmed. And strange it is that he should produce this for a President to prove a Partnership of Judicature in the Commons, being a strong one against it: And as well might at any time a Plaintiffs Bill in Chancery be produced for Evidence against a Defendant in some other suite, even when the Bill hath beene dismissed.  
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And his next President is just such another, to shew that the King and Commons alone without the Lords have made Acts of Parliament, for which he quotes 1 E. 6. c. 5. It is a Statute against conveying Houses out of *England*, and it is true that in *Pulton's Collections* it is so Printed, as enacted by the King and Commons, without mention of the Lords. But if the Journal of the Lords House had been consulted, it would have shewed, that the Bill began in their House, was read the first time the 1<sup>st</sup>. of *December* upon a *Thursday*. The second time upon a *Wednesday* the 7<sup>th</sup>. The third time upon *Saturday* the 10<sup>th</sup>. and sent down to the House of Commons by the Kings Attorney and Sollicitor the 22<sup>d</sup>. of *December* upon a *Thursday*: the House of Commons sent it up againe with a Proviso to be added, which Proviso was allowed of by the Lords, and the Bill dispatched the *Saturday* after. It was therefore a fowl mistake to say this Bill passed without the Lords. And it may be modestly said of all his Presidents,

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dents, both concerning the Legislative and the Judicature, that upon better consideration he will not finde cause of great encouragement from them to argue the foundations of either Power in order to that Super-structure which he would reare, whither in diminution of that Power which is challenged by the House of Peeres in the Legislative for Impositions, or maintenance of that which he pretends to for the House of Commons in point of Judicature.

And now wee come to his particular Answers to the Reasons given by the Lords. And to so much and so many of those Answers, as seeme to containe any thing of weight, and material to be replied unto, we shall give that Reply that is necessary: but as for that which is jocular, and hath something of reflection in it, as too much of it hath, onely this shall be said, *Auferat oblivio si potest, si non, silentium teget.*

To the 1<sup>st</sup>. Reason then given by the Lords, which was, *That the happiness of the Constitution, is to have one House to be a Check to the*  
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other; his Answer being, *That the Lords having a Negative voice to the whole, is a sufficient Check to the House of Commons.* It is replied, That to have a Negative voice is not to be a Check: A Negative voice is one thing, a Check is another. The King hath a Negative voice to what both Houses doe, yet he cannot be said to be a Check to the Houses, The two Houses have each of them a Negative voice to the Convocation granting Subsidies, yet they cannot be said to be Checks to the Convocation: But each to other in their Legislative capacity have both a Check and a Negative voice, which are different operations of that Legislative Power. For properly to be a Check is to have a trust reposed in one to examine the Act of another; And both are trusted by, and accountable to a third person, by whose authority, and for whose Service both are employed. And he that is the Check, cannot wholly reject what the other hath done, be it an account or any thing else, he can onely examine it if it be right; And if any  
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error be, he can correct it and reforme it, and make it such, as that he who employes them both, may receive no damage nor prejudice by it. And this is the proper worke of the House of Peeres, as they are a Check to the House of Commons (for they have a Negative voice besides, which is not now the Question, but onely as they are a Check, and so) they are trusted both by the King and People, as well as is the House of Commons: not onely in Money-matters, but in all things else, cognisable by the Parliament. If the House of Commons give Money so to the King, as the Subject cannot beare it, if out of Trade, so as Trade cannot beare it (which is the proper question now) or out of the Estates of the People, so as they are not able to pay it, the King himself suffers in all this, as well as the People, it will be his damage, his loss at the last; nay the greatest damage and loss will be his at the long run, perhaps immediately; for as the saying is, *He that grasps too much, holds nothing;* so if more be given  
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than can be paid, nothing may be received. A thing which King James of blessed memory did well understand; and therefore in the Session of Parliament 7<sup>mo</sup>. the 21. of *March*, he called both Houses to him to *White-hall* upon occasion of an Aide then demanded, and there among other things, said this to them. *If you give more than is fit, you abuse the King and hurt the People; and such a Gift I will never accept, for in such a case you might deceive a King in giving your flattering consent to that, which you know might move the People generally to grudge and murmur at it: And so should the King find himself deceived in his Calcul, and the People likewise be grieved in their hearts.* And a little after he added these words, *I do not desire you should yield to that extreeme in giving more than is fit, for that were to give me a Purse with a Knife.* That wise King knew the inconvenience of straining that string too much, winding it so high as to endanger the cracking. Therefore if

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any mistake have beene (as among the wisest of men there may be) the Lords are there to discharge their trust, and so rectifie, so moderate, so proportion the payments to the ability of them that are to make those payments, as that they may not be ruined, but be able to discharge these now, and the like hereafter, when there will be need againe. Which answers the second part of what is objected, *That it would be a double Check upon His Majesties affairs, if he may not rely upon the Quantum, when once his People have given it:* So far from it that it will be an advantage to His Majesties affairs, when the *Quantum* is made such, as he shall be sure to receive it, and that he may thereby have both the Purse and the hearts of the People. And as to this particular now in question, the *Quantum* upon the whole matter would not have beene less to the King, but much greater at the yeares end: For if Trade be over-burthened once, it sinks, and yields nothing,

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and noe where is the Proverbe more truely verified, *That light gaine makes the heavy Purse*, than in the returne upon Trade, to make it quick and easie, which cannot be, if it be over-charged.

2dly, As to the Writ of Summons, which the Manager acknowledgeth to be *de quibusdam arduis*, but that it must be understood of such things as by course of Parliament are proper to Parliament, (which matter of Money (as he will understand it) is not to the House of Lords, else, saith he, the Commons may aswel intitle themselves to Judicature, for they are also called to treat *de quibusdam arduis*. To this is replied, that *Quedam ardua* comprizeth all that the Parliament takes cognisance of, which are the great and arduous affairs of the Kingdome, as it is described, 9 H. 4. n. 21, 22. *L'estat du Royalme et la remedie a ce besoignable*, whatever concerns the state of the Kingdome, and the necessary remedies to it: In all these things both Houses are equally concerned, and  
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equally called by the King, to consider and debate them, and to give him their advise upon them: And there can be nothing of more importance to the state of the Kingdome, and consequently more proper for the care and inspection of both Houses, than the supply of the King with Moneys necessary to support the Government, make Provision of Ships, Armes, Stores, and all things needfull for the defence of the Kingdome, and to defray all other charges incident to the Crowne. But the exercising of a Judicature is clean of another nature, and the proper worke of a Court of Justice, which the House of Peeres is naturally by the Fundamental Constitution of it: not that the Parliament is called for that purpose, but the Parliament being called, and met according to the Call, the House of Peeres then becomes a Court of Justice, for the exercise of a Judicial power in those extraordinary Cases, which by the Custome and usage of Parliament are within their cognisance and

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Jurisdiction, and have been so from the beginning, long before there ever was a House of Commons: And therefore the Power of Judicature cannot be within the *Quibusdam arduis*, of which the House of Commons is to treat.

Then for the third Reason, to which was given a Rhetorical answer (for there was the Rhetorick) The Lords had by way of Question proposed to know, when they had appropriated this Right of Imposing upon Merchandizes to the Commons in exclusion of themselves; which well they might, having proved it to have been originally in them, and then it was but reason to put the Commons to shew when they lost it, according to that knowne Maxime, *Quod nostrum est, sine factu seu defectu nostro amitti, seu in alienum transferri non potest.* This was no Rhetorical Question, but the Answer was Rhetorical, to give the Lords a *Quid pro Quo*, with another Question, and ask, *Where was the Record by which the Commons submitted, that Judicature should be ap-*  
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*propriated to the Lords in exclusion of themselves: And that upon the back of that Record their Lordships would find the other endorsed.* This is a fine insinuation, that all is but a fiction of their Lordships Title to the sole Judicature, but it will be made out, that they can shew a good title to it, not onely of Custome and Prescription, from the very beginning of Parliaments, before there was a House of Commons, but a good Law made in the Case, & the strongest kind of Law, that is to say, to declare a right, (not to constitute it) for that Right had been acknowledged and practised time out of mind, beyond all Record; And this was 1 H. 4. The Commons then come up, and represent to the King and Lords, *Que comme les Jugemens appartiennent seulement au Roi et as Seigneurs et nient as Cōes, &c.* That as Judgements belong onely to the King and Lords, and not to the Commons, so they pray that noe Entry may be made in Parliament to make them parties now or hereafter to any Judgement given or to be given:



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ven: To which was answered, *That the Commons were but Petitioners, and that the King and Lords have at all times had, and are to have the right of Judicature in Parliament, which Order the King will have to be observed in all future times.* This was a perfect Law, and the same formality used to it, as went to the making of all the Laws of those times: And the Record of this is upon the Roll in the Tower, and yet noe endorsing upon it of the other Record, to make the Commons the sole unlimited and uncontroulable disposers of the Peoples Money: For that indeed is onely to be found upon the back side of the Salique Law, as the Gentleman said of a thing that was noe where to be found, from whom this whole conceit is borrowed.

To the 4<sup>th</sup> of the Lords saying, *That by the same reason of denying them Power to abate, they may deny them Power to reject the whole, and at last take away their Negative voice;* and the Managers answering this with instances of the King's

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King's Negative voice to Bills, and that of the two Houses to the King's Pardon, and the Clergies Subsidy, who can each of them reject the whole, yet cannot alter any part, and their Negative voices not be in danger for all that; To all which noe more need be replied, than what hath beene already said, *That in all things of which the Houses can take cognisance, they have a Deliberative voice, as well as a Negative, and by the same reason that the one is taken away, the other may be taken away likewise.* But of these things they have noe cognisance, not of the Pardon, because it is the King's free gift; and as for the Subsidy of the Clergy, the Clergy could tell them, 4 R. 2. n. 13, 14. when the House of Commons had offered to grant an Aide, if the Clergy would pay a third part of it, who held a third part of the Realme; The Clergy answered, they were not to grant Aides by Parliament, and therefore willed the Commons to doe their duties, and they would doe theirs.

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As to the 5th. where the Lords said, *That the Commons might allow them the same Priviledge of altering and amending of Bills of Money, that they doe the Commonas in Bills of Judicature,* The Manager will take it for an offer; as if the Lords would compound upon terms. But he is mistaken. The Lords very well know, that it is not Parliamentary to make bargaines. They neither desire to have more Power in either the one or the other, Moneys or Judicature, than doth of right belong unto them, nor will they depart with that which doth. And to that which was said of Forbearing the instances, hoping they will reforme: All they will say is this, They know not wherein they have done amifs.

To the 6th. of the *Ignoble Choice,* which the Lords say they are put to, of either not supplying the King, or consenting to wayes, which their owne Judgement and the Good of the Government, and of the People will not admit; to which are made two Objections. 1. That thereby  
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the Lords make their Judgements the measure of the wellfare of the People. 2. That by that rule they may as well encrease as abate the Taxes. And then he endeavours to retort this upon the Lords, saying, *That the ignoble choice is left by it to the King and the People, That so small an Aide must be demanded by him, and given by them, as not to be capable of diminution, or otherwise it must be subject to the Lords re-examination, whose proportions in the Taxes in comparison to what the Commonalty pay is inconsiderable.* To this will be replied in the same order; 1. That it is most agreeable to reason, that their Lordships being to act in the concernes of the People, to make Lawes by which a proportion of their Estates is to be disposed of for publick use, for the necessities of the King and Government, and consequently for the preservation of the whole, they should apply the best of their Judgements to do it so, as it may best consist with the wellfare of the People, which  
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wellfare they must so measure, and so guide, and regulate their determinations by it, that what they doe may not be hurtful to it, Therefore they may without vanity grant what is said, That they doe in that sense make their Judgments the measure of the wellfare of the Commons of *England*. To his second objection their Lordships say (as before) that it is out of the Case, they pretend not to a Power of encreasing Taxes. And then for matter of payment, the House of Lords indeed will not compare with the whole Commonalty (nor doe they in their Parliamentary capacity, looke upon the Commonalty of *England* in a distinct notion from themselves, conceiving themselves trusted for them and interested in their concernments, as much as any House of Commons,) but they say they pay their proportion as well as the House of Commons. And which of the Houses payes most is not material, both certainly paying what is their due to pay.

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As to the 7th concerning positive Assertions; It is true, they have on both sides beene positive enough, but which hath better maintained their Assertions, and made them good, and which hath better proved three hundred years usage, let neither party be Judge, but the indifferent looker on, who many times sees more than the Gamesters.

As to what was said in Answer to the 8th and 9th of the Lords Reasons, it not signifying any thing as to the decision of the matter in question, but rather something favouring of harshness and of unkindness, as, *That this House of Commons stands in no need of their Lordships recommendation, of it self deserving so well both of King and People*, and then concluding with an *Item* to the Lords, *To follow the wisdom of their Ancestors*, as implying they did not so: Expressions fitter to be forgotten, than to be replied unto: All this therefore shall be past over with Silence, in pursuance of *Solomon's counsel, To leave off Contention before it be meddled with.*

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The summe of all is, That the Lords are not at all convinced with either the Arguments or Presidents brought by the House of Commons, to believe, that ever they had, or that it is agreeable to Reason, or consisting with the Nature of Parliaments, and the general good of the Kingdome, that they should have such a Fundamental Right, as they pretend to, in Bills of Rates and Impositions upon Merchandize, as to the Matter, Measure and Time (for those are their words) They to be the sole Arbiters for the laying on of what Rates and Impositions they think good in those three respects; And the House of Peers not to intermeddle, nor have Power to make any alteration and abatement in them, when once resolved by the House of Commons, be there never so much reason, nay a necessity so to doe. This can no wayes be agreed to. And the Lords do say, as to what concernes their Rights and Priviledges, first in Generall, That they pretend not to be the beginners of any Charge to be

be laide upon the Estates of the Subject; nor to encrease and augment any, that is already laide by the House of Commons. This they conceive to be against the intendment of the Law 9 H. 4. and the practice of Parliament ever since. But they say, in the second place as to this Particular now in Question of Tunnage and Poudage, That they do challenge a Right and Liberty to have the use of their Reason, when such Bills come to them from the House of Commons, to judge of the equality of the Rates imposed, to moderate and reduce them to a due proportion, if they find any too high, and to receive the complaints and information of Merchants and Persons concerned, or of any other, who is experienced in Trade, thereby to regulate their Proceedings in the consideration of those Bills, that they may so frame and model them, before they give their Assent unto them, as to be sure they may be such, as Trade shall not suffer, and yet the King be supplied, and those great Ends complied with for the generall  
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Good and Benefit of the Kingdome,  
 for which those Subsidies are given.  
 This the Lords doe affirme to be the  
 undoubted Right and Priviledge of  
 the House of Peeres, and an Essential  
 part of that Power and Authority,  
 which the Constitution of this Go-  
 vernment, and the Custome and usage  
 of Parliament hath lodged there for  
 the Good of the Nation, and which  
 hath so continued, and beene enjoyed  
 and exercised by them for that End,  
 from the very beginning both of Par-  
 liaments and Government.

F I N I S.

E R R A T A.

PAg. 87. li. 1. for *Bedeord* reade *Bedfordia*, and  
 li. 3. for *fateros*, reade *cateros*.