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THE  
**QUESTION**  
CONCERNING  
**IMPOSITIONS,**  
**Tonnage, Poundage,**  
**Prizage, Customs, &c.**

Fully, stated and argued, from  
Reason, Law, and Policy.

DEDICATED  
To King *JAMES* in the latter end  
of his Reign.

---

BY  
Sir *JOHN DAVIES*, His then Ma-  
jesty's Attourney Generall.

---

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TO THE  
**KINGS**  
Most Excellent  
**MAJESTIE.**

**H**is *Question*, *SIR*,  
Concerning your  
Majesties Preroga-  
tive in laying Im-  
positions upō Mer-  
chandizes, ought not to have  
been made or moved at all; how-  
ever, it hath been stirred and de-  
bated

*The Epistle Dedicatory.*

bated in Parliament, it is now become an Argument of such Dignity and Importance, as the best-able amongst your Servants learned in the Law, may well employ their best learning in the discussing thereof. For my part, though I find myself unable to handle this Noble Question, as the weight and worthinesse requireth; yet have I upon sundry occasions arising from the course of my service, collected such notes, and drawn together such materials, as may be of use in the building of a Fortresse in the defence of this Prerogative; and sure I am, that if your Majesty will vouchsafe to cast your eye upon these Collections, that your Judgment will make a far better use and application thereof, than

*The Epistle Dedicatory.*

I who have gathered the same, can possible do; these little sparks of knowledge being taken into your Majesties consideration, will instantly multiply and arise into a flame, and so give a great light for clearing of this Question: This learning within my hand, is but a Spade, in your Majesties hand will become a Scepter. I have onely like the poor *Indian*, digged up the Oare of Mine, which being brought into the Kings Mint, and refined there, becomes part of the royall Treasure. For the Argument it self, it will hardly receive any Ornament,

*Ornari res ipsa negat, contenta doceri.*

The best light I can give it, is

A 3 *Lucidus*

*The Epistle Dedicatory.*

*Lucidus ordo*, by breaking it into *Capita rerum*, and casting it into a plain and naturall method; it is somewhat long, and in *Multiloquio non deest peccatum*, saith *Solomon*; it is also mixt with some reasons of State, wherein a common Lawyer may easily make a *Solacium*; yet such as it is, my zeal to advance your Majesties Service, hath moved me to present it to your Majesty, with all humbleness, and with some hope, that this dutifull pains shall purchase a pardon for the errours therein committed,

By your Majesties unprofitable Servant, and humble Subject,

*John Davies.*



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AN





AN  
**ARGUMENT**  
 UPON  
*The Question of Imposition,*  
 digested and divided into sun-  
 drie Chapters; by one of His  
 Majesties learned Counsel  
 in IRELAND.

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CHAP. I.

*The Exposition and meaning of certain words, which do shew the true state of the Question.*



**T**he *Question* it self is no more than this, Whether the Impositions which the King of England hath laid and levied upon Merchandize, by vertue of his Prerogative onely, without

B

Act

*Exposition of words, shewing*

Act of Parliament, be lawful or warranted by the Law of *England*.

By the word Imposition, we mean only such rates or sums of money as the King by Letters Patents, under the Great Seal of *England* or *Ireland*, hath set upon Merchandizes imported and exported, and commanded the same to be paid and levied to His Majesties use, over and above the Customes and Subsidies formerly due and payable for the same Merchandizes.

By the word Merchandizes, we mean only such goods or Merchandizes as are transported over the Seas, from one Realm or Dominion unto another, to be sold or exchanged for reasonable gain or profit; for upon the ingate or outgate of Commodities so crossing the Seas only; Customes, Subsidies, and Impositions for Merchandizes are paid and taken, and not for any Commodities carried too and fro by Sea and Land, within one and the same Realm and Dominion.

By the Law of *England*, we understand not only our customary Common Law, and our Statutes of *England*, which are Native and peculiar to our Nation only, but such other Laws also as be common

*the state of the Question.*

mon to other Nations as well as us; have been received and used time out of mind by the Kings and people of *England* in divers cases, and by such ancient usage, are become the Lawes of *England* in such cases; namely, the generall Law of Nations, and the Law-Merchant which is a branch of the Law, the Imperial or Civil Law, the Common or Ecclesiastical Law, every of which Laws so far forth as the same have been received and used in *England*, time out of mind, may properly be said to be the Laws of *England*.

CHAP. II.

Of the general Law of Nations, or Jus Gentium, and the force thereof in all Kingdoms, that traffique and commerce is a principal subject of that Law, and that it giveth power unto all Kings to take Customs and Impositions upon Merchandizes, and that the Crown of England hath many Prerogatives annexed to it by the Law of Nations, of which our Common Law taketh notice, and doth admit and approve the same.

Jus Gentium, or the generall Law of Nations is of equal force in all Kingdoms, for all Kingdoms had their beginning by the Law of Nations; therefore it standeth with good reason that the Law of Nations should be of force, and of like force in all Kingdoms; and for this cause in the Realms subject to the Crown of England, the Law of Nations also is in force in such cases, especially wherein the King himself, or his Subjects, have correspondence or commerce

merce with other Nations who are not bound in those cases by the Municipall Laws of England.

Omnes populi (saith Justinian) qui legibus Justinian & moribus reguntur, partim suo proprio, partim communi omnium hominum jure utuntur: nam quod quisque populus ipse sibi Jus constituit id ipsius proprium Civitatis est, vocaturque Jus Civile; quod vero naturalis ratio inter omnes homines constituit, id apud omnes homines plerumque custoditur, vocaturque Jus gentium, quasi quo jure omnes gentes utuntur; and in the same place it is said, Jus Gentium omni hominum generi commune est, & ex hoc Jure Gentium omnes pene contractus introducti sunt, ut emptio, venditio, locatio, conductio, societas, depositum mutuum, &c.

And with this agreeth our Doctor and Student, lib. 1. cap. 2. where it is said, that Trade and Traffique is by the Law of Nations; so that Commerce, Trade, & Traffique for Merchandize, between the people of severall Nations and Kingdoms, is a principal subject of the Law of Nations; and therefore to that question that hath been made in England, Whether the ancient Customs payable

for Merchandizes, did first grow due by our customary Common Law or Statute Law of England? Why may I not answer, that neither the Customary Law, nor the Statute Law of England, but the generall Law of Nations did first give these duties unto the Crown of England?

For as the Law of Nations was before Kings, for Kings were made by the Law of Nations, *Ex jure Gentium Reges originem traxerunt*, saith Baldus; So Kings were no sooner made by the Law of Nations, but presently the same Law, *cum creatus fuerit Rex ei omnia regalia conceduntur, & competit omnibus Regibus jus imponendi quantum habet Regalia*, saith Baldus, *Vectigalia introducta sunt à jure, &c.* which is the Law of Nature or Nations, *Ideo non otiosa sed favoralia*, saith another Doctor, did annex this Prerogative to their severall Crowns, *Vectigal origine ipsa jus Cesarum & Regum partimoniale est*, saith another, *Inheret Sceptro* saith another; and therefore when our ancient British Kings took up Customes for Merchandizes transported into France, as Strabo writeth, *Britanni vectigalia tollebant gravia earum rerum quas brevi trajectu in Gal-*  
*liam*

Baldus.

Baldus.

Strabo.

*liam importabant*; shall we presume they did it by Act of Parliament? no, for doubtlesse they did it by vertue of this Prerogative given unto them by the Law of Nations; for Kings upon their first institution did greater things than this, by their Prerogative, without the consent of the people, *Vetustissima corona jura ex singulari Regum decreto primitus orta*, saith a learned Doctor; and at first saith Justinian, *Arbitria Regum pro legibus fuerunt*, and so saith Halicarnassus, *lib. 3.* Cicero *offic. lib. 2.* And truly as Customes and Impositions taken upon importations of Merchandizes, being most properly called *Vectigalia, à mercibus vectis & in vectis*, are the most ancient duties payable to the King; so are the same grounded, saith Bodin, upon the greatest reason and equity in the world, *quid est enim rationi & equitati magis consentaneum quam & is qui in nostro territorio & ex nostris questum facit principi nostro cujus permisso & sub cujus protectione negotiatur aliquod perdat & presolvat?* And this common reason and equity which is the ground of these duties payable for Merchandizes, what is it else but the Law of Nations? which is nothing else but that

Justinian

Halicar.

lib. 3.

which common reason hath establisht amongst all men for the common good of all men, and which all Nations have received and imbraced for their mutual benefit and commoditie.

Neither isthis the onely Prerogative which the King of England hath by the Law of Nations, *habet & Rex in regno suo* (saith Bracton) *alia privilegia de jure Gentium propria, viz. Soreceum maris thesaurum inventum grossos pisces, & balenas & sturgiones Wavias, &c. huiusmodi de jure Gentium pertinent ad Coronam,* saith Stampford, *Prerogativa Regis, fol. 37. 6.* Adde hereunto the absolute power of the King, to make War and Peace, League and Truces, to grant safe Conducts, to pardon all Offenders, to distribute all degrees of Honour, and the like, wherein the King hath sole and absolute power, *Merum imperium & non mixtum,* and which Prerogative is as antient as the Crown, and incident to the Crown by the Law of Nations.

Bracton.

Stampford prerogat. Regis fol. 37. 6.

Lastly, for the proof that our Common Law doth acknowledge and prove the Law of Nations in most of these cases. The Book 19 Edw. 4. 6. doth approve the Kings absolute power in making

19 E. 4. 6.

king War, Peace, and Leagues; and in 37 Edw. 6. 20. That part of the Law of Nations, whereby the High Constable and Marshall of England, do proceed in their Courts of War, and Chivalrie, is called the Law of the Land. We finde also the Kings sole power in 11 Hen. 4. 11 H. 4. Rot. Parliament. in Archivis turris London, for Coyning of Money; we have the case of Mines, Com. 316. for safe conduct of Merchants, and stop of Trades, *tempore guerra,* and Letters of Reprisall we have 7 Edw. 4. 19. 2 R. 3. 2. Magna Charta cap. 30. and the Register wherein we find Writs of Reprisall.

37 E. 6.

11 H. 4.

Com. 316

7 E. 4. 19

3. R. 3. 2

Magna Charta.

cap. 30.

CHAP.

CHAP. III.

*Of the Law Merchant, which is a branch of the Law of Nations, and how it differs from our Common Law, and how in the judgement of our Law, Merchandizes do differ from other Goods & Chattels which do not crosse the Seas, and how the Common Law and Statute Law of England do admit and allow of the Law Merchant.*

*Ulpian.*

**M***ercatura vel Societas Mercatorum est magna Respublica* (saith *Ulpian*) and therefore that Common-wealth of Merchants hath alwayes had a peculiar and proper Law to rule and govern it; this Law is called the Law Merchant, whereof the Laws of all Nations do take special knowledge; first both the Common Law and Statute Law of *England* do take notice of the Law Merchant, and do leave the causes of Merchants and Merchandizes to be decided by the rules of that Law; for what saith the Book of *13 Edw. 4. 9, 10?* A Merchant Stranger made

*Edw. 9, 10.*

made sute before the Kings Privy council, for certain Bailes of Silk feloniously taken from him, and it was moved that this matter might be determined by Common Law, unto which motion the Lord Chancellor doth there answer; This sute is brought by a Merchant, who is not bound to sue according to the Law of the Land, nor to tarry the tryal of twelve men, nor other solemnity of the Law of the Land; albeit, the King hath jurisdiction of him within the Realm, and may cause him to stand to his Judgement, yet this must be according to the Law of Nature, which some call the Law Merchant, which is a Law universall throughout the word; these are the words of that Book, & it is there resolved by all the Justices, That if the Merchandizes of such a Merchant stranger, be stollen and waved by the Felon, the King himsele shall not take those Merchandizes as waifes, though in that case the goods of another person were lost by the Common Law of *England*. Doth not this case make it manifest, that in the judgement of our Common Law, Merchandizes that crosse the Seas, are goods of another nature, quality, and

and consideration, than other goods and Chattels which are possessed within the Realm, and do not crosse the Seas? This learning is not common in our Books, and therefore I think it meet to exemplifie this difference with more cases in this point.

If two Merchants be Joynt-Owners, or Partners in Merchandizes, which they have acquired by a Joynt-Contract, in this case the one shall have an Action of Account against the other, *die legem mercatoriam*, saith the Register, fol. 135. and F. N. 117. D. and yet by the rule of the Common Law, if two men be joyntly possessed of other goods which are not Merchandizes, the one shall not call the other to account for the same.

Reg. fol. 135. F. N. 117. D.

Again, if two Merchants have a joynt Interest in Merchandizes, if the own die the Survivor shall not have all, but the Executor of the party deceased, shall by the Law Merchant call the Survivour to an account for the moytie F. N. 117. D. whereas if there be two Joynts of other goods which are not Merchandizes, the Survivor shall have all, *per jus accrescendi*, even by rule of the Common Law.

F. N. 117. D.

Again, in an Action of Debt, upon a simple

allowed by the Law of England.

simple Contract which is without Deed in writing, the Defendant by the Common Law may wage his Law, that is, he may bar the Plaintiff of his Action by taking an Oath that he doth not ow the Debt nor any part thereof, and yet in *Itin. Derby 2 Edm. 3. John Crompton Merchant*, upon a Contract without Deed, the Defendant would have waged his Law, but was not permitted so to do, and so Judgement was given against the said Defendant.

2 E. 3.

Again, the goods of Ecclesiastical persons are discharged of Toll by the Common Law, *si non exerceat Marchandizas de eisdem*, saith the Register, 259. a. for then their goods are charged, being now become goods of another nature, when the same are turned into Merchandizes; so are the goods of the French Nobility discharged by Gabels and Impositions if they traffique not, but if they traffique, saith *Bodin*, their goods are charged like other Merchandizes.

Regist. 259. a.

Bodin.

Again, for goods wrongfully taken within the Land, the Common Law giveth remedy against the Trespasser, or the wrongfull Taker onely; but if an English Merchant be spoiled of his Merchandizes

Register  
122 6.  
46 Hen.3

Rot. Pa.  
3. E.1. m.  
19. in Ar-  
chis turris  
London.

3 Edw. 1.

chandizes upon the Sea, or beyond the Sea, by the Subject of another King, the Register doth give him a Writ of Repri- fall against all the Subjects of that Nati- on, *Regist. 122.6. and 46 Hen. 3.* we find a more brief cause of Justice, for there the King in respect of the losse which certain Merchants of London had sustained, by an arrest made of their goods, made by the Countesse of Flanders, doth grant un- to them all the Merchandizes whereof the Flemings were possess in England, *Rot.*

*Pa. 3 E.1. m. 19. in Archivis turris London:* Whereupon the Lord Mayor of London, did seize so much goods of the Flemish Merchants as amounted to 730. Marks, and delivered the same to Thomas Debas- sing, and other Merchants, who had suf- fered losse by that arrest; and in the same Roll of 3 Ed. 1. the Lord Mayor of Lon- don, and Bailiffs of Southampton, are com- manded by the Kings Writ, *Quod omnes Mercatores Londienses ad partes Anglie ac- cedentes per bona & catalla sua distin- guantur sed in legem mercatoriã & consueti- dinem Regni ad satisfaciendum Mercatori- bus Florentinis de pecuniis ipsi mutuo tradi- derunt Willielmo Episcopo Leodiensi.* Here we see that *Lex mercatoria*, which doth apparently

allowed by the Law of England.

apparently differ from the ordinary Cõ- mon Law of this Kingdom, is said to be *Consuetudo Regni.*

And lastly, in a sute at the Common Law no mans Writing can be pleaded against him as his Act and Deed, unlesse the same be sealed and delivered; but in a sute between Merchants, Bills of La- ding, Bills of Exchange, being but Ti- ckets without Seals, Letters of advice and credences, Policies of assurance, Assignations of debts, all which are of no force at the Common Law, are of good credit and force by the Law Mer- chant.

Thus we see how Merchandizes do differ from other goods and Chattles in the eye of the Law, and how the Law Merchant doth differ from the common Law of England, and how the Common Law doth admit and allow thereof. Our Parliaments likewise have not onely made extraordinary provison for the more speedy recovery of Debts due un- to Merchants for their Merchandizes, than is provided by our Common Law, as appeareth by the Statute of *Acton Bur- nell*, made the 11 Ed. 1. and the Statute *de Mercatoribus* made 13 Ed. 1. but also have



27 E. 3. Cap. 2.

have course of proceedings, in cases of Merchants differing from the course of our Common Law, for by the Statute of 27 Ed. 3. cap. 2. it is declared, that the proceedings in causes of Merchants shall be from day to day, and hour to hour, according to the Law of the Staple; and not according to the course of the Common Law; and by another Article in the same Parliament, that all Merchants comming to the Staple, should be ruled according to the Law of Merchants; touching all things comming to the Staple, and not by the Common Law of the Land; and by another Article, that neither of the Benches, nor any ordinary Judges of the Common Law shall have any Jurisdiction in those cases; and lastly, that the Law of Marque and Reprisal, which is a branch of the Law Merchant, shall be used as it had been used in times past. So as the Parliament doth but declare the ancient Law, and doth not introduce a new Law in those cases.

Untill I understood this difference between Merchandizes & other goods, and between the Law Merchant and the Common law of England, I confesse

I did not a little marvell, England being so rich, and entertaining Traffique with all Nations of the World, having so many fair Ports and so good Shipping, the King of England also being the Lord of the Sea, and also a principall part of his Royal Revenue consisting in duties payable for Merchandizes, so as many Questions must of necessity arise in all ages touching Merchants and Merchandizes, What should be the cause that in our Books of the Common Law of England, there are to be found so few cases concerning Ships or Merchants, or concerning Customes or Impositions payable for Merchandizes.

But now the reason thereof is apparent, for the Common Law of the Land doth leave these cases to be ruled by another Law, namely the Law Merchant, which is a branch of the Law of Nations.

The Law Merchant, as it is a part of the Law of Nature and Nations, is universall and one and the same in all Countries in the World, for as Cicero saith of the Law of Nations, *Non erit alia lex Romæ, alia Athenis, alia nunc, alia posthac, sed & omnes gentes & omni tempore una lex eademq;*

Cicero.

C

Of the Law Merchant

*eademq; perpetua continebit, &c.* So may we say of the Law Merchant, there is not one Law in England, another in France, another in Spain, another in Germany, but the same rules of reason, and the like proceedings of the Law Merchant are observed in every Nation; for as our Chancellor of England affirmeth, 13 E. 4. 9. That the proceedings of the Law Merchant ought to be according to the Law of Nature, which is universall; so say the Civilians of severall Nations. The Italian Doctor saith, *In curia mercatorum naturalis equitas precipue expectanda, & ex aequo & bono causas dirimendas esse;* The Frenchman saith, *In curia mercatorum proceditur de mera equitate omissis Solemnitatibus & apicibus juris;* The Spaniard likewise saith, *Apices & subtilitas juris non considerantur in foro mercatorio;* whereby it is manifest, that causes concerning Merchants and Merchandizes, are not wont to be decided by the peculiar and ordinary Laws of every Country, but by the generall Law of Nature and Nations, out of which resulteth this Conclusion. Suppose it be admitted that by the positive Law of the land Taxes and Tallages may not be laid up-  
on

13 E. 4. 9.

allowed by the Law of England.

on our goods within the land, without an Act of Parliament, yet by the Law of Nations, and by the Law Merchant, which are also the Law of England, in cases of Merchandizes the King of England, as well as other Kings, may by virtue of his Prerogative, without Act of Parliament, lay Impositions upon Merchandizes crossing the Seas, being goods whereupon the Law doth set another character than goods possessed in the land, as is before expressed.

D 2 CHAP.

CHAP. IV.

Of the Imperial or Civil Law, and of the extent of the Jurisdiction thereof, of what force it is at this day within the Monarchies of Europe, and in what case it is received within the King of Englands Dominions, and how it warranteth all Kings and Absolute Princes to lay Impositions upon Merchandizes.

Lex Civilis.

When the City of Rome was Gentium Domina & Civitas illa magna qua regnabat super Reges terra, The Roman Civil Law being communicated unto all the Subjects of that Empire, became the Common Law, as it were, of the greatest part of the inhabited world; yet the extent thereof was never so large as that of the general Law of Nature, as it is noted by Cicero, offic. lib. 2. Majores nostri aliud jus Gentium, aliud Civile jus esse voluerunt, quod enim civile non idem continet Gentium, quod autem idem civile esse debet, whereby it is manifest, that the Law of Nations is and ought to be a binding Law

Cicero offic. li. 2.

Law in all States and Countries; as it is binding, so it is perpetuall, and cannot be rejected, as the Roman Civil Law is rejected in most of the Kingdoms in Europe, in such cases as do arise within the body of every Kingdom.

In France, Philip le Bell (saith Bodin) de Repub. lib. 2. cap. 8. when he erected the Courts of Parliament at Paris, and Mountpelier, did expressly declare, That they should not be bound in their judgments by the rule of the Roman Civil Law, and in erecting of all the Universities of France, they are charged in their severall Charters, not to revive the profession of the Civil and Common Law, as of binding Laws in that Kingdom, and therefore Earum non imperio sed ratione utimur, saith another learned Doctor of France.

Bodin de repub. li. 2 cap. 8.

In Spain, saith Bodin, in the same place, severall Kings have made Edicts, that no man upon pain of death, should allege the Roman Civill Law as a binding Law in their Dominions.

Bodin.

And that Stephen King of Spain did forbid the publique pleading of the Civill Law.

Stephen King of Spain.

As for England, to omit what Pope Elutherius wrote in his Epistle to Lucius

Pope Eluther.

The Civil Law allows Princes to

the first Christian Monarch of the Britains, and whereof mention is made in Saint Edwards Laws de protestate Regia & Ecclesiastica, published in the time of 3 Hen.8. petiistis (saith he) leges Romanas & Cesaris vobis transmitti quibus in regno Britanie uti voluistis, leges Romanas & Cesaris reprobare possumus, legem Dei nequaquam, &c. In a Parliament holden in England 11 R. 2. when a course of proceedings in Criminal causes, according to the Civil Law was propounded, an answer was made by all the States assembled, That the Realm of England neither had been in former times, nor hereafter should be ruled and governed by the Civil Law,

11 R.2. Rot. Parliament. 11 R. 2. in Archivis turris London, and accordingly Chopinus the French Lawyer in his Book de Domino Francia tit.28. speaking of the Civil law, hujus Romani juris (saith he) nullus apud Anglos usus, sed ex veteri gentis instituto Britani reguntur legibus municipalibus quas illis majorum mores prescripserunt.

11 R.2. Chopinns.

But this is to be understood of causes arising within the Land onely; for all Marine and Sea causes which doe arise for the most part concerning Merch. and Merchandizes crossing the seas, our Kings have

lay Impositions upon Merchandizes.

have ever used the Roman Civil Law for the deciding & determining thereof, as the Romans did use the Law of the Rhodians Rhodians. in those cases, according to the memorable rescript of the Emperour Anthonius, terram suis legibus Rhodiis Regi. How be it now, those Laws of the Rhodians are digested and incorporated into one body of the Civil Law; the jurisdiction touching causes arising upon the Sea, is committed by the King of England to his Admirall, who in his Court of Admiralty doth proceed in those cases according to the rule of the Civil Law.

Now for the Rules of the Civill Law touching the power of Kings, in laying Impositions upon Merchandizes, the same are clear without question, and observed without contradiction in all the nations of the world, Regii tantum juris ac muneris est vectigalia imponere, redditus, seu vectigalia portus que perveniant ex his que in portum vel ex portu vehentur regalia sunt, Rex qui non recognoscit superiorem potest instituire nova vectigalia, &c. hoc est jus totius mundi, totus mundus hoc jure utitur, the D<sup>s</sup> Doctors who interpret the Imperiall Law, have their Books full of these Rules.

*The Civil Law allows Princes, &c.*

And if it be objected, That these rules of the Imperiall Law are onely intended of the Emperour, a learned Civilian hath this position, *plus juris habet Rex in Regno quam Imperator in imperio, quia Rex transmittit regnum ad successionem quod non facit imperator, qui est tantum electionis, &c.*

Lastly, when I speak of the rules of the Civil Law, and make use thereof, I do apply the same onely in cafes of Merchandizes crossing the Seas, which I do expresse by way of protestation, that I may not be mistaken here, and in other places where I cite the Text of the Imperiall Law, as if I intended that Law to be of force in *England* generally, as in other places:

CHAP.

CHAP. V.

*Of the Canon or Ecclesiastical Law, and how far forth it doth examine and resolve this Question in cases of Conscience only.*

**T**HE Canon Law is received and admitted in *England*, as a binding-<sup>The Canon Law,</sup> Law in cafes Ecclesiasticall, which are indeed the proper Subjects of that Law. But this question of Imposition is meerly Civil, and therefore the Canon Law doth not handle it but in cafes of Conscience only, & so indeed it doth examine and determine in what cafes an absolute Prince may with a good conscience lay and demand new Impositions, *Decret. causa 24. Quæsti. 3. Princeps potest indicere nova vectigalia,* and in *Summa summarum tit. de gabellis & exactiõibus,* these rules and distinctions are laid down. <sup>Decret. causa 24. Quæsti. 3.</sup>

*Quilibet Monarcha potest imponere novum vectigal, quod tamen boni viri arbitrio moderandum est, potest Princeps imponere vectigal ultra conventionem in duobus casibus.*

*i. quando redditus ejus non sufficiunt ad regimē boni & cōmuni & decentiam status ejus.*  
*2. quando non sufficiunt ex nova emergentia principes enim sunt à Deo instituti ut nō querant propria Lucra, sed cōmunem utilitatem populorum, lilia agri neque arant neque nent,*  
 which may be applyed, saith a French Monk, to all Princes, but espically to the Kings of France, because they bore the Lilies.

*Canonists.* The Canonists do likewise allege the example of our Saviour, who paid an Imposition of Poll-money, and wrought a miracle to enable himself to do it; that the Tribute-money which Christ commanded to be paid, *Date Cæsari quæ sunt Cæsaris,* and the Custome which Saint Paul willeth every Christian to pay willingly, *reddite omnibus, cui tributum, cui vectigal,* were but Impositions raised by the Emperours Edict only, without the consent of the people; and yet Saint Paul requires obedience to Princes in that case, not only for fear of the Princes displeasure, but for conscience sake, *non solum propter iram sed propter conscientiam.*

CHAP.

CHAP. VI.

*That this Question of Imposition may be examined and decided as well by the rules of the Laws before mentioned, as by the rules of our Municipiall Laws or Common Law of England.*

**F**Orasmuch as the general Law of Nations, which is and ought to be Law in all Kingdoms, and the Law Merchant is also a branch of that Law, and likewise the Imperiall or Roman Law have been ever admitted, had, received, by the Kings and people of England, in causes concerning Merchants and Merchandizes, and so are become the Law of the Land in those cases; why should not this Question of Impositions be examined and decided by the rules of those Laws so far forth as the same doth concern Merchants & Merchandizes, as well as by the rules of our Customary or Common Law of England, espically because the rules of those other Laws are well known to the other Nations, with whom

The former Laws allow Impositions.

whom we have commerce, and to whō and from whom all Merchandizes are transported, whereas the rules of our own Municipall Laws are only known within our Islands; and if this Question may be decided either by the Laws of Nations, or by the Law Merchant which is but a member thereof, or by the Roman Civil Law, we find this point clearly and absolutely determined, and over-ruled by the rules of those Lawes, viz. That all absolute Kings and Princes may set Impositions upon Merchandizes by their Prerogatives, and thereupon we may conclude, that since one Monarch hath as much power as another, as *Fortescue* in his Book *de Laudibus legum Angliæ*, affirmeth, the K. of England, as well as any other King, as the Emperour himself, *cum ipse omnes libertates habet in regno suo quas imperator vindicat in imperio*, As King *William Rufus* told the Arch-Bishop *Anselm*, may by vertue of his Royal Prerogative annexed to his Crown, and inherent to his Scepter, lay Impositions upon Merchandizes exported or imported into any of his Kingdoms or Doninions.

Fortescue

CHAP.

CHAP. VII.

*Of the Kings Prerogatives in general, and that the same do consist in certain speciall points or cases reserved to the absolute power of the Crown; when the Positive Law was first established, and that the Canon Law of England doth acknowledge and submit it self to those Prerogatives.*

**B**Y the Law of Nature all things were cōmon, and all persons equal, there was neither *Meum* nor *Tuum*, there was neither King nor Subject; then came in the Law of Nations, which did limit the Law of Nature, and brought in property, which brought in community of things, which brought in Kings and Rulers, which took away equality of persons, for property caused Contracts, Trade, and Traffique, which could not be ministred without a King or Magistrate; so as the first and principal cause of making Kings, was to maintain property and Contracts, and Traffique, and Commerce amongst men. Hereupon by the

the same Law of Nations, Tributes and Customes became due to the King or Prince to maintain him in his place of Government, *quasi Ministerii sui stipendia*, saith the School-man, *Deo Minister est tibi in bonum ideo & tributa potestas*, saith Saint Paul, and all these things, namely Property, and Contract, and Kings, and Customes, were before any positive Law was made; then came the positive Law, and limited the Law of Nations, whereas by the Law of Nations the King had an absolute and unlimited power in all matters whatsoever. By the positive Law the King himself was pleased to limit and stint his absolute power, and to tye himself to the ordinary rules of the Law, in common and ordinary cases, worthily and princely, according to the Roman Emperour, *Dignissimum Principe Rex se allegatum legibus confiteri*, retaining and reserving notwithstanding in many points that absolute & unlimited power which was given unto him by the Law of Nations, and in these cases or points, the Kings Prerogatives do consist; so as the Kings Prerogatives were not granted unto him by the people, but reserved by himself to himself, when the positive Law

Law was first established; and the King doth exercise a double power, *viz.* an absolute power, or *Merum Imperium*, when he doth use Prerogatives onely, which is not bound by the positive Law; and an ordinary power of Jurisdiction, which doth co-operate with the Law, & whereby he doth minister Justice to the people, according to the prescript rule of the positive Law; as for example, the King doth not condemn all Malefactors, but by the rule of the positive Law; but when the Malefactor is condemned by the Law, he giveth him a pardon by his absolute Prerogative.

Again, the King doth punish the breach of the Peace within the Land, by the ordinary course of the Common Law, but he doth make War and Peace with Forreign Nations, *Quod pertinet ad liberum jus gladii*, as a Doctor speaketh, by that absolute and unlimited power, which the Law of Nations hath given unto him.

Again, the King doth establish the Standard of Money by vertue of his Prerogative only, for the Common Law doth give no rule touching the matter, or form, or value thereof; but when those



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those Monies are dispersed into the hands of the Subjects, the same do become subject in respect of the property thereof, to the ordinary rules of the Common Law.

Again, the right of Free-hold and all Inheritance, and all Contracts reall and personall, arising within the Land, are left to be decided by the positive Law of the Land; but the Government and ordering of Traffique, Trade, and Commerce, both within the Land and without, doth rest in the Crown as a principall Prerogative, wherein the King is like to *Primum mobile*, which carrieth about all the inferiour Spheres in his superiour Course, and yet doth suffer all the Planets underneath him to finish all their divers and particular courses; or rather he doth imitate the Divine Majesty, which in the Government of the world doth suffer things for the most part to passe according to the order and course of Nature, yet many times doth shew his extraordinary power in working of miracles above Nature.

And truly, as the King doth suffer the customary Law of *England* to have her

her course on the one side, so doth the same Law yeeld, submit, and give way to the Kings Prerogative over the other; and therefore in the *1 Hen. 7. fol. 23.* there is a rule, That every Custome is void in Law *qua exaltat in prerogativum Regis*, which is an argument, that the Kings Prerogative is more ancient than the customary Law of the Realm; besides, the power of the Kings Prerogative above the Common Law doth appear in this, That whereas all privileges do flow, and are derived from the Kings Prerogative, and every privilege in one point or other *privat communem legem*, yet the Common Law doth admit and allow of privileges granted by vertue of the King Prerogative.

*1H.7.fol. 23.*

D CHAP.

## CHAP. VIII.

*Of the Kings Prerogative in the ordering and governing of all Trade and Traffique in Corporations, Markets, and Fairs within the Land, and the Common Law doth acknowledge this Prerogative, and submit it self there unto.*

**F**irst, it is manifest that all Corporations of Cities and Boroughes within the Land, were chiefly instituted for Trade and Commerce, and not by the rule of Common Law; no such Corporation can be made but by the Kings Charter; for though there have been some Corporations which have been time out of mind, yet the Law presumes that the same at first had their beginnings by the Grant of the King; besides, we find in divers ancient Charters made unto those Corporations, a power granted unto the King to take *de omnibus rebus venalibus* within their Liberties, certain sums of Money, *viz. de libra piperis*, so much, *de libra zinziberis*, so much, *de quolibet*

*Of ordering Traffick within Land.*

*quolibet panno, &c.* for murage, or towards the reparation of their Walls, which is nothing else but an Imposition laid by the Kings Charter to maintain those Cities & Boroughs wherein Trade and Traffique is maintained; wee find such a Charter granted to Nottingham, 3 Edw. 1. pat. m. 21. in Arch. turris London. The like is granted to Clonemiell, and to some other Towns in Ireland. F. N. 170. D.

**B.** We find a Patent granted to a Burrough in England, to take for five years a certain sum of Money of every Passenger, toward the paving of the same Town.

3 Edw. 1  
pat. m 21  
F. N. 170  
D.

Again, no Fair or Market may be holden within the Realm, neither can a multitude of Subjects assemble themselves together to that end, without a speciall Warrant or Grant of the King; and when a Subject hath a Grant of a Fair, he hath a Court of Py-powder incident thereunto, wherein the proceeding in Summary & *de plano* from hour to hour, as in the Court of Merchants; And for the Government of all Fairs and Markets, especially touching Weights and Measures, the Standard whereof was first established by the Kings Ordinance,

to whom the establishing of the Standard Monies, which is *mensura publica omnium rerum commutabilium*, is also reserved as a speciall Commodity.

Besides, in every Fair and Market where things are bought by retail, for the necessary use of the Buyer, and not to sell the same again as Merchandizes in another Market, for that is regrating and unlawfull, by the rule of the Common Law, There is a Toll taken, which is nothing else but an Imposition laid upon the Buyer, and that that Toll was originally imposed by the Kings Prerogative, it is manifest in this, that the ancient Tenants of the Crown, namely the Tenants in ancient Demeasne, are discharged of Toll in all Markets and Fairs; and that the King by Charter hath discharged divers other persons of Toll, as appeareth in the Register of Writs, and *Fitz. Na. Brevium*, where we find divers Writs *essend quiet de Theolneo*. But this discharge of Toll is onely for things bought for necessary use of the Buyer, and for Merchandizes, for the Tenants in ancient Demeasne are discharged of Toll, for such things only as are for their provisions, or manurance of their lands, and

and in the Writ which dischargeth the goods of Ecclesiasticall persons of this Toll, there is this clause, *dummodo non faciat Merchandizas de iisdem*, as is before declared.

Lastly, the Kings Prerogative in the Ordering and Government of Trade within the Realm, doth appear in that notable Charter granted to the Abbot of *Westminster*, recited in the Register of Writs, *fol. 107.* wherein the King doth grant to the Abbot and his Successors, to hold a Fair at *Westminster* for thirty two dayes together, with a prohibition that no man should buy or sell within seven miles of that Fair, during that time.

CHAP. IX.

*That the King hath another Prerogative in the Government in the Trade of Merchandizes crossing the Seas, differening from the Prerogative which he useth and ordereth in Trade and Traffique in Markets and Fairs within the Land, and of the difference between Custome and Toll by the rules of the Common Law.*

**T**ouching Merchandizes crossing the Seas outward and inward, the same are of another quality, and the Law hath another consideration thereof, than it hath of such things as are bought and sold in Fairs and Markets within the Land, as is before expressed; and therefore the duties payable upon the exportation and importation of Merchandizes, have another name, being called Customs, and not Toll, and are also paid in another manner, for Customs must be paid before the Merchandizes be discharged and brought to Land; whereas toll is not payable but for goods brought into

Custome  
and Toll.

*Difference between Custome and Toll.*

into the Fair or Market.

Again, Custome must be paid whether the Merchandizes be sold or not, but Toll is not due but for goods bought and sold in the Market.

Again, Custom is always paid by the Merchant, who selleth or intendeth to sell his Merchandizes in grosse; but Toll is ever paid by the party who buyeth some Commodity for his proper use and provision by retail.

Lastly, if Custom be not paid or agreed for before the Merchandizes be discharged and brought to Land, the Merchandizes are *ipso facto* forfeited, and may presently be seized to the use of the King; but if Toll be not paid, the thing sold is not forfeited, only it may be distrained and detained till the Toll be paid; or an Action upon the Case may be brought for the Toll. These differences between Custome and Toll do apparently prove that Merchandizes for which Customs are paid, do differ from other goods sold in the Markets and Fairs, for which Toll is taken, and that the Trade of Merchandizes crossing the Seas, and the Trade that is used in Markets and Fairs, are ordered by differ-

*Difference between Custome and Toll.*

rent Prerogatives; and as the Tolls of severall kinds which are taken in Markets, Fairs, and Towns Corporate, were first imposed by vertue of that Prerogative, whereby the King ordereth all Trade within the Land; so by vertue of that other Prerogative whereby the King governeth the Trade of Merchandizes crossing the Seas, the Crown of England, ever since the first institution of the Monarchy, hath from time to time raised and received out of Merchandizes, Customes, and Impositions, of divers Nature and Natures, according to the diversities of Merchandizes exported and imported, and the divers occasions and necessities of the comercion.

CHAP.

CHAP. X.

*Of the ancient duty called Custome, payable for our principall Commodities exported, and that it was originally an Imposition.*

**T**HE ancient duties payable for Merchandizes, were but of two kinds, and known by two names, Customes and Prizes; Customes were paid for Homebred and Native Commodities exported, and Prizes were taken out of Forreign Commodities imported.

The Native Commodities out of which Custome was paid, were Wooll, Woollfells, and Leather, and this Custome did consist of certain rates or sums of Mony, imposed by the King upon those Merchandizes exported, which rates were raised and reduced higher or lower, from time to time, as occasion did arise; for although in the time of King *Edm. I.* the Customes payable for those Commodities were reduced to this certainty, *viz.* to a demi mark for every Sack of Wooll,

Custom originally an Imposition.

a demi mark for every three hundred Wooll-fells, and a mark for every last of Leather, which we call now the great and ancient Custome, *ab initio non fuit sic*, these were not the rates from the beginning, for not long before that time there was a greater and more ancient Custome paid for the exportation of those Commodities, *Britanni* (saith Strabo) *vectigalia tollebant gravia earum rerum quas brevi trajectu in Galliam importabant*; this was *Magna Customa* in the time of the Britans; and though the certain rates thereof doth not appear, yet because the same were *gravia vectigalia* in those dayes, we may easily beleeve that Custome to have been greater than the demi mark for a Sack of Wooll.

Strabo.

Again, the Statute of *Magna Charta*, which was as ancient as King *John*, speaketh of ancient Customs payable for Merchandizes, and the Book of 29 *Edw. 3.* maketh mention of ancient Customes granted to King *John*, in the Town of *Southampton*, which doubtlesse were other Customes than that of the demi mark, &c. for that in the Record of the Tower, 3 *Edw. 1. Rot. fin. 24. & Rot. Patent* of the same year, *m. 9.* the demi mark which

Custom originally an Imposition.

which was first established by the Kings Letters Patents, is called *Nova Custuma*, and this was a diminution of the ancient Custome, saith the Book of 30 *H. 8.* *Dyer 43.*

38 H. 8. Dyer 43.

Again, when the same King *Edw. 1.* had by his Writ onely, without Act of Parliament, established the Custome of the demi mark, &c. in *Ireland*, in all the Customers Accounts, which are found in the Pipe-Rolls, in the time of *Edw. 1.* *Edw. 2.* *Edw. 3.* in that Realm, it is also called *Nova Custuma*, which importeth as much as a new Imposition, for Imposition is a new name, and hath been of use but of late years, whereas every new charge laid upon Merchandizes in ancient times, was called *Nova Custuma*, as the Lord chief Baron *Fleming* observed in his Argument in *Bates Case* of *Currans*, in the Exchequer of *England*; but because this Custome of a demi mark was a reducement made by King *Edw. 1.* of the great and ancient Custome to that proportion which was then thought reasonable (as after upon sundry Petitions of the Commons, was allowed by the succeeding Princes) it obtained in tract of time, the name of the great and ancient

Bates case de Currans in Scio per Fleming chief Baron.

*Customs originally an Imposition.*

cient Custome; this Custome of demi mark was not granted to the King by Parliament, but reduced to that rate by the King, by the prayer of the Comons, as is expressed in the Record of 3 *Edw. 1. fin. memb. 24.* for albeit the Charter for confirmation of *Magna Charta*, made in 25 *Edw. 1.* doth recite, That the demi mark was granted by the Cominaltie, yet is there no Act of P. printed or recorded, wherein that grant of the Cominaltie doth appear, neither can it stand with the rule of reason that the demi mark being a diminution of the ancient Custome should proceed from the grant of the Cominalty to the King, for the King would never have accepted of such a grant as did diminish his Revenue, neither had it been thank-worthy or acceptable, and therefore the King having a Negative voice, would never have given his assent to such a grant in Parliament; but it is to be presumed that this diminution of the ancient Custome was made in Parliament, and not by Parliament, and that by prayer of the Comons, as the Record of 3 *Edw. 1. Rot. fin. memb. 24.* testifieth, the King was then well pleased for that time to draw down the

3 *Edw. 1.*

*Edw. 1. Rot. fin. memb. 24.*

*Customs originally an Imposition.*

the ancient Custome to that rate, and the people did willingly yeeld and consent to the payment thereof; and this I take to be the true interpretation of the Charter or Statute made in 25 *Edw. 1.* <sup>Statute</sup> And therefore because we find no Act of Parliament whereby the people did originally grant the great and ancient Customes to the King, and because we find it was uncertain and subject to diminution and alteration, we may conclude, that it was but an imposition laid by the King from time to time by vertue of his Prerogative, without any grant from the Cominalty of the Realm who can make no grant but by Act of Parliament; & in truth it were absurd to affirme, that the great and ancient Custome imposed upon Native commodities of the Kingdom was first granted by Act of Parliament; since it cannot be imagined that ever those commodities did passe out of the Kingdom, without Custome, being equal in time with the first Scepter; and since the Scepter was established many hundred years before the people were called to be in Parliament; besides, the very name of Custome doth note and argue that it began before any Act of Parliament

<sup>Statute</sup> 25 *E. 1.*

*Customes originally an Imposition.*

ment was made, for that it signifieth a duty payable or accustomable to be paid time out of mind, which in presumption of Law, is before any Record; wherefore the rules in the Lord Dyers Book are good Law, viz. The King hath an Estate of Inheritance in the Custome payable for Merchandizes, as being a Prerogative annexed to his Crown. And again, 30 Hen. 8. 43. Custome is an Inheritance in the King by the Common Law, and not given by any Statute.

Dyer 29.

30 H. 8. 43.

CHAP. XI.

*Of the ancient duties called Prizes, taken out of Forreign goods imported, except Wines, and the petty-Customes of three pence of the pound were accepted by King Edw. I. in lieu of Prizes.*

FOR the Forreign commodities which are brought into *England*, our Kings in ancient times did not take any Rates, or Customes, or Sums of Money, but took such part of the severall commodities in specie, as they thought fit for their proper

*Ancient duties called Prizes.*

per use, paying for that they took a price as themselves did likewise think fit and reasonable, which was called the Kings price; this Prerogative is proved by the rule of the Imperiall Law, *Rex non recognoscens superiorem potest e India in propria causa*, and also by the rule which is given 31 Edw. 3. 60. where the Bishop of *Norwich* having forfeited to the King thirty Talents of Beasants of Gold, because the quantity and value thereof was uncertain, it was adjudged that the Kings House should set down of what quantity and value every Talent should be, and that the same should be paid accordingly; and by the same Prerogative, whensoever any Subject is to pay a Fine or Ransome unto the King for a contempt, The King himself doth limit and set the Fine or Ransome at his own will or pleasure.

31 Ed 3.

60.

The Forreign commodities thus taken by the King in *Spain*, at his own price, were called Prizes, but because these prizes were many times grievances to the Merchants, and brought little or nothing to the Kings Coffers, That prudent Prince *Edw. I.* by that famous Charter called *Charta Mercatoria*, made in the



31 year of his reign, did remit unto all Merchant Strangers their prizes, and did grant *quod de cetero super mercimonia Merchandizas vel bona ipsorum per ipsum Regem vel Ministros suos nullos nulla appretiatio vel estimatio apponeretur, & quod nulla prisae vel arrestatio ratione prisae inde fieret, &c.* and the Charter doth further recite, That for the remission of these prizes the Merchants Strangers did grant unto the King three pence upon the pound, now called the petty-custome, out of all Foreign Merchandizes imported, except Wines; and for our Native commodities exported, they would pay for every Sack of Wooll four pence, and for every three hundred Wooll-fells six shillings and four pence, and for every last of Leather a demi mark, over and above the duties payable by Denizens for the same commodities; which grant being made by the Merchants of every Nation, not being incorporated and made a body politick, is in respect of them of no force of the rule of the common Law, until the Kings charter made it good and maintained it, untill it was confirmed by Parliament 27 Edw. 3. which was fifty years after the date of the Charter, upon the matter

27 E. 3.

matter these duties payable by Merchant Strangers, were onely Impositions raised and established by the Kings charter, which Charter being made in England, was afterwards established, exemplified under the Great Seal of England, and transmitted into Ireland, with a special Writ directed to the Officers of the Customes there, to levy three pence of the pound, and other duties mentioned in that Charter, as appeareth in the Red Book of the Exchequer there; by vertue of which Writ onely, without Act of parliament, the three pence of the pound and other duties were levied and paid to the Crown in Ireland.

E CHAP.

CHAP. XII.

*Of the ancient Customes payable for Wines, called Prizage and Butlerage.*

Prizage and Butlerage.

**T**He most ancient Custome payable for Wines is Prizage, which is not any sum of Money, but two Tunns of Wine in specie, out of every Ship freighted with twenty Tun, the one to be taken before the Mast, and the other behind the Mast of the Ship; and the price which the King himself did limit to pay, was twenty shillings onely, for every Tun, as appeareth by an ancient Record of 52 Hen. 3. whereby we may conjecture, what easie rates the King gave for the prizes of other Merchandizes. This Custome of Prizage was meerly an Imposition, for it could not be granted by the Merchants of Forreign Nations, being no body politique, as is before declared; neither is there any Act of Parliament wherby our own Merchants did ever grant it unto the Crown.

This duty of Prizage was remitted unto

52 H. 3.

*Of Prizage and Butlerage:*

unto the Stranger, by the Charter of 31 Edw. 1. before mentioned, and in lieu thereof, by vertue of the same Charter, the King before mentioned receiveth two shillings for every Tun of Wine brought in by Strangers, which we now call Butlerage; but Prizage is paid in Specie by all our own Merchants at this day, the Citizens of London only excepted, who having remission of Prizage by a special charge, were charged with a new Imposition called Gauge, viz. *de quolibet dolio id. de vinis venientibus London*, which was accounted Forreign, *Magno Rot. An. 1 Edw. 1.* in the Office of the Pipe at Westminster; the last of these Impositions, which by the continuance have gotten the name of Custome, was laid and imposed three hundred years since, and have ever since been approved, and are now maintained by the Common Law of England, as the lawfull and ancient Inheritance of the Crown.

31 Ed. 1.

CHAP.

CHAP. XIII.

*Of the ancient Officers which our Kings have created by vertue of their Prerogatives, to search and over-see all sorts of Merchandizes, and to collect the duties payable for the same.*

**A**S our ancient Kings by vertue of their Prerogative without Parliament, have laid the Customes or Impositions before expressed, upon all sorts of Merchandizes exported and imported; so by the same Prerogative have they ordained severall sorts of Officers to search and over-see those Merchandizes on which they had laid those Impositions, namely the *Gauger* of Wines, a high Officer, is as ancient as the Imposition of the *Gauge* it self before mentioned; the *Alneger* of the cloths which is more ancient than any Act of Parliament that makes mention of the cloths, for there is a Record of 14 Edw. 2. in *Archivis turris* which speaketh of the *Alneger*, the *Packer* of Woolls, the *Garbello*

*Gauger.*

*Alneger.*

14 Ed. 2.

*Impositions set by Edward the first.* **53**  
bellor of spices; besides, the Officer of the Customes, viz. the Customer Controller and Searcher; all which Officers have ever taken Fees of Merchants, both Denizens and Aliens, not by grant of the Merchants or Act of Parliament, but by vertue of their severall Patents granted from the King.

Custo-  
mer.  
Com-  
troller.  
Searcher

CHAP. XIV.

*Of other Impositions, besides the ancient Customes before mentioned, laid upon Merchandizes, by severall Kings and Queens since the Conquest; some of which Impositions have been discontinued or remitted, and some of them are continued and paid at this day; and first of the Imposition set by King Edw. 1. over and besides the Customes spoken of before.*

**I**T appeareth in the Record of the Exchequer of England, That in 16 Edw. 1. an Imposition of four shillings was laid upon every Tun of Wine brought into England, from certain Towns in Gascoigne and Spain, and at this day answered and

0222

Of the Imposition

compted for duty, for the space of ten years, untill the 26 Edw. 1. when it was remitted but during the Kings pleasure only; it appeareth likewise 25 Edw. 1. by the Charter of the confirmation then made of the Great Charter, that King Edw. 1. had for divers years before, set and laid an Imposition of fourty shillings upon every Sack of Wooll exported, which *ad instantiam Communitatis* he was pleased to remit; which remittall was of meer Grace, upon the Petition of the Commons, after that Imposition had been laid many years before; and it is to be noted, that this Imposition of fourty shillings upon a Sack of Wooll, was taken and levied above twenty years together, after the new Imposition of the demi mark upon a Sack of Wooll, which was set and established; for that begun in 3 Edw. 1. and this Imposition of fourty shillings continued till 25 Edw. 1. which is a strong argument that the first establishment of the demi mark, was not by a binding Act of Parliament, with a Negative voice, that no other duties should be taken for those Merchandizes, as was surmized, but was only a mitigation or reducement of a greater Custome paid

25 E. 1.

set by Edward the first.

paid before, which was done of meer Grace, upon some reason of State at that time.

CHAP. XV.

Of the Imposition set and taken by King Edward the second.

King Edward the second, in the beginning of his Reign, did as well take the ancient as the new Custome upon Wooll, Wooll-fells, and Leather, which ancient Custom must needs be intended an ancient Imposition over and besides the demi mark, which was then called the new Custome, and this appeareth by a Record in the Tower, 3 Ed. 3 Ed. 2. 2. *claus. memb. 16.* where the King directeth his Writ, *collectoribus suis tam antiquae quam novae custome lanarum pellium & corriorum,* and requireth them to pay certain Debts of his Fathers, King Edward 1. out of their old and new Customes, and a hundred thousand pound *pro damnis occasione retardationis solutionis debitis, &c.* and howbeit afterwards, he being a weak

E 4 Prince

Prince and misguided by ill Counsell, and over-ruled by his unruly Barons, was driven first to suspend the payments of his Customes of three pence the pound, and other duties contained in *Charta Mercatoria*, during pleasure only, as appeareth by his Writs of *Superfedeas*, directed to the Collectors of his Customes, 3 E.2. *Claus. memb. 16.* and after that by an Ordinance made 5 *Edw. 2.* utterly to repeal that Charter, and to abloish all other Impositions raised or levied since the coronation of his Father, *Ed. 1.* except the customes of the demi mark; notwithstanding after that, again *Anno 11.* of his Reign, when he wanted Money for his Expedition into *Scotland*, *exquirentes vias* saith he in his Writ to the collectors of his customes at *London*, *Rot. fin. memb. 12.* *in Archivis turris, quibus possemus pecuniam habere commodius & decentius, tandem de consilio & advisamento quorundam mercatorum invenimus subscriptum*, which was, that he should receive by way of loan forsooth (which never was repaid) a greater increase of custom upon all merchandizes imported and exported, for it is expressed in the VVrit, that *præter incrementum de lanis coriis & pellibus lan-*

11 E.2.  
The Writ  
to his  
Collectors  
of his  
Customs.

*tis*, which was a third part more than the demi mark, *viz.* twenty shillings for every Noble; the King was to receive for every coloured cloth worth three pound *sterling*, a Noble; for every other cloath worth fourty shillings, four shillings; for every peece of Scarlet, a Mark; for every Tun of VVine, five shillings; for all Foreign commodities called *Averdepois*, two shillings the pound; all which sums of Mony he commandeth the Collectors of his customes to collect to his use upon their Merchandizes; which levy or collection, though it bear the name of a loan, being not made by authority of Parliament, nor with the consent of the whole cominalty, but taken up by the Kings VVrit onely, was nothing else but an Imposition laid upon Merchandizes by the Kings Prerogative.

Collectors  
of his  
Customs.

CHAP. XVI.

*Of the Impositions laid and levied upon Merchandizes, by King Edward 3.*

King *Edward* the third reigned a full Jubilee of years, for he dyed in the fiftieth

fiftieth year of his reign; and during all this time, as there lay upon him a continuall charge for the continuance of his VVars, so was he continually supplied with his customs and Impositions which he had laid upon Merchandizes, whereof he was so great a husband, & by reason of his good husbandry spent such huge sums of Money, as there went a report in those dayes, that *Raimundus Lullius* the famous Alchymist, did make that *Elixer* for him, whereas his improving of those duties which were paid for Merchandizes, was the true Philosophers Stone, which did enrich him, and enable him to spend so many Millions in his VVars in *France*.

*Raimundus Lullius.*

In the first year of his reign, by his wit only, without Act of Parliament, he gave new life to *Charta Mercatoria*, made by *Edw. 1.* and repealed by *Edw. 2.* or rather by unruly Barons, for the words of the Writ are, That the customes and duties payable by the Charter, *prætextu ordinationum per quosdam magnates in regno nostro factos, ad tempus aliquod cessarunt, & jam adnullatis dictis ordinationibus colligi debent & levari, sicut tempore dicti Avi nostri, &c.*

*Ed. 1. Rot. fin. 1. 30. in Archivis turris.*

*Edw. 1. Rot. fin. memb. 39. in Archivis turris.*

Afterwards

Afterwards the Records of this Kings time do plentifully declare, That he by vertue of his Prerogative, without Act of Parliament, laid many great Impositions, and raised extraordinary profit upon Merchandizes, though not alwayes after one manner, yet all the means he used may be reduced unto three kinds.

Sometimes he did impose certain rates or sums of Money upon Merchandizes, as forty shillings upon a Sack of Wooll, with a ratable proportion upon other commodities, for levying whereof hee only sent out his Writs to the Collectors of his Customes in every Port; and this kind of Imposition being of the nature of the Impositions now in question, was more usuall and frequent than any other in this Kings reign, as appeareth by sundry Records in the Exchequer, and in the Tower of London, 17 E. 3. Rot. 308. in *Le 1 cords* *Sccio Anglie. 21 E. 3. Rot. Parliament. numb. 17 E. Rot. in Sc* *11. in Arch. turris, 24 E. 3. Rot. 12. Sccio Anglie. 25 E. 3. Rot. Parliament. 11, 22. in Arch. Ang. turris. 27 E. 3. Rot. 7. in Sccio Anglie. 30 E. 3. Rot. 10. Sccio Anglie. 38 E. 3. Rot. Parliament. numb. 26. in Arch. turris. 40 E. 3. Rot. 7. Sccio Anglie. 50 E. 3. Rot. Parliament. numb. 163. in Arch. turris.* *Sc:*

At

*Impositions set by Edward the third.*

At other times he sent out Commissions to take up great quantities of Wooll and other commodities, at a low price, set by himself, and transported the same beyond the Seas, where he made the best profit thereof, for payment of the wages of his Army there, as appeareth by a special Record in the Tower, 12 E. 3. Rot. *Almanie pars 1. numb. 3. in dorso.* These taking prizes of English Merchandizes, are the first I find in any Record (for the Kings provision of Household, is of another nature.) But the King took these Wools in point of Prerogative, as his Predecessors were wont to take prizes of all Forein commodities, untill King E. 1. did remit all prizes to Merchant Strangers, by *Charta Mercatoria*, as is before expressed; and also such of English Merchants as would pay the customes restrained by that Charter, were offered the like immunitie from prizes, 31 E. 3. Rot. *Parliament, numb. 24.* But our English Merchants refused the benefit of that Charter, and therefore the King it seemeth was at liberty to take prizes of them as well as Strangers.

The King did many times shut up all the Ports, and stop all Trade, and then granted

*Impositions set by Edward the third.*

granted licences to all particular persons to transport Wool and other commodities, for which licences he took forty shillings, sometimes fifty shillings for a Sack of Wool, and the like rate for other Merchandizes, and this is manifest by these Records, 13 Ed. 3. Rot. 2. in *Secio Anglia*, 14 Edw. 3. Rot. *Parliament in Arch. Turris.*

Thus did this warlike and politique Prince, King Edw. 3. by his Prerogative, without Act of Parliament, lay sundry Impositions and charges upon all sorts of Merchandizes; and although upon Petition of his Subjects in Parliament, when they granted him other Aids and Subsidies of greater value than these his Impositions, he did many times remit and release those Impositions, yet did he oftentimes renew the same, or impose the like again, when the Aide or Subsidy granted in recompence was speut, as shall be shew'd more particularly when I come to answer the Objections which have been against His Majesties rightfull prerogative, in laying Impositions upon Merchandizes.

CHAP.

CHAP. XVII.

*Of the Profits raised unto the Crown out of Merchandizes during the reigns of several Kings who succeeded K. Edw. 3. untill the reign of Queen Mary.*

**T**Rue it is, that during the reign of these Princes, we finde no Impositions directly set upon Merchandizes by their absolute power or prerogative; but they did not forbear to lay Impositions directly, for that they wanted right so to doe, or because they doubted of their right in that behalf; for they well knew they had the same right, the same prerogative, and absolute power that their Predecessors had; but because they found other means to make other profit upon transporting of Merchandizes, and that in another manner, and in so high measure, as the trade of Merchandizes in those daies could hardly bear any greater charge, without danger of overthrowing all Trade and Commerce: And therefore those Princes did

did in their wisdomes forbear to lay any further Impositions by their Prerogatives: For these Kings who reigned after King *Edw. 3.* who conquered *Callis* in *France*, and before Queen *Mary* lost *Callis*, had two principal waies and meanes to raise extraordinary profits upon Merchandizes, but proceeding from one cause, namely, from establishing the Staple at *Callis*; for King *Edw. 3.* some few yeares before his death, did by his Prerogative in point of Government, without Act of Parliament, erect a Staple at his Town of *Callis*, and did ordain, and command, that all the Merchandizes exported out of *England*, *Wales*, and *Ireland*, by any Merchant Denison, or Alien, should presently be carried to the Staple at *Callis*, and to no other place beyond the Seas. This Staple at *Callis* was first settled and fixed there by an Ordinance which the King made by virtue of his Prerogative and absolute power in the government of Trade and Commerce, without Act of Parliament: And if this Ordinance so made had been thought unlawful, and against the liberty of the Subject, it would never have been approved and con-

*Staple at Callis.*



confirmed by the Judgements of so many Parliaments in the times of *Rich. 2. Hen. 4. Hen. 5. and Edw. 4.* Neither could there have been such heavy penalties layd by those Parliaments upon the transgressors of those Ordinances: In-  
 somuch as in the time of King *Henry* the sixth, it was made Felony to Transport any Merchandizes to any part beyond the Seas but to *Callis* onely. Now the Staple of *Callis* being thus established, there did arise a double profit to the Crown for transportieg of Merchandizes over and above the ancient Customs and other Subsidies granted by Parliament.

First it came to pass, that the Customs and Subsidies for Merchandizes transported out of *England, Wales, and Ireland*, which before was single, and payd but once, that is, upon the outgate; after the establishing of the Staple at *Callis*, the duties for the same Merchandizes became double at the least, and for the most part treble, and were ever payd twice, and for the most part thrice; namely, once upon the outgate in the Ports of *England, Wales, and Ireland*; secondly, upon the ingate at *Callis*; and  
 because

because all the commodities brought into *Callis* could not be vented into the main Land there, but the greatest part was to be exported again by Sea into higher or lower *Germany*, and other the North-East Countries, and some into *Spain*, and *Italy*, and the Ilands of the *Levant*, there did arise a third payment of Customs and Subsidies for so much of their commodities as were exported again out of *Callis*, by meanes whereof the Customs and Subsidies did amount to threescore thousand, or threescore and ten thousand pounds sterling, *per annum*, in the latter times of King *Edw. 3.* and during the reign of *Rich. 2. Hen. 4. Hen. 5.* and the beginning of the reign of *Hen. 6.* as appears by the Records of the Exchequer of *England*, which according to the valuation of Moneys at this day, the ounce of Silver being now raised from two shillings to five shillings, do make two hundred thousand pound sterling, *per annum*, which doth equal, or surmount all the Customs, Subsidies, and Impositions received at this day, though that plenty of money, and price of all things, and consequently the expences of the Crown be exceed-

F ingly

E. 3.  
R. 2. H. 4.  
H. 5.

ingly increased in these times.  
 And albeit the breach of Amity between the Crown of *England* and the Duke of *Burgundy*, who was the Lord of the Lower *Germany*, in the weak and unfortunate time of King *Hen. 6.* did cause a stop of Trade between us, and that Country into which the greatest part of our Staple wares, especially *Wooll* and *Cloth* were vented, and uttered, and was likewise the cause of loss of all our Territories in *France*, except *Callis*, and all the Merchandizes thereof, whereby the Customs, and other duties payable for Merchandizes were in the time of that unhappy Prince withdrawn, and diminished to a low proportion; yet afterwards upon the Mariage of *Margaret*, Sister to King *E. 4.* unto the Lord Duke of *Burgundy*, as that in honour of the English *Wooll*, which brought so much Gold into his Country, he instituted the Order of the Golden Fleece; and hereupon the Customs, Subsidies, and Impositions were raised again to so high a Revenue, as our Kings could not well, in policy, strain that strength of profit upon Merchandizes any higher.

Secondly,

Secondly, albeit the Staple established at *Callis* being first established by an order made by the Kings Prerogative and absolute power, was afterwards approved and confirmed by sundry Acts of Parliament, yet did the King by another Prerogative retain a power to dispence with that Ordinance, and those Acts of Parliament, and to give license to such, and so many Merchants as himself thought fit, to export any Merchandizes out of *England, Wales, and Ireland*, unto any other parts beyond the Seas besides, à non obstante of the first Ordinance, and of the Statutes which did establish the Staple at *Callis*. By virtue of this Prerogative and power, the several Kings who had *Callis* in their possessions, did grant so many Licences to Merchants, as well Aliens as Denizens, to transport our Staple commodities immediately into other places without coming to *Callis*, for which Licences, whereof there are an incredible number found in the Records of *England*, the Merchants payd so dear for their commodities, especially the *Genoeses*, and the *Venetians*, and other Merchants of the *Levant*, as by the profits made of those Licences did amount

F 2 to

*Profits raised to the Crown*

to double the value of those Customes and Subsidies payable for exportation thereof; and thereof those Princes as they had the less need, so had they no reason at all to charge the Trade of Merchandizes with any other, or greater Impositions.

In these two points before expressed doe consist the principal cause why the Princes of *England* who succeeded King *Edw. 3.* who won *Callis*, untill the reign of Queen *Mary*, who lost *Callis*, did not directly use their Prerogative in setting any other Impositions upon Merchandizes above the ancient Customes and Subsidies granted by Parliament: For it is to be observed, that most part of those Princes who reigned after *K. Edw. 3.* and before Queen *Mary*, had the Subsidy of Tonnage and Poundage granted unto them by Parliament, which being added to the gain of the Staple of *Callis*, did augment not a little the profit layd upon Merchandizes. And may be a reason likewise why those Kings did forbear to lay any other Impositions by their Prerogative.

We may adde hereunto other reasons. First, *Rich. 2.* was a *Minor*, and over-ruled

by other Kings.

ruled by the great Princes of the Blood, who would not suffer him to use his Prerogative.

Secondly, that during the Wars of *Lancaster* and *York* there was no fit time to make use of that Prerogative, while both parties did strive to win the favour of the people.

Thirdly, that King *Hen. 7.* had much ado to settle himself in the quiet possession of the Kingdome after those troubles.

Fourthly, that King *H. 8.* had such a mass of Treasure left him by his Father, and did so enrich himself by dissolution of Abbyes, as he had no need to make use of this Prerogative.

Fiftly, that *K. E. 6.* was also a *Minor*, and that his chiefest Council did more contend to advance their own houses than the Kings profit.

CHAP. XVIII.

*That Queen Mary did use her Prerogative in laying Impositions upon Merchandizes.*

Dyer 165  
12 Eliz.

**Q**Ueen *Mary*, in whose time the Town of *Callis* was lost, and consequently the benefit of the Staple at *Callis* was lost, did by her absolute power, as appeareth by the Report of the Lord *Dyer*, 1 *Eliz.* *Dyer* 165. raise an Imposition upon Clothes, viz. six shillings and eight pence upon every Cloth, over and above all Customes and Subsidies. True it is, that the Merchants petition'd to be disburthened of this Imposition, which was referred to the consideration of the Justices, and others; whereupon they had many assemblies and conference, as that Book reporteth: And albeit the Resolution of the Judges in that behalf be not found in that book, it is to be presumed, That they adjudged the Imposition to be just and lawfull, because it was continued and answered during

*Impositions raised by Q. Elizabeth:*

during all the Reign of Queen *Mary*. This Queen *Mary* likewise by her Prerogatively, layd an Imposition of four Marks upon every Tun of French Wines over and above the Prizage and Buttlerage, which during her life time was payd without contradiction.

CHAP. XIX.

*That Queen Elizabeth also used her Prerogative in laying Impositions upon Merchandizes.*

**Q**Ueen *Elizabeth* also by virtue of the same Prerogative, did not only continue the Impositions layd by Queen *Mary* upon Cloths and French Wines, but did raise other Impositions of sundry sorts of Merchandizes by the same absolute power; namely, upon every Tun of sweet Wines, upon every Tun of Rhenish Wines, upon every Kental of Allom, which during the time of the prudent Princess were payd and received without question. Besides, the same Queen, upon complaint made unto her

<sup>2</sup> Eliz.

in the twelfth year of her Reign, That the State of *Venice* did impose one Duc- ket upon every hundred of Currans ex- ported out of their Dominions by the Merchants of *England*, did by her Let- ters Patents, grant unto the English Mer- chants who traded into the *Levant*, That they only, and their Assigns, might bring Currans into *England*. The English Mer- chants having this privilege, did take five shillings and six pence upon every hundred waight of Currans brought in- to *England* by Strangers, which was duly payd, although it was taken by the Mer- chants by virtue of their privilege only of *fortiori*; yet it ought to have been payd if it had been payable to the Queen her self, as the Lord Chief Baron *Fleming* did observe in his Argument of *Bates's* case of Currans in the Court of Exchequer in *England*.

CHAP. XX.

*That our Sovereign Lord King James hath by virtue of the same Prerogative, without Act of Parliament, layd several Imposi- tions upon Merchandizes.*

HIS Majesty likewise when he came to be King of *England* finding his Crown to be seized of this Prerogative, and finding withall the necessary charge of the Crown exceedingly to in- crease, did for the supportation thereof, not onely continue the Impositions layd by Queen *Mary*, and Queen *Elizabeth*, but also layd new Impositions upon sundry sorts of Merchandizes, over and above all Customes and Subsidies for- merly due and payable for the same: And these are the Impositions now; the principal of these is twelve pence upon the pound, or a second poundage set upon Merchandizes as well exported as imported, by Letters Patents 28. *July*, in the sixth year of his Majesties Reign; but how is it set and imposed, surely

Letters Patents 28. *July* 6. *Jac.*

0232

surely with such moderation, and limitations, and such receptations full of grace and favour, as no Monarch or State in the world did ever impart to their Subjects the like in the like case; for, besides other gracious clauses contained in the same Letters Patents, All commodities serving either for food, or sustenance of the Kings people, or setting the poor on work, or for munition or defence of the Realm, or for maintenance of Navigation, or which especially tends to the enriching of a Kingdome, are excepted and discharged by this Imposition.

As for the special Impositions which his Majesty hath set upon certain forrein commodities, as Currans, Logwood, Tobacco, &c. As touching the first of these, the Imposition hath been adjudged lawful in the Court of Exchequer of *England*: And for the other commodities, they are of such nature, as no man ever made question but that the Impositions set upon them were lawful. Besides these Impositions layd in *England*, his Majesty by his Prerogative onely, since the beginning of his Reign, received the Impost of Wines in *Ireland*; and

and hath likewise, to make equality of Trade in that Realm, layd an Imposition of twelve pence on the pound of all other Merchandizes imported and exported out of the Ports of *Dublin, Waterford, Drogheda, and Galway*, the Citizens of which Cities and Townes are exempted and discharged of Poundage granted by Act of Parliament there, which Imposition was never impugned in *Ireland*, but hath since the setting thereof been levied and payd without contradiction. And that wee see how long the Crown of *England* hath been seised of this Prerogative, in laying Impositions upon Merchandizes, and how the same hath been put in practice by the most prudent Princes since the Conquest.

CHAP.

CHAP. XXI.

*The general reasons whereupon this Prerogative is grounded.*

Although it be a matter of difficulty, and doth favour withall of curiosity and presumption, to search a reason for every Prerogative that is incident to the Crown; for *sacrilegii est disputare de Principis facto*, saith the Imperial Law; and *Scrutator Majestatis opprimitur à gloria*, saith the Wise man: Yet the reasons whereupon this Prerogative is grounded are so many, and manifest, as it were not amiss to collect the principal of them, rather for the confirmation, than the satisfaction of such as have moved this question touching the lawfulness of Impositions layd by his Majesty upon Merchandizes.

First, the King is the Fountain of all Justice, and therefore the first reason drawn from the Kings charge in doing Justice,

*The Reasons of this Prerogative.*

Justice, and procuring Justice to be done to Merchants, not onely distributive Justice, wherein consisteth *Premium* and *Pena*, but commutative Justice is also derived from the king. Now his Majesty doth exercise commutative Justice chiefly in the ordering and government of Trade and Commerce, wherein hee is to doe Justice, or to procure Justice to be done to his Subjects, who do make contracts real and personal within the Land: But to his Merchants that trade and traffique with Forrein Nations, and to Strangers that trade & traffick with us, for the Administration of commutative Justice within the Land, the King receiveth sundry profits, which grew first by way of Imposition. A man cannot recover a Debt in the Kings Court, but first he payeth the King a Fine for his first Proceſs: Land cannot be conveyed by a Common Recovery but a Fine for the Original must be payd to the King. Neither can Land be passed from one to another by Fine in the Kings Court, but the Kings Silver must be payd, *pro licentia concordandi*. Adde hereunto the profit of the Seals in all the Kings Courts, for all manner of Writs: And yet the King

in *Charta magna* did promise, *Nulli negabimus, nulli vendemus Justitiam vel reatum*; but the Kings taking of these, and the like Duties, is no breach of the great Charter, for that the same was imposed by the King long before the Charter was made and taken, *ut Ministerii sui stipendia*, as the Schoolman speaketh; and withall to recompence the charge of the Crown in maintaining the Court of Justice: See *Bodin lib. 6. de Repub. cap. 2.* where hee speaketh of the like profit made upon the Proceſs in *France*: And shews that the antient Romans did the like: And the Emperour *Caligula* took the fortieth penny of that which was demanded in every severall Civil Action. If then such profits be taken for the King in his Courts of Justice within the Land, towards the charge which he sustaineth in the maintainance of these Courts and the Offices thereof, which duties were at first limited and imposed by the King himself without any Act of Parliament; for who ever heard of an Act of Parliament whereby the same were granted? Is there not as good reason why the charge of the King in doing Justice, and procuring Justice to be done unto

*din lib. de re- b. ca. 2.*

*igula:*

unto Merchants, whose residence and comerce is for the most part out of the Land, should be recompenced out of Merchandizes imported, and exported, not according to the will of the Merchant, and pleasure of the people, but proportionable according to the Kings charge, which being best known to himself, it is most meet that the recompence should be limited by himself?

Touching the charge of the King in doing, and appointing Justice to be done to Merchants; Are not all Leagues, Truces, and Treaties of State with Foreign Princes, wherein the publique Trade and Comerce of Merchants are ever included, concluded, and made at the Kings charge? Did not the Kings Council of State, and high Court of Chancery give more speedy hearing to the causes of Merchants than to the causes of other Subjects? Doth not the King maintain a Court of Admiralty for deciding of Marine causes, which doe for the most part concern Merchants? Doth he not bear the charge of severall Leiger Ambassadors in *Italy*, in *Spain*, in *France*, in the *Low Countries*, in *Turkie*, whose



whose principal Negotiation doth consist in procuring Justice to be done to our Merchants? And if our Merchants doe suffer wrong in any Forein Country by reason of any defective neglect in doing Justice there, doth not the King by his Prerogative grant them Letters of Mart, or Reprisal, that they may right themselves, which is a *species justitiae Belli*, as the Civilians call it? And if the injury done to the Merchants bee multiplied and continued with a high hand, Is it not the Kings Office to denounce and prosecute War against such a people as doth refuse to doe Justice unto his Merchants? For this cause the Romans began the first Punick War, saith *Appian*, *Cicero* in his Oration *pro Lege Manlia*, affirmeth, *Populum Romanum saepe Mercatoribus Injuria suis tractata bella gessisse*. Briefly, the plenty of Money being greater in this Age than ever was there by reason of so many Millions of Gold and Silver brought from the *Indies* into *Europe*, and the price of all Merchandizes being withall greatly enhanced, and the charges and expences of Princes exceedingly encreased, is it meet or just that the King at this day should be

*Appian.  
Cicero.*

be stinted or bound to that old Demark onely for Native commodities, or the three pence of the pound for the Forein commodities which *Edm. 1.* was content to accept of four hundred years since, or a single poundage onely, which in the time of King *Edm. 4.* was not sufficient to maintain the necessary charges of keeping the Sea, as the Acts of Parliament, *12 Edm. 4. cap. 5.* which granteth that Subsidy to the King, reciteth all the Kings charge in supporting the Trade of Merchants being unlimited, and infinite: And shall the duties payable for Merchandizes be stinted and restrained to such a proportion only as the Subject shall bee pleased to grant unto him? Assuredly if the King had not a Prerogative of his own absolute power without Act of Parliament, to increase the duties payable for Merchandizes at this day, a Merchants Counting-house would be richer than the Kings Exchequer; and the Subject who may live privately, and moderate his expences, and yet raise the Fines of his Copsyholds, and Rents of his Demains without controlement, would be in better case than the King, who by reason of

*12 Ed.  
4. cap. 5.*

The Reasons whereupon

the Majesty of his Estate cannot abridge his charges, and yet should have no power of himself without leave of his Subjects to increase his Revenue.

Again, the King is not only at charge in doing of Justice to his Merchants at home, and in procuring Justice to be done to them abroad, but he doth with all maintain a Royall Navy of Ships, the best, the fairest, the strongest in the world at this day, to protect all Merchants from spoyl and Piracy on the sea. In the maintenance of this Navy, the King doth expend more Treasure than the whole Revenue of some of his Predecessors did amount to.

And he doth not onely secure Merchants by Sea, but he gives them safe conduct by Land also, as appeareth by the great Charter: So as they may well give our King that title which *Virgil* gives to the King of Bees, *Ille operum custos*: And seeing Merchants are most likely resembled to those Industrious creatures, because they bring the hony to the Kings Hives, to wit, to his Havens and Ports, where they, and their Merchandizes be protected and reserved, why should they not imitate the Bees in observing

*Virgil.*

this Prerogative is grounded.

observing their King, and in making him partaker of the fruit of their labours? Neither is it a new thing, or an invention of this Age, to lay Impositions upon Merchants for their Wastage and Protection at Sea; for *Plinius* tels us, *lib. 19. cap. 4. Merces pretiosæ ut ex India, Arabia, Ethiopia, tuto in Europam à Mercatoribus conveyerentur, necessariò classem parandam esse adversus Piraticas incursiones, inde maritimi exercitus habendi causa vectigal rubri maris institutum.*

*Plin. lib. 19. cap. 4.*

A third reason drawn from the Interest the King hath in the parts of the Kingdom, and the custody thereof, which giveth him power to shut and open the same at his pleasure.

Again, all the Ports of the Kingdome are the Kings, not onely the Cinque-Ports, which have a special Warden appointed by the King, but the rest of the Ports are also his, and many of them bear a mark of the Kings Inheritance in their Additions, as *Linn Regis, Waymouth, Melcombe Regis, Pool Regis*; for the King is *Custos totius Angliæ Regni*; as the four Seas are the Walls of the kingdom, so the Havens and Creeks are the Gates, and Posterns of it. They are *Ostia*, they

G 2 are

are *Janua Regni*; and we find two Ports in *Italy* called by those names, the one at the mouth of *Tiber*, the other corruptly called *Genoa*, but the true name thereof is *Janua*. And as the Havens are *Janua Regni*, the King himself is *Janus*, and hath power to open and shut them at his pleasure.

*Omnia sunt nostra clausa patentque manu.*  
Saith *Janus* in the Poet. And again, *Modo namque Patulchus idem & modo sacrifico Clusus ore vocor.*

The King of *England* hath ever had this Prerogative incident to his Crown, to shut and open the Ports when it pleased him, as appeareth by many Records, especially by the Parliament Rolls in the time of King *Edw. 3.* wherein are found many Petitions that the Sea might be open, which during that Kings time was often shut by virtue of his Prerogative only, and never fully opened again, but when the King layd an Imposition upon Merchandizes.

Tempore  
Edw. 3.

And this Prerogative of Custody of the Ports, and of shutting and opening the same, is reserved unto the Crown upon an excellent reason: For Trade and Commerce is not fit to be holden with  
all

all persons, neither are all things fit to be imported or exported: For such persons as are enemies to the Crown, & come to discover *Arcana Regni*, such persons as come to corrupt Religion, or the manners of the people, such persons as under colour of Merchandizes come to set up Monopolies, or a dry Exchange to drain or draw away our commodities or money out of the Kingdom, are not fit to enter in at the Gates of the Kingdome. And again, such commodities as the kingdom cannot spare, as Corn in time of dearth, and such as may advantage our Enemies and hurt us in time of Warre, as Horses, Armor, Gunpowder, &c. are not fit to be exported out of the Realm: And Poysons, Heretical books, and other things which are apparently hurtfull to the people, are not to be imported; and therefore the Prerogative of opening and shutting the Ports is accompanied with another absolute power, of stopping and imbarring of Trade & Commerce, sometimes generally, sometimes between us and particular Nations, and sometimes for particular Merchandizes only, whereof there are many presidents and examples both in Records and Histories

of our Nation, 2 Edw. 1. Rot. Parliament.  
 2 Edw. 3. m. 18. in Archivis Turris. 2 Edw. 3. Rot. fin.  
 10 Ed. 3. m. 17. ibid. 10 Edw. 3. Chaunc. m. 3. in dorso  
 17 Hen. 4. Matthew Paris Hist. magna p. 568. 10 Hen. 7. Stow. And this  
 Prerogative of imbaring Trade, doth re-  
 sult out of the undoubted Prerogative  
 which the King hath to make Peace and  
 War with Forein Nations, for open War  
 is no sooner denounced, but all Trade of  
 Merchandize is stopt and imbarred be-  
 tween the Nations which are ingaged in  
 the Warre, *durante bello inter Reges Chri-  
 stianos merces quascunque exportare vetamur  
 ne Regni arcana scrutentur*, saith a Doctor  
 of the Imperiall Law; whereupon wee  
 make this Argument, That since the King  
 hath absolute power of shut the Ports,  
 and stop Trade, it standeth with as good  
 reason that he shold have the like power  
 to lay reasonable Impositions upon Mer-  
 chandizes for opening of the Ports, and  
 for giving of freedome of Trade again;  
 he that may doe the more, may doe the  
 lesse, *Non debet ei cui id quod majus est, id  
 quod minus est non licere*, saith the Rule of  
 the Law; hee that may prohibit Mer-  
 chants not to Trade or passe, may dis-  
 pence with that prohibition, and give  
 them

2 Edw. 1.  
 2 Edw. 3.  
 10 Ed. 3.  
 17 Hen. 4.  
 Matthew  
 Paris  
 Hist.  
 magna p.  
 568.  
 10 Hen. 7.  
 Stow.

them leave to go and Traffique *sub mo-  
do*.

Again, the King of England is *Dominus  
Maris*, which floweth about the Island, as  
 divers ancient Books and Records do  
 testifie, as Fitz Avowry 192. 6 Rich. 2. pro-  
 tectio. 46. Rot. Scotia. m. 16. in Arch. Turris. 6 Rich. 2.  
 And he is Lord of the Sea, not only *quoad  
protectionem & jurisdictionem, sed quoad pro-  
prietatem*, and this is our Neptunes trident,  
 for God gave unto man as well the Do-  
 minion of the Sea as of the Earth, where  
 it is said, *Gen. 1. replete terram & subjicite  
eam, & dominamini piscibus maris, &c.* and  
 in Psal. 8. *Omnia subjecit pedibus ejus, Pisces  
maris & quicquid perambulat semitas ma-  
ris.*

Fitz Avowry 192.  
 6 Rich. 2.  
 protectio  
 46 Rot.  
 Scotia. m.  
 16 in Arch.  
 Turris.

And therefore Baldus affirmeth, *de jure  
Gentium distincta esse dominia in mare sicut  
in terra arida*, and again, *mare attribuitur  
terra Circumstanti*. Hence it is, though  
 there be but one Ocean, in respect wher-  
 of the whole Earth is *quasi insula*, saith  
 Strabo, yet is there *Mare Gallicum, Sardi-  
cum, Creticum, Aegypticum, & oceanus Brita-  
nicus, Germanicus, &c.* which particular  
 names do note a propriety in the Princes  
 and States, who are Lords of the Land  
 adjoining. Hence it is that our Common

Baldus.  
 Strabo.

Law doth give unto our King all the land which is gained from the Sea, which *Stampford* in the Book of the Kings Prerogative doth affirm to belong to the King, *de jure Gentium, quia Mare seu particula Maris est de Territorio illius Civitatis vel Regni cui magis appropinquat*, saith one learned Doctor, *Mare se extendit cum aquae sint mensurabiles*, saith another; hence it is, that all navigable Rivers, as the River of *Thames*, and the River of *Lee*, and divers others, are called in our Books, the Kings Streams, 19. *Aff. p. 6. Dyer 117. a.* because such Rivers are arms of the Sea, so far as the Sea doth flow in them, 22. *Aff. p. 93.* and lastly, hence it is, that by the Common Law, the King may prohibit all Subjects whatsoever to passe over the Seas without his licence; and to that end *Ed. 4.* in 22 *Edm. 4.* the King commanded the Warden of the Cinque Ports, and the Bailifs of all other Ports of the Kingdom, that they should not suffer any Man, Ship, or Boat, to passe beyond the Seas, *quousque Rex illud mandaverit*, and the like Commandments were given, 4 *Edm. 3.* 21 *Edm. 3.* 16 *Rich. 2.* 17 *Hen. 6.* If therefore the King hath such an absolute Interest in the Ports, and in the Sea, and in all

*Stampford*

*Aff. r.*

*Aff. p.*

*Ed. 4.*

*dw. 3.*

*Ed. 3.*

*Ri. 2.*

*H. 6.*

all Navigable Rivers wherein the Kings Ports are situated for the main part, why should he not have the like absolute power to limit and prescribe unto Merchants what duties they shall pay, and upon what terms and conditions they shall passe to and fro upon the Seas, and come in and out of his Streams and Ports with their Ships and Merchandizes? *Podagium in Mari debet solvi sicut in terra. si sit impositum per dominum Maris*, saith *Baldus*, and the rights belonging to the Lord of the Sea, saith another Doctor, are *Jus navigandi, jus piscandi, jus imponendi vectigalia pro utroque.*

Again, the Kings of *England* have the like Prerogative in the government of Trade and Commerce belonging to this Kingdome, as other Princes and States have within their Dominions; he must of necessity have the like absolute power as they all have to lay Impositions upon Merchandizes imported and exported, otherwise he cannot possible hold the ballance of Trade upright, or perserve an equality of Traffique between his own Subjects and the Subjects of Foreign Princes, and consequently it will lye in the power of our Neighbours to drain and

and draw away all our wealth in a short time, or else to overthrow all Trade and Commerce between us and them at their pleasure, and we shall have no means to encounter or avoid the mischief; for their Princes, having sole power to impose, will have the sole making and managing of the Market between their Subjects and us, and consequently may set what price they please upon all Merchandizes, enforcing us to sell our Commodities cheap, and buy their Commodities dear, onely by this advantage of laying Impositions.

And therefore the King of *England* must of necessity have the same absolute power to lay Impositions upon Merchandizes, as other Princes have, as well, *ut evitetur absurdum*, as to prevent the ruin of the Common-wealth, by the equall ballancing of Trade & Commerce between his Subjects and the Subjects of Foreign Princes. Upon this reason when the Duke of *Venice*, in the time of *Q. Eliz.* as is before expressed, had laid an Imposition of one Duckett upon a 100 *li.* weight of Currans carried out of his Dominions by any English Merchant, the Queen by speciall Patent in the twelfth year of her

Reign

Reign, did enable the Merchants which did Trade into the *Levant*, to levie five shillings and six pence upon every 100 *li.* weight of Currans brought into *England* by any Merchant Stranger. Upon the like reason, when in the time of King *Tempore Hen. 3.* the Emperor and the *French King Henry 8.* had raised the valuation of their monies both so high, as there grew not only an inequality of Trade between their Subjects, and the Subjects of *England*, but our monies standing at their former values, were carried out of the Realm in great quantities; The King in the 24 year of his Reign granted a Commission unto Cardinal *Woolsey* to enhance the values of *English* monies likewise, by that means to set ballance of trade even again, and to keep our monies within the Realm.

Upon the same reason of State, when the King of *Spain* that now is, in the year *Spain's Imposi on in 1614.* 1614. had laid an Imposition of thirty upon the hundred on all Merchandizes imported and exported by Strangers; the *French King Hen. 4.* was quickly sensible of it, and did forthwith impose the like in his Kingdom; then it followed of necessity that other Nations should follow and imitate them, whereby it came

to

to passe that Commerce of Merchants generally throughout *Christendome*, began to decay, which being perceived by these two great Princes, they agreed to take away those excessive Impositions, upon severall Treaties between them and the *Italians*, and after between them and the *English*, and the *Dutch*.

Briefly we find examples in all ages, that whensoever by reason of Warre, or for any other cause, any Foreign Prince gave the least impediment to Merchants in their Trade, our Princes gave the like entertainment to their Merchants again; This is declared in *Magna Charta*, cap. 30. where it is plainly expressed what entertainment the Merchants of all Nations should expect in *England*, *Habeant saluum & securum conductum* (saith the Charter) *Præterquam in tempore guerra & si fuerint de terra contra nos guerrina*, then as our Merchants are used with them, so shall their Merchants be used with us, 46 *Edw. 3.*

*Magna Charta*  
p. 30.

*Ed. 3.*

1 *Edw.*

1 *Edw. 3. pat. m. 19. in Arch. Turris.* There are many other examples of mutuall embarrments of Trade between the *Flemings* & us, and also between us and the *French* men during our Wars with *France*, which I omit; I will recite onely one president in the 40 year of *Queen Elizabeth*, at which times the Merchants of the *Hauuce* Towns having by sinister information procured the Emperour to banish our *English* Merchants out of the Empire; the Queen by her speciall Commission, did authorize the Mayor and Sheriffs of *London* to repair to the *Still-yard*, being the Hostell of the *Hauuces*, to seize that House into her Majesties hands, and there to give warning to the Merchants of the *Hauuce* Towns to forbear Traffique with any of her Subjects in *England*, and to depart the Realm upon that very day, which was assigned to our Merchants to depart out of the Empire.

1 *Edw. 3.*

Anno 40.  
*Elizabeth*

Lastly, for the ordering and government of Trade among our own Merchants in Foreign Countries and at home, our Kings by their Prerogatives have instituted divers Societies and Companies of Merchants, as the Company of Merchant-Adventurers, the *Muscovia* Company,

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pany, the *Turkie* Company, the *East India* Company, &c. all which are created, upholden, and ruled, by the Kings Charter only; whereupon I may conclude, that the Kings of *England* having the same power in governing and ballancing Trade, as other Princes have, may justly execute the same power, as well by laying Impositions upon Merchandizes, as by the other means which are before expressed.

CHAP. XXII.

*Of the several Objections that are made against the Kings Prerogative in laying Impositions upon Merchandizes, and the several Answers thereunto.*

Object. I. **T**HE first Objection touching the property which all free Subjects have in their goods.

First, it is objected, that under a Royal Monarchy where the Prince doth govern by a positive Law, the Subjects have a property in their Goods, and inheritance in their Lands; *Ad Reges potestas omnium*

*omnium pertinet ad singulos proprietatis*, So as the King hath no such Prerogative, say they, whereby he may take away the Lands or Goods of a Subject without his consent, unless it be in a case of Forfeiture.

And therefore though *Samuel* foretold the people when they desired a King, *Hoc erit jus Regis, tollere agros vestros, & vineas, & oliveta, & dare servis suis: et Ahab*, though he were a wicked King, did not claim that Prerogative when he coveted *Naboths* Vineyard, neither did he enter into it untill *Naboth* by false witnesses was condemned and stoned to death for blasphemy, and then he took it for a lawfull Escheat; but when the King doth lay an Imposition upon Merchandizes without the consent of the Merchants, and doth cause the Officers of his Customs to take and levie the same; it seems say they, they take away the goods of the Subject without his consent, and without cause of forfeiture, which is not warranted either by Law of Nations, which brought in property, nor by the Law of the Land, which doth maintain property.

CHAP.



## CHAP. XXIII.

*The Answer to the first Objection.*

The Answer  
to the 1.  
Object.

**T**O this Objection we answer, That the King doth not take the Land or Goods of any without his consent; but here we must distinguish, there is a particular and expresse consent, and there is an implicit and general consent, when a man doth give his Goods, or surrender his Lands to the King by deed enrolled, or when in Parliament which representeth the body of the whole Realm, and wherein every man doth give his consent, either by himself, or his Deputy. A subsidy is granted to the King, there is an expresse consent; but when subjects who live under a Royall Monarchy, do submit themselves to the obedience of that Law of that Monarchy, whatsoever the Law doth give to that Monarch, the subjects who take the benefit of the Law in other things, and doe live under the protection of the Law, doe agree to that which the Law gives by an implicit and

*Answer to the first Objection.*

and general consent, and therefore there are many cases where the King doth lawfully take the goods of a Subject without his particular & expresse consent, though the same be not forfeited for any crime or contempt of the Owner.

If a Theef do steal my goods and waive them, the King may lawfully take those goods without my particular consent, and without any fault or forfeiture of mine; but in regard I live under the Law, which giveth such wayves unto the King, he taketh not the same without my implicit consent; so if my Horse kill a man, the King may lawfully take my Horse a Deodand without my fault or consent in particular; but in that I have consented to the obedience of the Law which giveth all Deodands to the King, he taketh not my Horse without the implicit or generall consent of mine.

In the time of War the King doth take my House to build a Fort, or doth build a Bulwark upon my Land, he doth me no wrong, though he doth it without my consent, for my implicit consent doth concur with it, for that I being a member of the Common-weal, cannot but consent to all Acts of necessity tending to

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*The first Objection answered.*

the preservation of the Commonwealth.

So if the King doth grant me a Fair or Market, with a power to take a reasonable Toll; If a man will buy any thing in my Fair or Market, I may take Toll of him, though I give no particular consent to the grant, because the Law whereunto every Subject doth give consent and obedience, doth warrant the taking of Toll in every Market and Fair granted by the King.

So it is in case of Impositions, the Law doth warrant the Kings Prerogative to impose upon Merchandizes, as is before declared, and therefore though the Merchants give not their particular consents to the laying of these Impositions, yet in regard they live under the protection and obedience of the Law, which submits it self to this Prerogative, and allow and approve the same; it cannot be said that the King doth take these Impositions of them without their implicit and generall consent.

CHAP.

CHAP. XXIV.

*Of the second Objection touching the uncertainty and unbounded largeness of this Prerogative.*

**T**He second Objection is against the uncertainty and unlimited largeness of this Prerogative, for in other cases they say, where the King taketh the goods of a Subject by his Prerogative, there is a certainty what he may take, as in the case of wayvs, he may take onely the goods wayved, and no more.

In case of Deodand, he may take only the thing that causeth the death of a man, and no more.

In case of wreck, he may take only the goods that are wreckt, and no more.

In case of Wardship of Land holden in Capite, the King may take the profits of the Land, till the Heir sues his Livery, and no longer.

In case where the King hath *Annuitum Diem & vastum*, hee may retain of the Lands of the Felon attainted, which are

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holden of other Lords for a year and a day, and no longer.

In all these cases there is a certainty what the King shall have, and how long he shall have it; but in case of Imposition, the quantity or rate thereof high or low, is left to the Kings own will or pleasure; so as if he should be misled, as many Princes have been, with evill Counsell, he might with his Prerogative doe hurt the Comon-wealth, by laying too heavy burthens upon his Subjects; for though hetherto his Majesty hath imposed upon Merchandizes only twelve pence on the pound over and above the ancient Custome and the Subsidies granted by Parliament, yet this Prerogative being unlimited, he may hereafter (say they) set five shillings or ten shillings upon the pound, if it please him, and so undoe the Merchants, or discontinue and overthrow all Trade and Commerce.

CHAP.

CHAP. XXV.

*The Answer to the second Objection.*

**T**O this Objection the fittest answer is, That it is an undutifull Objection, and withall too busie, too bold, and too presumptuous; for it is an Objection against the wisdom of the King in point of Government, and against the bounty and goodnesse of the King towards his people: the Text of the Civil Law cited before, doth call it a kind of Sacrilege to dispute of Princes Judgments or Actions; and for the Law of *England*, sure I am, that it trusteth the Wisdom and Judgement of the King alone in matter of greater importance than in laying of Impositions, or setting of rates upon Merchandizes.

The Answer to the 2<sup>d</sup> Object.

Is not the Kings wisdom only trusted with the absolute power of making War and Peace with forein Nations, whereby hee may when hee pleaseth interrupt all Trade of Merchandizing? Is not the King alone trusted with the like power of making and decrying of monies which

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is

is the onely *Medium* of all Traffique and Commerce? Is not he solely and without limitation trusted with the nomination and creation of all Judges and Magistrates, who are to give Judgement in cases concerning the Liberties, Lands, and Lives of all his Subjects? hath not he a sole and unlimited power to pardon all Malefactors, to dispence with all penal Laws, to distribute all Honours, to grant to whom he pleaseth Protections, Denizations, Exemptions, not only from Juries, but from all other Services of the Common-wealth? and yet these Prerogatives if the same be not used with judgement and moderation, may prove prejudicial to the Common-wealth, as well as the laying of Impositions upon Merchandizes. Shall therefore any undutiful Subject make these conclusions? The King may have a continuall Warre with Forein States and Princes, and so continually corrupt all courses of Merchandizes, *Ergo*, he shall lose his Prerogative of making War or Peace, when himself in wisdom shall think fit so to do. The King may decry all monies of Gold and Silver in Bullion, and establish a Standard of Copper or Leather; therefore he shall

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coyn no monies without the consent of the people. The King may if he please, break up all the Prisons, pardon all Offenders, and so give impunity to all Offenders; *Ergo*, he shall pardon no Malefactors by Act of Parliament. These are found absurd, or rather wicked conclusions, *à posse ad esse* is an absurd Argument, but *à posse & nolle nobile est*. The Law presumes the King to be so noble and so wise, that all Acts done by him, or in his Name during his Infancy, are of as good force in Law, as if the Law had bin done in his ripest years. The Law presumes the King to be most just in all his actions, & therefore it hath these rules; the Prerogative of the King can do no wrong, the King can commit no disseisin, the King can make no discontinuance, and the like, *Cor Regis in manu Domini*, saith *Solo-Solomon*, and therefore the Law presumeth, that God will ever direct him to that which is just; is it not then too much curiosity to instruct where the Law trusteth, and too much presumption to presume against the presumption of the Law, especially in the time of such a King who is the wisest, and justest, the most religious, and most gracious King that ever

H 4                      reigned

reigned in Europe? Can any man imagine that so great a Master in the Art of Government, the most prudent King of great Britain & Ireland, the two greatest Islands in this Hemisphere, and seated most commodiously for Traffique, which all the World knowing that the duties paid unto him for Merchandizes, are the most certain, settled, and assured, and withall the best and richest part of his Revenues at this day, will lay heavier Impositions upon Merchandizes than they are able to bear, and so destroy all Trade and Commerce? When King Hen. 7. his most prudent Predecessor, did lend money to his Merchants to maintain Traffique, will he for a little extraordinary profit for the time present, pluck up at once the Root, and dry up the Fountain of this Revenue for the time to come? it is unprobable, it is incredible, it is impossible; But suppose that this is credible, that the King should lay such heavy Impositions upon Merchandizes, as all Merchants should refuse to Traffique, who should lose most by that, the King or his people? assuredly hee should suffer an exceeding great losse in his Customes; but we that are of the Commons should save by it, having

ving all things necessary for the Life of man within the Land, which is.

*Terra suis contenta bonis, non indiga mercis. Poeta.*

We should spare these vain expences which we now make upon Forein Commodities, namely Cloath of Gold, Cloath of Silver, Silks, Spices, Wines, and many other superfluous & unnecessary things, which doe nourish Pride, and Luxury, Riot and Excesse amongst us, which corrupt our manners, and in the end will be the ruin of the Common-wealth; I may therefore conclude this point, That since the King hath power by his Prerogative to lay Impositions upon Merchandizes, he hath also a power coincident thereunto, to limit and rate the proportion and quantity thereof, according to his own wisdom & reasons of State, from time to time; for either the King must set down the rates, or the people, or the King and people both by Act of Parliament; but if the people will not assent or agree to a reasonable limitation thereof in Parliament, shall the King lose those Royal Duties which all other Kings do take by vertue of their Prerogative? it were most unreasonable, absurd, and unjust.

## CHAP. XXVI.

*The third Objection, touching the repeal of Charta Mercatoria by King Edw. 2. and the remittall of divers Impositions by King Edw. 3. upon sundry Petitions of the Commons in Parliament, and the punishment of divers Persons in Parliament for procurting Impositions to be set up.*

Object. 3. **T**Hirdly, it is objected, that this Prerogative of laying Impositions upon Merchandizes, hath never at any time been set a foot and used by any of His Majesties Progenitors, but it hath been contradicted, and upon Petitions of the people, such Impositions have been suspended, remitted, and abolished; first, King Edw. 1. say they, in the 31 year of his Reign, did by his Charter called *Mercatoria*, spoken of before, lay the Imposition of three pence in the pound, now called the petty-Custome, with an increase of other duties upon Merchandizes imported by Strangers; howbeit, this Imposition stood not above seven years

years by vertue of that Charter, but it was discontinued and quite taken way; for in 3 Edw. 2. the Charter it self was suspended by the Kings Writ, 3 Edw. 2. <sup>3 Edw. 2.</sup> <sup>5 Edw. 2.</sup> *Claus. m 23. in Arch. Turris*, and 5 Edw. 2. it was utterly repealed by a solemn Ordinance of State, *Rot. Ordina. 5 Edw. 2. in Arch. Turris.*

Secondly, King Edw. 3. did at sundry times during his Reign, lay severall Impositions upon Wools and other Staple commodities, sometimes forty shillings, sometimes fifty shillings upon a Sack of Wooll, and other the like rates upon Merchandizes, yet could he never fix nor settle the same upon His Subjects; for upon sundry Petitions of the Commons in Parliament, who found themselves grieved therewith, these Impositions were from time to time remitted, 13 <sup>13 Ed. 3.</sup> *Edw. 3. Rot. Parliament.* <sup>14 Ed. 3.</sup> *in Arch. Turris.* 14 <sup>12 Ed. 3.</sup> *Edw. 3. cap. 21. 17 Ed. 3. Rot. Parliament. numb. 12. 12 Ed. 3. Rot. Parliament. numb. 11.*

Again, the same King many times did shut up all the Ports, and thereby restrained the exportation of Merchandizes; then would he take great sums of Money to grant licences to transport, which proved

proved as great a charge as Impositions, and yet upon sundry complaints of the people in Parliament, the Sea was set open, and liberty of Trade permitted again, *Stat. 18 Edw. 3. cap. 3. 22 Edw. 3. Rot. Parliament. numb. 8. in Arch. Turris. 13 Edw. 3. in Scio Angliae. Rot. 12. 13 Edw. 3. Rot. Parliament. numb. 5. in Arch. Turris.*

Lastly, in the last year of this Kings Reign, divers persons were accused and punished in Parliament, for procuring new Impositions to bee set upon Merchandizes, namely, the Lord *Latimer*, who albeit he were a Noble man, and a Privy Counsellor to the King, yet was he fined, committed to the Marshalsee, and put out of the Council, *50 Edw. 3. Rot. Parliament. num. 34 in Arch. Turris.* *Richard Lions* likewise, a Citizen of London, and Farmer of the Customes, an Instrument of the *L. Latimers* in raising the new Impositions, was fined, ransomed, and imprisoned, and put from the Franchise of the Citie. *50 Edw. 3. Rot. Parliament. numb. 17. in Arch. Turris.* And one *John Peachy*, who had gotten a Monoply of Sweet Wines, by Letters Patents, and by colour thereof had extorted three shillings and four pence out of every Pipe or Vessell of Wine

18 Ed. 3.  
22 Ed. 3.  
13 Ed. 3.

Lord Latimer.

Richard Lions.

J. Peachy

Wine vented by others, was also fined and imprisoned, and made satisfaction to the parties grieved, *50 Edw. 3. Rot. Parl. numb. 33.* and more than this, a Bill was preferred by the Commons in this Parliament, that such as should set new Impositions, should have Judgement of life and member, *50 Edw. 3. Rot. Parliament. num. 191. in Arch. Turris.* These examples strook such a terrour at that time, as from the time of King *Edw. 3.* till the Reign of Queen *Mary*, being a hundred and fifty years and upwards, there was no man found that would advise the King of *England* to set or levie any Impositions upon Merchandizes by Prerogative, and therefore we find no Imposition laid upō Merchandizes all that space of time; Queen *Mary* indeed began to set on foot this Prerogative again, and laid an Imposition of three shillings and eight pence upon every Cloth transported out of the Kingdome; but what doth the Lord *Dyer* report, *1 Eliz. f. 165*? the Merchants of *London* (saith he) found themselves greatly grieved, and made exclamation and sute to Queen *Elizabeth* to be disburthened of that Imposition, because it was not granted by Parliament,

50 Ed. 3.  
Rot. Parl.  
numb. 33.

50 Ed. 3.  
Rot. Parl.  
num. 191.  
in Arch. Turris.

Dyer.  
1 Eliz.  
fol. 165.

ment, but assessed by Queen *Mary* her absolute power; these frequent Petitions, complaints, and exclamations, these suspensions and remitalls of Impositions, are good arguments (say they) against the right of this Prerogative.

CHAP. XXI.

*The Answer to the third Objection.*

The Answer to Object. 3.

**T**HIS Objection consisteth of several parts, and shall recieve an Answer consisting of divers parts; the first part of this answer, King *Edw. 1.* being a prudent and resolute Prince, did not onely impose the three pence upon the pound upon Merchant Strangers, by his *Charta Mercatoria*, but justified and maintained that Imposition during his life. True it is, that after his death, King *Edw. 2.* it was repealed, as is before objected; but whose Act was this? by whom was this Ordinance made, which did repeal this Charter? not by the King and his Parliament, but by certain rebellious Barons, who took upon them the Government of the Realm,

Realm, and called themselves Ordainers; Wherefore King *Edw. 3.* in the first year of his Reign, did revive that Charter, and commanded by his Writ that the Customs and Duties therein contained should be collected and levied to his use; He maketh mention of these Ordinances of *5 Edw. 2.* and saith the same were made <sup>5Edw.2.</sup> *per quosdā Magnates*, and not by the King, as appeareth by the Record, *1 Edw. 3. Rot. fin. memb. 30. in Arch. Turris*, which in another place before I have recited, by which Record it likewise appeareth, that those Ordinances *5 Edw. 2.* were before that time repealed and made void, and therefore that which was done in that time of that unfortunate Prince, overruled by his unruly Barons, is not to be urged and used as an example, especially since they that urge this repeal of *Charta Mercatoria*, might, if they would find any thing which makes against their contradicting humour, find in the said Roll of Ordinance, made in *5 Edw. 2.* divers Articles wherein those Ordainers did wrong and wound the Prerogative in matter of greater importance than in the repeal of that Charter, for they might have found among the same Ordinances these things ordained. First,



First, that the King should not make gifts of Lands, Rents, Franhises, Wards, or Escheats, without the consent of the Ordainers.

Secondly, that all gifts and grants formerly made by the King, not only of Land and other things in *England*, but in *Gasconie*, *Ireland*, and *Scotland*, should be resumed and made void.

Thirdly, that the King should not depart out of the Realm, nor make Warre, without the assent of his Barons, and of his Parliament.

That because the King was misguided and counselled by evill Counsellors, it was ordained, that all his Counsel should be renewed, and new Officers and Servants appointed for him.

These traitorous Ordinances were made against the King at that time, and therefore it is a shame that any part of these Ordinances should be made an argument against the right of the Crown in laying Impositions upon Merchandizes; for with the same reasons they might argue the King had no right to grant his Lands, Rents, Wards, or Escheats, that he might not go out of the Realm, nor make Warre, nor choose his own

own Counsellors or Servants without an Act of Parliament; and it is manifest, that those factious Barons did cause the King to forego the said Impositions, rather *ad faciendum populum*, and to gratifie the Comons, and to draw them to their party, than for the good of the Comon-wealth; for if they had been good Counsellors they would have done as the Senate of *Rome* did, when *Nero* in a glorious humor to please the people, would needs have discharged at once all Customes and Impositions; the Senate gave him thanks for his favour towards the people, but utterly diswaded him so to doe; telling him, that in so doing, he would ruine the state of the Comon-wealth; for indeed no Comon-wealth can stand without these duties, they are *Nervi*, they are *sucus & sanguis Reipublice*, and therefore no Comon-wealth was ever without them, but the imaginary Comon-wealths of *Plato* and *Sir Thomas More*, for they doe both agree; for in the Comon-wealths of which they dream, there was nothing to be paid for Merchandizes exported and imported. But to return to King *Edw. 2.* what followed upon the Repeal of *Charta Mercatoria*, and the discharge of

*Senatus Rom.*

I Im-

Impositions which King *Edm. 1.* established? was not that poor Prince King *Edm. 2.* enforced to take up great sums of money of his Merchants, by way of loan, which he never repaid again? *11 Edm. 2. Rot. fin. m. 12.* whereby the Merchants received a greater detriment than if they had made a double payment of Customes and Impositions which the King had discharged, and therefore the example of this weak Prince doth make but a weak argument against the right of the Crown, in laying Impositions upon Merchandizes; and here I think it fit to observe that they were all wise and worthy Princes which are spoken of in former ages, to have laid Impositions upon Merchandizes, namely *Solomon* in the Holy Land, *Julius Caesar* and *Augustus Caesar* in the Empire, King *Ed. 1.* and King *Ed. 3.* in *England*; but on the other part, they which released all Customes and Impositions, were but weak Princes, and destroyed themselves and the Commonwealth wherein they lived; namely *Nero* in the Empire of *Rome*, King *Edm. 2.* and King *Rich. 2.* with us; and truly by the rule of our Common Law, the King cannot, if he would, release all Subsidies and Aids

*Solomon.*  
*Julius*  
*Caesar.*  
*Augustus*  
*Caesar.*  
*Edm. 1.*  
*Edm. 3.*  
  
*Nero.*  
*Edm. 2.*  
*Rich. 2.*

Aids of his Subjects, that they should be for ever discharged of all Subsidies to be given to the Crown, such a grant were made void, and against the Law.

Secondly, touching the Petitions exhibited to the King in sundry Parliaments, against Impositions laid by that King upon Merchandizes, upon view of the Record wherein these Petitions are contained, with their answers made by the King thereunto, it is evident, that neither the Petitions of the people, nor the Kings answers thereunto, do disprove this right of the Crown to lay Impositions upon Merchandizes; for Petitions do not of necessity prove or suppose the Petitioners have received wrong; Petitions are of divers kinds. 1. There are Petitions of Grace, which do not insist upon any right, but upon meer Grace and Favour. 2. There are Petitions of Right, wherein the Petitioner doth set forth a pretended right, and yet perhaps upon examination it is found that they have no right at all, and commonly they ask more than their right is, *Iniquum petas ut equum feras.* 3. There are Petitions *Armatae*, when a company of Rebels armed against the Crown, do yet preferre their

Petitions  
are of  
divers  
kinds,  
and  
have di-  
vers An-  
swers.

their Petitions, but with an intent to effect their desire, whether it be right or wrong, if their Petitions be not granted; *Et stricto supplicat ense petens*, many of their armed Petitions were exhibited during the Barons Wars, during the Wars of *Lancaster* and *York*, and in sundry popular commotions since the Conquest; but these Petitions which we speak of were made by the Commons, or by some factious Spirits, in the name of the Commons, in sundry Parliaments holden during the Reign of King *Edw. 3.* howbeit, if wee look upon the form of these Petitions, we shall find there is nothing sought but Grace and Favour; and if we consider the Kings answers, though many of them be very gracious, we shall find him therein much reserved, and withall circumspect not to prejudice or conclude his Prerogative in point of right; the form of these Petitions was for most part but thus, The Commons pray, that the Impositions or Maletolt of fourty shillings upon every Sack of Wooll may cease or be taken away, and that the Custome of the demi mark may onely be taken: Or thus, The Commons pray, that the passage of the Sea may be open to all manner of Mer-

Merchants and Merchandizes, as it had been in former times; herein we find no claim or challenge of right, but a modest prayer of Grace and Favour, unlesse the word *Mayletolt* may seem to imply a wrong, because some do conceive that the word doth signifie an evil Toll, where *Mayle* as indeed the word doth signifie Toll-money, for *Mayle* in old *French* is a small peece of money, and therefore the rents taken by force in the Borders of *Scotland*, was called *Blackmayle*, and the word *Mayletolt*, in some of our old Statutes is taken *in bonam partem*, which speaks of *Droitirell Mayletolts*. But in what form doth *Edw. 3.* make his Answers to those Petitions? in divers formes, according to the diversity of the occasions & reasons of State, but alwayes in a gentle and gracious manner, sometime he granteth the Petition in part onely, for a certain time, or after a certain time expired, that his people may know, that as he receiveth part of the Petition, so he might have rejected the whole if he might have been so pleased; sometimes he granted the whole Petition, yet not absolutely but conditionally, that hee may receive a greater recompence; but wheresoever he

Kings  
ap. 12.

he doth franckly yeeld to remit any Imposition, we find in the same Record a Subsidy granted unto him of far greater value and profit than the Imposition by him remitted, wherein we perceive that he followed the wise counsell of *Roabohams* old Counsellors, given in the like case of Impositions, *3 Kings cap. 12. se hodie obedieris populo huic & petitioni eorum cesseris locutusque, diebus, &c.* sometimes he gives a generall or doubtfull answer, and sometimes hee is silent and gives no answer at all; so as he doth never bind nor conclude himself by any of those answers to those Petitions, but with such reservation as he might still make use of his Prerogative in laying Impositions upon Merchandizes; to demonstrate this point more plainly, it were not amiss out of many Records which I have seen, and whereof I have the Copies transcribed out of the Records themselves, with mine own hands, to select and set down some of those Answers in any of the kinds aforesaid. In *14 Edw. 3. cap. 21.* the Comons pray the King that he would grant an Act of Parliament that no more Custome should bee taken for a Sack of Wool but a demi mark, nor for Lead, nor Tin,

4 Ed. 3:  
p. 12.

Tin, nor Leather, nor Wooll-fells, but the old Customes. This Petition is general and extending to all Staple Comodities without exceptions of persons, or limitation of times; but what is the Kings answer? That from the Feast of *Pentecost*, which commeth, unto a year, neither he nor his Heirs shall take of any *Englismen* for a Sack of Wooll, more Custome than the half Mark, upon Wooll-fells, and Leather, no more than the old Custome.

Here this Petition is granted but in part; First, in respect of the persons, for *Englismen* only are favoured, and Strangers are omitted; Secondly, onely in respect of the Commodities, for Wooll-fells and Leather onely are exempted, and Tin and Lead remain to be charged as before; Thirdly, in respect of the time, for the King continueth his Impositions formerly laid for a year and more, notwithstanding that Petition.

But let us see withall what the King did gain in Parliament, upon yeelding to the peoples Petition but in part; in the first Sessions of this Parliament, it was granted that every man who should ship Woolls over the Seas, should find Sureties to bring in upon his first return, for every

every Sack of Wooll, two Marks of Silver, Plate or Bullion, and to deliver it to the Kings Executors; and in the next Sessions there was granted unto him the ninth Fleece, the ninth Lamb, and the ninth Sheaf of Corn throughout the Realm, which the people did often times redeem with a gift of twenty thousand Sacks of Wool.

Here we see the fruit that the King made by following of Rehoboams old Counsellors, & yet out of this grant and remission made by the King, who can draw an Argument against the Kings right in laying Impositions upon Merchandizes?

Anno 29 Ed. 3.

Again, 29 Edw. 3. when there lay an Imposition of fourty shillings upon a Sack of Wooll above the old Customes, A Conference was had between the Lords and Commons in the White-Chamber at Westmin. where after a short Parliament, saith the Record, 29 Edw. 3. Rot. Parliament. numb. 11. in Arch. Turris. It was concluded, that the King should have a greater Subsidie out of Wooll, Wooll-fells, and Leather, for six years; so as during that time, the King did lay no other Impositions or Charge upon the Commons.

Commons. Here is a conditionall agreement between the King and the poople, and here the King doth remit his power of Imposition, for a recompence of greater value.

And this is a strong Argument, That the King had right to impose, otherwise the people would never have bought their freedom from Impositions at so high a rate or price.

The like conditionall agreement between the King and the people, we find in 6 Edw. 3. Rot. Parliament. numb. 4. 13 Ed. 3. Rot. Parliament. numb. 5. 18 Edw. 3. Rot. Parliament. numb. 10. 26 in Arch. Turris.

In 28 Edw. 3. Rot. Parliament. numb. 26. The Commons complain of an excessive Imposition upon Wooll-fells, and desire that the old Custome might he paid. The Kings Answer is, the old Custome ought not to be withdrawn.

In 38 Edw. 3. Rot. Parliament. numb. 26. The Commons desire that an Imposition of three shillings and four pence upon every Sack of Wooll at Callis, and all unreasonable Impositions, bee repealed.

The Kings answer unto this is, It pleaseth the King that all unreasonable Impositions

6 Edw. 3.  
Rot. Parl.  
numb. 4.

positions be repealed; like unto this is that answer which is contained in the Parliament Rolls of 6 Edw. 3. numb. 4. in *Arch. Turris*. When Petition was made for remittall of Impositions, I shall saith the King, asseffe no such Tallages in time to come, but in manner as it hath been in time of mine Ancestors, and ought to be by reason.

Can any wit of man pick any Arguments out of these Answers against the right of the Crown, in setting Impositi- out upon Merchandizes?

Lastly, in 13 Edw. 3. *Rot. Parliament. numb. 13.* the Commons pray, that the Maletolts of Wooll may be taken as it was used in former times, being then enhaunfed without the Assent of the Commons.

To this Petition there is no answer found of Record, the King is silent, and gives no answer at all; which doubtless the King had not refused to do, if the Petition had been exhibited in point of right, and not in point of favour.

Thirdly, touching the punishing of the persons before mentioned, for pro- curing of new Impositions to be set up- on Merchandizes, we are to consider two circum-

circumstances; first, the time when, and next the causes wherefore these persons were called in question.

The time when these persons were called to account, was a Parliament hol- den in 50 Edw. 3. the last year of that Kings Reign, at which time that great and renowned Prince, who had been formerly assisted by a most wise and po- litique Councell, was become weak and stupid, and almost in despair, through sicknesse, age, melancholy, conceipted upon the death of his eldest Son the Black Prince, and suffered himself to be ill-governed by a Woman called *Alice Perrey*, and her Favourite the Lord *Lati- mer*; upon which occasion and advan- tage, the Commons grew more bold than they were wont to be in former Parlia- ments, and therefore if ought had been done in that Parliament, which might prejudice the Kings Prerogative, it is not to be urged as an example or presi- dent in these times; but in truth, the causes for which these persons were cen- sured, do rather approve the right of the Crown in laying Impositions, than any way disaffirm the same. First, *Richard Lions*, a Farmer of the Customes, was ac- cused

*Lionscave*  
50 Ed. 3.  
*Rot. Parl.*  
nu. 17, 18.

cused in this Parliament by the Commons, that he had set and procured to be set upon Wooll, and other Merchandizes, certain new Impositions without assent of Parliament, converting the same to his own use without controule, the High Treasurer not being acquainted therewith, the said Richard assuming to himself in divers things as a King, 50 Edw. 3. Rot. Parliament. numb. 17, 18, 19, 20. This was his Accusation, and though his answer were, that he set those Impositions by the Kings Commandment, yet did he shew no Warrant for it, and therefore was justly punished with fine, ransom, disfranchisement, and imprisonment.

But how may this insolency and misdemeanour of a Subject, be an argument against the right or Prerogative of the King? *Lions* a Merchant of his own head cannot set Impositions upon Merchandizes; Ergo, King *Edm. 3.* a Monarch, of his royall Authority cannot do it; what an absurd argument were this? as if a man should say, it were High Treason in a Subject to Coyn money; Ergo, the King himself cannot do it, or cause it to be done; besides, the accusation it self doth imply,

imply, that the King hath power to impose upon Merchandizes, because *Lions* is charged, being a Subject, to take upon him as a King in divers things, & namely, in setting of Impositions; as if they should have said a King may do it, but not a Subject, according to the rules of the Imperial Law, *Solus princeps instituit vectigalia Regni tantum juris & muneris est indicere vectigalia, imponere vectigalia maximi Imperii est, inferior a Principe non potest imponere,* and the like.

And the Bill exhibited by the Commons in this Parliament, 50 *Edw. 3. Rot. Parliament. 191.* praying that those that should set new Impositions by their own Authority, encroaching unto themselves Royal Power, might have Judgement of life and member, seemeth to be grounded upon good reason, and doth prove it is a Mark of Sovereignty and Royall Power to set Impositions; and therefore if a Subject of his own head, of his own authority wil presume to do it, he is worthy to dye for it; and yet this Bill did receive but a general answer, viz. Let the Common Law run as it hath been used heretofore.

Touching the Lord *Latimers* censure, Lord *Latimers* he case.

he had not only upon his own head and authority set sundry Impositions upon Merchandizes at *Callis*, where the Staple there was much decayed; but he was charged with sundry other misdemeanors mentioned in the said Roll, namely, that he brought in divers Tallies and Tickets, whereby the King was indebted unto his Souldiers and Pensioners, for which he gave little or nothing to the parties, and yet had an entire allowance in the Exchequer, to the great damage of the King, and scandall of the Court; that he had also deceived the King of the pay and wages which he had sent unto his Souldiers in *Britain*; that he had sold a great quantity of the Kings provisions for his Army there, and converted the same to his own use; and that he had delivered up the Town of *Saint Saviours* in *Normandy*, and the Town and Fort of *Betherell* in *Britainy*, not without suspicion of Corruption and Treason.

How can the Lord *Latimers* censure for these deceits and misdemeanors make an argument against the right of the Crown in laying Impositions upon Merchandizes?

And the like may be said of the punishment

ment of *John Peachy*, who having got a Patent that none should sell sweet Wines within the City of *London* but himself, his Deputies, and Assignes, by colour thereof did extort three shillings and four pence, out of every Pipe or Vessel of sweet Wine sold by others within the City. Shall this extortion committed by a Subject, by colour of a Patent, where perhaps the Patent doth not warrant it, be objected as an argument, that the King himself might not lay the like Imposition upon every Pipe or Vessel by virtue of his Prerogative? therefore the punishment of these persons was not the cause, that for an 150. yeares after that, no Impositions were layd upon Merchandizes by Prerogative; but the Princes who succeeded *Edw. 3.* untill Queen *Mary*, did forbear to use their Prerogative in that kind, for those other notable and true causes which are before at large expressed in the seventeenth Chapter.

Lastly, touching the Imposition of six shillings and eight pence upon every Cloth, laid by Queen *Mary*, after the losse of *Callis*; she held the same with a new Imposition upon *French Wines*, without any question during her life; and albeit complaint



1 Eliz.  
Dyer.  
fol. 165.

complaint were made against the Imposition set upon Cloaths unto Queen Elizabeth, upon her first entry (as it is usuall for the people to complain of burthens and charges upon every change of Government.) Yet we find that after the Conference of the Judges spoken of by my Lord Dyer, 1 Eliz. f. 165. Dyer. (though their resolution be not their reported) Queen Elizabeth did continue that Imposition, and also the Impost upon French Wines, as being lawfull set for the space of fourty four years without any further contradiction; besides, Queen Elizabeth did raise divers other new Impositions; as is before declared, whereunto there was never made any opposition during her Reign, and which His Majesty that now is, hath received without any question for the space of fifteen years; and thus much may suffice for answer to the several points in the third Objection.

CHAP.

CHAP. XXVIII.

The fourth Objection, that the Prerogative is bound or taken away by divers Acts of Parliament.

Fourthly, It is objected, That though it were granted and admitted, that the King *de jure communi*, hath a rightful Prerogative to lay Impositions upon Merchandizes, yet that power say they, is restrained and taken away by sundry Acts of Parliament.

First, the Statute of *Magna Charta*, cap. 30. doth give safe conduct and free passage to all Merchants to buy and sell, *absque aliquibus malis tolnetis per antiquas & rectas consuetudines*. Secondly, by the Act or Charrer of confirmation in 25 Edw. 3. The King doth release a Mayltolt of fourty shillings upon a Sack of Wooll, and doth grant for him and His Heirs, unto the Commons, that he shall not take such things without the Commons consent or good will; and in the same Act or Charter reciting, that wheras divers people of the Realm were in fear, that the Aids and Taxes which they had given

*The fourth Objection.*

given to the King before that time, was towards his War, and other busineses of their own grant and good will, might turn to a bondage of them and their heirs, because in time to come they might be found in the Rolls, and were likewise grieved for Prizes taken through the Realm, The King doth grant for him and his Heirs, That he will not draw such Ayds, Taxes, or Prizes, into a Custome, for any thing that had been done before that time, be it by Roll or any other president that may be found. Thirdly, by the Statute 14 *Edw.* 3. *cap.* 12. the King doth grant that all Merchants Denizens, and Aliens, may freely come into the Realm with their goods and Merchandizes, and freely tary there, and safely return, paying their Customes, Subsidies, and profits thereof, reasonably due. Fourthly, by the Statute 11 *Rich.* 2. *cap.* 9. it is enacted, That no Imposition or Charge be put upon Wools, Wooll-fells, or Leather, other than the Custome or Subsidie granted to the King in that Parliament, if any be, the same to be adnulled and repealed, saving to the King his ancient right; there are other Acts of Parliament containing the same sence

*The fourth Objection answered.*

sence and substance, but these principally have been singled out, and cited as specially Statutes restraining and taking away the Kings Prerogative in laying Impositions upon Merchandizes.

CHAP. XXIX.

*The Answer to the fourth Objection.*

**T**O this Objection first I answer, The Answer to the fourth Object. That this being a Prerogative in point of Government, as well as in point of profit, it cannot be restrained or bound by Act of Parliament, it cannot be limited by any certain or fixt Rule of Law, no more than the course of a Pilot upon the Sea, who must turn the Helme, or bear higher or lower sail according to the wind and weather; and therefore it may be properly said, That the Kings Prerogative in this point is as strong as *Samson*, it cannot be bound; for though an Act of Parliament be made to restrain it, and the King doth give his consent unto it, as *Samson* was bound with his own consent, yet if the *Philistins* come, that

that is, if any just or important occasion do arise, it cannot hold or restrain the Prerogative, it will be as thred, and broken as easie as the bonds of *Samson*; and again, *Jus imponendi vectigalia inheret scepro*, saith the Law Imperiall, & *quod scepro inheret non potest tolli nisi sublato scepro*. The Kings Prerogatives are the Sun-beams of his Crown, and as inseparable from it as the Sun-beams from the Sun; The Kings Crown must be taken from his head, before his Prerogative can be taken away from him; *Samsons* hair must be cut off, before his courage can be any jot abated. Hence it is, that the Kings Act, nor any Act of Parliament can give away his Prerogative; for in his own Act the King cannot release a *tenure in Capite*, nor grant it to any Subject, *Dyer 44.* If the King grant Land to *J. S.* to hold as freely as the King himselfe holds his Crown, he shall hold his Land still of the King in *Capite*, and if he Alien it hee shall pay a Fine, for the tenure is vested in the King by his Prerogative, saith the Book, *14 Hen. 6. 12.* and therefore when King *Edw. 3.* did grant unto the Black Prince his eldest Son, the Dutchy of *Cornwall, una cum omnibus wardis maritagiis*

*Dyer 44.*

& *releviis, &c. non obstante Prerogativa Regis*, the Prince could not seize a Ward that held of the Kings Ward, who held in *Capite* of the King, because it belonged to the King by his Prerogative. *34 Ass. pl. 25.* whereby it is manifest, that the King by his own Grant cannot sever his Prerogative from the Crown, nor communicate any part thereof to any one, not to the Prince his eldest Son; and in this case of Tenure it was resolved in the last Assembly of Parliament in *England*, That no Act of Parliament could be framed by the wit of man, whereby all Tenures of the Crown might be extinguished; neither can any Act of Parliament in the flat Negative, take away the Kings Prerogative in the affirmative.

The King hath a Prerogative in the affirmation, that he may pardon all Malefactors; There is a Statute made at *Northampton, 2 Edw. 3.* That no Charter of pardon for killing a man should thenceforth be granted, but in one case, where one man killeth another in his own defence by misfortune: Hath this Statute so bound the Prerogative, as no man ever since hath been pardoned for killing a

Statute of Northampton. 2 Edw. 3.

man, but in the cases before mentioned? The King hath a Prerogative in point of Government, to make choice of the Sheriff in every County; there is a Statute made, 28 Edw. 3. cap. 7. That no man shall be Sheriff two years together, and that no Commission shall be granted or renew'd for the year following, to him that hath been Sheriff the year before; Was the Kings Prerogative bound by this Statute when hee granted the Sheriffwick of Northumberland, to the Earle of Northumberland during his life, with *non obstante* of that Statute 2 Hen. 7. fol. 6. Again, the King hath no ancient and absolute power to grant dispensation for holding Ecclesiastical Benefices *in Cōmendum*. There is a Statute made 7 Edw. 3. in Ireland, whereby it is enacted and declared, that the Kings dispensation in this case shall be utterly void, if it be not by Act of Parliament; did this Statute so derogate from the Kings Prerogative, and so restrain it, that he might not only by his Letters Patents, Grant *Cōmendamus*, before the Statute of 28 Hen. 8. in this Realm? assuredly the Kings dispensation *non obstante* the Statute would have taken away the force thereof, as if  
no

no such Law had ever been made: There are many other cases of like nature which I omit; as for the particular Statutes before recited, the words thereof are too generall to bind or restrain this Prerogative in laying Impositions upon Merchandizes. First, that Statute of *Magna Charta* doth give safe conduct to all Merchants to come and go, and to tarry within the Realm, and to buy and sell their Merchandizes, *sine malis tolnetis per antiquas & rectas consuetudines*. How do these generall words restrain the Kings Prerogative in this Case? for the ancient Common Law of the Land, which is the Common Custome of the Realm, doth warrant and approve the Kings Prerogative in laying Impositions upon Merchandizes, as before I have fully and clearly proved, then a reasonable Impo- sition laid by the King is *Antiqua & recta consuetudo* warranted and approved by the Great Charter.

Secondly, albeit King Edw. 1. by Act or Charter of confirmation of *Charta Mercatoria*, made in Anno 25. of his Reign, doth release the Maletolt of fourty shillings upon a Sack of Wooll; and doth grant for him and his heirs, that he will

K 4 take

take no such thing without the assent and good will of the Commons. That word (*such*) doth not absolutely bind the Kings Prerog. that he shall lay no Imposition at all, for it is to be intended such in quantity, such in excess, for fourty shillings at that time was as much as six pound at this day, which the scarcity of money in those dayes being considered, and compared with the plenty of money at this day, might then be said to be a great burthen, and yet this strong band doth not bind *K. Ed. 3.* his Grand-child but that, notwithstanding this Charter or Act of Parliament, he took these things in greater quantities, sometimes fourty shillings, sometimes fifty shillings, upon a Sack of Wooll, when the *Philistins* came upon him, that is, when the Wars of *France*, and other urgent occasions did presse him to it; as to the other Article contained in the Act or Charter of *25 Edw. 3.* where it is said the people did fear, lest the Aids and Taxes granted of their good will to the King might turn to a bondage to them and their heires, when the same in time to come should be found in the Rolls; and the King did grant for him and his heires,  
That

That he would not draw such Ayds and Taxes into a Custome; that Act, in this point restraineth not the Kings Prerogative in setting Impositions upon Merchandizes, for it speaketh only of Ayds and Taxes willingly granted by the people in Parliament, & therefore I marvel that this Article was ever objected or used as an argument against Impositions; and whereas the King doth grant that such Ayds shall not be drawn into a Custome, such words are usuall in the preambles of Acts of Subsidies where the grant is large and extraordinary, *viz.* That it may not be drawn into an example; that it may not be a president in future times; and yet succeeding Parliaments have not forborn to grant as large Subsidies as formerly were granted.  
Thirdly, the Statute of *14 Edw. 3. cap. 12.* doth rather maintain the Kings Prerogative in this case, than any way impugne or impeach it, for by that Law free passage is granted to all Merchants, paying the Customs, Subsidies, and profits thereof reasonably due. Now certain it is, that all duties payable to the King for Merchandizes, are of three kinds only, Customs, which are these ancient and certain

certain duties, wherein the Crown hath no Inheritance, as is before expressed; Subsidies which are granted by Act of Parliament, and Impositions which are raised from time to time by the Kings Prerogative onely, we find not a fourth kind, and therefore the word *Profits* must needs be taken for Impositions.

Fourthly, the Statue of 11 *Rich. 2. cap. 9.* though it provide in expresse terms, that no Imposition or Charge be layd upon Wooll, Wooll-fells, or Leather, other than the Custome or Subsidy granted in that Parliament, yet it saveth alwayes to the King his ancient rights; this was as turbulent a Parliament as ever was holden in *England*, and yet was the Kings Right acknowledged, though the unruly Lords and Commons did in a manner force his Assent to limit his Prerogative at that time.

Lastly, if these Acts had absolutely bound the Kings Prerogative, and had been observed literally and punctually untill this time, the King should onely have had at this day the Demi mark for our own Staple Wares, and perhaps the three pence Custome for Forein Commodities, and no more. What an inconvenience,

venience, what an absurdity had this been at this day, when all Forein Princes have raised their Customes to an exceeding height? when as I have noted before the necessary expences of the Crown are so much encreased, when the prizes of all Commodities are so much enhanced, when there is so great a plenty of money in this part of the World, when the Kings Revenue within the Land is so much improved; Is it fit that Duties payable for Merchandizes should stand at a stay and keep the old rates without augmentation?

CH AP.

CHAP. XXX.

*The fifth Objection, that Tonnage and Poundage were never taken, but when the same was granted by Parliament.*

Object. 5. **F**ifthly, it is objected, That the Subsidies of Tonnage and Poundage, were never taken by any King of *England*, but when the same were granted by Act of Parliament, which is an Argument, say they, that the King could never take those duties but by his absolute power, for if his Prerogative could have imposed those rates of it self, what need was there of an Act of Parliament? why should the King have expected the consent of the Commons? *cum Dominus eis opus habet*, and when the Exchequer were so empty, as the Jewells of the Crown were layd to pawn by some of those Kings who were glad to take these Subsidies by Acts of Parliament.

CHAP.

CHAP. XXXI.

*The Answer to the fifth Objection.*

**T**HE Answer to this Objection is twofold; First, That which is objected is not true, for Tonnage and Poundage have been taken by the Kings Prerogative without Act of Parliament; Secondly, If it had been true, it is no Argument against the Kings Prerogative in this point, for what is Tonnage but a certain sum of money payable for every Tun of *VVine* imported? did not King *Edw. 3.* by force of his *Charter Mercatoria*, without Act of Parliament, take two shillings for every Tun of *VVine* imported by Strangers? did not the same King set a new Imposition of *Gauge*, viz. upon every Tun of *VVine* brought into *London*, as is before expressed? and are not the severall Impositions of *VVines* taken by His Majesty in *England* and *Ireland*, a kind of Tonnage? being nothing else but extraordinary rates imposed upon ever Tun of *VVine*, and levied  
and

The Answer to the 5. Object.

and taken by the Kings Prerogative.

Again, was not the three p<sup>ce</sup> upon the pound imposed by King *Edw. 1.* by his *Charta Mercatoria*, a kind of Poundage, and well nigh as great an Imposition as twelve of the pound granted at this day by Act of Parliament? if we consider the Standard of Monies in the time of King *Edw. 1.* when a peny sterling did contain as much or more pure Silver, as the three pence sterling doth contain at this day; but admit that no Tonnage or Poundage had ever been taken, but by grant in Parliament; yet it is no Argument, but that the King might impose the like or the same by his Prerogative, for three particular reasons: The first, because these Subsidies were granted for maintainance of the Navy Royall, the charges whereof were grown so great in the time of King *Edw. 4.* as appeareth by the Act of Tonnage and Poundage granted in the 12 year of that Kings Reign, that it sufficed not, nor in time to come was like to suffice or defray the charge of the Crown in keeping the Sea: these are the words of that Act, if then in the time of King *Edw. 4.* the Subsidy of Tonnage being three shillings upon a Tun of  
VVine

R. Ed. 4.

VVine brought in by Denizens, and six shillings upon a tun brought in by Strangers; and the Subsidy of Poundage or of twelve pence of the pound upon other Commodities was not then sufficient to bear the charge of the Royall Navy, which was not comparable by many degrees in strength, and beauty, and multitude of Ships to the Kings Navie at this day; Doth it stand with reason, that the Crown should be stinted or limited ever after to take no more than those poor Subsidies granted at that time? that the King should wait for a Parliament, and pray an ayde of the Commons for a competent means to maintain the Walls of the Kingdom, when by the Common Law of the Realm he may grant Letters Patents for Murage, to maintain the Walls of a Corporate Town. If any unexpected necessity should arise for repairing of the Navy Royall, and making a Navall War, should the King expect a Parliament for a greater Subsidy to be granted by the Commons before he should rigge and make ready his Ships, perhaps a Kingdom might be lost in the mean time; as if a Pilot sitting at the Helm, and seeing a sudden gust of wind, would



*The fifth Objection answered.*

would over-set the Ship, or perceiving her to be running on a Rock, should forbear to turn the Helm, or cause the Sail to be stricken, untill he had consulted with the Mariners or Passengers, and demanded their consent or counsell in the business; the Pilot himself with his Mariners and Passengers might be cast away, before they were agreed what course to take.

Secondly, these Subsidies of Tonnage and Poundage were first granted by Act of Parliament, in the time of the Civill Wars between the two great Houses of Lancaster and York, when the severall Kings were loath to make use of their Prerogatives, but were glad to please their people, and loath to impose any charge upon them, but by common consent in those troublesome times.

Thirdly, Kings and Princes oftentimes of their own noble nature, and sometimes in policy, do accept that of their Subjects as a gift, which they might exact & take as a duty, and therefore our most potent and politique Kings have ordained and accepted many things in Parliament, which they might have done in their private Chambers by their own preroga-

*The fifth Objection answered.*

prerogative, without any other Ceremony; who ever made doubt of the Kings Prerogative in establishing the Standard of monies, and yet how many Acts of Parliament do we find touching Monies; in the times of King E. 1. and King Edw. 2? the Kings Prerogative in making & establishing Marshall Law, was never yet in question, yet are there Acts of Parliament touching Musters, departures of Souldiers without their Captains Licences, or the like.

The King only doth give Honours, and places of precedency, yet King Hen. 8. made an Act of Parliament, whereby he ranked the great Offices of the Crown in their severall places, as well in Council as in Parliament.

No man ever doubted but the King being the Fountain of Justice, may erect Courts of Justice by his Prerogative, yet we find the Court of Augmentations, and the Court of VVards, erected by Act of Parliament.

Lastly, in the time of Edw. 2. we find an Act of Declaration of the principall Prerogatives of the Crown of  
L England,

England, were most undoubted and clear, yet His Majesty was pleased in his first Parliament to accept of an Act of Recognition.

CHAP. XXXII.

The Conclusion.

BY these reasons and demonstrations which are before expressed, it is evident, that the King of England by vertue of an ancient Prerogative inherent to the Crown and Scepter, may justly and lawfully set Impositions upon Merchandizes, and may limit and rate the quantity and proportion thereof by his own wisdom and discretion, without Act of Parliament; and this Prerogative is warranted and approved by the generall Law of Nations, and the Law Merchant, which is a principall branch of the Law of Nations; by the Imperial Law, the Ecclesiasticall Law, and by the rule of the Common Law of England, and by the practice

practice of the most prudent Kings and Queens of England since the Conquest; and that this Prerogative is grounded upon many excellent reasons, and that the severall Objections made against this Prerogative, are but shadows and colours of reason, and clearly removed and washed away by the severall Answers thereunto.

CHAP. XXXIII.

*A Comparison of the Impositions set and taken in England, by the Kings Prerogative, with the Exceptions and Gabells in Forein States and Kingdoms, whereby it will appear, that the Subjects of the Crown of England, do not bear so heavy a burthen by many degrees, as the Subjects of other Nations do bear in this kind.*

Albeit, indeed the King of England being no Emperor, and having all Imperiall Rights within his  
L 2 OWN

own Kingdoms, hath and ever had as absolute a Prerogative *Imponere vectigalia*, or to lay Impositions, as the Emperor of *Rome* or *Germany*, or any other King, Prince, or State in the world, now have, or ever had; yet let it be truly said for the honor of the Crown of *England*, That His Majesty that now is, and all his Noble Progenitors, have used and put in practice this Prerogative with more moderation and favor toward the people, than any Foreign State or Prince in the world have besides, and that in three respects.

First, the King of *England* doth make use of this Prerogative only, in laying Impositions upon Merchandizes crossing the Seas, upon such onely, and not upon any other goods which are bought and sold within the Land; neither doth he by his absolute power alone, impose any Tax upon Lands or *Capita hominum*, or *Capita animalium*, or upon other things innumerable, whereof there are strange presidents and examples, both Ancient and Modern, in other Countries.

Secondly, the King doth not charge all

all Merchandizes crossing the Seas with this Imposition now in question; for in the Letters Patent whereby the Imposition of twelve pence in the pound over and above the Subsidie of Poundage, is laid and limited, divers kinds of Commodities are excepted, especially such as serve for food and subsistence of the Kings people, for setting the poor on work, for maintenance of Navigation, and other things of like nature, as before is declared.

Thirdly, the Impositions which are laid by the Kings of *England* upon Merchandizes, are not so high as the Impositions and Exactions set and taken by other Princes and States; for the highest Imposition in *Ireland* is but twelve pence upon the pound, or but a single Poundage, which is but five in the hundred, and is the lowest rate in *Christendome* at this day, and in *England* there is added but twelve pence in the pound more, which is but ten pound upon the hundred pound, and yet divers sorts of Merchandizes, as I said before, are except-

150 *A comparison between the Impositions*  
ed and discharged of that Imposition  
of the second Imposition of twelve  
pence.

But on the other side let us see the  
practice of other Princes and States in  
laying Impositions, and how far they  
have extended and strained their  
Prerogative in that point, beyond and  
above the Impositions in *England*; I  
will begin with the *Romans*, when  
they had gained the Monarchy of the  
World, so as all Kingly power did rest  
in their Emperor.

Julius  
Caesars  
Impositi-  
ons.

First, *Julius Caesar* laid the first Im-  
position upon Foreign Merchandizes,  
saith *Suetonius*, *peregrinarum mercium*  
*portaria primus instituit*, and that Im-  
position was *Octava rerum pars*, which  
was more by a fifth part than our  
highest Imposition in *England*, for it  
is two shillings and six pence upon the  
pound. Next, *Augustus Caesar* about  
the time of our Saviours Birth, sent  
out an Edict, whereby he did tax all  
the world, and this Tax was *Capitatio*,  
or an Imposition, *super capita hominum*,  
though the quantity thereof doth not  
appear; but the poll-money which  
our

*in England, and other Countreies.* 151

our Saviour did pay, and wrought a  
miracle, it seemeth to be an high Im-  
position, for the peeces of money taken  
out of the Fishes mouth, which is cal-  
led *didrachma*, or *stater*, is said to bee  
worth two shillings and six pence ster-  
ling, which being given for himself  
and *Peter*, *da illis pro me et te*, shews that  
fifteen pence sterling was given for a  
Poll, which must needs amount to an  
infinite thing, if it were collected over  
all the World, then subject to the *Ro-  
man Emperor*.

*Tiberius* the *Roman Emperor*, who  
succeeded *Augustus*, took the hundred  
part of all things bought and sold  
within the Empire, which perhaps  
was an Imposition of greater value  
and profit than the other. *Caligula* the  
Emperor, layd an Imposition upon all  
Sutes in Law, and took the fourth  
part of the value of the value of the  
thing sued for, and set a pain upon the  
Plaintiff if he compounded, or were  
Non-suted without his Licence. He  
likewise imposed a number of *sesterii*  
upon every Marriage contracted or  
made within the whole Empire.

L 4 *Vespasian*

*Vespasian* *Vespasian* in meaner and more homelier matters, took by way of Imposition, a part of every poor Labourers wages, and part of every Beggars alms; he set likewise an Imposition upon Urine, and pleased himself with this *Apothegm, Dulcis odor lucri ex re qualibet.* *Severus* the Emperor did impose upon the dishonest gains of the Stews, and took part of the Prostitutes there, as the Bishop of *Rome* doth at this day; all the Emperors before *Trajan*, took the twentieth part of all Legacies and Lands descended, as things which came unlooked for, and as a cleer gain, and therefore the Heirs and Legatories might easily spare a part to the Emperor; and *Nicephorus*, one of the Emperors of the East, did not onely take *sumaria tributa* Smoke-money out of every Chimney, but he layd an Imposition upon every mans Estate that grew suddenly rich, upon a presumption that hee had found a Treasury which did belong to the Emperor by Prerogative. With a little more search might find out other Impositions of severall kinds, set by the ancient Emperors

perors upon the heads of Beasts, upon the tiles of Houses, and the like; I might adde hereunto the Impositions set by *Lorrain*, upon every pane of Glasse in Windows; but these may suffice how high they strained, and how far they extended their Prerogatives in this point of Impositions.

Secondly, the *Roman* Empire being over-come by the *Gothes* and *Vandalls*, and other barbarous Nations, and thereby broken into Kingdomes and Free States, their passed divers ages before these Monarchies could be well settled, and before peace bred plenty, any plenty bred civility, and before Trade, Traffique, Commerce, and Intercourse could be established between these States, and Kingdoms, and therefore while these States and Kingdoms were yet but poor, and while there was a generall scarcity of Gold and Silver in these parts of the World, and so for want of money there was but little Trade and Traffique among the people, either at home or broad, Kings and Princes did

did not, neither could they make that use of their Prerogative in laying Impositions, as they had done in those latter times; since all Arts and Sciences have been encreased, all Commodities improved, and the Riches of the East and West *Indies* have been transported into this Hemisphere. But now let us see whether the Kings and Princes of other Countries round about us at this day, make not a far more profitable use of their Prerogatives in laying Impositions upon their people; than the King of *England* doth, albeit his Kingly power be full as large as any of theirs.

The Imposition of *France*.

In *France*, the most richest and ancientest of the Neighbour Kingdoms, the Impositions not onely upon Merchandizes crossing the Seas, but also upon Lands, Goods, persons of men, within the Realm are so many in number, and in name so divers, as it is a pain to name and collect them all, and therefore it must needs be a more painfull thing for the people of that Kingdom to bear them all, *La tallie, le tallon,*

*tallon, les aids, les aquavalentes, les equi pollentes, les cruces,* or augmentations of divers kinds, *le hop benevolence la Gabelle,* upon Salt, amounting to an exceeding great Revenue; the Impost of Wines upon every Vessel carried into any walled Towns or Suburbs thereof, and payable, although it be transported thence again, before it be sold, *la hault passage or de maine forrein,* for Merchandizes exported, *le trajet forrene,* for Merchandizes imported, *la solid de Cinquants mil holmes,* imposed upon Cities, & walled Towns, and the Suburbs onely, and after layd upon Town and Country, without distinction, the common positions for provisions; the tenthes paid by all Ecclesiasticall persons: These and other Impositions of the like nature, are layd and levied upon the Subjects of *France*, by the absolute power and Prerogative of the King, and though many of these were imposed at first upon extraordinary occasions, and set but for a time, yet the succeeding Princes have continued them from time to time, and the most part of them made ordinary and

and perpetuall by King Lewis the 11. who was wont to say, France was a Meadow, which he could have mowed as often as he pleased.

The Spanish Impositions.

In Spain there is an Imposition named *Alcavala*, imposed as well upon the Nobility, as the Commons, which was first raised by *Alphonfus* the 12. to expell the *Mores*, and for the expurgation of *Algiers*, but afterwards it wss made perpetuall, and is now a principall part of the Royall Patri-

*Gutturis de gabellis Quest. 174.*

mony, *Gutturis de Gabellis, Quest. 174.* this Imposition was at first but the twentieth part, but afterwards it was raised to the tenth of every mans Estate, which doth far surmount the highest Impositions that ever were layd in *England*, by the Kings Prerogative, without Act of Parliament.

This *Alcavala* is an Imposition within the Land, but the Impositions upon Merchandizes exported and imported, are far higher, especially upon Merchants Strangers, for their common Impositions upon Strangers is five parts upon the hundred, and in the year 1604. they imposed thirty of

of the hundred, as is before declared; and upon the Ingate of *Indian Spices* into *Portugall*, the King of *Spain* doth lay the greatest rates that ever were set in *Christendome*, although upon the outgate the rates are more moderate.

In *Italy* the Impositions and Gabells set upon every kind of thing by the States and Princes there, are intolerable and innumerable.

*Non mihi si Centum Lingue sunt  
oraque Centum,  
Ferrea vox Italarum omnes nume-  
rare gabellas,  
Cuncta gabellarum percurrere nomi-  
na possem.*

Especially upon the great Towns and Territories that are subject to the Great Duke of *Tusknie*, where there is not any roots, nor any herb, nor the least thing that is necessary for the life of man, that is bought and sold, or brought into any Town, but there is a Gabell or Imposition set upon it; where no Inholder, Baker, Brewer, or Artificer,

The D. of Tusknie's Impositions.

Artificer, can exercise his Trade, but the Great Duke will share with him in his gain, by laying some Imposition upon him; where no man can travel by Land, or by Water, but at every Bridge, at every Ferry, at every Wharf or Key, at every Gate of a Town, the Garbellor arrests him, and is ready to strip him naked, to search what goods he hath about him, for which he ought to pay the Garbell.

The Impositions by the Pope.

Sixtus Quintus.

In the Popes Territories the Impositions which His Holinesse doth lay upon his Subjects as a Temporall Prince, are as many, and as heavy, as those that are levied by the Duke of Tuskanie, in so much as when Sixtus Quintus had set an Imposition upon every thing that served for the use of mans life, Pasquill made hast to dry his Shirt in the Sun, fearing the Pope would set some Imposition upon the heat of the Sun, *mi astingo* (saith he) in the 16. *sole se venda*; I omit to speak of the Exactions of the Court of Rome, in another kind, which are infinite, and which long lay hevie upon the Western Countries of *Christendome*, untill

till of late years some Nations did free themselves thereof, by rejecting the Yoke of the Bishop of Rome.

In the Seigniory of Venice, the Gallies upon the Land were more moderate than in the other parts of Italy; But that City being the Lady of the Adriatique Sea, doth use by prescription a high Prerogative, in laying Impositions upon all Merchandizes arriving within the Gulf, *Civitas Venetiorum* (saith Baltholus) *potest pro maritimis mercibus Gabellas imponere, quia est Civitas in Mari situata, & Veneti* (saith Baldus) *ex consuetudine sunt domini maris Adriatici & possunt statuere super Gabellis maris*, wherein they observe a profitable and politique course, for upon the Commodities of other Nations which are of goods in their Commonwealth, they lay the easier Impositions, sometimes five, sometimes seven, sometimes ten, upon the hundred, which doth exceed the highest Imposition in England, five in the hundred at the least.

The Impositions of the Seigniory of Venice.

Baltholus

Baldus

In the Low Countries the Impositions which they call Excises, paid by the

The Impositions of the Low countries



*A comparison between the Impositions the Retaylors of Wines and other Commodities, and not by the Merchant; are the highest in Christendome; and yet we perceive that people to thrive and grow rich withall, for an improved high rent doth so quicken the industrie of the Farmer, as he thriveth oftentimes better than his Neighbour who is a Free-holder and payeth no rent at all; howbeit, to draw Trade, and to invite all Nations to Commerce with them, & so to make their Country a Staple, Store-house, or Magizen of all Europe, they do set but easie rates upon Merchandizes imported, but when they once have gotten their commodities into their hands, if any Merchant will export the same again, hee shall pay a greater Custome.*

The Impositions of the Grand Seignior of Turkie

The Grand Seignior of *Turkie* doth impose sometimes ten in the hundred, sometimes twenty in the hundred upon Merchant Strangers, who Trade into the *Levant*; and I could speak of his other Exactions and Impositions upon his Vassalls, but that I think it not meet to compare that Regions Tyrant, to the Princes and States of *Christendome*.

I may remember at last, the Great Toll which the King of *Denmark* taketh of every Ship that passeth into the *Sound*, taking advantage of a narrow Straight between *Elsmore* and *Copman Haven*; whereas the King of *England* being the undoubted Lord of the Narrow Seas, between *Dover* and *Gallis*, might take the like Toll if it pleased him, and by the same right might participate of the great gain of Fishing which the Busses of *Holland* and *Zeland* do make yearly upon the Coasts of *Great Britain*.

The Impositions of Denmark

Thus we see by this comparison, that the King of *England* doth lay but his little Finger upon his Subjects, when other Princes and States do lay their heavy loins upon their people; what is the reason of this difference? from whence cometh it? assuredly not from a different Power or Prerogative, for the King of *England* is as absolute a Monarch, as any Emperor or King in the world, and hath as many Prerogatives incident to his Crown; whence then proceedeth it? to what profitable cause may we ascribe it?

M certainly

certainly to divers causes profitable, and principally to these causes following. First, our King of *England* hath alwayes gone before, and beyond all other Kings in *Christendome* in many points of Magnificency; and especially in this, That they have alwayes had a more Rich and Royall Demean belonging to the Crown, I mean more large and Royall Patrimony in Lands and Rents, than ever any Christian King had before, or now hath at this day; for it is certain, that the Revenues of other Princes and States do principally consist in such Gabells, Impositions, and Exactions, as are before remembred, and not in *terra firma*, not in such a Reall and Royall Patrimony as hath ever belonged to the Crown of *England*, and therefore other Kings being lesse able to maintain their Estates, or more covetous in their own Nature, have laid heavier Burthens upon their Subjects, than ever the King of *England* hath layd, or will do, or hereafter hath need to do, God be blessed for it; the Kings of *England* have had the Princes Portion

spoken

spoken of before in 45 of *Ezekiel*, and therefore they had no need so to oppresse the people. Ezek. 45.

Again, we may ascribe this difference to the bounty and noble nature of our Kings, that they would never descend to those poor and sordid Exactions which other Princes & States do take of their Subjects, *Sordidum putandum est aurum quod ex lacrimis oritur*, as a good Counfeller told *Vespasian*.

Again, we may ascribe it to the wisdom and policy of our Kings, who would never follow the Counsell of *Rehoboams* younger Counfellers, *boni pastoris est oves tondere non diglubere*, as *Tiberius* the Emperor was wont to say, *Odi hortulanum* (saith Alexander) *qui ab radice olera excindit; qui nimis emergit elicit sanguinem*, saith *Solomon*, they well considered that the money levied by Taxes and Impositions, is the blood of the people, which is not to bee let out in any great quantity, but to save the life, as it were, of the Common-wealth, when she is sick, indebted, and in great danger.

M 2      Again,

Again, it may be ascribed to their Piety and Religion which moved them to follow the counsell of the Divine Rule, *Deut. 17.* where the King is warned not to multiply upon him much Gold and Silver, for that indeed there doth seldome come good by great Treasure heapt up by a great Prince, for it doth but nourish Pride and Ambition in him, and stir him up many times to make an unjust Warre upon his Neighbours; or if he leave it unto his Successors, it makes them luxurious and vitious, which draweth with it sometimes the ruin of the kingdome, *sed optimus & certissimus thesaurus Principis est in oculis subditorum*, saith the learned *Buterus*, in his Book against *Machiavill*, let the King, saith he, have a care to maintain Religion, and Justice, and Peace, in his Kingdom, this will soon bring plenty, with a continuall increase, and make a rich and wealthy people; then shall the King never want money to serve his just, and necessary, and honourable occasions; for it is impossible the Sovereign should be poor when the Subjects

*Deut. 17.*

*Buterus contra Machiavill.*

Subjects are rich, and untill occasions do arise, the Coffers of his Subjects will be his best Exchequer; they will be his Treasurers, they will be his Receivers, his Tellers without fees or wages, no bad Accomptant shall deceive him, nor no Bankrupt Officer shall deceive him, they will keep the Treasure of the Kingdom so frugally, as no Imporunate Courtier shall be able to withdraw the same from a Prince, but that it shall still remain in store to supply the necessities of the Common wealth.

Lastly, our Kings of *England* in their wisdoms, well understood the natures and dispositions of their people, and knowing them to be a free, generous, and noble Nation, held them not fit to be beaten with *Rehoboams* Rod, esteemed them too good to be whipt with Scorpions, and therefore God be blessed, we have not in *England*, the Gabelle standing at every Towns end; we have not a Publican in every Market, we pay not a Gabell for every Bunch of Reddish, or Branch of Rosemary sold in *Cheap-side*, we have none of

166 *A comparison between the Impositions &c.*  
 of those Harpies which do swarm in  
 other Countries, we have no com-  
 plaining in the streets, as is said in the  
 144. Psalm; and therefore I may well  
 conclude with the conclusion of that  
 Psalm, Happy are the people that are  
 in such a case, blessed is the people  
 that have the Lord for their God a-  
 bove in Heaven, and King James for  
 their King here upon Earth.

Psa. 144.

**FINIS.**



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