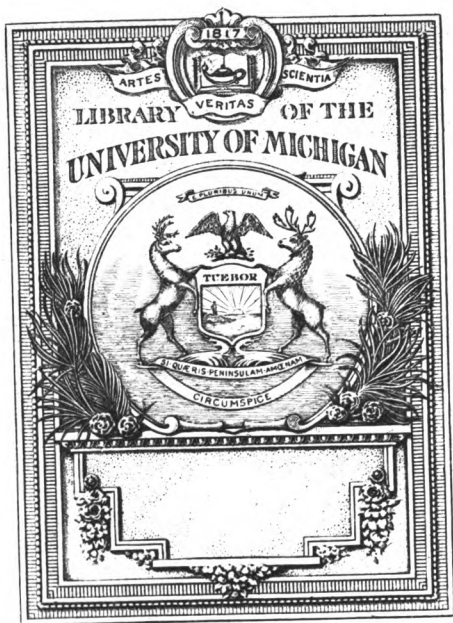


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THE  
PRIVILEGES  
OF THE  
*House of Lords and Commons*  
Argued and Stated,  
IN TWO  
CONFERENCES  
Between Both Houses.

*April 19, and 22, 1671.*

To which is added a Discourse,  
wherein the Rights of the House of  
Lords are truly Asserted.

WITH

Learned Remarks on the seeming Argu-  
ments, and pretended Precedents, offered at  
that time against their Lordships.

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Written by the Right Honourable ARTHUR *Annals*  
Earl of ANGLESEY, late Lord Privy-Seal.

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L O N D O N,

Printed and Sold by J. Nutt, near Stationers-  
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THE  
P R E F A C E

**T**Here needs no more to be said in Recommendation of the following Sheets, but that they contain a full and exact Account of an Important Debate between the *Peers* and *Commons*, as 'twas Manag'd in the year, 1671. And that the Vindication of the Lords Privileges, was written by that Learned and Profound Statesman, the  
A 2 late

## The Preface.

late Lord *Anglesey*, Lord Privy  
Seal to King Charles the Se-  
cond.

I am confident that all who  
have heard the least mention  
made of my Lord *Anglesey*,  
can be no strangers to his  
Lordship's incomparable Me-  
rits; and as for his Friends,  
who had the Honour to enjoy  
his Conversation, and be Per-  
sonally known to him, there  
wants no Justification to be  
made to them in behalf of  
anything which comes from  
his Pen. Indeed his Lordship's  
Knowledge was Universal; it  
was not Circumscribed with

## The Preface.

in such narrow Bounds, as that of some of our Modern Statesmen, who understand nothing above the *Fisponnerie* of Courts, and building a Fortune by publick Rapine and Oppression. My Lord was perfectly well conversant in all the most difficult parts of Learning; he had thoroughly acquainted himself with the *Grecian* and *Roman* Antiquities; and as he had made it the chief end of all his Application and Study to serve his Prince and Country, he had with indefatigable industry, rendered himself an absolute Master of our *English* History,

## *The Preface.*

both Ancient and Modern; and I may add without vanity, that perhaps few Lawyers in the Kingdom were better acquainted with our Old Records and Monuments, than himself.

With these extraordinary Qualifications and Parts, and after so many eminent Services done both to his King and Country, 'tis no wonder if at the happy Restauration of our late Sovereign King *Charles* the Second, he was advanced to the Dignity of a *Peer* of this Kingdom, and had the Honour to be placed near his

## *The Preface.*

his Majesty's Person: In which high Post he behav'd himself with the utmost Fidelity to his Master, yet could never be prevail'd upon to fall into those wicked Measures which some of our Chief Ministers at that time were pleased to take, who under pretence of advancing the Prerogative, and securing the Monarchy, made no Conscience to overthrow the Liberties of the People, and Sacrifice the visible and real Interest of their Native Country.

As I observed before, his Lordship's Knowledge was Universal. He was an incom-

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parable

## The Preface.

parable *Philosopher*, a judicious *Antiquary*, an exact *Historian*, and a profound *Statesman*. And to lay up a noble Magazine of Learning for himself and his Posterity, his Lordship with incredible Expence and Pains, had got together one of the most Valuable Collections of Books that perhaps was ever seen in *Europe*, consisting of the choicest Volumes written in all Faculties, Arts and Languages; and tho it had the ill Fate to be dissipated after his Death in a publick Auction, which was none of his Lordships fault, yet it ought to be mentioned

to

## The Preface.

to his everlasting Honour, that he was one of the first Peers of England, that took care to furnish himself with a Judicious and well-chosen Library, in which he has happily been followed since by several Persons of the Highest Rank and Quality.

This Admirable Collection my Lord Anglesey kept at his Country Seat at Blechington, near Oxford, and after the Example of the Borromeo's, the de Puy's, the Telliers and Colberts, of other Countries, design'd that it should never go out of his Family, but be inviolably preserved in the same: And as  
01 things



## The Preface.

things of this nature are the more Useful, as they are the more communicated, that the Gentlemen of the neighbouring University should have free recourse to it whenever they had occasion. But this Generous design as I hinted above, unhappily fell with his Lordship.

Having made mention of his Lordships Excellent Library, I may venture to affirm, that tho it comprehended the most valuable Remainers of *Greece* and *Italy*, and the best Compositions of our Modern times, it received no inconsiderable Addition from a curious

## ~~The~~ Preface.

ous Manuscript of his Lordship's Writing, I mean his *History of the late Commotions and Troubles of Ireland*; beginning with the Rebellion in the year 1641, and containing all the Treaties, Negotiations, Sieges and Battles; in short, all the memorable Transactions and Revolutions, till His Majesty's most happy Re-establishment in 1660. But this History by what Mischance it has hapned so, I have not been able as yet to inform my self, is now Missing, and the loss of it can never be sufficiently regretted by any one that considers the great Abilities

200

## The Preface.

Abilities of the Noble Author. I will not say, it had the ill fortune to fall into some hands who stifled it purposely for their own sakes, lest if Published, it should have Exposed their Mis-management and Treachery: But certain it is, that none of his Lordship's Friends can tell what is become of it; so that whether it is actually destroyed, for fear of telling some unlucky Truths, or whether it is still in being, but unworthily confined to some obscure Corner, I dare not pretend to determine.

But

## *The Preface:*

But if his Lordship, together with the Publick, has been a sufferer, by having the above-mentioned History, which he had compiled with so much Exactness, and Impartiality, suppress'd or stifled by some of his Enemies, he has been no less injur'd by one that stiles himself his good Friend; I mean by Sir *Peter P*— who a few Years ago printed some of his Lordships scatter'd and unfinish'd Papers, which 'tis plain, he never intended for the publick View, and gave them the specious Title of my *Lord Anglesey's Memoirs*; far from deserving any such name, they

## *The Preface.*

they were only the effect of a few vacant hours in the Country, and written with no other design by his Lordship, than to relieve his melancholy Moments, and amuse himself under a long and tedious Indisposition. One would hardly have imagined that an old Acquaintance, and a Person that had so many Obligations to the Family, wou'd have stooped so low as to gratify his Bookseller at the expence of his Lordships Reputation. But Experience shows, there are some People in the World, who can break through all the obligations of Friendship, and all  
the

## *The Preface.*

the ties of a private Commerce, merely for their own little Interest.

And now perhaps it will be suggested, that the following Papers for the same Reason, ought not to have been made Publick, because it does not appear, that his Lordship ever intended them for the Press: To which I think it a sufficient Reply, that my Lord design'd to communicate them to the House of Lords, had not the Prorogation hinder'd him; and surely what his Lordship thought worthy the perusal of so Illustrious an Assembly, may safely venture the severest

*The Preface.*

severest Examination of any other Hand. And therefore I hope I have done no unacceptable piece of Service to the Publick, in communicating the Debates of the following Conference, and my Lord Anglesey's Vindication of the Peers, especially at this Juncture, when we have had so warm a Controversy about the Privileges of both Houses; tho' I must confess, that these are things of a different Nature. And, as it never was my intention to revive any past Quarrels, much less to cause any Mis-understanding between the *Lords and Commons,*  
in

## The Preface.

in this critical Exigence, when our Religion, our Liberties, and our All, are at stake, so neither had I the least design to derogate from my Lord *Anglesey's* Reputation, by introducing him again upon the Stage. All my aim was to present the Learned World with something that might contribute to their Instruction, as well as Entertainment; and I leave it to them to pass sentence as the Merits of the Cause direct them.

All the while my Lord *Anglesey* had the Honour to sit in the House of *Commons*, no Man asserted their Rights with  
a more



## *The Preface.*

more Vigour than himself; and when his Majesty call'd him to the Upper House, he was no less zealous as it became him, to defend the Privileges of the *Peers*, which had been notoriously invaded in the late Civil Commotions. Upon this account, I know some of his Enemies charged him with taking up new Notions with his new Title, but very Unjustly: For certainly a Man may be allowed to maintain his own just Rights, if he does not encroach upon those of his Neighbour; and they that cannot sit down content with their own unquestionable Rights

## The Preface.

Rights, but endeavour to extend them beyond their proper Bounds, may be justly suspected to harbour none of the best Designs.

It is the happiness of *England*, that the Legislature is lodged in *King, Lords and Commons*, so that nothing with us obtains the force of a Law, but what has past the Approbation of both Houses, and receives its determinate *Fiat* from the King. But whenever the *Lords* usurp upon the known Privileges of the *Commons*, or they upon the *Lords*, or both upon the *King*, or Lastly, the *King* upon them, we may cry  
a 2 good

## The Preface.

good Night to this our ancient Constitution, under which we have flourished so many Ages. So long as the Balance continues even between these Powers, that are a reciprocal Check to one another, the Machine of our Government moves Regularly and Justly, and we are safe from all Attacks of Tyranny; whenever this *Æquilibrium* happens to fail, from that very Moment we may date our Ruine.

I will not here presume to enter into the *detail* of that Controversy, which has so long exercised the Pens of Sir *Robert Filmer* and *Dr. Brady* on one side,

## *The Preface.*

side, and Mr. *Petyt*, and Mr. *Tyrrel* on the other; I mean, whether the *Commons* made always a part of the Legislative Body of this Kingdom, or whether they were first solemnly Summoned by King *Henry* the 3d, in order to repress the Insolence of his Barons. 'Tis enough that they have been invested with divers Privileges, and enjoyed them time out of mind, and let the Man be Accursed that endeavours to remove our old Land-mark.

At the same time, it cannot be denied, but that the *Commons*, since they came to possess so  
great

## *The Preface.*

great a share of Lands by the alienating of the Peers Estates under Henry the VIIth, and the suppressing of Abbies under *Henry* the VIIIth, most of which fell into their hands, have talked in a higher Strain, and extended their Privileges farther than their Ancestors ever Dream'd of, particularly in the Reign of King *Charles* I. which I had rather the *Reader* should take in a late Historians words than my own; who speaking of the Bill of Subsidies, which was tack'd to that famous Remonstrance, which begot so much ill Blood between the King and his People,

## The Preface.

ple, expresses himself as follows.

But how suddenly the Commons House encroach  
upon the Lords Liberties, Excluding the

Sanderfon's  
Hist. of K.  
Charles I. p.  
115.

words, The Lords Spiritual and Temporal, in the very Grant of the Bill of Subsidies, which they resented with very high Indignation, tho' the Commons were known to be cunning enough to palliate the Design if discover'd, with an excuse of bare Mis-omission; yet the most of them stood fit out, pretending (evermore in such Cases) That heretofore some Acts had so passed, which they knew well enough how to avoid the Proving. But if their good  
Lord-

## *The Preface.*

*Lordships wou'd return the Bill  
their Names should be inserted,  
as if they were not able to put  
themselves in, as the others were  
cunning to leave them out.*

But I have trespass'd too much upon my Reader's Patience; and therefore will stop my hand; only I desire him to excuse the Errors of the Press, occasioned by the ill hand the Copy was written in, and the Publishers Absence; However, I hope they are neither so numerous nor so great as to give Men of Learning, for whom it was principally intended, any difficulty, much less to betray them into any Mistakes.

T H E

THE  
PRIVILEGES  
OF THE

*House of Lords and Commons*

Argued and Stated,

In Two Conferences between  
Both *Houses*, April 19, 22. 1671.

**T**HIS Conference was de-  
fir'd by their Lordships,  
upon the Subject Matter  
of their last Conference;  
concerning the *Bill for*  
*Impositions on Merchandice, &c.* Where-  
in the Commons communicated it to  
B the



the Lords as their Resolution, That there is a *fundamental Right in that House alone in Bills of Rates and Impositions on Merchandice, as to the Matter, the Measure and Time.*

And tho their Lordships have ~~neither~~ Reason nor Precedent offer'd by the Commons to back that Resolution, but were told, That this was a Right so fundamentally settled in the Commons, that they could not give Reasons for it ; for that would be a weakening of the Commons Right and Privilege ; yet the Lords in Parliament, upon full Consideration thereof and of that whole Conference, are come to this Resolution

*Nemine Contradicente.*

*That the Power exercised in the House of Peers in making the Amendments and Abatements, in the Bill Intituled, An Act for Additional Imposition on several Foreign Commodities, and for Encourage-*

couragement of several Commodities and Manufactures of this Kingdom, both as to Matter, Measure and Time, concerning the Rates and Impositions on Merchandice, is a Fundamental, Inherent and undoubted Right of the House of Peers, from which they cannot depart.

*Reasons.*

I. The great happiness of the Government of this Kingdom, is, That nothing can be done in order to the Legislature, but what is consider'd by both Houses, before the King's Sanction be given unto it; and the greatest Security to all the Subjects of this Kingdom, is, that the House by their Constitution, do not only give assistance, but are mutual Checks to each other.

II. Consult the *Writs of Summons* to Parliament, and you will find, that the Lords are not excluded from

the Great and Arduous Affairs of the Kingdom ; and the *Commons* of *England* are but called to Treat and give their Council upon them all, without exception.

III. We find no Footsteps in Record, or History for this new Claim of the *House of Commons* ; we would see that Charter or Contract produced, by which the Lords divested themselves of this Right, and appropriated it to the *Commons*, with an Exclusion of themselves: Till then we cannot consent to shake, or Remove Foundations, in the laying whereof it will not be denied, that the *Lords* and *Grandees* of the Kingdom had the greatest Hand.

IV. If this Right should be denied, the *Lords* have not a Negative Voice allowed them in Bills of this Nature ; for if the *Lords*, who have

have the Power of Treating, Advising, giving Counsel, and applying Remedies, cannot Mend, Abate, or Refuse a Bill in part, by what consequence of Reason can they enjoy a Liberty to reject the whole? When the *Commons* shall think fit to question it, they may pretend the same Grounds for it.

V. In any case of Judicature, which is undoubtedly and indisputably, the peculiar Right and Privilege of the *House of Lords*, if their Lordships send down a Bill to the *Commons* for giving Judgment in a Legislative way, they allow and acknowledge the same Right in the *Commons* to Amend, Change, and Alter such Bills as the Lords have exercised in this Bill of *Impositions*, sent up by the *Commons*.

VI. By this new Maxim of the *House of Commons*, a hard and ignoble Choice is left to the *Lords*, either

to refuse the Crown Supplies, when they are most necessary, or to consent to ways and proportions of Aid, which neither their own Judgment, or Interest, nor the Good of the Government and People, can admit.

VII. If a positive Assertion can introduce a Right, what Security have the *Lords*, that the *House of Commons* shall not in other Bills (pretended to be for the General Good of the *Commons*, whereof they will conceive themselves to be the fittest Judges) claim the same peculiar Privilege in exclusion of any Deliberation or Alteration of the *Lords*, when they shall judge it necessary or expedient?

VIII. And whereas you say, this is the only poor thing which you can Value your selves upon to the *King*, Their Lordships have commanded  
us

us to tell you, that they desire rather to encrease, than any way diminish the Value and Esteem of the *House of Commons*, not only with His Majesty, but with the whole Kingdom; but they cannot give way that it should be raised by the Undervaluing the *House of Peers*, and an endeavour to render that House Unuseful to the King and Kingdom, by denying unto it those Just Powers which the Constitution of this Government, and the Laws of the Land have lodged in it for the Service and Benefit of both.

IX. You did at the *Conference* tell us, That we did agree to a Book of Rates, without so much as seeing it, and that never a *Book of Rates* was read in the *Lords House*; and that the said Book of Rates was Sign'd by Mr. *Harbottle Grimston*, then Speaker of the *House of Commons*,

and not sent up, lest the *Lords* Speaker might Sign it too.

As for the *Book of Rates* instanced in by the *House of Commons*, it was made in a way different from all former Books of Rates, and by an Assembly called without the *King's Writ*; and which wanted so much the Authority of Parliament, that the Act that they made, was no Act, till Confirm'd by this Parliament; tho' the Work, which happily succeeded in their Hands, for Restauration of the Ancient Government of this Kingdom, will ever be mention'd to their Honour; yet no Measure for Parliamentary Proceedings is to be taken from this one Instance, to the prejudice of the Right of the Crown, in making *Books of Rates*, and of the *Lords*, in having their due Consideration thereof, when they shall be Enacted in Parliament, which was so far from being according to former Usage, that the *Lords* considering the Necessity and  
Condition

Condition of that Time, and there being no Complaint, passed that Bill upon three Readings, in one day, without so much as a Committee, little imagining the forwardness of their Zeal to the King's Service in such times wou'd have created an Argument in the future against their Power; and if the *Lords* did never read Books of Rates in their House, it is as true, That the *House of Commons* do not pretend, nor did shew, that ever any was Read there but this.

Tho' where a Right is so clear, and Reasons so irrefragable, it is not to be required of those who are possess'd of the Right, to give Precedents to Confirm it, but those who dispute the Right, ought to shew Precedents, or Judgment to the contrary, not pass it (*sub Silentio*) upon the Point Controverted: Yet the *Lords* have Commanded us to offer, and leave with you these following Precedents.

i. By



1. By Records, both Ancient and Modern, it doth appear, That the *Lords* and *Commons* have Consulted together, and Confer'd one with another on the Subject of a *Supply to the King*, and of the Manner how the same may be Levied, As, 14. *Edw. 3. N. 5.* *Après Grand trete et pleance entre les Grantz et les ditz Chevaliers et autres des Communes Esteans en-dit Parl. est accorde et assentu per tous les Grantz et Communos, &c.* That they grant to the King, the 9th of Corn and Wool, 29. *Edw. 3. N. 11. 51. E. 3. N. 18.* certain there named from time to time, to Confer with the *Commons*, for their better help in consulting for the raising of Money, and this sometimes by the King's Command, As 22 *Ed. 3. N. 3.* Sometimes by Motion and Appointment of the *Lords*; As 5 *Ed. 3. N. 8.* And in the Case of the Great Contract for Tenures and Purveyances, 7 *Jac. 14* of *Febr. 1609.* Sometimes by the Desire of the  
the

the *Commons*; As 47 *Ed.* 3. N. and 4. *R.* 2. N. 10, 11, 12, 13, 14, 15. upon a great Sum demanded for the King, the *Commons* come to the *Lords*, and desire a moderation of the Sum, and their consideration how it should be Levied; and hereupon was granted by *Lords* and *Commons*, 12 *l.* of every Man, &c. It is observable, that *Nov.* 13. it is said, The *Lords* sent for the *Commons* several times before them, and proposed to them the manner of Levying the Money, and afterwards it was given: And again, 6 *Ric.* 2. *Nov.* 14. And in the Case of the Great Contract before-mentioned, 7 *Jac.* 18 *June*, 1610, the *Commons*, at a Conference, desire to know what Project their Lordships will propound for Levying that which shall be given other than upon Land. And afterwards another Conference by the *Commons*, Answer was made to the *Lords* Proposal, agreed, That the manner of Levying it, may be in the most easie and contentful way that

that by both Houses can be devised. See the whole Proceedings of the intended Contract, which doth in several Remarkable Instances shew, that the *House of Commons* themselves did allow the *House of Peers* their part in Treating and Debating on the Subject of Money to be Levied for His Majesty.

2. That in Aids and Subsidies, the Lords have anciently been expressly joined with the *Commons* in the Gift, as in the first we can meet with in our Statutes; That in the Body of *Magna Charta*, Cap. 37. *The Arch-Bishops, Bishops, Abbots, Priors, Earls, Barons, Knights, Free holders and other Our Subjects, have given to Us the 15th Part of all their Moveables; which must include Merchandice. This Stile the Ancient grants of Subsidies and the Modern ones too do retain. (The troublesome time of the War between the Houses of York and Lancaster only excepted; and even*

even then it was (*the Commons by Advice and Consent of the Lords Give and Grant*) till the beginning of K. Charles the First, by these Words, *We Your Majesty's Loyal Subjects in Parliament Assembled*, implicitly, or by the words, *We the Lords Spiritual and Temporal, and Commons in Parliament Assembled*, expressly the *Lords* are join'd in the Grant, as by Perusal of the Statutes will appear.

3. That in Subsidies of this Nature, (*viz.*) *Customs*, the *Lords* have join'd with the *Commons* in the grant of them; and that at the very beginning of these Impositions, as when 40 s. upon every Sack of Wool (a Home Native Commodity) was granted to *Edw. I.* in the Third Year of His Reign, to him and his Heirs: The Grant is, *Magnates, Prælati & tota Communitas concesserunt*. See Parl. Roll. 3 *Ed. I. M. I. N. I.* And other ancient Rolls do also shew, That the *Lords* join'd with the *Commons*

*mons* in gift of Moneys, as Close Roll 3. *Ed.* 1. *M.* 12. Endorse 3 Grant of a 15<sup>th</sup>. and part Roll 3. *Ed.* 1. *M.* 6.

4. And more particularly in Impositions of this very Species, *Tonnage and Poundage*; The *Lords* were ever at the first beginning, Joined with the *Commons* in the Grant, as the Parliament Roll, in 47 of *Ed.* 3. *N.* 10. the first Establishment of it by Act doth declare; where 'tis expressly said, *The Lords and Commons do grant.* And this Stile did continue in Acts of this Nature till the end of *Rich.* 2. After which in those troublesome Times, the Stile was various; till *K. H.* the 8<sup>th</sup>'s time, and this Stile of Acts of *Tonnage and Poundage* was; *We the Commons, with the Advice and Consent of the Lords Spiritual and Temporal, do give and grant.* This form. of Gift in *Tonnage and Poundage*, lasted *Ed.* 6. *Queen Mary*, *Queen Elizabeth*, and *King James's* time, as the Statutes themselves do declare.

5. And

5. And to prove most undeniably, that the *Lords* have their share in the gifts of Aids and Supplies to the King, see the Act of 9 *H.* 4. commonly call'd the *Indemnity of the Lords and Commons*; which provides, that the *Lords* shall Commune apart by themselves, and the *Commons* by themselves. The latter end Enacts expressly, *That the King shall thank both Lords and Commons, for Subsidies given him.*

6. That the *Lords* may make Amendments and Alterations in Bills which grant *Tonnage and Poundage*, (the very Question now between us) appears in an Eminent Book, *Case 33. H. 6. Feb. 17.* which was a Consultation of all the Judges in *England*, and the Master of the Rolls, and the Clerk of the Parliament called in to inform them as to the manner of proceedings of Bills in Parliament: where it is said, *That if the Commons grant Tonnage and Poundage to endure*  
for

for Four Years, and the Lords grant it but for two years, it shall not be carried back to the Commons, because it may stand with their Grant, but must be so Enrolled; and that the Lords have made Amendments and Alterations in Bills granting Tonnage and Poundage, appears by that Statute of the First of Edw. 6. and the First of Queen Eliz. even in the very point now in Dispute, such Amendments as do lessen the Sum to the King, as the 1st of H. 8.

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The **PROVISO** it  
self was read at the  
Conference.

**W**E have seriously consulted  
our Judgments and Rea-  
sons to find Objections, if it were  
possible, against this Power of the  
Lords, and are so far from find-  
ing any, that we are fixed in Opi-  
nion, that the want of it, would  
be destructive to the Government  
and Peace of the Kingdom, and  
the Right of the Crown, in Bal-  
lancing and Regulating of Trade,  
C and



*and making and preserving Leagues and Treaties with Foreign Princes and States, and the Exercise of it, cannot but be for the Security of all, and for the Ease, Benefit, and Satisfaction of the Subject.*

*Their Lordships are very far from designing to obstruct this Gift, no not for a moment of Time, much less for ever, as was hinted to them at the last Conference: and therefore they desire the House of Commons to lay it to Heart and consider, if it should so happen, (which they heartily wish it may not) that there should be an Obstruction upon occasion of this*  
*Diffe-*

*Difference, at whose door it must lie; Theirs, that assume to themselves more than belongs to them, to the prejudice and diminution of the others Right; or theirs, that do only exercise that Just and Lawful Power, which by the very Nature and constant Practice of Parliament is, and for many Ages has been vested in both Houses.*

*Their Lordships had under consideration and Debate the desiring a free Conference with your House upon the Reasons of the Amendments in difference between the Houses, but when they found that you had interwoven*

*your General Position with every Reason you had offer'd as for your Particulars, it seemed to them that your Judgments were prepossessed, and they hold it vain, and below the Wisdom of Parliament to Reason or Argue against fixed Resolutions, and upon Terms of Impossibility to perswade, and have therefore applied themselves only to that Point, which yet remains an Impediment in the way of free and Parliamentary Debates and Conferences, which must necessarily be first removed, that so we may come to a free*  
Con-

( 21 )

*Conference upon the BILL  
it self, and part with a fair  
Correspondence between the Two  
HOUSES.*

**The end of the First Conference.**

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**C 3**

**THIS**



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THIS  
CONFERENCE

Was the 22d of April, 1671.

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The Earl of *Anglesey* begun the Report of the Conference: Who said, That Mr. Attorney told them, that because the Matter is of Moment, the House of Commons have trusted none to give their Words but themselves; and therefore have order'd it to be in Writing, which is as follows, (Viz.)

**T**HE Commons have desir'd this Conference, to preserve a good Correspondence with the House of Peers, and to prevent the ill Consequences

quences of those Misunderstandings, which may possibly interrupt the happy Conclusion of this Session, and of all future Parliaments too, if they be not very speedily Removed: Wherein the Commons are not without hopes of giving your Lordships full Satisfaction in the Point in Question, and that without shaking any Foundations, unless it be such as no Man should lay, much less build upon, the foundation of a perpetual Dissention between the Two Houses. Three things did surprize the Commons at a former Conference, concerning *the Bill for an additional Imposition on several Foreign Commodities.*

1. That where they expected a Discourse upon some Amendments to that Bill, they met with nothing but a Debate of the Liberties of their House in the Matter, Measure and Time of Rates upon Merchandice, with a kind of demand that those Liberties might be deliver'd up to your Lordships,

ships, by our Publick acknowledgments, before there shou'd be any further Discourse upon that Bill.

2. That your Lordships should declare so fixed and settled a Resolution in this Point, before you had so much as heard what could be replied in Defence of the *Commons*.

3. And lastly, That your Lordships should be so easily induced to take this Resolution, if there be not other Motives for it than those Precedents and Reasons, which your Lordships have been pleased to impart to us,

The *Commons* confess, That the best Rule for deciding of Questions of Right between both Houses, is the Law and Usage of Parliaments; and the best evidence of that Usage and Custom of Parliaments, are the most frequent and authentick Precedents; therefore the *Commons* will first examine the Precedents



dents your Lordships seem to rely upon, then they will produce those by which their Right is asserted; and in the last place, they will consider the Reasons upon which your Lordships Ground your selves.

By the nature of the Precedents, which your Lordships produce, there is an evident departure from the Question, as the former Conference left it: There the doubt was narrowed to this single Point, *viz.* Whether your Lordships would retrench or abate any part of the Rates which the Commons had granted upon Merchandice; here the Precedents do go to a joint Power of imposing and beginning of Taxes, which is a Point we have not yet heard your Lordships to pretend to, thô this present Difference prepares way for it. Therefore either these prove too much, by proving a power of Imposing, or they prove nothing at all, by not proving a Power of Lessening.

And

And yet they do not prove a Power of Imposing neither, for those Words, (*The Lords and Commons grant*) must either be understood *Redendo singula singulis*; that is, the Lords grant for themselves, and the Commons grant for Countries, Cities, and Boroughs, whom they represent, or else the word (*Grant*) must be understood only by the Lords Assent to what the Commons Grant; because the form of Law requires, that both join in one Bill, to give it the force of a Law.

This answers the Statute of *Magna Charta*, Cap. 37. and those few Instances where it is said, *The Lords and Commons Grant*, viz. 47 *Ed.* 3. N. 10. 4 *R.* 2d. N. 10, 11, 12, 13, 14. 6 *R.* 2. N. 14. But what Answer can be given to those Ancient and Modern Precedents and Acts where the Grant moves, and is acknowledg'd to come from the Commons alone, of which a multitude shall

shall be herein after mentioned? The Case of the 14th. of Ed. 3<sup>d</sup>. N. 5. *Après Grand trete et pleance Entre lez Grantz et Chevaliers et Communs fuit assentu, &c.* is no grant of the 9th. Sheaf, as your Lordships Cited it to be, but an Agreement, that the *Nones* granted in a former Parliament, should now be sold, because the Money came not in fast enough. The 22<sup>d</sup>. Ed. 3. N. 5. which your Lordships Cited to prove that the King did sometimes Command the Lords to Consult with the Commons about raising of Money, proves little of that; but it, proves exprefly, that the Commons granted three Fifteenths; and as the Grant runs wholly in their Names, so the Record is full of many Reasons why they would not grant no more, and upon what Conditions they granted so much; thô they seem to make a shew in your Lordships part, yet they prove two things of great Importance to the Commons.

i. That

1. That all Aids must begin with the Commons, else the Lords needed not to have Conferred about the Aids, but might have sent down the Bill.

2. That when they are begun, the Lords can neither add nor diminish, else it was in vain to adjust the Matter by private Conference before hand, if the Lords could have Reform'd it afterwards, which shews what little service the *Records* of 29 *Ed. 3d* N. 11. 51. *Ed. 3d* N. 18. can do your Lordships in the present Question. From the time of *Richard* the 2d. your Lordships came to the 7th of *Jac.* to tell us of the Treaties between the Lords and Commons, touching the Contract for *Tenures in Capite*, wherein the Lords being to be Purchasers, it was less subject to Objection, to Confer both of the Method, and Manner how the price agreed might be Paid, for the satisfaction of the King: But this Matter

ter hath so little affinity with the present Question of lessening Rates upon Merchandice given by the Commons, that nothing but a scarcity of Precedents could ever have perswaded your Lordships to make use of this Instance.

As for the Precedent of 3 *Ed. 1.* Cited by your Lordships, the Commons have most reason to reply upon that Case. Your Lordships say, That in the beginning Impositions, when 40*s.* upon a Sack of Wool was granted to *Ed. 1.* and his Heirs, the Lords join'd in the Grant; for the words are, *Magnates, Prælati, & tota Communitas Concesserunt*, wherein are these Mistakes:

1. That Record was not a grant of 40*s.* upon the Sack of Wool, as your Lordships suppose, but a Reducing of 40*s.* upon a Sack, which *Edw. 1.* took before *Magna Charta* was Confirm'd, to half a Mark, *viz. 6*s.* 8*d.* per Sack;*  
and

and it was at the Prayer of the Commons, as some Books say, and Cite for it, 3 *Ed. I. M.* 24.

2. The Record which your Lordships Cite, is twice Printed, once in the Second part of the *Institutes*, pag. 531. And again in the Fourth Part of the *Institutes*, pag. 29. And by both those Places, it is evident, that the *Concesserunt* is only to be apply'd to the *tota Communitas*, and not to the *Magnates*, for this was a Grant only of the Commons, and not a Grant of the Lords: And' to demonstrate this beyond all possibility of Scruple, the Printed Books do refer to Statute the 25th. *Ed. I. Cap. 7.* called *Confirmationes Charter*; wherein it is expressly declared by Act of Parliament; for by the last Statute it appears that the *Male tote* of the 40 s. was again demanded by *Edw. I.* and was therefore now Abrogated, saving to the King and his Heirs the Demy Mark upon a Sack of Wool, granted

granted by the Commonalty, which is the very same grant of the 3<sup>d</sup>. Ed. 1. cited by your Lordships in the present Question: But this is also a convincing Evidence, that those words (*The Lords and Commons Grant*) are words of Form, and made use of in such Cases, where the Grant did certainly proceed from the Commons alone: and to clear this Precedent, we pray your Lordships to take notice of the Statute of the 2<sup>d</sup>. and 3<sup>d</sup>. of Ed. VI. Cap. 36. where a Relief is given to the King by Parliament, and in the Title of the Act (as also in the Body of the Act). it is called all along, *The Grant of the Lords and Commons*, yet in the 3<sup>d</sup>. and 4<sup>th</sup>. of Ed. the Sixth, Cap. 23. this former Act is rejected, and there it is acknowledged to be only a Grant of the Commons.

And as for the Case of the 9<sup>th</sup>. of H. IV. called *The Indemnity of the Lords and Commons*, these things are evidently proved by it;

I. That

1. That it was a Grievance to the Commons, and a breach of their Liberty, for the Lords to demand a Committee to Confer with them about Aids.

2. That the Lords ought to consider by themselves a-part.

3. That no Report should be made to the King of what the Commons have Granted and the Lords Assented to, till the Matter be perfected; so that a plain Declaration is made, that the Commons *Grant*, and the Lords *Assent*.

4. That the Gift ought to be presented by the Speaker of the Commons.

The Book-Case of 33 of *H. VI.* Cap. 17, is the Weakest of all, for the Words are, *C. Siles Communs Grant*, p. 4. *Ann. et Sannes 4. ceo sera reliver.*

D

I. Now;



1. Now, this was no Opinion of any Judge, but only of *Kirby*, Clerk *de Parliament*.

2. This was a Case put by the bye, and not pertinent to the Matter in hand.

3. 'Tis impossible to be Law, being against the Constant Usage, and Practice of Parliament, for then your Lordships may not only lessen the Rates and Time, but you may choose whether you will send us the Bill or no back again with Amendments, which was never heard of; and if that may be, why was it done so now?

4. That Clerk says your Lordships may encrease Impositions too, which part of the Case you thought not fit to Cite, because you pretend not to it.

5. *Brook*

5. *Brook* Parliament 7. puts a Query upon the Case as it deserv'd. But if the Law-Books are to be heard in this Case, 30. *H. VIII. Dier*, 43. in *Judicial Authority*. Where Subsidy is defined to be a Tax, *Assess per Parl. et gre al Roy per les Communs durant VII. de che Roy tauta per le defence de Merchants sur le mere.*

The Proviso's in the Bill 1. *H. VIII.* which your Lordships seem mainly to rely upon, we conceive to be of no Force at all, unless it be against your Lordships; for as it appears by your *Lordships Journals*, the Case was this: The Bill it self did not Pass till 3d. *H. VIII.* and upon the 43d. day of the Parliament, the Lords Assented to it; afterwards, upon the 45th day, two Proviso's came in, one touching the Merchants of the *Hans Towns*, another touching the Merchants of the Staple of *Calais*; both were Sign'd by the

D 2

King

King and the Lord *Chancellor* ; and the Bishop of *Winton* did declare, that the signing of those Proviso's by the King's own hand was enough, without the Consent of either House ; so that the additions of those Proviso's prove nothing for which your Lordships Cited them : Because,

1. They were Signed by the King.
2. They were brought against the course of Parliament, after the Bill Passed.
3. The Proviso's were nothing but a saving of former Rights, usually considered in former Acts of that Nature.
- 4 Your Lordships Journals declare, That the King without these Proviso's might have done the same thing by the Prerogative.

Only

Only this may be fit to be observed by the way; That as the Bill was a Grant of the *Commons* alone, so the Thanks for the Bill were given to the *Commons* alone; and so it appears upon the Indorsment of that Record.

The Precedents for the *Commons*, which on the sudden we find, (for we have have had but few hours to search) are all these following, *viz.*

11 *Ed. I. Walsingham, 486. Populus dedit Regi tricesimam partem bonorum.*

25. *Ed. I. Walsingham, 486. Populus dedit Denarium Nom.*

7 *H. IV. Walsingham, 566. Postquam Milites Parliamentales diu distulissent concedere Regi Subsidium, in fine tamen fracti Concessere.*

6 *H. IV. Walsingham, 564. Subsidium denegatum fuit, proceribus renitentibus.* So hitherto when granted, the *Commons* give it; when denied, the whole Bill is rejected, never abated.

1 *Ed. III. Stat. 2. C. 6.* The Commons griev'd, that when they granted an Aid and paid it, the Taxes were Reviewed.

18 *Ed. III. C. 1. Stat. at large, The Commons grant two Fifteenths, the Great Men grant nothing, but go in Person with the King.*

36 *Ed. III. C. 11.* The King having regard to the Grant made by the Commons for three Years of Wool, and Leather, grants, that no Aids be levied but by consent of Parliament.

21 *R. II. N. 75.* is the first Grant of *Tonnage* and *Poundage* for Life, and it was given by the Commons alone.

2 *H. VI. N. 14.* The Commons grant *Tonnage* and *Poundage* for two Years.

31. *H. VI. N. 7, 8, 9, 10.* The Commons grant *Tonnage* and *Poundage* for Life.

8 *Ed. IV. N. 30.* The Commons grant two *Tenths* and two *Fifteenths*.

12 *Ed.*

12 *Ed. IV. C. 3.* The Grant of *Tonnage* and *Poundage* for Life, is recited to be by the Commons, and most of the Rates mentioned in the Bill.

The Wars of *York* and *Lancaster*, are so far from weakening these Precedents, that they strengthen them rather; for no man can think the Lords were then in less Power, or less careful of their Right than your Lordships are now: Wherefore, if in those days those Forms were approved by those Mighty Men, it is a sign the Right is clear.

1 *H. VIII.* The Commons by Assent of the Lords, grant *Tonnage*.

15 *H. VII.* In *Ireland* was the first grant of *Tonnage* and *Poundage*, but it is said, *At the Prayer of the Commons it is Enacted*; which in a Kingdom where they are not tied to Forms, shews the clear Right.

1 *Ed. VI. Cap. 13.*      *We your poor*  
 1 *M. Cap. 8.*            *Commons by Ad-*  
 1 *Eliz. Cap. 19.*      *vice, &c. Grant :*

And also it avers the Right time out of mind, to be in the Commons. This Stat. 1 *Eliz. Cap. 19.* gives us occasion to put your Lordships in mind of another Precedent, which appears in your own Journals; for while this Bill was Passing, the Inhabitants of *Cheshire* and *Wales*, Petitioned the Lords upon the second Reading, That forasmuch as they were subject to pay the Queen a certain Duty called *Mises*, that therefore they might be excused of the Subsidy, and abated their part of it.

The Lords who then knew they had no power to diminish any part of the Aid granted by the Commons, did therefore Address themselves to the Queen in their behalf. The Queen commanded an Entry to be made in the Journal of the House of Lords,  
 That

That she was pleased the *Cheshire-men* and the *Welchmen* should be respited the *Mises* when they pay Subsidies, and respited the Subsidies when they pay *Mises*: Which as it is a strong proof that the Commons alone Grant, so no body can diminish their Grant, else what need had the Lords to apply themselves to the Queen for it?

17 Car. I. *Tonnage* and *Poundage* was granted once for a Month, then again for three Months, but still the Grant was by the Commons in those days, how Tumultuous soever. The Commons did not rise against the Lords, they agree'd well enough.

In short, all these Grants were of the Commons, yet none of these Bills were ever varied by your Lordships, or your Predecessors, which if there had been such a Right, would some time or other have been exercised, tho in very small values, purposely to preserve that Right.

Thus



Thus an uninterrupted Possession of this Privilege ever since the 9<sup>th</sup> of H. IV. confirm'd by a multitude of Precedents both before and after, not shaken by one Precedent these 300 Years, is now required to be deliver'd up, or an end to be put to all further Discourse; which Opinion if it be adher'd to, is, as much as in your Lordships lies, to put an end to all future Transactions between the Houses in matters of Money, which we pray your Lordships to Consider.

*The Reasons offered by the House of Commons, are these:*

- I. Because there appears not to the Commons any Colour from the Precedents Cited by your Lordships, why your Opinion should be so fixed in this Point, we suppose the main Defence is in the Reasons that have been given for it.

That

That Paper begins with an Observation, That your Lordships have neither Reason nor Precedent offer'd by the Commons to back their Resolution, and yet concludes with an Answer to a Precedent then cited by the *House of Commons*, viz. The Act of *Tonnage and Poundage*, now in force; and if your Lordships had but one Precedent then, you have now a great number beside; of these, 3 *Ed. I.* 1 *H. VIII.* 9 *H. IV.* and divers others your Lordships furnish'd us with.

Before the Commons answer to your Lordships *Reasons* in particular, they desire to say first in General, That it is a very unsafe thing in any settled Government to argue the Reasons of the Fundamental Constitutions; for that can tend to nothing that is profitable for the whole.

And

And this will more sensibly appear to your Lordships, if the Grounds and Foundations of Judicature be examined, for there are several Precedents in Parliament, and some in Book Cases, which prove, that Judicature is not to be exercised by all the Lords, but only by such as the King is pleased to appoint; so is the Book Case of 22 *Ed. III. N. 3. A. B.* And so is the Parliament Roll, 25 *Ed. III. N. 4.*

Several other Precedents, where the Commons by the Kings good pleasure have been let into a share of the very Judicature, are 42 *Ed. III. N. 20, 21. 31 H. 6. N. 10. 8 of Ed. IV. Hugh Price's Case* in the Rolls of Parliament.

Some Precedents there are, where it was assigned for Error in the House of Peers, That the Lords gave Judgment without Petition, or Assent of the Commons; so is 2d. *H. V. N. 13.*

Would

Would your Lordships think it safe, that a Dispute should now be made of the very Rights of Judicature, because we have such Precedents ?

If Usage for so long a time hath silenced all Disputes touching your Lordships Judicature, shall that Usage be of no force to preserve the Privilege of the Commons from all further Question ?

Also there is a precedent of an Act of Parliament passed by the King and Commons alone, without the Lords, *viz.* 1 *Ed.* VI. 65. and that twice approved, *viz.* 1 *Eliz.* Cap. 17. and the 5th. of *Eliz.* Cap. 19. which both allow and commend this Act.

Shall we therefore argue the Foundations of the Legislature, because we have such Precedents ? but to come to Particulars; your Lordships first Reason it from the happiness of the Constitution,

stitution, That the two Houses are mutual Checks upon each other.

*Answer.* So they are still, for your Lordships have a Negative to the whole; but on the other side, it would be a double Check on His Majesty's Affairs, if the King may not rely upon the *quantum* when once his People have given it; therefore the Privilege now contended for by your Lordships, is not of use to the Crown, but much the contrary.

II. Your Lordships Reasons drawn from the *Writ of Summons*, is as little concluding; for tho' the Writ does not exclude you from any Affairs, yet it is only *de quibusdam arduis negotiis*, and must be understood of such as by course of Parliament are proper, else the Commons upon the like ground may entitle themselves to Judicature, for they are also called to treat *de quibusdam arduis*.

III. Your

III. Your Lordships also proceed to demand, *Where that Record or Contract in Parliament is to be found, where the Lords appropriate this Right to the Commons in Exclusion of themselves?*

*Answer.* To this Rhetorical Question the Commons pray they may Answer by another Question; Where is that Record or Contract, by which the Commons submitted, That Judicature should be appropriated to the Lords in Exclusion to themselves? Where ever your Lordships find the last Record, they will shew the first Endorsed upon the back of the same Roll.

Truth is, Precedents there are, where both sides do exercise their several Rights, but not how either side came by them.

IV. If the Lords may deny the whole, why not a Part? Else the Commons

mons may pretend at last against the Lords Negative Voice.

*Answer.* The King must deny the whole of every Bill, or pass it; yet this takes not away his Negative Voice. The Lords and Commons must accept the whole General Pardon, or deny it, yet this takes not away their Negative.

The Clergy have a Right to Tax themselves, and it is a part of the Privilege of their Estate; Doth the Upper Convocation-House alter what the Lower Grants? Or do the Lords ever abate any part of their Gift, yet they have a Power to reject the whole. But if Abatement should be made, it would insensibly go to a rising, and deprive the Clergy of their ancient Right to Tax themselves.

V. Your Lordships say, *Judicature is undoubtedly ours, yet in Bills of Judicature, we allow the Commons*  
to

*to Amend and Alter, why should not the Commons allow us the same Privilege in Bills of Money ?*

*Answer.* If Contracts were now to be made for Privileges, the offer might seem fair, but yet the Commons should profit little by it ; for your Lordships do now industriously avoid all Bills of that Nature, and choose to do many things by your own power, which ought to be done by the Legislative ; of which we forbear the Instances, because your Lordships, we hope, will reform them ; and we desire not to create new Differences, but to compose the Old.

VI. Your Lordships say, *You are put to an ignoble Choice, either to refuse the King's Supplies when they are most necessary, or to consent to such Ways or Propositions which neither your own Judgment nor the good of the Government or People can admit.*

E

*Answer:*



*Answer.* We pray your Lordships to observe, That this Reason first makes your Lordships Judgments to be the measure of the Welfare of the *Commons of England.*

2dly. It gives you power to raise and encrease Taxes, as well as to Abate, for it may be sometimes your Lordships Judgment, that it is for the Interest of Trade to raise and encrease a Rate, and then still you are brought to the same *Ignoble Choice*, unless you may raise the Tax.

But it is a very *Ignoble Choice* put upon the King and his People, that either His Majesty must Demand, and the Commons give so small an Aid as can never be diminished, or else run the hazard of your Lordships Examination of the Rates, whose proportion in all Taxes, in comparison to what the Commonalty pay, is very Inconsiderable.

VII. *If*

**VII.** *If positive Assertions can introduce Right, the Lords have no Security, but the Commons may extend their Rights as they judge it necessary or expedient.*

*Answer.* We hope no Assertions or Denials, tho never so positive, shall give or take away Right, but we rely upon Usage on our side, and non-Usage on your Lordships Part, as the best Evidence, by which your Lordships or we can claim any Privilege.

**VIII.** *Your Lordships profess a desire to raise our Esteem with His Majesty and the whole Kingdom, but not by the Undervaluation of the House of Peers.*

*Answer.* We have a great Confidence in His Majesty's goodness, that nothing can lessen his esteem of our Dutiful Affections to him, and we hope we deserve

serve as well of our Country, by our Department towards His Majesty, that we shall not need your Lordships Recommendations to any, who wish well to His Majesty or the present Government; but we are so far from wishing to raise an Esteem by any diminution of your Lordships Honour, or Privileges, that there never was any House of Commons, who ever had a more just and true Respect of that Noble Constitution of a House of Peers, of which your Lordships have had frequent Instances, by our consenting to several Clauses in Bills for securing and improving your Lordships Privileges.

We are sorry to see your Lordships undervalue the Precedent of this last Act of *Tonnage and Poundage*, because if it were an Act of the last Convention, 'twas confirmed in this

And

And because the Right of the Commons there asserted, was pursuant to a former Precedent in 1642, and possibly had not pass'd so, if the younger Members of that *Convention*, had not learn'd from some of those great and noble Lords, who now manage the Conference for your Lordships, and were then Commoners, that this was the undoubted Right of the Commons.

To Conclude, the Commons have examined themselves and their Proceedings, and find no Cause why your Lordships should put them in mind of that Modesty their Ancestors shew'd, who always paid a great deference to the Wisdom of the Lords, for they resolve ever to observe the Modesty of their Ancestors, and doubt not but your Lordships will also follow the Wisdom of yours.



THE  
RIGHTS  
OF THE  
*House of* LORDS  
ASSERTED.

With Learned Remarks  
on the Two late Con-  
ferences.

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Written by the Right Honour-  
able *Arthur*, Earl of *Angle-*  
*sea*, late Lord *Privy-Seal*.



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*The RIGHTS of the House  
of Lords Asserted, &c.*

**T**He *Commons* having shewed a great Earnestness in the late *Conference*, that was about the Bill for an *Additional Imposition on Foreign Commodities*, in their Endeavours to maintain an Usurpation they now lay claim to, and the Lords not having had time, by reason of the Prorogation, to give an Answer to their seeming Arguments and pretended Precedents, it will not be time lost to take a little Consideration of what was then said, which will be found upon Examination to draw more Strength from the Greatness of the *House of Commons*, in whose Name it was spoken, than from any force inherent in any thing that was then produced, either by way of Argument or Precedent.

And



And first it may be consider'd, how little ground there is to believe that the *Commons*, (tho they began with that profession) had an intent *to preserve a good Correspondence* with the House of Peers, when the very next Word they say is so rough as to lay so great a weight upon the present *misunderstandings*, (as they are pleased to call them) as may hinder the happy conclusion of all future Parliaments. This is indeed a heavy Consequence, and this they are the likeliest to have knowledge of, since if there be any misunderstanding, they are the misunderstanders in so mistaking their own Right, as to lay Claim to what is not their due, but that they desire to fix that misunderstanding, and all the ill Consequences of it upon the *Lords*, is very Visible by the manner of the expression, and more particularly by a strange ruggedness; which they affect, tho' they have no ground for it; in the very next Words that came from

from them, for there they go on to say, that there is a foundation of a perpetual dissention between the two Houses, which they are willing should be thought to be begun to be laid by the *Lords*; but their Lordships having exprest themselves unwilling to shake or remove the foundations, in the laying of which the *Lords* and *Grandees* of the Kingdom had the greatest hand, it is a very odd inference thereupon to imagine, that the *Lords* insisting upon their yet undisproved Rights should be a laying of any such Dangerous and destructive Foundation, and the *Lords* can no way be thought guilty of such an intention: But whether the *Commons* denying (tho not disproving the Rights of the *Lords*, and Claiming things to themselves for their Right, to which they offer not any thing more Considerable than the *Lords* having of late upon great exigencies for the Kings supply forborn to insist upon their own Rights, may not be more lyable to such an interpretation.

pretation, is a thing that may perhaps deserve the *Commons* Consideration.

Three Things the *Commons* say they were surpris'd with, which upon consideration will be found not to have any thing in them, that could justly cause any such thing ; for first how can it be wondered at, that the *Lords* should desire to Debate about the Matter, Measure, and Time of Rates upon Merchandice, since the *Lords* are necessitated to it, to maintain their Right which their late long silence in business of this nature hath given the *Commons* occasion now to deny, and that with no arguments, ( hitherto produced ) stronger than their Lordships late forbearance to assert their Right in this point. Secondly how can it be wondered at that the *Lords* should be fix'd and settled in their Resolutions in this particular, since it is now high time for them Vigorously to assert their true Right, which they have so long forborn to  
do

do, that they find the *Commons* every day to rise higher in their endeavours to deny the *Lords* what is justly their due, not only in this, but in some other particulars of no small consequence.

Thirdly it is least of all to be wondered at, that the *Lords* should take these resolutions upon the precedents and reasons produced by their *Lordships*, since the Precedents are strong, and the Reasons good and able to justify them in what they do, as shall be farther made out hereafter upon the consideration of the Precedents and Reasons; and their *Lordships* do not proceed upon any hidden motives, but go on openly to the maintaining of their just Right.

Next the *Commons* begin to draw towards the consideration of the Precedents produced by the *Lords*, and because they are afraid they are like to be too hard for them, they endeavour  
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to weaken them by *narrowing* the Question, as they are pleased to word it, and then complain that the Precedents prove too much, or else will not allow them to prove any thing at all, which is a very extravagant way of Proceeding; for if it were acknowledg'd that the Precedents the *Lords* produce, prove more than what they bring them for, it would be a strange way of Reasoning to say, That therefore they don't prove so much, or prove nothing at all. But perhaps it is a way of resolving, which the *Commons* have a particular Privilege to make use of, and surely can be allowed to none but them, for if any else were to be dealt with in this business, it would not be a satisfactory answer to say, That whatsoever proves a power of imposing must needs serve to prove an ability in those who justly have the power to do any thing else whatsoever in relation to an imposition, either by lessening, or by any other way, which shall be thought convenient

ent by those who have a just Right to such an authority, and consequently cannot but very unjustly be denyed to the *Lords* in particular.

As the *Commons* are afraid the Precedents produced by the *Lords* should prove too strong for them, so now they will not acknowledge that they prove a Power of imposing, tho' the last thing that they said was, that they proved too much, by proving a Power of imposing; and this defect of proof they would prove by misunderstanding the Word *Grant*, for it cannot be but a willfull mistake to conceive that where it is said *the Lords and Commons Grant* it shall be only understood of the *Lords* assent to the Bill, since by the same reason the King might be said to grant, as well as either *Lords* or *Commons*, since he assents to the Bill as well as either of them, and it can be no Act without His Majesty's assent; but it must by all Rules of Grammatical construction be  
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certainly understood of the *Lords* joyning in the Grant and not only in the Bill: And it is as easily said, and perhaps much more easily proved, that the *Lords* grant with the *Commons*, as that the *Lords* and *Commons* granting must be understood by a cunning fetch *Reddendo singula singulis*, which is said indeed but not proved, nor can there be any ground for such a construction, the Words being plain, and the *Lords* not denying, but that by these Words, the *Commons* do grant for the *Lords* and for themselves, as well as the *Lords* by the same Words do grant for themselves and the *Commons*.

The Answer the *Commons* make to the *Lords* having made use of the Statute of *Magna Charta*, is that what they have said before hath answer'd it, and not only it, but the rest of the few Instances (as they are pleased to call them) produced by the *Lords*, but that is very easily said but not so easily proved, and

and therefore not so easily believed, except there could be better Arguments produced than hitherto have been made use of: Since by what hath gone before, the weakness of what hath been yet said to that purpose hath been fully made to appear, so that the Precedents cited by their Lordships of *Magna Charta*, Chap. 37, and 47. *Ed. 3. N. 10.* 4 *R. 2d. N. 10, 11, 12, 13, 14.* 6 *R. 2d. N. 14.* as few as they are, yet they remain firm and unprejudiced in the Testimony they give on the behalf of the *Lords*. As to the multitude of Precedents, the *Commons* bragg of, those which the *Lords* have made use of, who would have produced many more, if they had thought fit to put themselves or the *Commons* to any more trouble than what was absolutely necessary for the just asserting of their Right, will be upon reckoning found to be as many, if not more than those the *Commons* thought fit to make appear; for the multitude spoken off lies amongst the modern Precedents (e-

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ven so modern as since the King's happy Restoration) and they were but only mentioned, but never enumerated at the Conference, but something in some of them may perhaps be fit to be taken notice of in what is to follow.

The next thing the *Commons* proceed to, is to endeavour to weaken the particular Precedents quoted by the *Lords*; and they begin with 14 *Ed* 3. N. 5. in which they very much fail in performing what they go about; and to shew that they do so there needs no farther labour than only to set down again the Words of that Precedent which are these (tho the *Commons* thought fit to Abbreviate them very much) *Après grand trete & parleance entre les grantz & les dits Chevaliers & autres des Communes Estsans endit Parl. est accordes & Assentus per tous les Grantz & Communes, &c.* and then follows the Grant to the King of the Ninth of their Corn, Wooll, and Lamb, which makes full  
 Proof

Proof that the *Lords* joyned with the *Commons* in the grant, and if in 14 *Ed* 3. a further search be made to N. 29, it will be there found that the *Lords* by Letter gave to the King Information, that they had granted the Ninth, and their Policy of Wooll for the Present shift; and if it should be yeilded that this Precedent were but an agreement for selling the Nones, as the *Commons* pretend it to be, yet taking it so, it proves for the *Lords*, that the *Commons* acted not without advising with their Lordships in that Particular of Relief given to the King.

The next Precedent which the *Lords* made use of, of which the *Commons* think fit to take notice, is 22 *Ed*. 3. N. 3. which they would fain wrest to be on their side, and would willingly Prove by it three things, first that the Grant is expressly the *Commons*. Secondly that Aids ought to begin with the *Commons*, and Thirdly that when they are begun

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the *Lords* can neither Add nor Diminish. As to the *First* Precedent it is thus: The *Lords* and *Commons* took advice from day to day, and in the end Answered; They first shew the great Charges, &c. Now who is it that Answers? Surely they who are first mentioned, or else all Grammatical Constructions must be altered, and then who are they, that are So metioned? The *Lords* and *Commons*: so that by the very reading of the Precedent the true manner of construing it will sufficiently appear to any one, that hath not a mind, to wrest the Interpretation. As to the *Second* ( if the *Lords* may as well have leave to narrow their Question as the *Commons* pretend to have a right to do it ) that is not the thing now in Dispute, for the *Lords* do not now call in Question whether or no Aids ought to begin with the *Commons* ( tho much may be said even upon that point, and there will be occasion to say more of it in what is to follow ) and therefore that  
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inference, at this time, is unnecessary. As to the *Third*, the Precedent now spoken of 22 *Ed.* 3. proves nothing at all, that which the *Commons* endeavour to infer from it, but have not been able to make good, that when there is any Aid begun, the *Lords* can neither Add or Diminish, but it rather follows, that, because the *Lords* had at that time, a share in adjusting of the matter before hand, the *Commons* could not then begin any thing concerning Money, till the *Lords* had first adjusted with them the Rates and Proportions; and so it appears, that the *Lords* could not only Add and Diminish, but the *Commons* could not Give till they had agreed with the *Lords* for adjusting the Matter and Manner of the Gift: Upon Consideration of the whole, it is very apparent, that not only this Precedent is still good for the *Lords*, but those of 29 *Ed.* III. N. II. 51 *Ed.* III. 18. are still ready to do their Lorships Service, notwithstanding any thing that

hath been hitherto objected against them.

The next thing the *Commons* are troubled at, is, That the *Lords* should make use of the Great Contract for *Tenures and Purveyances*, 7 *Jac.* as a Precedent in the Case in question; they pretend it is for want of Precedents, that the *Lords* are forced to make use of that; but sure it is a great sign, that the *Commons* are in great want of Arguments, since they have no more to say, but only charge the *Lords* with a scarcity of Precedents; and that when their *Lordships* produce one so plain in the Case for their having power to treat and debate about the manner of raising Money, as this of 7. *Jac.* is: By which it is clear and evident, that the *Commons* were then so far from denying, that the *Lords* might Treat about that Matter, that they at a Conference, desire to know what Project their *Lordships* will propound for Levying

ing that which shall be given, other than upon Land; and at another Conference, Answer was made by the *Commons* to the *Lords* Proposal thus; *Agreed, that the manner of Levying it may be in the most Easie and Contentful sort that by both Houses can be devised;* by which it is apparent, that the *Lords* were invited by the *Commons* to do their part in treating and debating on the Subject of Money to be levied for His Majesty: Therefore, this Precedent is very unjustly said to be made use of by the *Lords*, only by reason of a scarcity of Precedents, seeing, upon Consideration, it is so very full and home in the Case.

About the Precedent of the 3d. *Ed.* I. the *Commons* do excell even themselves in their extraordinary way both of Construing and of Arguing; for first, if it were as they say, it was a reducing of the 40 s. upon a Sack of Wool to 6 s. 8 d. per Sack, and then this Pre-

cedent is yet better for the *Lords*, seeing it is plain in the very point in question, for none can deny 6 s. 8 d. to be less than 40 s. so there is a plain Abatement.

Next, the Construction, whereby they would apply *Concesserunt* only to *tota Communitas*, and not to *Prælati, Magnates & tota Communitas*, is such, as there might be some danger to make so near *Westminster-School*, but that the Members of the House of Commons are all of full Age; for if *Prælati* and *Magnates*, have nothing to do with *Concesserunt*, they can have nothing to do in the Sentence, as any one will own, who hath ever been either under Tutor or School-Master; and Sir *Ed. Cook* himself, whom the *Commons* quote for the twice Printing of this Record, shews not any way to Construe that Sentence, whereby these words should be necessitated to be left out.

Next,

Next, their arguing from the 25th of *Ed. I.* in the Statute-Book, that the words (*Lords and Commons Grant*) are words only of Form, and made use of in such Cases, where the Grant did certainly proceed from the *Commons* alone, and endeavouring to prove it by the Precedents of the 3d and 4th of *Ed. VI.* is a very strange way of Reasoning, since the Precedent is such, as rather proves against them than for them; for they say themselves, that in the 2d. and 3d. of *Ed. VI.* there was a Relief given to the King by Parliament; and in the Title of the Act, as also in the Body of the Act, it is called all along, *The Grant of the Lords and Commons*, which is a Precedent very full to prove the just contrary of what the *Commons* assert: And to shew that *the Lords and Commons Grant*, are not words only of Form, but that the *Lords* have a right of Granting as well as the *Commons*, and this Right their Lordships have made use of, and have  
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put in execution, and that not very long ago, for the *Commons* call this a Modern Precedent; but then they say in the 3d. and 4th. of *Ed. VI.* this former Act is recited, and there it is acknowledg'd to be only a *Grant of the Commons.*

It is a hard shift the *Commons* are driven to, when they are fain to make use of a false Recital, as this cannot but be, tho' in an Act of Parliament, since the former Act is acknowledged by the *Commons* themselves to be in other terms; but be it what it will, it doth them but little Service, but rather shews that the old Courſe was for the *Lords and Commons to Grant*; and that this of the 3d. and 4th. of *Ed. VI.* was an endeavour of the *Commons* then to slip into this Claim, which the *Commons* now so earnestly labour to maintain, but shew not that it was then yielded as of right due to the *Commons*, but that it was casually overseen by the *Lords*, since  
after

after that the *Commons* never gave by themselves, but still with the Consent of the *Lords*, all the Reigns of *Ed. VI.* *Queen Mary*, *Queen Eliz.* and *King James*, tho' indeed in the Reign of *King Charles I.* and since the happy Restoration of our present Sovereign, they have for the most part done otherwise, but that can be no proof for their Right to do so, since Action cannot prove Right, and this Action is the very Encroachment of which the *Lords* complain.

Upon the next Precedent of the 9th. of *H. IV.* called *The Indemnity of the Lords and Commons*, the *Commons* make a very strange Observation, which the Precedent will not bear; which is, That the *Commons* complain of a Grievance and a breach of their Liberties by the *Lords*, demanding a Committee to Confer with about Aids, whereas the Record is thus; the aforesaid Displeasure arose by the Means; that in the question

question of the Subsidies, the Lords made the King sundry times privy thereto, and brought Answer therein from the King, upon which the *Commons* answer, that the same was against their Liberties; so that it is plain, the Complaint was for the Lords having made the King acquainted with some Proceedings, and not their demanding a Committee to Confer with them about Aids.

Their next Observation is, That *the Lords ought to consider apart*. About this there is no Dispute, the *Lords* do so, and so do the *Commons*; but nothing in this Precedent doth any ways exclude the use of Conferences between the Houses; nor any ways limit, that they may not be, upon occasions of Supplies for the King.

As to their next Observation, That *no Report shall be made to the King, till the Matter be perfected*, it being not the

the thing now in question, it is not at all to the Business in Dispute, and so it is but improperly observed now, but to find out what they next Assert, *viz.* That this Precedent mentions any thing at all of the *Commons Granting*, and the *Lords Assenting*, there will be need of some extraordinary sort of Spectacles, or the Precedent will be worn to pieces, before such a thing can be discovered in it.

Their next Observation, That *the first should be Presented by the Speaker of the House of Commons*, is not of any Moment in this Dispute, being a thing daily practised in that manner, and which the *Lords* have not gone about to change or alter.

Next, the *Commons* find fault with the *Book-Cafe* which the *Lords* Quoted of 33 *H. VI.* and it may well be acknowledged, that a Book-Cafe is not so strong as a Record, and yet nothing  
said

said by the *Commons* at the Conference, tends much to the Prejudice of this Case; for First, It could not be possible the Judges should deliver any Opinion in it, since the Book says thus, *Ilz mandur pur Kirkeby des Rolles pour Fauxes Clerke del Parlement pour estre pus del fourm et Cours del Parlement.* And if the Judges did want and desire Information, who would be so proper to give it them, as *Kirkeby*, of the Rolls, and *Faux*, Clerk of the Parliament, for so they were Cited by the *Lords*, tho' the *Commons* forget one of them, and apply the other to the wrong Office. Next, that *it was a Case put by the bye*, is no weakning to it at all, for the Method of the Parliament being the thing enquired after by the Judges, this Particular was mentioned by those Clerks, only to clear the Judges, (who had desired to be informed by them) the Usage and Practice of Parliaments, and their clearing it by such an Instance as hath relation  
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to the *Tonnage and Poundage*, (which they might perhaps have done as full by some other) affords the Lords sufficient ground, to take notice of this Case, as a thing not then disallowed; and tho' their Lordships call it an eminent Book-case, yet they lay no more weight upon it, than it is able to support, and do not look upon it as of equal strength with a Record of Parliament. Then to say against it, that it hath not been so used since, and that if it might have been done, it should have been so done now, is but to acknowledge, that the Lords are wary of practising what hath not lately been in use; and to give their Lordships warning to be careful for the future not to slacken or forbear the doing of any thing they have a right to do, lest their not using their Authority in any case be after interpreted a want of it. And yet this particular of not sending down Bills again, may perhaps be too inconvenient upon many accounts ever to be revived.

revived. Next, If this Case prove, that the *Lords* may encrease Impositions, such a Proof-cannot make at all against their Power of abating; and their Lordships either Cite or not Cite that part of the Case as they think fit. It is no way necessary that they should be compelled to make use of any more than what is proper to the Matter in Debate.

Next, upon search of the Abridgment, Printed 1565, it appears, that what the *Commons* call a *Query*, is a *Note*, which is rather of Approbation, than of Dislike; and indeed the Case doth well deserve a Note, but a Note is not a *Query*.

In the next place, the *Commons* have hitherto slighted a Book-case, yet now they have lighted on one, which seems to make for their turn, in Judge *Dyer's Reports*, 30 of *H.* 8th. They are not unwilling it should bear weight; nay, will have it go before a Judicial Authority, which is but a private definition

nition of a Subsidy, by that Judge, wherein it is not impossible, but he may have mistaken ; but since the *Commons* will have it thought, that there is so much strength in *Dyer's* Definition of a *Subsidy* for them, it cannot be unreasonable, to expect, they should allow the words in the same Author, immediately going before the Definition Cited by them, which certainly ought to have as much strength, as the words immediately following, and then they will find, that *Le Custome pur Marchandize d'estre transport hors del Reabne, est un inheritance in le Roy, et per la Common Ley et nemy done per ascun Statute et cea appieret per le Statute fait in Anno. 14. Ed. 3. qui fait le premier Statute, qui par le d'ascun Custome et tel Statute ne done no limit al Roy ascun Custome, mais abridge Custome qui fuit pay pur laynes et quire, car les parlos del Act sont prohibitorie et diot que nul Anglois payera pur Custome de un Sack de layne fo sq demye Marke issint est*

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proce



*proce perdit Estatute, que Custome est inheritance en le Roy per le Course del Common Ley.* And so they must not claim a Right of granting the Customs to the King, since being his Inheritance already, they cannot be again granted to him. If the *Commons* will approve of this Opinion of Judge *Dyer*, as to the King's Interest in the Customs, they may make what they can of this Definition of a *Subsidy*, as to the interest of the Lords to it ; but it is very probable, that they are not likely to approve much of the King's having the Customs as his Inheritance, without being obliged to them for the Gift of them.

There is now left but one Precedent more produced by the *Lords*, which the *Commons* take notice of, and that is that of the *Proviso's* added to the Bill, 1 *H. 8.* and by their Expressions about it, they very clearly discover, that when they apprehend there is any  
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Weakness in any thing the Lords urge, they are then very desirous to have it believed that their Lordships lay great weight on that Particular; they would not else have said, *The Lords seem mainly to rely upon these Proviso's*; which their Lordships are so far from doing, that making use of this Precedent *inter alia*, they did only name it and read it, without making further inference upon it, than only this, That there was something abated by it from what came up from the *Commons*; but if the Precedent be somewhat irregular, and perhaps in some things not exactly agreeing with the true Method of Proceedings in Parliament, it is so in nothing more, than in that particular out of which the *Commons* strive to take advantage, *viz.* That *the Thanks were given to the Commons alone*; for that is absolutely against the Act of Parliament, 9 H. 4. called, *The Indemnity of the Lords and Commons*, the latter end of which Enacts expressly, That the

King shall Thank both *Lords* and *Commons* for Subsidies given to him.

Now the *Commons* have done what they pleased with the Precedents Cited by the *Lords*, they pass from our *scarcity*, (as they are pleased to term it) to their own abundance; for they have found on the sudden (as they say) having had but few Hours to search, all these following, which shall be considered hereafter, and then it will easily be discern'd what a stock they will prove for their Service: But surely 'tis no sign of great store of Precedents upon Record that the *Commons* are furnished with, when they are fain to have recourse to *Walsingham's* History, since his Authority is no more than the Opinion of a Private Person, and *Stow*, or *Hollingshead*, or any other Chronicler, may be esteemed of equal Weight with him, if any thing should be produced out of any of their Writings. But if the weight of what is Quoted out of him, be considered, it will be found

found, the *Commons* will not gain much Advantage by it; for in the first two Quotations, the History mentions not any thing of the manner of granting those two Aids, of the 30th part of Goods, and of the 9th Penny, but concludes it under the word *Populus*, which word, if of so general Signification, that it includes in it all the Subjects of the Realm of all sorts, and the *Lords* cannot be excluded out of the number of the King's Subjects, by the Historian's speaking in general terms, expressing the manner and Method of the Gift. The other two Quotations have not been fully observed by the *Commons*, else they would have found, that the last of them is and ought to be first in time, and then they would have seen how the Matter pass'd; for the History sets forth, That *H. 4.* in the 6th Year of his Reign, *Accersitis Londini Regni Baronibus tractabat cum jisdem de Regni Regimine, deq; pecuniali subventionem sibi ferendam,*

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sed

*sed proceres Regi tunc minime parvere.*  
 So that the reason of their refusal, may well be conceived to be, That the *Lords* held it irregular, and perhaps illegal, to grant Money without the *Commons*, of whom the History mentions not any were Called.

The History next sets forth, that the King took another Course; *Et Convenire fecit apud Sanctum Albanum Clerum, Regniq; Barones pro præmisso negotio, sed proceribus renitentibus nihil actum fuit.* And the reason of this second Refusal, may well be apprehended to have been, that they held it irregular now, as well as before, to grant Money without the *Commons*, of whom there were none Assembled at this time, neither. So that from hence it is clear, that there was no whole Bill rejected by the *Lords*, as the *Commons* would have it thought there was, for there was no Bill offered that could have been rejected, there being no *Commons* then Assembled

Assembled to offer such a Bill; and so the Proof the *Commons* endeavour to make by this Quotation, of a denial of a whole Bill, falls to the ground, and comes to nothing.

The other Quotation of the 7th. of *H. 4.* (which which was Cited first, but is last in time) Shews the success of the whole Business thus; *Eo tempore inchoatum est Parliamentum, quod protelabatur inutilitè fere per annum quia postquam Parliamentales Milites distulissent diu Concedere Regi Subsidium, in fine tamen fracti Concessere taxam petitam.* So that these two Quotations prove the Wariness of the Lords, in their avoiding to do any thing illegal, as to giving of Money without the *Commons*, but proves not but that (when the *Commons* were Summoned) the first Motion might proceed from the Lords for the granting to the King, what they did at last, after long delay, agree to; so that nothing which *Wal-*

*Walsingham* writes in this particular, is any way prejudicial to the *Lords*, tho' it were not only a History, but a Record; but being done, is of no Weight one way or other; and therefore the Quotation might very well have been forborn; but then the number would have shrunk, and the *Commons* must have gone without some of the Precedents that follow, which they would make us believe, are all in their behalf.

The next thing which the *Commons* offer as a Precedent (what hath gone before out of *Walsingham*, not having deserved the Name) is the 1st. of *Ed.* 3. Statute 2. *Cap.* 6. It is very hard to conceive what they aim to prove by it, for the thing is only a grief that Taxes were Re-viewed, and the Statute says nothing of the Grant, but only relates, how the *Commons* were grieved after an Aid was granted, that the Taxes should be Re-viewed; and (*where-*  
as

*as they Granted*) are the words used in this Statute, the *Commons* would have it only applyable to themselves. Now, those words are not such that can possibly shut the Lords out of the Grant; for if the Lords had complained of the Re-view of the Taxes, the word (*They*) might have been as properly applied to their Lordships, and it might have been as well said of them, *which they had Granted*; but because only the *Commons* Complained, therefore the word (*they*) seems to relate to them, but doth not at all make out, but that the Grant formerly made (the Re-view whereof is here complained of) was made both by the Lords and Commons.

By the Statute of 18 *Ed. 3. Cap. 1.* the *Commons* will not gain much advantage; for it is no great wonder, that at the first looking on, that Statute the *Commons* should seem to grant alone, since their grant of two *Fifteenths* differs so much in kind from the Grant  
made



made by the Lords of their own Personal Service: But if the thing be fully considered, it will appear but a seeming one, for if the Lords (as they do in this Statute) in the very same Act in which the Commons grant (*Fifteenths*) do Grant (*Go in Person*) into the King's Service, it cannot be said, but that they both Grant in one and the same Act, except the *Commons* will acknowledge, that they have so slight an Opinion of the Lords, and of any Service done by them, that none of their Actions can be of any worth or value.

Now, tho at the first sight of this Act the *Commons* may perhaps seem to grant alone, yet since upon full Consideration of it, the Lords are found to grant very considerably with them, this Statute must needs be look'd upon as no way available to the Commons purpose. The Statute (*36 Ed. 3. Cap. 11.*) doth but recite a former Grant, and if it be allowed, proves but the first  
of

of the all these following Precedents, which the Commons desire should be esteemed a Multitude.

In the first Precedent of ( 21 R: 2. N. 75.) the Commons have mistaken, for if it be looked on, it will appear to run in that Stile, which the Lords in the last Conference about this Business, did mention to be constantly made use of, *Ed. 6. Queen Mary, Queen Eliz. and King James*, and so will not make any thing at all for the Commons; since according to that Stile, the Gift was not given by the Commons alone, but granted by the Commons by the Assent of the Bishops and Lords. The two Precedents indeed of 2 H. 6. N. 14. and of 31 H. 6. N. 7, 8, 9, 10. are as the Commons Cite them; so that now they may reckon three of the *Multitude* they produce, of the *all these following* they brag of; and they may very well have past in that manner through some inadvertency of the Lords,

Lords, in those troublesome times. But the next Precedent of 8 *Ed. 4.* N. 30. appears upon view of it, to be like that of 21 *R. 2.* N. 75. *A part of the Commons by the Assent of the Bishops and Lords*; and so makes not for, but against the Common's Assertion.

The Statute 12 *Ed. 4. Cap. 3.* doth but recite a former Grant, and if allowed, makes up the *multitude* of Precedents but four; but much more is to be said of this Precedent, for if the Statute of the 4th of *Ed. 4.* be looked on, which is the Statute Quoted in this Statute, it will be found, that there is no other Grant in it, but that *the King by the Advice, Assent, Request, and Authority aforesaid, doth Grant, Ordain, and Establish, &c.* And what the *Advice, Assent, Request* and *Authority* is, will appear by looking on the beginning of the Statutes of that Year, and there it will be found, to be *By the Advice of his Lords Spiritual and*

*and Temporal, and at the special request of his Commons; being in the said Parliament; and this Stile is the Enacting Stile of all the Acts past that Parliament, as well as of this Grant, and the Commons are not mentioned otherwise at all; so that if the Enacting makes the Gift (as in this Act there is no particular Clause of Gift, but all the Gift that is made, is made by an Enacting Clause) It will prove fully, that the Lords had an equal share in the Gift with the Commons, since it cannot be denied they have an equal share in the Enacting.*

The same will be found in the 36th. *Ed. 3. Cap. 11.* and then two of the four Precedents which the Commons have produced for their Assertion, will be found to face about, and to bear Witness for the Lords, and the Commons will have but two left to count upon, towards making up the Multitude they talk of; Nay, a greater Consequence will follow in relation  
to

to the Commons, if it shall be held for granted, that the *Enacting* makes the Gift, for then not only these two Precedents will change their Party, but all the modern Precedents, which the Commons did only mention, but not enumerate, will tack about, and be of the Lords side ; for none can deny, but ever since His Majesty's happy Restoration, the Lords have joined in the *Enacting* all the Acts that have past, and if the *Enacting* makes the Gift, they have then likewise joined in the Gift, and then it will evidently follow, they must have a power of Methodizing and ordering the Gift as well as the Commons, since the Gift is theirs as well as the Commons.

Thus it is evident they did make use but of few Hours ( as they say themselves ) in the search of Precedents, or in consideration of those they did light upon, they would not else have produced such that make so much against them.

And

And whereas the Commons pretend, that these Precedents, which they think are for them, are strengthened in their behalf, by being in the troublesome Times of the Wars of *York* and *Lancaster*, they may be minded that the distraction of those times was mentioned by the Lords only because it was the occasion of variety of Stiles in Acts of Parliament: And it may be observed of all the Precedents hitherto Cited, even in this time of change of Stile, there have been but two produced, that do clearly agree with the Assertion of the Commons; which shews, that tho by reason of those troublesome Times, those two did escape the Lords Notice, yet their Lordships were for the most part, careful of their Rights, and had always power enough to preserve and keep them entire, tho sometimes there have been offers and endeavours to invade them; nor doth it follow from these two Slips, that the

the Forms of them were approved by these *mighty* Men, as the Commons call them, nor if they were approved by them, would it hence ensue, that the Lords now, who tho perhaps not such *mighty* Men, yet have as just an Interest in their Rights, as any of their Progenitors, or Predecessors, how *mighty* soever, must therefore totally abandon their Just Rights, because the Lords of those former times were twice Mistaken, and did not fully maintain what was their Just due then, and is the Just Right of the Lords now.

The next precedent the Commons produce, is 1 *H.* 8. and this, even as they quote it themselves, makes for the Lords. The *Tonnage* mentioned in it, being granted by Assent of the Lords, and so the *Stile* agreeing with what the Lords have asserted to be the *Stile* in Grants, in the time of *Ed.* 6. Queen *Mary*, Queen *Eliz.* and King *James*, is so

so much the stronger for the Lords, since it shews that here is the same Stile used in. the time of *H. 8.* and not the Stile the Commons would have, of the Commons Granting alone.

The Precedent of the 15th of *H. 7.* is *Irisb.* and if it were allowed, is of no Consequence in *England*, since if either Kingdom be to guide the other, surely it will be fitter for *Ireland* to receive Precedents from *England*, than for *England* to receive them from thence. It is very certain, that of late, there hath not been in other things, so great a respect shewed to *Ireland*, nor perhaps would be in this, but that the Commons find a great scarcity of Precedents at home, that may be serviceable to their present Turns.

Now the Commons have fallen on a heap of Precedents, for they bring three at once, 1 *Ed. 6. Cap. 13.* 1 *Q. H* *M. Cap.*



*M. Cap. 8. and the 11th. of Q. Eliz. Cap. 19.* Of these three Precedents, the first shews clearly, that the Lords said nothing but truth, when they asserted, That all Grants in this time, were *by the Advice and Consent of the Lords Spiritual and Temporal*; for tho' there be some Preface made in the name of the Commons, yet, (before it comes to the Enacting Part, where the Lords cannot be left out) as soon as ever the granting part begins, it runs in these Terms; *Your poor Commons, by the Advice and Consent of the Lords Spiritual and Temporal, &c. Give and Grant*; which Terms do fully unite the Lords in the Gift; so that it cannot be given without them; therefore the Commons can receive no benefit by this Precedent for the justification of their Assertion, That they have a Right to give alone without the Lords, and that the Lords have no share at all in the Gift.

The

The Second Precedent, which if it had been right quoted, should have been the 1st. of *Q. M. Cap. 18.* and not *Cap. 8.* there being nothing in that Chapter of any Gift at all, shews the same thing as to the manner of the Grant, before it comes to the Enacting part as the former Precedent, and the no Enacting part is still the same with the former, but in the Preface, is more yet against the Assertion of the Commons than the first; for the very Preface of this Act runs in these Terms, *Your poor and obedient Subjects and Commons,* &c. Now out of the word *Subjects,* it is not possible to exclude the Lords, so that the Commons have quite mistaken this Precedent, and have Cited one that makes more by much against them.

As for what they endeavoured to prove by the third Precedent, it begins in the same Stile in the Preamble as the

Second doth, and goes on in the same manner in the Granting part, as the other two Precedents do, and in the Enacting part is likewise the same: So that since the first makes nothing at all for the Commons Assertion, and the second yet less; this Third being so exactly in the same Terms with the Second, none of all the three prove any thing of what the Commons desired, but are full in proof of what the Lords Maintain; and for farther proof of the Just Right of the Lords having to do both in the Gift, and in the manner and measure of the Gift, the very next Act of Parliament which follows in the Book of the Statute at large, after the Precedent last Cited, of 1 *Eliz. Cap. 19.* is very sufficient, and very proper to be taken notice of, for it is a grant of a Subsidy, and two *Fifteenths* and *Tenths*, by the Temporality, and runs in these very words; *We, your most Obedient and Loving Subjects, the Lords Spiritual and Temporal; and Commons*

*Commons in this present Parliament Assembled, to shew our willing Hearts and good Minds, upon mature Consultation had, have condescended and Agreed with one Voice, and most entire Affection, to make your Highness at this time a Present, not such indeed as in our Affections we do wish it, and as we know most certainly it ought to be, but yet of your accustomed Clemency which you do shew to all Men, We do humbly on our Knees, pray your Highness not to reject it, but accept our good Wills and hearty Desires herein, and that this our small Gift may be by your Highness, the Lords Spiritual and Temporal, and Commons in this present Parliament Assembled, and by the Authority of the same Enacted, &c.*

By which it is very apparent, that not only in the Enacting, but in the Giving part too, the Lords joined with the Commons, and then there was no Dispute about it, nor any Question, but it was the Lords Right so to do.

The Inference the Commons make upon the business of the *Mises*, whereby they would have it thought, that the Lords did at that time acknowledge that they had not a Power to diminish any part of the Aid, shews how absolutely necessary it is for their Lordships to insist constantly upon their Rights, since their Civil Respects shewed to the Crown, are brought in as Arguments against their Power; for were not the Commons resolved to make use of all that can but have a shew of appearing against the Lords, they could not have been so weak as to conceive they could draw any advantage out of this; for if the Business be taken, as they express it themselves, it shews that the Lords have a Right of rectifying such things as the Commons have past in relation to Aids given to the King, else the People of *Cheshire* and *Wales* were strangely and grossly mistaken, when they addressed to the  
Lords,

Lords, upon the second reading of the Bill, to have relief about their *Mises*, and to be therefore abated their part of the Subsidy; and yet it is not found, that ever there was any irregularity complained of in that Proceeding, either in relation to the Lords, or their Petitioners, the *Cheeshire* or *Welchmen*; nor can it be reasonable to conceive, that the Lords were then sensible that they had no Power in that particular, and therefore Address'd to the Queen in it to have her Direction, but rather what appears from thence, is the great Readiness the Lords shew'd for the dispatch of the Queen's Supply, and the great Respect they shew'd the Queen, in desiring her approbation of what they found fit to be done for the relief of the *Cheeshire* and *Welchmen*, before they would relieve them by their own Authority, which was very sufficient to have done it. Of such respect shewed to the King's Pleasure, latter times are not

without Examples; but it would be very hard if either Ancient or Modern Civilities should be made use of to the Prejudice of Just Rights.

What advantage the Commons expect from the Precedent of the 17th of King *Charles* the First, is something hard to be conceived, for if it should be allowed to be as it is Cited, it can be of no great use to them, since it is in a time in which the Lords do not deny but that Grants have run in that Stile by reason of the Usurpation, which the Commons had some time before that offered at, and did then further endeavour to effect, and are still labouring for. And the *Junta* of the Lords and Commons then agreeing well enough, however it may be intended, yet fixes not upon the present Lords; for as it cannot be denied, but that both the Lords and Commons were at that time very much to blame, so it can as little be denied, that if new Elections  
have

have filled the *House of Commons* with Honefter Men than then fat in it, Time hath made great Alterations in the Persons of the Lords, and if there be any remaining of those who then Sat in the *House of Lords*, there are as many at least, if not more, of those who then Sate in that *House of Commons*, who have been chosen to this Parliament, and now Sit in this House of Commons? and it is not to be put in doubt, but the present Members of both Houses, are (as they ought to be) full of Duty and Loyalty to His Majesty and Government.

It is a very hard plunge the Commons are put to, when they are fain to mention for a Precedent, a thing that hath not yet a Being, as they do the Preamble of this very Bill now in Question, which certainly (the Bill not being past) cannot be looked upon as a Precedent to prove any thing whatsoever, and yet other Modern Precedents



dents the Commons have not particulariz'd in; so that what is become of the *multitude* they brag of, is yet to seek: But tho' they have only thought fit to mention them, and not to name so much as one (except this Preamble of a Bill unpast, might be so esteem'd) yet it is not hard to find several late Grants of Money, that may be well worth a little Consideration, and perhaps will then be found to be so totally on the Commons side, as they are willing they should be believed to be.

It is true, the Acts since His Majesty's happy Return, run for the most part in the Style which they desire to maintain, and they are so often in that Style, that the Commons endeavour to make great Advantage out of it for their Assertion; but yet tho' their Zeal hath been great, and their Care no less for approving their Usurpation of the Right of the Lords in this particular; nevertheless, they

they have not been so exactly careful in the Business, but that the Stile hath varied several times since the King's Restauration, and that sometimes very materially to the advantage of the Lords. In the case of the first Act for *Poll-Money*, 12 *Car.* 2. they were so sensible of the Lords giving as well as they, that they not so much as offer to make it a Gift of their own, but the whole Preamble runs in general Terms of expression of the urgent Necessity and pressing Occasions, that did then require extraordinary Means for the present raising of great Sums of Money, and never mention that the Commons give any thing, but goes immediately to the Enacting, *By the King's most Excellent Majesty, and by the Lords and Commons in this present Parliament Assembled, and by the Authority of the same,* for these foregoing words are the very words of that Act it self.

It is true indeed, that in the next Act of *Poll-Money*, 18 *Car.* 2. after they

they had had some Acts past in the Stile which they desire, they then adventured to make use of that Stile, and to entitle themselves to the giving of that which the Lords gave even for their very Persons. This the Lords did then let go in this manner, out of their earnest desire, that the King's Supply might not at all be obstructed, but may very well take Warning, since so ill use is made of their Condescensions, how they yield to any such for the future, to the prejudice of their own Rights, which they now see are endeavouring to be wrested from them by the Commons.

In the 12th *Car. 2.* in the first grant of Excise upon Beer and Ale, in which Act the Court of *Wards* and the *Purveyance* Were taken away (which perhaps may be said was a Bill of Bargain, and not of Gift, as upon consideration it doth seem to be,) it is very observable, that neither in the Abolishing,  
nor

nor in the Granting part are the Commons so much as once named separately without the Lords, but in the Abolishing part in what relates to the Court of *Wards* and the *Tenures*, the Stile runs thus, *Be it therefore Enacted by the King our Sovereign Lord, with the Assent of the Lords and Commons in Parliament Assembled, and by the Authority of the same.* In what relates to the *Purveyance*, it runs thus; *His Majesty is therefore graciously Pleased, that it may be Enacted, and be it Enacted by the King's most excellent Majesty, by and with the Advice and Consent of the Lords and Commons in this present Parliament Assembled;* and in the Granting part thus, *Be it therefore Enacted by the Authority aforesaid:* So that it is as clear as the Sun, that in the Grant of what was given to the King for the Court of *Wards* and the *Purveyance*, be it by Gift, or Bargain, the Lords had an equal share with the Commons; so that their Lordships claim not to be Excluded,  
hath

hath been held good and valued in a later time than the Commons are now willing to acknowledge. Nay, in a later time than that of 14 *Car. 2.* in the Act for providing Carriage by Land and by Water, *for the use of His Majesty's Navy and Ordnance*, wherein the *Parveyance* is in some proportion Re-granted to the King; there is nothing at all of mention of the Commons making it their Gift, but the Act comes (immediately after the recital in the Preamble of what had been taken away by the former Act) to the Enacting of what should be for the future in these words; *Be it notwithstanding Enacted by the King's most Excellent Majesty, by and with the Advice and Consent of the Lords Spiritual and Temporal and the Commons in this present Parliament Assembled, and by the Authority of the same: And all the other Enactings in the Bill run thus, Be it further Enacted by the Authority aforesaid; So that at this time,* (which is yet later

later than the former) the Lords had as much Interest as the Commons in this Grant, and the Commons are not at all mentioned separately from the Lords.

In 13 Car. 2. in the Act for a *free and voluntary Present to His Majesty*, the Lords Right of Giving did so clearly appear, that the Commons did not so much as offer to entitle themselves to a Solemnity in that Present, but the whole Preamble is upon the Lords and Commons in Parliament Assembled, taking into consideration His Majesty's great and important Occasions for a speedy supply of Moneys, and then they beseech His Majesty, that it may be Enacted; and so it goes on to the Enacting, which is in these words, *Be it Enacted by the King's most Excellent Majesty, by and with the Advice and Consent of the Lords Spiritual and Temporal, and Commons in this present Parliament Assembled, and by the Authority of*

*of the same ; By which the Lords are not at all excluded out of the Gift.*

In 14 Car. 2. an Act was made for distributing threescore Thousand Pounds amongst Indigent and Loyal Officers ; and the Preamble of that Act is thus, *Whereas, there was a Loyal Party, &c. without any particular naming of either Lords or Commons, throughout the first Paragraph of the Act ; and the second Paragraph begins thus ; We therefore the Lords and Commons for the perpetual Memory of the Eminent Deservings of the said Loyal Party, &c. and so goes on to these words, most humbly beseech your Majesty that it may be Enacted by the King's most Excellent Majesty, and by and with the Advice and Consent of the Lords Spiritual and Temporal, and the Commons in Parliament Assembled, and by the Authority of the same : And when the Act comes to the assessing of Offices, these are the words that are then used ; Be it Enacted by the Authority aforesaid.*  
By

By all which it appears, that the Lords were equally concerned with the Commons in this Gift. But because perhaps it may be said, the Threescore Thousand Pound was given before by a former Act, and only now appointed to be Distributed, it will be fit to take notice, that the assessing of Offices was a thing now in this Act, and that cannot be denied to be a raising Money upon His Majesty's Subjects, and in doing of that the Lords were not (in this Case) at all divided from the Commons; nor are the Commons ever separately named in the whole Act.

In 15 *Car. 2.* There was a grant of a Subsidy by the Clergy, which was then Confirmed by Act of Parliament; the Stile of that Grant, as it is recited in the Act of Confirmation, runs thus, *Your Majesty's Leige and Humble Subjects, the Prelates and Clergy of the Province of Canterbury, called together, &c. with one agreement and uniform consent, have*  
f
given



*given and granted, and by these Presents do give and grant, &c.* So that it plainly appears to be the Grant of the Prelates, as well as of the inferior Clergy. This Example, the Grant of the Clergy being Confirmed by the Act of Parliament, goes a great way, to the Shewing, that the Lords are Parties, (or at least ought to be) in the gifts of Aids to the King; for since the Clergy exclude not the Lords Spiritual out of their Grants, upon what account imaginable can it be, that the Lords Spiritual and Temporal should be shut out of that Right, which the Lords Spiritual are not debar'd of? And why should not the Lower House of Parliament as much acknowledge the Rights of the Upper House of Parliament, as the lower House of Convocation doth those of the upper House of Convocation?

The

The Commons next proceed to give the Lords very good Counsel, tho' the Foundations of it be not rightly laid, for the Precedents mentioned (how near or how far from a *Multitude* hath been already seen) have not at all been Grants of the Commons separately, as hath been fully set forth by what hath gone before, where it hath been very plainly shewed, that in many of them the Lords have joined in the Gift; and since the Lords not having made Changes and Alterations in some of those Bills, is insisted upon to prove their want of Power to have so done, which Argument (as weak as it is) is the strongest the Commons have produced yet, the Lords have reason to take the good Advice given them, and for the future to make such Alterations upon all occasions as they shall think fit, if it were but (as the Commons direct them) purposely to preserve their Right.

Next, the Commons fall into very high Expressions and very strong Affe-  
 verations of the uninterrupted Possessi-  
 on of their present Claim, in the Stile  
 of which it hath been already shew'd by  
 what hath gone before, that they are  
 very much mistaken, and that what  
 they have said, should rather have run  
 in another manner.

Thus an often disputed usurpation  
 of this Privilege, which hath had no  
 other Confirmation since the 9th. of *H.*  
*4. But only that the Stile of Acts of Par-*  
*liament hath sometimes been varied, but*  
*hath been shaken frequently by the Stile*  
*of Acts running according to the Claim*  
*justly made by the Lords, ought now at last*  
*to be for ever wav'd, that it may no lon-*  
*ger be an occasion of Dispute between the*  
*two Houses, to the hindering necessary*  
*Transactions between them in matters of*  
*Money; and the Commons ought to consi-*  
*der, that if they insist longer upon main-*  
*taining their Usurpation, the Inconveni-*  
*encies*

*encies and Mischiefs that may thereby ensue, must necessarily lie at their doors, and that may well be worth their serious Care, and earnest endeavour to avoid.*

If the Commons did fully consider the Precedents produced by the Lords, it is something wonderful (but that they have a way of Reasoning, and a Confidence in Asserting, different from other Men) that they should declare, that there appears no colour from the Precedents why their Lorships should be so fixed in this Point, for by what hath gone before, it hath been sufficiently made out, that the Precedents cited by the Lords, do make for them, and if there be any irregularity in any of them, the Commons can make nouse of it against the Lords, since nothing perhaps but the irregularity that is in any of them, makes for the advantage of the Commons; and the Lords had reason enough to say, That they *had neither Reason nor Precedent offered by the Com-*

*mons for what they Claim;* for their Lordships are not so fond of Novelties, as to conceive that the Book of Rates 12 Car. 2. (past in such a manner upon such an exigent of Affairs as that then was) should ever be fit to obtain the name of a Precedent. The Lords give God thanks for the good that was done at that time, but do not think, that the then Method of Proceedings is fit to beset up for a Rule, and therefore what they then said concerning the *Book of Rates* cannot justly be look'd upon as an Answer to a Precedent, but as an endeavour to put the Commons in mind, that the state of Affairs was such at that time in the Kingdom; that the Lords (who were earnestly desirous of His Majesty's firm and fix'd Settlement) found it fit for so good an end, not then to insist upon all Formalities in their Proceedings; but it is a very hard matter to create from thence an Argument against the Power of the Lords, especially the  
 Commons,

Commons, not so much as pretending to prove that any other *Book of Rates* (besides that now spoken of) was ever read in their House, any more than in the *House of Lords*.

The next thing the Commons do, is to give the Lords very unnecessary Thanks for what their Lordships never did for them; and since they are willing to wrest even the Precedents made use of by the Lords, as if they were to their Advantage, it shews them very desirous to lay hold on any thing, that can but seem to make for their Assertion. But the saying that Precedents are on their side, will not make them so, as hath been fully discovered by what hath gone before, in relation to the Precedents urg'd by the Lords, and more Particularly to those three the Commons are so willing to own from their Lordships, 3 *Ed. 1.* 1 *H. 8.* 9 of *H. 4.* which do (notwithstanding any thing

yet said by the Commons) still continue to make good the Allegations of the Lords; and for the rest which the Commons intimate do make for them, it is very likely if they were enumerated and examined, they would make for the Lords as those do, which are taken notice of; and in the mean time they may be conceived to make for any thing, or for nothing.

The next assertion of the Commons, that it is an unsafe thing in any settled Government to argue the Reasons of fundamental Constitutions, is a very great truth; but as true as it is, it cannot be of weight enough to induce the Lords to forbear the Justification of their Right, and let the Commons go away with it, for fear of some other inconvenience which may be apprehended, but cannot be foreseen except by those who design to Introduce them; and it is to be hoped the Commons intend not to do any such thing : But  
 now

now they come to shew in what manner they apprehend the arguing of the Reasons of fundamental Constitutions may be prejudicial to the Lords, and so take occasion to Question the Lords Right in Judicature in three particulars, endeavouring to have it thought, first that the Judicature is not placed in all the Lords in Parliament; secondly that the Commons have a share in the Judicature; and thirdly (to the further strengthening of the second) That it is an Error in the Lords to Judge without the Commons.

Now tho' at this time they do not pretend to question the Judicature of the Lords, and speak what they say concerning it only by the bye; nevertheless (because at some other times it hath been but too frequent with them to make earnest endeavours at encroachments upon their Lordships in that particular) it will not be improper a little to look upon the Precedents here mentioned. The first of them will  
upon



upon examination be found to be a Book Case, and then the Commons may well be put in mind that in this very Conference they have exprest no great respect to a Book Case cited by the Lords in the last Conference upon this subject; so that if this Case 22 Ed. 3. went against the Lords, it ought not sure to be of greater value against them, than the other was for them; and yet this Case is not against the Lords, for thō it is true in the Book Case, *that le Roy assigne certeyne Countz et Bar. et Evesqueux, Lez Justices & determiner le dit besoignes,* yet nothing was done, and it is very likely there was nothing done because the Lords found that there ought not to be any others joyned with them in time of parliament. For the Book Case goes on thus, *Adeuant ceo querier fuit fait le Parliament fuit fini, et Lez Deputies demurrer,* and then it was alledged, *que le juge non povet estre revers si non en Parlement, et depuis que ceo est fines, ulterius*

us

*us encest Besoigne, nihil agendum est,* so that this Case proves rather the Contrary of what the Commons assert, since it is plain there was not then any further proceedings, neither in nor after Parliament and so that Irregularity was not at all Justified.

That of the 25. of *Ed. 3. N. 4.* (which should surely have been *N. 10.* for in *N. 4.* there is not any thing of that Nature to be found shews that the Judgment there mentioned was read before the Nobles of the Parliament, and was affirmed by them; so that the Course of Judicature was not at all herein altered, and the Rule given in this Precedent, what should be done, if the like Case should hereafter happen, was an establishment of a method used out of Parliament for there was no need of making a Rule what should be done in Parliament, Since the Course was then so perfectly known, and at that time in this Case so exactly practised; so that there is no proof in this precedent

dent that there was any pretence that there was not a Right to Judicature in all the Lords in Parliament.

As to the second thing, which the Commons mention of their having a share in the Judicature, for which they urge a Precedent, 42 *Ed.* 3. N. 20, 21. whatever it may make for the Commons being joined with the Lords in point of Examination of the particular Case before the King, it makes nothing as to their joining with their Lordships in Judgment; for all the Judgment given, is only this; That Sir *John Lee* should be commanded to the Tower of *London*, there to remain a Prisoner, until he had made Fines at the King's will. In this Sentence there is not any particular mention of the Commons, whereupon to ground a belief that the Sentence was not given by the Lords alone.

A further Sentence there was given against him, but that was after the Lords and Commons were departed,  
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and is express'd to be given by the King's Council: But this precedent hath two Edges, and if it should be acknowledged that it doth a little scratch the Lords with the one, it cannot be denied, but it cuts the Commons with the other, and that even in the very Particular now in Question; because these words, *The 21st. of May, the King gave Thanks to the Lords and Commons for their coming, and Aid granted,* fully set forth the Right of the Lords to give with the Commons, seeing in the time of *Ed. 3.* they had a Right to be Thanked with the Commons for Aids granted, which was long before the making of the Act, called *The Indemnity of the Lords and Commons, 9 H. 4.* in which, as hath been mentioned before, upon another occasion, it was Enacted, That the King should thank both Lords and Commons for Subsidies given to him. Neither is it possible to find any thing to the purpose of what the Commons endeavoured

deavoured to make out by the last Precedent, without very hard straining in the next Stated Precedent, 3<sup>r</sup> H. 6. N. 10. or indeed in any part of that King's Reign, and least of all in that Year, but rather the quite contrary; for in that Year, N. 25, 26, 27, 28, 29. there is a famous Precedent of the exercise of Judicature by the Lords, even over the Speaker of the *House of Commons*; so that the alledging of this Precedent, is no Testimony of the Commons carefulness in examining such things as they alledge.

*Hugh Brice's Case*, 8 Ed. 4. proves that there was indeed a Committee of Lords and Commons made for the Examination of *Brice's* Accounts, but that there was any Sentence given either for or against him, either by the Lords or Commons, the Precedent is absolutely Silent, and consequently there is a great want of Proof, that the Commons have any Right at all to be join'd with the Lords in Judicature.

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- As to the third Matter, which the Commons mention to prove an Error for the Lords to Judge without them, they produce but one Precedent, which is the 3d. of *Ed. 4. N. 13.* which Case is thus; *Thomas Montacute, Earl of Salisbury* Petitions that Judgment given in Parliament against *John Montacute, his Father,* may be Reversed, for certain Errors therein contain'd; the success of this Petition was, That the Lords had Judged, that the said Earl should get nothing by his Petition; and further, the Bishops and Lords, by the Assent of the King, affirmed the said Judgment against the said *John Montacute, Earl of Salisbury,* to be good. So it is very difficult for any but the Commons; (what they may do is easie to be conceiv'd) to find any proof in this Precedent of that which they produce it for. The Lords therefore, tho' they may join in Opinion with the Commons, that it is not good

good to argue the Reasons of the Constitutions in a settled Government, yet may very well believe, that the weight of the Precedents urged by the Commons upon the account of these three last particulars concerning Judicature, neither hath done, or is like to do their Lordships, or the settled Government of the Kingdom any great hurt.

And whereas the Commons talk of Usage to justify their Claim against the Lords; Usage lies indeed on the other side, for the right of the Lords to Judicature, is Justified by so long a time, that it justly silences all Disputes about it: and all that hath been offered seemingly to the derogation of it, appears to be so weak, that it cannot in the least prejudice it. But the Claim of the Commons to what they endeavour to Usurp upon the Lords, hath so many ancient Precedents against it, and hath of late, even in the time of their  
greatest

greatest Pretences, found so many rubbs and variations, that it cannot find a Justification by the length of Usage any way answerable to that the Lords have for their Judicature.

The next thing which the Commons aim at, is to shut the Lords out of the Legislature, having as they say, a Precedent of an Act past by the King and Commons without the Lords. This is but by the bye neither, but it may not be amiss to consider what they say now; because perhaps some other time they may be in Earnest in this, as well as they have been already in other matters, to which they have as little Right, as to this, to which they have not any at all; for if they have no better Precedents to produce than this, 1 Ed. 6. Cap. 65. to prove their having past an Act without the Lords, (as it is very credible they have not,

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since they have mentioned no other) this is only sufficient to shew they are willing to lay hold on Twiggs, when they have no stronger Boughs to fasten on. For this Precedent can prove nothing more, than that the Lords had at that time Clerks that were too Careless, and their Lordships themselves were not at that time so Careful as they ought to have been: Or that the Commons had then as negligent Clerks as the Lords, or were themselves as negligent; or that the Commons and their Clerks were willing to let this palpable Error go at that time, thereby to raise a Ground-work for some pretence for the Commons to make a new endeavour of Usurpation upon the Lords, as is now a little offered at, tho' no Benefit can ever be reaped by the Commons from this Precedent towards the Exclusion of the Lords from the Legislature; since this very Act, wherein this gross Mistake happened,

happened, began in the *House of Lords*, and had there two Readings, the first on the First of *December*; the Second on the Seventh of *December*, and was then Committed, and received a third Reading the Tenth of *December*, at which time it was past by the Lords, and the same day sent down to the Commons, with this Inscription, *Soit baille aux Commons*. All which appears by the Journal of the House of Peers of that Year, as well as by the Inscription on the Act itself, to which there is annex'd a *Proviso* with this Addition, That the Commons did agree to the Bill, and did direct that *Proviso* thus, *Soit Baille aux Signeurs*. The Lords afterwards assenting to the *Proviso*, the Act was dispatched, and had the Royal Assent: So that whatsoever Mistake may be in the Enacting words, it is absolutely impossible that the Act either could or did pass without the Lords; and it is very appa-

rent, that the Lords do not by this Precedent (how cunningly soever mentioned and laid hold of) receive any prejudice at all in their Right to a share in the Legislature; but the Foundation of it is very safe, notwithstanding any thing in this Precedent, the fault of which was not at all Confirm'd in Queen *Elizabeth's* time; the Statute it self being very good as to the Substance, was very justly twice approved. So that it is clear, that by any thing yet said about the Reasons of fundamental Constitutions, neither the Lords, nor the Established Government of the Kingdom, are at all Prejudiced. And if any Inconveniency to the Government happens by the Dispute, the blame must justly fall upon the Commons, who mention these things, how unable soever they are to be maintain'd, rather than not say something (tho never so weak) to endeavour to strengthen as much as they can, tho' but by  
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Inferences upon Comparisons, their Claim to the Usurpation of what they now endeavour to usurp from the Lords.

Now at last the Commons think fit to come to the consideration of the Reasons offered by the Lords, and to every Reason they offer something, which they are willing should be esteem'd an Answer; but every Answer will admit of a Reply. Now, since 'twould be too long to transcribe every Reason, and every Answer, and then to annex to every one a Reply, the nature of a Reply being such, as to draw into the Reply much of the material Substance both of the Reason, and of the Answer, the course here taken, shall be only to enumerate the Reasons, to which Answers have been proffered, and then to make fit Replies to those Answers; so in order the next thing that is to be enquired into is,

*The Answer to the first Reason.*

IN Reply to which, the Lords may very well alledge again, That it is a very hard Choice the *Commons* endeavour to put the *Lords* upon, in allowing them no more but a total Negative; for except the *Commons* can lay claim to Infallibility, it can be no Prejudice to His Majesty's Affairs, that Grants made by the *Commons* should be Re-viewed; the *Lords* having at no time (and certainly not of late) shew'd less Zeal to the Service of the King, than the *Commons*; therefore it cannot Justly be esteemed a superabundant Check upon the King's Business, that the *Lords* should consider and approve of the Method and manner of the Aids that are offered ( for Given they cannot be said to be till they are agreed by both Houses ) since the *Lords* have  
upon

upon all Occasions had as much care of the People as the Commons, and have as much right to take care of them, and it hath been and ever will be as much their Interest so to do; for their Lordships cannot possibly be excluded out of that comprehensive word *People*, since the word signifies all the King's Subjects, and the Lords will ever own themselves His Majesty's Subjects, and will yield to none in their Duty and Allegiance to the King, and their Zeal for his Service; altho' it is their right to be esteem'd (as they are) a higher sort of Subjects than the *Commons*, and therefore ought not to be put in a meaner Condition in matters of Business than they. The next enquiry must be made concerning

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*The Answer to the second Reason.*

**I**N Reply to this, the *Lords* may very well averr, that the *quibusdam arduis*, &c. in the Writ of Summons, will very hardly ever intitle the *Commons* to any Right in Judicature, how great a mind to ever they may have unto it, since there is so vast a difference betwixt the words of the Writ directed to the *Lords*, and those directed to the *Commons*. The *Lords* Writs empower them to Advise and Treat in every thing, the words being, *Pro quibusdam arduis negotiis nos, Statum, & Defensionem Regni nostri Angliæ & Ecclesiæ Anglicanæ concernentibus, & cum Prælatiis, Magnatibus, & proceribus prædictis superdictis negotiis tractaturi vestrumq; consilium impensuri, &c.* Whereas those directed to the *Commons*, have indeed the first words

words, *Pro quibusdam arduis, &c.* But they are not impowred to *Treat and Advise* at all, but only to *do and consent*: For the words are, *Ad faciendum & consentiendam his quæ tum ibidem de Communi Consilio nostro (favente Deo) contigerint ordinari de negotiis antedictis, &c.* By which it is visible they have no right to *Judge*, since they are only to *Consent*; but if the *Commons* would be content with what they have long enjoyed, although perhaps more than the *Writ of Summons* Justifies them in, the *Lords* go not about to take it away from them, but are earnestly desirous to keep their own.

The next thing to be considered, is,

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*The ANSWER to the Third Reason.*

**I**N which the Unmannerly Question on the *Commons* make in answer to a fair Question asked by the *Lords*, which they are pleased Sarcastically to call *Rhetorical*, is a perfect Mistake of the Matter, and a false recital of the *Lords* Question; for their Lordships did not enquire how the *Commons* came by a Right to that which they now claim, but were desirous to learn if ever the *Lords* had divested themselves of this Right; and then the Question went on to enquire, *Whether they had ever appropriated it to the Commons, with an Exclusion of themselves.* Now the *Commons* only take notice of the second part of the Question, thereby endeavouring to have it forgotten, That the *Lords* esteem it a thing which

which the *Commons* cannot appropriate to themselves, without divesting themselves of it, who still Claim it, and cannot wave it, without shaking those Foundations, in the laying of which, the Lords and Grandees of the Kingdom had the greatest hand; of this expression, now it is a strengthening of the *Lords* Claim, they here think fit to take notice, tho' in the beginning of the Conference, they had a rude (and in that place) impertinent fling at it, endeavouring to wrest the Expression to their Lordships Prejudice: But enough has been said as to this particular, and there is very little in this Answer to the third Reason that is Material; But as to that, that may seem to be so, this Reply may be made, That it is very true, that the *Lords* may (and so may the *Commons* too) have a just Right to some things, for which there can be no Record produced, but it will be very hard to make out, that  
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the *Lords* have parted with a Right, which they have very often made use of, as hath been proved by Precedents, and yet no Record appears, to shew that they have parted with it: The citing of one Record endors'd upon the back of another, can never be sufficient to clear so Weighty a matter.

The next thing we are to look upon, is,

*The ANSWER to the Fourth Reason.*

**I**N which the Commons, not being able to say any thing satisfactory deal only in applicatinos (or perhaps more properly misapplications) of other matters to the Case in hand; for the Lords deny not, but if they had no other negative Voice than such as the King hath, they yet should have a  
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Negative Voice, but it would be so imperfect that therewith they could neither do the King nor the Kingdom any service, since they should be brought to that hard and ignoble Choice, of which they complain, of either denying the King Supplies when he hath need of them, or suffering them to be raised (if the Commons be not infallible) in such a manner sometimes as may be by Consequence prejudicial to the King, by being destructive to his Government and the good of his people; which how unreasonable a thing it would be for the Lords to assent to (even against their own Judgments and foresight) is no uneasy thing to apprehend.

The application of the Pardon in this Case is so improper, that it is a wonder the Commons should make it; for can any thing be more fit than that an act of Grace should be received as the King our Sovereign is pleased to proffer

proffer it? In such an Act the King proffers, and the Subjects receive, whereas in other Acts the Subjects offer, and the King receives; so that in the one it is necessary the Subjects should answer positively *Ay* or *No*, in the other that the King should answer so too; but neither of those are fit to be made use of to prove any thing to the contrary, but that where two bodies of Subjects are concerned in making an Act, it must needs be necessary that both those bodies should be fully satisfied of the substance, manner and method of what is to be enacted, before they can agree in the enacting it.

The application of what Concerns the Clergy, if rightly Considered will prove as little to the purpose as any of the rest, for the Clergy are an absolute distinct body from the Houses of Parliament, and the care of them is in the convocation and not in the Houses

Houses; and therefore when the proper persons (in whom the Care of them rests) have gone through with their business, there can be no need, nor is there any Justice that what they have done should be particularly reviewed by any otherbody. But how careful soever the Commons are willing to appear now of the Rights of the Clergy, their true Care of them is visible by the late method of raising money for the most part by the way of Land Tax; by which means the Clergy are to the great derogation of their Rights, assessed great Sums only by the Laity, and have nothing at all to do in it themselves; but Perhaps one Reason why that method of raising money hath been so often made use of is that the Lords may be involved in the same inconveniency as to their Rights and privileges as well as the Clergy; for if the Clergy's method might be more frequently followed, and their Course of  
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Proceedings in raising Supplies taken from example, it would be easily discerned by the method of the House of Convocation, wherein the Lower House, (as hath been shewed already in what hath gone before in the Precedent of the Clergies Grant of Subsidies 15. Car. 2,) doth not so much as offer to give by themselves without the Prelates, that the lower House of Parliament ought not to give without the Peers.

The next Search must be in

*The ANSWER to the Fifth Reason.*

**I**N which the *Commons* are in the right in saying, There is not now any Contract to be made for Privileges; for the *Lords* do but maintain their old ones, and discover the reasonableness of what they insist upon,

upon; by comparing it with the Method now held, (not now propounded to be held) in Bills of Judicature. And certainly the *Commons* have no just ground of Exception, that the *Lords* do not find reason to proceed in Judicature by the way of Bill so often as the *Commons* would have them; for as that is a thing totally in their *Lordships* Choice, and in none but theirs; so they cannot be brought to wave their Rights, and to change their Method in Judicature by any instigations of Miscarage, or pretended hopes of future Reformation (a Stile the *Commons* think fit to use to the *Lords*, although certainly it would have become them to have used a milder and more respectful one, this being at least *Satis pro Imperio*) when their *Lordships* do nothing that is irregular, nor claim any thing but their just due: So that this Intimation might have been spared,

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since either the Lords have understanding enough to discern the *Commons* endeavours of encroaching by it upon their Lordships Judicature, and then they have Right and Power enough to defend and preserve it; or they are so weak, (which surely they will not prove to be) as not to understand the drift of the Admonition, and then the Jest is thrown away.

The next Consideration must be of

*The ANSWER to the Sixth Reason.*

**U**PON which the *Commons* make some Observations, and the first they make is very wonderful; for why should the *Lords* be excluded from considering the welfare of the *Commons of England*, since the *Commons* are His Majesty's Subjects, and the

the Peers are so too, and have ever been as careful of the good of the People as the *Commons* either were or could be ; neither did any thing their Lordships say arrogate to themselves the sole consideration of the good and welfare of the People, but only shewed the unfitness of their being quite shut out from it.

The second Observation is almost as wonderful, That the *Commons* should esteem it a good Objection against a Reason brought by the *Lords*, to say it proves as well a power to raise as to abate : If it do so, it is not at all the weaker to prove what the *Lords* urge it for, because it proves something more than what is just now in Question ; and if the other were now in Debate, 'tis but reasonable that the *Lords* should insist not to be put upon that ignoble Choice, any more in that particular, which is the occasion of the present Dispute ;

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and it cannot be imagined how either the King or *Commons* should lose any thing by any imaginary hazard that may happen by the *Lords* Examination of the Rates, even tho' the proportion the *Lords* should pay, were yet more inconsiderable than, the *Commons* confidently aver it to be; which may well make the *Lords* very careful how they suffer any of their Rights to be invaded, lest when they have parted with more of them, the *Commons* should then think fit to tell their *Lordships*, that they themselves are as Inconsiderable, as now they say the Proportions are which they bear in Taxes,

The next thing that is to be viewed, is,

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*The ANSWER to the Se-  
venth Reason.*

**I**N Reply to which, the *Lords* may very well still insist, That they have not yet had any thing but positive Assertion against their Claim, and may very well suspect the *Commons* may some other time assert as positively some other thing, which they may then be as unable to prove as they were to prove this: And therefore their *Lordships* may well join with the *Commons* in their Resolutions, That positive Assertions or Denials shall never take away Right; but it is impossible to think how weak the Proofs of Usage brought by the *Commons* are, since all they have said proves no more but violent endeavour in them to Usurp this Right upon the *Lords*, both before and since His Majesty's happy Re-

turn, but that they have quietly possess it can never be shewn, the Lords having so plainly set out the variations of Stile in all times to the weakning the Claim of the *Commons*, and confirming that which their *Lordships* now most justly make.

The next thing to be considered, is,

### *The ANSWER to the Eighth Reason.*

**I**N Reply to which, the *Lords* may very well say, That tho' they have a great kindness for the *Commons*, and great inclinations to do them good, yet since they are so sure that they have no need of their *Lordships* Recommendation, and have so roundly refused any thing of that nature, the *Lords* may well forbear troubling themselves any more in a  
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matter that appears so unacceptable: But yet the *Commons* cannot justly take it ill of their *Lordships*, if they express themselves unsatisfied in the truth of the Affeuration of the just and true Respect the *Commons* have of that noble *Constitution* of a House of Peers ( as they are pleased to stile it ) since it is impossible for the *Lords* to forget how hardly those frequent Instances, which they mention of their consenting to several Clauses in Bills for securing some of their *Lordships* Privileges have been obtain'd of them, and how few they have been, as frequent as they are pleased to call them; nor can it possibly pass out of their *Lordships* Memory; that there would never have been any need of any such Clauses, but that in several Bills the *Commons* did invade the just Right of the *Lords*, for which reason they were forced to stand upon their Guard, and insert such Clauses as

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might

might (at least in some measure) preserve their Privileges. And with what difficulty the *Commons* have consented to them cannot easily be forgotten: And as for improving the Privileges of the *Lords*, it will be hard to shew that ever the *Commons* went about any such thing, but rather the contrary; since it is easie to make out, that the *Lords* have parted with several Privileges that were truly theirs. That the *Commons* have weakned many of the *Lords* Privileges very much, and have striven to weaken more; whereas the *Lords* never offered to desire any new Privilege, but have only laboured to preserve the old.

Now the *Commons* have made such Answers as they could to the *Lords* Reasons, they think fit again to mention the *Act of Tonnage and Poundage*, 12 *Car.* 2. and in Commendation of it, to say, that it was pursuant to a *Precedent* in 1642, which time if it be well remembered, will not be found

found a very proper one to draw Precedents from. But since they are so fond of it, as still to put great value upon it, notwithstanding what the *Lords* have exprest to them concerning it, it will not be improper a little further to consider it, and put them in mind, that if they will read it, they will find this very Precedent, if it may bear that Name, to make against them; for the Stile of it runs in these very words, *which the Lords Assert*) and to have been the constant Stile, during the Reigns of *Ed. 6. Q. Mary, Q. Eliz.* and King *James*; and the *Lords* are joined with the *Commons* (*by their Advice and Consent*) as well in the Granting as the Enacting Clause: for the Act runs thus, *The Commons Assembled in Parliament, reposing Trust and Confidence in Your Majesty, in and for the guarding of the Seas against all Persons, and for the better defraying the necessary Expences thereof, which cannot otherwise*  
be



*be effected without great Charge to Your Majesty, Do by and with the Consent and Advice of the Lords in this your present Parliament Assembled, and by the Authority of the same, to the intent aforesaid, Give and Grant unto You our Supreme Leige Lord and Sovereign, a Subsidy called Tonnage, &c. And the next Paragraph is thus, And further, we your said Commons by the Advice, Assent and Authority aforesaid, do give and grant unto you our said Leige Lord and Sovereign, for the Causes aforesaid, one other Subsidy, &c. and after the Enacting Clauses are thus, And be it further Enacted by the Authority aforesaid, that, &c. So that this Precedent (which the Commons are so in love with) clearly makes against them, and allows the Lords a share in the Gift of Tonnage and Poundage, which is not surely the thing the Commons intended to have proved by it; so that if it had not been that they must then have*

have lost the Opportunity of a Reflection they intended to make upon some particular Lords, (which they were unwilling to let slip, although it did but ill become the seriousness of a Conference) they had better have forbore the mentioning this Precedent again, since they receive no Advantage, but rather much Prejudice by it. But since Precedents are again on foot, it will not be amiss to take notice, that even in this Parliament the *Commons* have not always been so careful to keep the Lords from having any thing to do in Money, as they now are; for the Act for *Enlarging and Repairing of Common Highways*, 14 Car. 2. Cap. 6. was sent up by the *Commons*, with a direction for raising an Assessment for that purpose upon Parishes, of 12 *d.* in the Pound in a Year, and this the Lords abated to 6 *d.* in the Pound, and the *Commons* agreed to it. And in another part of the same Bill, the  
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Lords laid a penalty of 5 *l.* upon such Surveyors of the high-ways, who (after their Election to that Office) should fail in the performance of their Duty therein; and this the Commons likewise consented to, although upon the same Bill they were so stiff in another Particular, as to refuse two *Proviso's* sent down by the Lords, for the Building two Bridges, upon a pretence of their being to raise Money upon the People, and the Lords did then agree to the Bill without those *Proviso's*, out of their Zeal to the Reparation of the High-ways; but yet not without protesting at a Conference, that their Lordships had a just Right to do what they offered in those *Proviso's*, tho' they did then wave them, that the mending the High-ways might not at that time be obstructed.

So that it appears, that the Right now claimed by the Lords, is a Right always owned, never parted with by  
 their

their Lordships, and for the most part agree'd to and acknowledged by the Commons, although they are now so zealous to get it quite away from the Lords.

Towards the Close of all that the Commons have to say in this Business, they express themselves disturb'd that the Lords should put them in mind of that *Modesty*, by which their Ancestors shew'd a great deference to the Wisdom of the Lords: But it is no sign of Modesty in them, that they are not well-pleas'd with the mention of the word, nor of any great Respect they are willing to have for the Lords, that they are unwilling to hear of the Deference their Ancestors shew'd the Peers, but are troubled that the very word should be used by the Lords, altho' they thought the thing it self (word and all) very proper for them to expect from their Lordships, as they

they told them in the second Conference that was had about this Affair, at which their words were these, *If they had sent up a Book of six Lines, referring to a Book of Rates, there could be no reason, why the Lords should not have agreed to that with the same Deference to the House of Commons, as they did for their other Book of Rates,* 12 Car. 2.

So that it seems a very fitting thing to expect a deference from the Lords, but not for the Lords to expect any from them. But as it hath been before observed upon the occasion of this Book of Rates, which the Commons are so fond of, they will be sure to find themselves mistaken in this; for it was not a Deference to the Commons, but a forwardness of Zeal in their Lordships to the King's Service, that made them pass that Bill with reference to the Book of Rates in that manner as they then did; and in that Zeal for the King's Service,

Service, the Lords will ever continue, and it will be well if the Commons will keep their Word, now they have promised it, in observing the *Modesty* of their Predecessors, and there will be no doubt, but the Lords will be careful to tread in the steps of their Ancestors, how ill Opinion so ever the Commons may have of their Lordships wisdom.

By what hath gone before, it hath been made fully appear, that the Lords have very good grounds for their first Vote which they made.

#### Nemine Contrad.

*That the Power exercised by the House of Peers, in making the Amendments and Abatements in the Bill, Intituled, An Act for an additional Imposition on several Foreign Commodities and Manufactories of this Kingdom, both as to the Matter, Measure and time, concerning the Rates, and Impositions*

*Impositions on Merchandice, is a fundamental, inherent, and undoubted Right of the House of Peers, from which they cannot depart, and that they have as good ground to adhere both to it and their second Vote, which upon serious Debate and Consideration, they did likewise make*

### **Nemine Contrad.**

*That this House is not satisfied with the Reasons and Precedents, given by the House of Commons at the last Conference, and do much dislike the unusual Expressions of the Commons in what they delivered at the Conference ; which Vote, if the Prorogation had not so soon succeeded the Conference, their Lordships would have been able to make good with strong and proper Reasons, and to have shewed the several Misapplications and Wrestings of the Precedents produced by the Commons, and the just ground they have to dislike that the Commons should make*  
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use of such unusual Expressions in a Conference with the Lords; but the Prorogation being made, there could be no more Discourse between the two Houses of Parliament; so there must needs be an end for that time.

That all the strength that is in any particular produced by the Commons, may be fully allowed, it must be acknowledged, that upon further looking into *Brook's Abridgment*, Printed 1576, it doth appear, that there is Query upon the Case, which the Lords Cited 33 of H: 6. But it doth as fully appear, that that Query is there applied, and so ought to be; to that part which concerns the not returning a Bill from the Lords to the Commons, and not that part which concerns the power of abating some part of a Tax sent up by them to their Lordships; so that tho' *Brooks* were never so doubtful, yet if the Commons will but suffer his Queries

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to be applied to things upon which he makes them, and not remove them (by their exceeding Power) to others of which *Brook* never made any Doubt at all, nothing quoted out of his Writings, will be found any way prejudicial to any Right of the Lords, or to any Claim their Lordships have ever thought fit to make.

As it is fit that Care should be taken, that what the Commons produce, should be allowed all the strength that it is any way capable of, it is as proper that nothing should be yielded to the Commons that they have not a just Right to; and therefore it will be convenient some of the Precedents produced by them be a little more look'd into, and then it will be manifest, that none of these, which seem to make against the Lords, will prove to be such, but rather be found absolutely against the  
the

the Assertion of the Commons. For upon further search into the Records it appears, that tho' in *Pulton's Printed Statutes*, the Precedent of 36 of *Ed. 3d.* be as the Commons alledge it, yet in the Record N. 35. it is *Les ditz Grantz Communes grantirent d'un assent a notre dit Seigneur. le Roy un Subsidy de Levies, &c.*

And the Precedents of the 2d. of *H. 6. N. 14.* and 31. of *H. 6. N. 7, 8, 9, 10.* tho' in the exact Abridgment they be as the Commons produced them, yet in the Records they are Grants of the Commons by assent of the Bishops and Lords, which is the Stile the Lords maintained to have been constantly used in the times of *Ed. 6. Queen Mary, Queen Eliz.* and King *James*, and thereby proved, that Gifts and Grants have not been made without their Lordships.

And the Precedents of 12 Ed. 4. in the Record N. 24. is in Latin thus, *Communes in Præsenti Parlamento, &c. de Assensu Dominorum Spiritualium, Temporalium concesserunt, &c.* And in English thus; *We your poor Commons by the Assent of all the Lords Spiritual and Temporal in this present Parliament Assembled, Grant, &c.*

And so those four Precedents, which did seem to have some shew in them against the Lords, are fully for them, and make good their Assertion.

The *Irish* Precedent, of 15 H. 7. (when further search'd into) says no more, than that *at the Prayer of the Commons, it is Granted and Enacted, by the Authority of Parliament, that a Subsidy be given*; and surely there is a difference between desiring a thing may be done, and doing it.

Thus

Thus then it clearly appears, that the more search is made into Precedents, and the more strictly they are examined, the Right of the Lords is still more and more manifested; so that their Lordships have very great reason to insist upon the preservation of their Rights, and not suffer new things to be brought in upon them, not only to their own Prejudice, but that of the whole Kingdom.

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PRECEDENTS

Touching the

Right and Manner

O F

Impeachment

I N

PARLIAMENT.

Collected out of the Parlia-  
ment R O L L S.

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*By Sir W. W.*

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P R E C E D E N T S

Touching the

Right & Manner

O F

*Impeachment* in Parlia-  
ment, &c.

**A**T a Parliament held at *Westmin-*  
*ster*, the Monday after the *Pu-*  
*rification* of our Lady, in the 11th.  
Year of *Richard 2d.* the Commons  
petitioned, That none be about the  
King's Person, nor intermeddle with  
any Affairs of the Realm, other than  
those named and appointed in Parlia-  
ment ;



ment; and that all Persons of ill Fame be removed from all Places about the King: the which that King granted. See the Rolls of that Parliament, N. 23, 24.

At a Parliament held at *Westminster* on Monday in *Easter* week, in the 15th of *Edm. 3.* That the *Chancellor*, and all other great Officers be chosen in Parliament, and that Men of Evil Fame be removed. See the Roll, N. 15, 16.

At a Parliament held at *Westminster*, in the *Quindene* of *St. Michael*, 1 *Rich. 2d.* The Commons prayed the King would be pleased to name, in that Parliament, 17 Persons of good Note and fame, to be always about him, and in the interval of Parliaments to negotiate the Affairs of the Kingdom; to which the King assented. Parliament Roll, N. 18, 19, 20.

In

In the same Parliament, That Pri-  
-ary-Councillors, or great Officers a-  
-bout the King, shall take no Grant  
nor Gift from the King, during their  
being in the Service of the King.  
Roll, N. 23, 24, 25.

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The like was done in the Parlia-  
-ment held at *Westminster* the 3d day  
after *All-Souls*, 5 *Rich. 2.* See the Roll,  
N. 20, 21, 22, 27, 28. and all granted  
at the Request of the Commons.

In the Parliament held at *West-*  
*minster* the 3d day in *Lent*, 6 *Rich.*  
2d. The Commons prayed that such  
as misbehaved themselves, may be  
removed from the King, and that Per-  
sons of good Note and Fame may  
be put in their places, and sworn in  
full Parliament. Roll, N. 26.

At a Parliament held at *Westmin-*  
*ster* the 1st of *October*, 10 *Rich. 2.*

The

The Commons Impeached Sir *Michael de la Poole*, Earl of *Suffolk*, and Chancellor of *England*, articulated against him, and got that King to remove the Chancellor before Judgment. Parliament Roll, N. 6, 7, 8. An Abstract of the Articles against the Chancellor, see in a Book intituled, *The Right and Liberties of Englishmen asserted*, newly Printed, Page 8, 9, 10.

In the 11th of *Rich. 2.* Divers Lords, Justices, and others, were accused in Parliament for Treason, and Misdemeanors, and some of them banished into *Ireland*. But it is here to be noted, That when the Trials for Treason came on, the Lords Temporals proceeded, and the Lords Spiritual made their Protestation (saying to them their Rights to be in Parliament in all Cases excepting Blood; as by the same Protestation (made in Latin, and to be seen upon the Roll) appears, wherein they

say

~~say~~ expressly, in relation to Blood, *De jure interesse non debemus*: And the Ordinance made in the 21<sup>st</sup> Hen. 2. positively requires, that no Clergyman be present upon any Trial of Life and Death, all being forbidden by the Canon Law (*Agitare Judicium Sanguinis*) upon pain of being deprived of Dignity and Order, and to suffer the Penalty and Punishment of the greater Excommunication. We have no mention throughout all our Rolls of Parliament, that ever the Prelates were present, or voted in Cases of Life and Death. It is true, that at Assizes and Sessions they are present, but not as Judges; and when Judgment of Death is pronouncing in these places, the Clergy did use to walk out of Court. The Bishops Protestation against such matters is entered upon the Roll of that Parliament, N. 9, 10.

In the 7<sup>th</sup> Ric. 2. The Commons  
granted

granted to the King a subsidy according to the tenour of a Schedule indented, and delivered in Parliament, requiring it may be Enrolled in the Journals of that Parliament; in which Schedule is the following Protestation, *viz.* That it is not the meaning of the Commons to give the said Subsidy, without the King's granting to the Commons the following Conditions.

1. That the Clergy having the third part of the Kingdon in their hands, shall in proportion grant the like Subsidy.

2. That the Bishop of *Norwich*, and others, be compelled to answer and repay all such Sums as he and they have received for the Service by them undertaken, and not performed. Parliament Roll, N. 13. And that the King remove from his Presence such Persons as the Commons look upon  
to

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to be pernicious to the Publick. To  
which the King assented.

It is here to be noted, That the Clergy excepted against the first Condition; and said, They were not to be taxed by the Commons, but that they would use their own Discretion. To which the Commons replied, That if the Clergy would not condescend to pay a third part of the Subsidy, that as they insisted upon Ecclesiastical Privileges, so they should not have any share in Temporal matters in Parliament. Upon which the Bishops went out of the House for that time.

In the 29th H. 6. The Commons addressed the King to banish all Persons of evil Fame, and evilly thought of by the Commons, viz Edmund Duke of Somerset, Alice Dutches of Suffolk, William Bishop of Chester, the Bishop of London, the Abbot of St. Peters

*Peters in the County of Gloucester, the Baron of Dudley, Thomas Lord Hastings, Thomas Pulford Esq; Sir John Sutton, Sir Tho. Hungerford, and twenty seven Persons more of the King's Retinue, Attendants, and Favourites: All of them, upon the bare desire of the Commons, without any Accusation, by Word or Article exhibited, only upon common ill Fame, were compelled in that Parliament to leave the Kings Presence, and never to come within ten Miles of the Court during their Lives. The King seemed unwilling to part with some, but would leave them to be punished by Law, according to their demerits, and to be moved from his Person for one Year: But the Commons insisted; and the King, rather than disoblige them, assented. Parliament Roll, N. 16.*

**At a Parliament held at *Westminster*, the next day after *St. Hilary*,  
in**

in the 5th of Hen. 4. On Monday the 14th of January, being the first day of that Parliament, the King accorded that four special Persons should be removed from his Person, at the request of the Commons, viz. The King's Confessor, the Abbot of Dore, Mr. Richard Durham, and Mr. Crossby of the Chamber: whereupon Saturday the 9th of February, the said Confessor, Durham, and Crossby came into the Parliament, before the King and Lords, where the King excused them, saying, That then he knew no Cause why they should be removed, but because they were hated of the People, and therefore charged them to begone from his House according to the Commons desire; and the like Sentence was pronounced against the Abbot, tho' then absent. Parliament Roll, N. 16. and Sir Robert Cotton's Abridgment, Page 426, 427.

In 1 Jac. 1. the 21st of May, The Commons accused the Bishop of Lon-

N

don



don for speaking ill of them and their Proceedings, in the Lords House; but the Bishop of London cried *Pescart*, and pleaded his own mistake: which shews that both Houses have their distinct and separate privileges independant one of another.

The Commons have an undoubted Right to exercise their Authority within their own House, and to accuse whom they please, without respect of Persons, and to exhibit their Charge by Surmise, Word, or by Articles generally or specially, as it was resolved in the Cases of *John de Wansleben*, and *Walter de la Charton*, in the 5th *Edw. 3.* and likewise in the Case of *Hugh de Spencer*, in the 11th *Edw. 2.* as also in the Case of the Duke of *Buckingham*, in the 5th *Cha. 1.* Which shews the Authority of the Commons within their own House hath no limitation; and that they may make Precedents, as well as be guided by such (especially were the Grievances

Grievances of the publick require to be redressed ) extrajudicially, if not otherwise to be obtained.

And as the Commons of *England*, from the first Institution of Parliaments, have been the great Conservators of *English* Liberties, and the safety of both Kingdoms at this critical Juncture, when our All seems to be indangered, depends alone ( under God ) upon their Conduct: so it is the Common Interest of the People, that the Commons according to their wonted Privileges, do displace or banish all insulting, overgrown, corrupt Ministers, or such as by their Male-Administration at the Helm, have discovered their Principles by their pernicious practices: Otherwise we may in time bid adieu to our Rights, and to Parliaments too.

*F I N I S.*



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