

making, and constituting Sheriffs of *London* and *Middlesex imperpetuum*.

Then they plead this Liberty and Franchise confirmed to them by all the aforementioned Statutes and Charters, *ac eo Warranto* they claim to make and constitute Sheriffs.

III. As to the Mayors and Aldermen being Justices of the Peace, and holding Sessions, they plead,

That the City is, and time out of mind was, an ancient City and County, and the Citizens a Body Politick.

That King *Charles* the First, by his Letters Patents dated 18 *Octob.* 14 *Car.* I. granted to the Mayor and Commonalty, and Citizens of the City of *London*, That the Mayor and Aldermen of *London*, such of them as had been Mayors, should be Justices of the Peace, and should hold Sessions, *& eo Warranto* they claim to be Justices, and hold Sessions.

Respons. **T**O this Plea the Attorney General replies. And as to the Mayor, and Commonalty, and Citizens of *London*, being a Body Politick and Corporate,

First takes issue, that they never were a Body Corporate, and for this puts himself upon the Country. And then goes over and pleads,

That the Mayor, Commonalty, and Citizens, assuming upon themselves to be a Body Politick and Corporate, and by reason thereof to have Power and Authority to convocate and assemble, and make Laws and Ordinances, not contrary to the Laws of the Kingdom, for the better Government of the City and Citizens, and for preserving the King's Peace — Under Colour and Pretext thereof, but respecting only their private Gain and Profit, and against the Trust in a Body Corporate by the Laws of this Kingdom reposed, assumed an unlawful and unjust Authority to levy Money upon the King's Subjects, to their own proper Use, by colour of Laws and Ordinances by them *de facto* ordained or established; and in prosecution and execution of such illegal and unjust Power and Authority by them usurped, 17th of *Septemb.* 26 *Car.* II. in their Common Council assembled, made, constituted, and published a certain Law, by them *de facto* enacted, for the levying of several Sums of Money of all the King's Subjects, coming to the publick Markets within the City to sell their Provisions, *viz.* Of every Person for every Horse-load of Provisions into any publick Market within the said City, brought to sell, 2 *d.* *per* Day. For every Dorser of Provisions, 6 *d.* *per* Day. For every Cart-load not drawn with more than Three Horses, 4 *d.* *per* Day. If drawn with more than Three Horses, 6 *d.* *per* Day. And that these Sums of Money should be paid to the Use of the Mayor, Commonalty, and Citizens: And if any refused to pay, then to be removed from his Place in the Market. And that by colour of this Law, the Mayor, Commonalty, and Citizens, for their own private Gain, had illegally, by the space of seven Years next after the making this Ordinance, received divers great Sums of Money, in all amounting to 5000 *l.* *per* Annum, in Oppression of the King's Subjects.

And further, That whereas a Session of Parliament was holden by Prorogation, and continued to the 10th of *January*, 32 *Car.* II. and then prorogued to the 20th of *January* then next:

The Mayor, Commonalty, and Citizens, 13 *Jan.* 32 *Car.* II. in their Common Council assembled, unlawfully, maliciously, advisedly, and seditiously, and without any lawful Authority, assumed upon themselves *ad censendum & judicandum dictum Dominum Regem, & prorogationem Parliamenti per Dominum Regem sic facti*. And then and there in Common Council assembled, did give their Votes and Order, that a certain Petition under the name of the Mayor, Aldermen, and Commons of the City of *London*, in Common Council assembled, to the King should be exhibited; in which said Petition was contained,

That by the Prorogation, the Prosecution of the publick Justice of the Kingdom, and the making necessary Provision for the Preservation of the King, and of his Protestant Subjects, had received Interruption. And that the Mayor and Commonalty, and Citizens in the same Common Council assembled, did unlawfully, maliciously, advisedly, and seditiously, and with Intention that the said Petition should be dispers'd amongst the King's Subjects, to induce an Opinion in them, that the said King by proroguing the Parliament, had obstructed the publick Justice, and to incite the King's Subjects to Hatred of the King's Person and Government, and to disturb the Peace of the Kingdom, did order that the said Petition should be printed, and the same was printed accordingly to the Intent and Purpose aforesaid.

By which the Mayor, Commonalty, and Citizens aforesaid, the Privilege, Liberty, and Franchise of being a Body Politick and Corporate did forfeit, and afterwards, by the time in the Information, that Liberty and Franchise of being a Body Politick did usurp upon the King. *Et hoc, &c.*

And as to the other two Pleas, *viz.* The making and having Sheriffs and Justices of the Peace, the Attorney General imparles to *Mich.* Term.

Rejoinder. **T**HE Mayor, Commonalty, and Citizens, as to the Plea of the Attorney General, pleaded in assigning a Forfeiture of their being a Body Politick and Corporate,

Protestando, That those Pleas, by the Attorney pleaded, and the matter in the same contained, are insufficient in the Law to forejudge or exclude the Mayor and Commonalty, and Citizens from being a Corporation.

Protestando etiam, That no act or Deed, or By-Law made by the Mayor, Aldermen, and Common Council is the Act or Deed of the Body Corporate.

Protestando etiam, That they, the Mayor and Commonalty, and Citizens of *London*, never took upon them any unlawful or unjust Authority to tax the King's Subjects for their own private Gain, or did ever levy or exact from the King's Subjects coming to Markets such yearly Sums as in the Replication are alledged — For Plea say,

That

That *London* is the Metropolis of *England*, and very populous, & *Celeberrimum Emporium totius Europe.*

That there are, and time out of mind have been, divers publick Markets for Provision and Merchandise within the said City to be sold.

That the Mayor and Commonalty, and Citizens have been, time out of mind, and yet are, seiz'd of these Markets in Fee, and by all the said time at their own Costs and Expences have provided and have accustomed, and ought to provide at their own costs Places for the holding the said Markets and Stalls, and Standings, and other Accommodations for Persons bringing Provisions and Merchandises to the said Markets, and Supervisors and other Officers for the better preserving and ordering the said Markets, and of the great concourse of Persons coming to the same; and for the sustaining and supporting of the said Costs and Expences, by all the time aforesaid have had, and ought to have, reasonable Tolls, Rates, or Sums of Money, of Persons coming to the said Markets for their Stalls, Standings, and other Accommodations by them for the better exposing their Commodities had and enjoyed.

They further say, That the Citizens and Freemen of *London* are very numerous, (*viz.*) 50000 and more.

That within the said City there hath been, time out of mind, a Common Council assembled, as often as necessary, consisting of the Mayor, Aldermen, and of certain of the Citizens, not exceeding 250 Persons thereto annually elected, called the Commons of the said City.

That there is a Custom within the said City for the Mayor, Aldermen, and Common Council, to make By-Laws and Ordinances for the Regulation and Government of the pullick Markets within the City.

That these Liberties and Customs of the City were confirmed by *Magna Charta*, and the other Statutes in the Plea abovementioned.

That by reason of the burning of the City in *Septemb. 1666.* and the Alterations in the Market-Houses and Places thereby occasioned, for the establishing and resettling the Markets within the City, *17 Septemb. 26 Car. II.* the then Mayor, Aldermen, and Commons, in Common Council assembled, according to the said Custom, for the better Regulation of the said Market, did make and publish an Ordinance, entituled, *An Act for the Settlement and Well-ordering the publick Markets within the City of London*, by which said Ordinance reciting that for the accommodation of the Market-people with Stalls, Shelters, and other Necessaries for their standing in the Markets, and for the amendment, paving, and cleansing the Market-places, and for the support and defraying the incident Charges thereof, there have been always certain reasonable Rates and Duties paid for the same. And to the intent that the said Rates may be ascertained and made publick to all Market-people, and the Collectors restrained from exacting—It was enacted and ordained by the said Common Council, that the Rates and Sums in the Replication should be paid to the use of the Mayor and Commonalty and Citizens; or upon refusal, to be removed out of the Market. And they aver, that these are all the Rates or Duties paid, and

were reasonable Sums to be paid; and these they have demanded and received for the Use and Purpose aforesaid, as was lawful for them to do.

As to the other matter alledged by the Attorney General in assigning the Forfeiture, they say,

That within this Kingdom (*viz.*) at the Parish of *St. Michael Bassishaw, London*, there was an execrable Plot and Conspiracy prosecuted by Papists to destroy the King, and to subvert the ancient Government, and suppress the true Religion in this Kingdom established.

That Sir *Edmundbury Godfrey* took Examinations of Witnesses, and Informations of the same; and also of the burning of *London* by the *Papists*.

That divers of these Conspirators had lain in wait for him, and murdered him, to the intent to suppress his Examinations, and to deter other Magistrates from acting in the Discovery.

That *Green*, and others were try'd, and hang'd for this Murder.

That *Coleman*, and others were also try'd, and executed for the same Conspiracy.

That *William Lord Powis*, Lord *Arundel* of *Warder*, Lord *Petre*, Lord *Bellasis*, were impeached by the Commons in Parliament of *High Treason* for the same Conspiracies, and sent to the *Tower*.

That the King, in his Speech to that Parliament had recommended to them the further pursuit and examination of that Conspiracy, declaring he thought not himself nor them safe, till that matter were gone through with; and therefore that it was necessary that the said Lords in the *Tower* should be brought to their Trials, that Justice might be done; and the Parliament having made an Address to the King, wherein both Lords and Commons declared their being deeply sensible of the sad condition of the Realm, occasioned chiefly by the Conspiracies of a Popish Party, who had plotted and intended the Destruction of the King, and Subversion of the Government and Religion of the Kingdom; and thereupon a Solemn Fast kept pursuant to the King's Proclamation, grounded upon the said Address, and divers Bills prepared to be pass'd into Laws for preservation of his Protestant Subjects.

These Impeachments and Bills being thus depending, and the Lords in the *Tower* not tried, the Parliament was upon the 10th of *January* prorogued, as the Attorney General above in his Replication hath alledged, by reason whereof the Citizens and Inhabitants of the said City, being faithful Subjects to the King, were much disquieted with the Sense and Apprehensions of the Danger threatning the Person of the King, His Government and Realm, by reason of the Conspiracies aforesaid, as is by both King and Parliament affirmed and declared; and conceiving no better means to prevent, than by the sitting of the Parliament; and having received a Petition from divers faithful Subjects, Citizens of *London*, to the same effect: And it being lawful to petition, the Mayor Sir *Patience Ward*, and the Aldermen and Commons, in Common Council assembled, for the preservation of the King and His Government, did cause to be written the Petition in the Replication mentioned,

ed, which is set forth in *hæc verba*; and did Order, that after the same was presented to the King, it should be printed for the satisfaction of the troubled Minds of the said Citizens; and traverse the writing or making any other Petition, or making this to any other end or intent than they have pleaded.

Surrejoinder. THE Attorney General as to the Plea of the Mayor, and Commonalty, and Citizens pleaded to the making and publishing the Ordinance about the Markets,

Protestando, That the Mayor, and Commonalty, and Citizens were not seiz'd of the Markets, nor at their charges provided Stalls and Necessaries, or Market-places.

Protestando etiam, That the said Rates and Sums were not reasonable.

For Plea saith, That by a Statute made 22 Car. II. it was enacted that Places for Markets should be set out, and 2 *d. per* Chaldron upon Coals for the Charge of that, and many other things, was given; and that they received a great Sum out of that Duty for the Purpose aforesaid; and yet for their own private Lucre took the Money by the Ordinance.

And traverseth, That the Mayor, and Commonalty and Citizens, time out of mind, *habuerunt & habere consueverunt Tolneta, Ratas, sive denariorum summas per ipsos Majorem, Communitatem, & Cives superius supposit. per prefatam Legem, sive Ordinationem predicti Assess. & in cer-*

titudinem reduct. prout per placitum suum superius rejuugendo placital' supponitur.

And to the Plea of the Mayor, and Commonalty, and Citizens, pleaded to the Residue of the Attorney's matter assigned for a Forfeiture, as aforesaid,

The Attorney *Protestando*, That the aforesaid Prorogation of the Parliament was for urgent Causes concerning the good of the Kingdom, and thereby the prosecution of publick Justice not interrupted.

And demurs to the said Plea of the Mayor, and Commonalty, and Citizens by them pleaded as to the Petition.

THE Mayor, and Commonalty, *Rebutter.* and Citizens, as to the making and publishing the Ordinance for the Payment of Monies by those that come to the said Markets, say as before,

That the Mayor, and Commonalty, and Citizens have, time out of mind, had, and accustomed to have, reasonable Tolls, Rates, or Sums of Money of all Persons coming to these Markets with Victuals and Provisions there to be sold, for Stalls, Standings, and other Accommodations, by them had for exposing their Victuals and Provisions to sale. And of this they put themselves upon the Country, &c. To this Mr. Attorney demurs.

And as to the Plea by the Mayor, and Commonalty, and Citizens pleaded to the Residue of the matter by the Attorney General, assigned for Forfeiture, they join in Demurer †.

This great Case was only twice argued at the Bar: First, by Mr. Finch, the King's Solicitor, for the King; and Sir George Treby, Recorder of London, for the City. And next by Sir Robert Sawyer, the King's Attorney General, for the King; and Henry Pollexfen, for the City.

The First Argument was in Hilary Term on Wednesday, Febr. 7.

Mr. Solicitor. THE Questions in this Case, as I think, will be,

- I. Whether any Corporation can be forfeited?
- II. Whether the City of London differ from other Corporations as to point of Forfeiture?
- III. Whether any Act of the Mayor, Aldermen, and Common Council, in Common Council assembled, be so much the Act of the Corporation, as can make a Forfeiture?
- IV. Whether the Acts by them done in making the By-Law, and receiving Money by it; or in making the Petition, and causing it to be printed and published, be such Acts, as if done by the Corporation, will make a Forfeiture of the Corporation?

I. The First of these Questions truly I should not make any Question at all, but that this Case has been a Case of so great expectation, every man hath discoursed about it, and the prejudice that some have entertained concerning it, have drawn them to assert the Negative Proposition. Therefore, my Lord, because this strikes to the whole, though I think it hath no Foundation in Law, I will beg leave to remove this Objection out of the Case.

1. First of all, No Corporation hath any other Creation than any other Franchises have, and subsist upon the same Terms that other Franchises do.

2. There is a Trust or a Condition in Law, that is annexed to, and grows upon all Franchises, that they be not abused, and the Breach of them is a Forfeiture of the very being of the Franchise.

3. And as there is no Foundation of that Opinion in Law, so the Mischiefs would be great, if the Law were otherwise. For,

† When the Demurrer in this Case was joined (*viz.* Mich. Term 34 Car. II.) Mr. Serjeant Pemberton was Chief Justice of the King's Bench. But before Hilary Term, when it came to be argued, he was removed, and made Chief Justice of the Common-Bench; and Sir Edmund Saunders, who had been Counsel for the King, in drawing and advising the Pleadings, was made Chief Justice of the King's Bench.

1. First, That no Corporation hath any other Creation than other Franchises have; 'tis undoubtedly true that the King is the Original and Commencement of all Franchises; they have their beginning from him, the Books are clear and full in it: I need not quote them, though there are many, *Kelway* 138. 17 *Ed. II.* 530. in the Reports of those times set forth by Mr. Serjeant *Maynard*. Now, my Lord, there can be no Corporation, but by the King's Letters Patents; for even the Prescription doth suppose there was the King's Patent to create it at first. And therefore the proper Inquiry will be about the Second thing.

2. How far the Breach of Trust that is annexed to a Franchise, is a Forfeiture of that Franchise.

First of all, There is no Rule in Law more certain, than that the Mis-user of a Franchise is a Forfeiture of that Franchise. This the Statute of 18 *Ed. II.* does very well prove, which was an Act of Grace to restore Franchises to those that had lost and forfeited them. There it was restrained *Ita quod libertat' non fit' abuse*. And my Lord *Coke* 2 *Inst.* in his Observations upon the Statute of *Westm'* 1. that Chapter of it that concerns Towns that exacted more Murage than was granted, *fol.* 223. says, They shall lose that Grant for ever; says the *Mirror of Just.* which my Lord *Coke* there quotes, that is no more than the Common Law; for the Law wills that every Man should lose his Franchise, that does misuse it: So the Abbot of *St. Albans* Case, 8 *Hen. IV.* 18. The King seized the Franchise into his hand, because the Abbot, who had the Gaol, would not give Pledges to make Deliverance, and for detaining his Prisoners a long time without making a lawful Deliverance. And so 20 *Ed. IV.* 6. The Abbot of *Crowland's* Case for detaining Prisoners acquitted after Fees paid, the King seized the Gaol for ever. These two are cited by my Lord *Coke* 2 *Inst.* 43. And in *Sir George Reynel's* Case, 9 *Report*, *Fitzherbert's* *Abridgment*, *Titl' coron' placit'* 233. a Layman was taken in a Robbery, the Ordinary challenges him as a Clerk, whereas he was a Layman: It was ruled, that for his false challenge the Ordinary should lose his Temporalities to the King, and lose his Franchise to challenge Clerks, for him and his Successors for ever. Thus far is plain, That Franchises, if misused, are forfeited; and that though enjoyed by Persons in a corporate capacity, as appears by the Cases put. And then as a Corporation may forfeit any Franchise they are seized of in right of the Corporation, so may a Corporation forfeit the Franchise of the Corporation it self, upon the same ground and reason in Law: unless any one will say, The Franchise of being a Corporation cannot be misused; and that would be very strange matter to assert.

Every Corporation is entrusted with a Franchise to make Laws for governing the Subject within it's Jurisdiction. If that Power be exercised to the Subjects prejudice, as it may be, it were an hard matter if there were no Law to redress that Grievance. Suppose a Corporation under their common Seal should authorise a Rebellion, would any Man say that were no Forfeiture? 'Tis said indeed by *Pigott*, 21 *Ed. IV.* *f.* 13. *Arguendo* upon a Case (where the Question is,

Whether a Corporation should avoid a Bond entered into by the Mayor by Durefs) That a Corporation can neither commit Treason or Felony; but upon the same Reason that he urges, That a Corporation cannot act at all, that is, abstractedly from all the Members of it; for so this Notion is, that a Corporation is a Body in consideration of Law only, and not Reality; and therefore the particular Act even of the head of that Body shall affect him personally only. But this is only a Notion of his arguing; but it is the best Opinion of that Book, that *Durefs* to the Members did so affect the Corporation, that it should avoid the Bond.

Now, my Lord, a Corporation may be surrendered; and surely that that may be surrendered, may be forfeited; and I shall offer you some Authorities in this case, 12 *E. III. rot. claus. memb.* 36. a Writ is directed to the Constable of *Dover*, reciting, That the Cinque-Ports had seized divers Goods of several Merchant Strangers *Portugueses*, and others; and the Writ commands that Right should be done, or else the Franchise should be seized into the King's Hands, 6 *Ed. II. rot. claus. N^o 5.* The Liberties of the City of *Bristol* were seized, and the Custody of it granted to _____ for divers Contempts and Injuries done *per Majorem, Ballivos, & Communitat'* to the King; and so the close Rolls of *R. II. m.* 6.

There is another Case that comes further, *Pasch. 9 Ed. I. Majus rot.* 25. I find it likewise among my Lord Chief Justice *Hales* Collections, that he has given to *Lincoln's-Inn* Library; I took it out of that Book: 'Tis in the Collection of the *Adjudicata* in the time of *Ed. I. fol.* 28. *a.* Thus it was: There was the Abbot of *St. Austin* in *Canterbury* had made an Agreement with the Men of *Sandwich*, about paying Ten Hogheads of Wine yearly to the Abbot; and there was due to the Abbot some Thirty Marks, and he had Judgment, and Execution went out; and thus 'tis in the Book, *Vic. de ——— mandatur, quod leverari fac' 30 Marcas de bonis ipsius, ad opus Abbatis, pro pretio 10 Doleorum Vini annuatim solvendi.* And they made Rescue when the Sheriff came to execute the Writ, and they were sued for that; and the Judgment of the King and his Council, which was by Parliament, for it was adjourned into Parliament, was, *Quod libertas de Sandwich forisfact' sit.* And there is this Observation, tho' it be written with the same Hand, which is not his, but the Clerk's that transcribed it, *Judicium illud extendit contra Barones 5 Portuum, & eorum libertates, ut mihi videtur.* These are the Words of that Book: And this will go a great way with the City of *London*, as to their Confirmation of *Magna Charta*; for the Cinque-Ports are confirmed by Act of Parliament, as well as they.

But, my Lord, there are many Cases of like nature, and that even in the Case of the City of *London* too, as I shall shew you by and by. Now tho' these are not Judgments in *Quo Warranto's*, to out a Corporation of a Franchise of being a Corporation, yet it shews, that these things were Forfeitures of all the Franchises of a Corporation; for a Seizure is never but where there is Matter for Forfeiture found upon Record, as in *Sir George Reynel's* Case; or to ground a Forfeiture, upon which to bring a *Quo Warranto*,

Warranto, as in our Case. But in the Case of 9 *Ed. I.* there it does appear Judgment was given by the Parliament, that the Liberty should be forfeited, not that it should be seized into the King's Hands only.

Now, my Lord, where all the Franchises of a Corporation are forfeited, what is the Corporation? Truly, 'tis nothing, 'tis but a Name; a Corporation without a Power to act, is nothing at all. Indeed, I do not find any Judgment in a *Quo Warranto* of a Corporation being forfeited; yet, my Lord, it doth not follow from thence that this cannot be by Law; for many *Quo Warranto's* have been brought against *London*, and other Places too, to out Corporations of their Franchises, but it hath always ended in Submission to the King, and so they have been at quiet. All the *Quo Warranto's* in Mr. Attorney *Palmer's* time, after the King's Restoration, against the several Corporations, they all submitted; and yet that was to question the very being of their Corporations.

Now, my Lord, pray consider a little upon the Rule of Law. It should seem very strange, if a Corporation should neglect to come into Eyre, or into the King's Bench, the same Term that a *Quo Warranto* is brought against them, they must be outed of their Franchise for ever, as 'tis said 15 *Ed. IV.* 6 & 7. And yet, when all the Contempts and Oppositions imaginable are found upon Record, that this should not be a Forfeiture, that seems absurd that a Neglect in Eyre should do it, but all the Oppressions and Offences in the World, when found upon Record, should not do it.

3. But, my Lord, the Mischiefs that would follow from hence are very great. How many Oppressions and Offences would be daily committed, if every Corporation were a Franchise and Jurisdiction independent upon the Crown? and the Punishment truly of some particular Men for those Offences would not be adequate, where the Power of offending and misgoverning should still remain, sure that were no adequate Redress of such an Inconvenience. And to this purpose my Lord, I shall humbly offer a Case, and 'tis that great Case between the Earls of *Gloucester* and *Hereford*, Hil' 20 *Ed. I.* in *B. R. rot. Wallie* 14. 'Tis likewise in *Riley's Placita Parliamenti*, 83, 86. The Case is this in short: They both claimed the Liberty of *Returna Brevevium*, and they had incurred great Contempts in refusing to obey the King's Writs; and Judgment was given against them, that the Liberty should be seized for this Reason, which, I think, will go a great way in this Case, and for which I offer it, *Quia puniendus est Dominus libertatis in eo quo deliquit*. I think, my Lord, as I said, that will go a great way in this Case to shew the Reason of the Law.

My Lord, if the granting of too many and too large Franchises were a Mischief, as certainly it was by the Law, and as appears by the Commons Petitions 21 *Ed. III. rot. Parl. N^o.* 17. where they pray, That new and large Franchises may not be granted, because it tended to the overthrowing the Common Law, and great Oppression of the People. And the King's Answer was, That Care should be taken for the time to come. I say then, if this were such a Mischief, that there ought not to be granted new and large

Franchises, much more would it be a Mischief, if these Franchises should not be under the Controul of the Law, when they exercise such Oppression. And so, my Lord, I shall leave that Point; for I think it will be pretty clear, that a Corporation may forfeit their Being of a Corporation.

II. I shall next consider, *Whether the City of London be in any other Plight than any other Corporations*. I think, truly, there is no Difference at all. Now this Question doth depend upon what they have set forth by their Plea; and that is, the Confirmation of *Magna Charta*, cap. 9. *Civitas London' habeat omnes libertates suas antiquas, & consuetudines suas*. And then the Act of 1 *E. III.* upon which my Lord *Coke*, in his 4 *Inst.* 253. says, that the Franchise of this City shall not for any Cause be seized into the King's Hands. And then that of 7 *R. II.* which says, that the City shall enjoy it's whole Liberties, *licet non usi vel abusi*. This is their Foundation, upon which they would distinguish this City from all other Corporations. Now as to these things, I give these Answers:

First for *Magna Charta*, That plainly is no more a Confirmation to them, than 'tis to other Cities and Corporations. For not only the City of *London* is named to have it's ancient Liberties and Customs preserved, but 'tis likewise *omnes alie Civitat' &c.* and all Cities, Burroughs, and Towns, and the Barons of Cinque-Ports, and all other Ports, should have all their Liberties and free Customs. So my Lord *Coke* agrees it in his Comment. And in what he cites out of the *Mirror of Justice*, and other ancient Authors of our Law, they should enjoy their Franchises which they had Right to by lawful Title of the Gift and Confirmation of the King, and which they had not forfeited by any Abuse. So that the Act which confirmed them, did not purge former Forfeitures, much less did it license other Abuses.

Then for their Acts of 1 *E. III.* and 7 *R. II.* I shall humbly offer this, That as they are in truth no Acts of Parliament at all, so they will not concern this Question, whatsoever my Lord *Coke* says concerning them. But I shall give some instances before these Acts, to shew that they never had such an unquestionable Power as they now dream of, and then some Instances in after times, that there either were no such Acts, or no such Sense at least is to be put upon them, as they have strained to make.

First it appears 15 *E. I.* that the Franchise of the City of *London* was seized into the King's Hand, and *Johannes de Britton* was made *Custos Civitatis London'*, who was no Freeman; and this implies, that the Franchise was seized into the King's Hands, for they had a Power to choose *de seipis*, by Charter from King *John*, a Citizen to be Mayor or chief Governor; but here was another Governor appointed them.

Then *Rot' Pat' 26 E. I. Rex pro bono servicio civit' London' reddit eis civit' suam London' habend' dict' civibus ad volunt' Regis. Teste Rege*. So that both the City, and all it's Franchises, were seized at that time; for he restored the very City of *London* to the Citizens *habend'* during his Will and Pleasure. Thus, my Lord, it stood

in the time of *E. I.* Then in the time of *E. II.* seized again; 14 *E. II. memb. 21.* of the Pat' Rolls, in 21. *Rex dimisit civibus London' officium Major' civitat' London'.* 15 *E. II. Rex dedit licentiam eligendi Major' London'.* And in the second part of Pat' Rolls 15 *E. II. m. 5.* the King recites, That whereas in the Fourteenth Year of his Reign he had replevied to them the Office of Mayor, *usque quindenam Sancti Martini,* and also recites, which Office was seized into the King's Hands by the Justices of Eyre in the Tower of London, and he was willing to continue it longer to them, *ex gratia speciali* he did grant them the said Office, *quamdiu, &c.*

Then the second part of Pat' Rolls in 20 *E. II.* it is recited, That the King had seized the Office of the Mayoralty, and had replevied it from time to time; and that one *Hamond de Chigwell* was made Mayor, the King had accepted of him for Mayor, *Et Rex volens eis gratiam uberiorem facere,* grants him the Office of Mayor.

Now, my Lord, these Seizures shew plainly, that the Franchises of the City were forfeitable; for either they were seized upon Matter of Record found for a Forfeiture, or else upon some Matter which was to be a Ground of a Forfeiture. So then they were absolutely gone, and I do not find that these were ever taken out of the King's Hands by Process of Law, but were restored by Grace and Favour; for till the 20 *E. II.* it appears, that they so long continued in the King's Hands, and he absolutely disposed of them.

Here is now a Favour to them, and a plenary Restitution. Thus it stood in the Reigns of *E. I.* and *E. II.*

Now the next thing will be for their Act of 1 *E. III.* which they back with my Lord *Coke's* Observation upon it, that it was *Authoritate Parliamenti.* Now truly, My Lord, there is no such Act of Parliament that is any where extant. For it is not in Print, neither are there any Parliament Rolls of *E. III's* time till 4 *E. III.* And he that cites it, my Lord *Coke* himself, cites no Roll at all for it; so that where we shall find this Act of Parliament, truly I do not know. But this Act at best amounts to no more, than that for any personal Trespas of Officers the Liberties of the City should not be seized; but that signifies nothing, for that is not our Case. There are Acts of the Corporations, not of particular Officers; though I cannot but observe how the Law was taken to be at that time, before this their pretended Act, even for the Offence of private Officers; and that appears to be the Law too in the Case of 9 *E. I.* which I cited before, which was only the Offence of the Mayor of *Sandwich,* who refused to answer for a Trespas, and a Rescue was committed, and the whole Liberty seized.

Now this Act of 1 *E. III.* be it what it will, though they would take it in that Sense, that no Forfeiture should be incurred for the Trespas of an Officer, yet I find quite the contrary thereunto, and that it hath not prevailed even in that Sense. For 5 *E. III. rot. claus. 14.* there the King did discharge one from the Office of Mayor, and commands the Aldermen and Commonalty to choose another. Now this, my Lord, I take to be not so much a punishment of the Officer, as a breaking in upon the Franchise it

self. But I shall shew more fully in the Reign of *R. II.* that this was done.

Yet I will first take notice of the Statute of *R. II.* which is the next thing that they rely upon; and this, with Submission, is no Act of Parliament neither; for though my Lord *Coke,* in his 5th Inst. 205. says, this is the Statute mentioned in our Books, which supports the Customs in London to devise in *Mortmain,* and other Customs against Acts of Parliament, and cites Authorities in the Margin; yet, my Lord, I have looked, and can find none of them to speak to the purpose for which they are cited, but the Book of 7 *H. VI. fol. 1.* where the Custom of London to devise in *Mortmain* is in question; and there it was ruled a good Custom, because of the Statute that confirms it after the Statute of *Mortmain,* but says the Book, *Quere the Statute;* so that they were not well apprized of the Statute in those Days, though this were the Foundation of all these Resolutions of that kind.

It appears by the Roll, that it is no Act of Parliament in the Nature of it, for it is 7 *R. II. N^o. 37.* 'tis a Prayer of the Commons, That there might be a Patent granted to the City, confirming their Liberties, *licet non usi vel abusi fuerint.* And the Answer was, *Le Roy le veult;* but this is no Act of Parliament, it is no more than a Confirmation of the Letters Patents, which had been *primo R. II.* Besides further, there never was any Patent granted in pursuance of this Act: And yet 'tis plain, that if it had been so, it would only have extended to Forfeitures that were past, but could never amount to a Dispensation or License for the future. And my Lord, this appears by these Authorities and Records that I shall now cite. The first part of Pat' Rolls 16 *R. II. membr. 36, 37;* whereby it fully appears, That notwithstanding these pretended Statutes, there was no such Privilege in the City, but that for the Offences of their Officers, or themselves, the Franchise should be seized.

But, my Lord, I must a little observe, that truly the City have attempted to raise themselves above the Fear of any Judgment in any of the King's Courts; for in *primo R. II. Parl. Roll 126.* there they petition for a Confirmation of their Character, with a Clause of *licet non usi vel abusi,* which was that they then would have to be done in Parliament for them. But they do likewise desire in their Petition, that notwithstanding any Statute, Privilege, Charters, Judgment made, or to be made to the contrary, their Liberties might be confirmed; of this, 'tis said, The King will advise. There is in 1 *R. II. Parliament Rolls 121.* as pleasant a Petition as the other; they there do desire, that the Interpretation of their Charter may be left to themselves; and where it is doubting, such Meaning as they should put upon it should be allowable. But to that the King's Answer was, That he would make the Interpretation of his own Charters, according as his Council should advise. So that I observe, they would fain have been absolute, but they could never do it; it hath always been denied them. So that from what was done at this time, and after 7 *R. II.* it does appear plainly, that there was no Difference between the City of London and any other Corporation, only this is really the greatest. But as all Greatness is the King's

King's Favour; so when Men forget their Duty, in abusing the King's Favour, this great Court is the place to put them in mind of it. I come then to the Third Question:

III. *Whether the Act of the Mayor, Aldermen, and Commonalty, in Common Council assembled, be an Act of the Corporation, so as to make a Forfeiture of the whole?* And with Submission, my Lord, that will be pretty clear too upon these Reasons:

1. First of all, the whole Corporation is fully represented by them, notwithstanding the Disparity of Number set forth in their Rejoinder.

2. Again, All By-laws and Ordinances made for the good Government and Order of the City, are certainly the Acts of the Corporation; but the sole Power of making those Laws is in the Mayor, Aldermen, and Common Council; and therefore sure the whole Power of the Corporation is in the Common Council.

3. They have the sole Power of the Corporation-Seal. They can bind all the whole Corporation by any Alienation to, or Charge upon their Inheritance; and by Consequence they may surrender all or any of their Franchises, and then, as I said, they may forfeit them.

4. They have pleaded that there hath been time out of mind a Common Council, consisting of the Mayor, Aldermen, and Two hundred and fifty Citizens, who are called the Commons of the City. So that it shall be intended now, that as they have prescribed for it as incident to their Corporation, it was part of their Original Constitution to be thus represented by them, and ruled and governed by their Laws: But there is another reason for it, and that is, that it is an inseparable incident to a Corporation, implied in Law without grant, that they have a power to make By-Laws to bind the Corporation, without which there were no Government in a Corporation; and therefore a misfure of that power must be a Forfeiture of their Corporation, because 'tis a breach of their Original Trust: 22 *Jffif. pl.* 34. there is this Rule given, and a true one it is, Where there are many Franchises granted, which do not depend one upon another, there the misfure of one is a Forfeiture of that one which was misused; but where there are several parts of a Franchise depending all upon the said Franchise, if any part be misused, the entire Franchise shall be forfeited. As for instance, if a Man have a Fair, a Court of Pypowders is incident to it, the misfure of that Court of Pypowders is a Forfeiture of the whole Fair it self; for where any part is abused that is incident to an entire Franchise, that Abuse forfeits the whole.

And this is the Opinion of *Palmer's Reports* in the Case of the Corporation of *Maidenhead*, where 'tis doubted whether the Market was forfeited for taking too much Toll, because the Toll was not inseparably incident to the Market, and so was not dependent upon the entire Franchise, and there the rule is taken, as I have said before, that the misfure of a part of an entire Franchise, or a power that is incident to it, is a Forfeiture of the Franchise.

Then, my Lord, if they cannot forfeit here, the whole power of the Trust of the Corporation is reposed in them, and may be misused by

them, to the Oppression of the King's Subjects, and there is no remedy, if they shall not be punished at all. For it is much harder to say, that several Acts of all the particular Persons should forfeit the Corporation, than that their joint Act should do it. But this, my Lord, is an Act contrary to the trust upon creating the Corporation, and may be a misfure to the prejudice and oppression of all people; and if this should not forfeit the Corporation, there is no remedy at all, but the power remains of oppressing as it did before.

Now, my Lord, I think, with submission, I have made it pretty plain; and as they are not distinguished from other Corporations in point of Privilege as to Forfeitures, so this is their Act, and shall bind them, being done by their Representatives.

IV. Then the fourth Point will be, *Whether these Offences set forth in the Repl'cation are Forfeitures?*

1. The first is the making of that Law in the Common Council for the levying of Sums of Money upon the King's Subjects, and the actual levying of those Sums accordingly; and this they justify under their prescription to have reasonable Tolls, as they set forth in their Pleadings, from all Persons that come to their Markets to sell Provision there, and power to reduce their Tolls to a certainty by an Act of Common Council. This is their Justification; so that, My Lord, the first thing to be considered is,

(1.) What right they have to these Tolls or Sums of Money assessed by the By-law; and then

(2.) Whether if they have no right, their taking upon them to make a Law be a Forfeiture?

(1.) For their Right, that depends upon a prescription to have reasonable Toll, as they set it forth, and this, as they have pleaded it, appears to be no Right at all; for a prescription to have Toll and Tollage, not shewing how much in certain, is void; for reasonable Toll is not incident to a Market, but the Party has it by the King's Grant, and so 'twas adjudged in this Court, *Mich.* 39 & 40. *Eliz.* cited by my Lord *Coke* in the *Second Inst.* 220. So if the King grant a Toll, if he do not in his Grant ascertain how much shall be taken for Toll, that Grant is void, and so is the Prescription too, as you may see in the Corporation of *Maidenhead* in *Palmer's Reports*, fol. 79. grounded upon 9 *H.* VI. 45. & 11 *H.* VI. 19. and so he cites the Opinion of *Popham* in the Case of *Heedy* and *Weeldbouse*, for no Subject can prescribe to have Toll, but by the Grant of the King.

But, my Lord, this is not properly a Toll neither, nor in the nature of a Toll; for that is always paid by the Buyer, and never paid before a Sale; but here all that comes to the Market, whether they buy or not buy, sell or not sell, they must pay by this Law. My Lord, I confess there may be a custom for Persons to pay for Standings in a Fair or Market, as that Case was 9 *H.* VI. 45. but yet that must be prescribed for in a certain Sum, which is not done here. And this customary Payment is in the same nature as a Toll traverse, or a Toll through, which cannot be in an uncertain Sum; for they are all by Prescription, and a Grant

Grant of them now uncertain would not be good.

But, my Lord, however, Judgment upon these Pleadings must be given against the City; for either the Prescription, as they have set it forth, is good, or it is not good; if it be good, then the Traverse that is taken, is well taken, *to wit*, that they have no such Custom, and they ought to have taken issue upon that which they have not done; for, my Lord, they have taken Issue thus, That, Time out of Mind, they have had reasonable Toll of all Persons coming to the Market to sell their Provision, without tying of it to the reasonable Toll assessed and reduced to Certainty by the Law; and this is naught: For though they had a reasonable Toll in general, taking the Prescription to be good, yet if either that reasonable Toll in the use of it were not taken in that Manner, or to that Value that they assess by their By-law, then have they done Wrong; and therefore our Traverse is proper to their reasonable Toll, that they had not, Time out of Mind, such a Toll as they set forth; for it must be such a reasonable Toll as may answer to that which is assessed in the By-law; and that they have not put in Issue. For the King, when once he hath granted a Market, cannot after grant Toll to that Market, because it is a free Market, and the People have Right to come to it as a free Market; neither can they, when once by Custom they have exercised their Power of assessing reasonable Toll, alter that at their Pleasure; for it being once set, all People have Right to come upon such Terms: And if they increase the Toll, under Pretence to reduce it to Certainty, it will be void; for they may lower their Price if they will, but they can never come to increase the Penalty. If therefore they have done Ill in not taking Issue upon the Traverse, which does take in the full Substance of their Rejoinder; if it be good, then Judgment must be given against them upon that Reason; so then, my Lord, the Question will be,

(2.) *Whether the making of a Law to raise Money at large upon the Subject be a Forfeiture of the Charter?* And truly, my Lord, that it is. For

First, It is the usurping of a Power that they neither can have, nor have by Law.

Secondly, It is a Breach of the Trust annexed to the Corporation; for 'tis a Misuse of the Franchise, to the Oppression of the King's Subjects; and therefore the Charter must be forfeited, and not the other Franchise; not the Franchise of a Toll, for they have none; not the Franchise of the Market, for that would be nothing. If the Market be forfeited, it must either be extinguished, or kept; if it be extinguished, 'tis a Punishment to others that did not offend; and if it be kept, though it be forfeited, 'tis no Punishment to them that do offend: And 'tis a Question whether a Market may be forfeited for taking unreasonable Toll; and that appears in the Case of *Maidenhead*. And, as my Lord *Coke* says upon the Statute about taking outrageous Toll, the Franchise should be seized only till it be redeemed by them.

But, my Lord, however, without going far into that Matter, this Offence lies not only in taking the Money, but in taking upon them, and usurping a Power to make Laws to raise Money. They have taken upon them a legislative Power to oppress their Fellow Subjects, that is their Offence, and that is a Misuse of their Franchise.

My Lord, in the Case of Ship-money it was not the *Quantum* of Money that was raised, that was complained or quarrelled at, but it was the Manner of levying of it without an Act of Parliament. The Logick and Consequence of that was it, which was so much debated and stood upon. So here, the Abuse and the Offence is the making the Law, and the Consequence of that; for by the same Reason that they have a Prescription to lay so much, they may have a Prescription to lay ten Times as much. So that upon what I offer upon this Point, I conceive it ought to amount to a Forfeiture of their Charter, and the Loss of their Corporation.

Then the next Thing will be that which is the last Matter, that is the Petition, and that is of a strange Nature; where the Offence is not only in presenting, but in printing and dispersing of it; it charges the King with interrupting the publick Justice of the Nation, and the making the necessary Provisions for the Security of his Protestant Subjects; for, my Lord, to say, that the Prorogation of the Parliament, which is the King's Act, who surely has alone, and none but he, the undoubted Prerogative of calling, proroguing, and dissolving Parliaments; to say that Act of his was an Interruption of Justice, is all one as to say, the King did interrupt: And 'tis done by them as a Corporation; 'tis the Act of the City in their Common Council in the Name of the Corporation; and, as we have pleaded it, the Mayor, Citizens, and Commonalty, in Common Council did do it, which sure is the Corporation, as they would have it. And that I rely upon for the Reasons I offered before upon that Point.

Then the Matter of this Petition is the taking upon them to censure the King and his Government by this Petition. The printing and dispersing it is now publickly scandalizing and libelling the King; for 'tis in the Nature of an Appeal to the People: 'Tis unlawful to print any Man's private Case, while it is depending in any Court of Judicature, before it comes to Judgment, because 'tis an Appeal to the People. And that was my Lord Chief Justice *Hales's* Opinion in Colonel *King's* Case. And the ill Consequences of such Proceedings are so many, and the Danger so evident in these licentious Days, that I do not know indeed whither it may tend.

The Fact is confessed by them in their Rejoinder; but they say they did it to alleviate Mens Fears, and quiet their Minds *absq; hoc*, that they did it *aliter vel alio modo*. Surely, my Lord, this is no Sort of Excuse in the World, nor is it capable of any. They have owned the Thing, but they have excused it in the Manner of doing thereof. And I may venture to say the Traverse is impertinent: Suppose a Man be indicted for publishing a Libel, and he owns the Fact, but doth traverse *absq; hoc*, that he did it *malitiose*, or with an Intent to defame, that surely would be an idle Thing; for those are Constructions that the Law puts upon it, and are not Matters traversable, or to be put in issue. But if the Fact be done, the Law says, 'tis maliciously done, and with such an Intention. Therefore a Confession of the Fact is a Confession of all the Consequences that the Law puts upon the Fact.

My Lord, this can amount to no less than the Forfeiture of their Charter, not only for the greatness of the Offence, but because otherwise the Law would be unequal; for if this were the

Case of a private common Person, he must be fined and imprisoned during the King's Pleasure, as was the Case of *Harrison* in *l. Cr. 503.* for Words spoken of Justice *Hutton*. Now, my Lord, a Corporation is not capable of suffering this Imprisonment; and therefore 'tis a much greater Offence in them, as the Body is greater than any particular Member: And then, that which is a greater Offence would have a less Punishment, if the Charter itself were not forfeited, than it would if a particular Person were punished. And give me Leave to apply here the Reason of the Earl of *Gloucester's* Case, that I cited before, *Quia Dominus Libertatis puniretur in eo quo deliquit.* So they shall lose their Charter for the Abuse of that Power that was intrusted with them by their Charter. Therefore upon the whole Matter, I do humbly pray your Judgment for the King, that they may be outed of their Franchise of being a Corporation.

May it please your Lordship,

Sir George I Am of Counsel in this Case for the
Treby. I Mayor, Commonalty, and Citizens
of *London.*

The Record hath been truly opened by Mr. Solicitor in all Particulars, except an Omission of one or two, which I shall mention.

The Information sets forth and charges, That the Mayor, Commonalty, and Citizens of *London*, had, by the Space of a Month before the Information, used, or claimed to use, without any Warrant or Royal Grant, the Liberties therein set forth; that is to say, to be of themselves a Body politick and corporate with such a Name, and by that Name to plead and be impleaded, to answer and be answered; and likewise to make Sheriffs and Justices of the Peace: But as to these there are only Imparlances, and I suppose Continuances. But as to the first Article, the Defendants plead and prescribe, That they are a Body politick Time out of Mind; and then they set forth indeed several Acts of Parliament, and Charters of Confirmation. To this Mr. Attorney General doth reply two Things:

First; He takes Issue upon the Prescription, That they are not Time out of Mind a Body politick with such a Name; and then he assigns a Forfeiture, which Mr. Solicitor indeed does call two Causes; but they rather seem to be but one joint Cause; but yet take them to be two.

The first is; That the City did assume upon themselves a Power to meet and make Laws for the Government of the City, and thereupon did make the Law which is now in Question; and thereby did levy, and order to be levied, for one Horse Load of Provision so much, &c. and that this should be paid to the Use of the City, and for Default of paying, the Persons denying to pay this Rate, should be removed from their Standings in the Market.

The second Branch is, *The Petition*, and therein are those Words which Mr. Solicitor hath repeated about the Prorogation of the Parliament.

And to all this the Defendants do rejoin, That the City of *London* has, Time out of Mind, been seized of these Markets; and they say, That the City of *London* is the Metropolis of the Kingdom, and consists of above fifty thousand Citizens and Inhabitants; and that (at their proper Costs and Charges) they are to provide,

and always have provided a Market-place to sell Provision in, and also Officers for the Preservation of good Order, and Regulation of that great Concourse of People that comes thither, and that they have always amended and cleansed the Markets; and for these Charges of the Market-places, and Officers, and cleansing of the Markets, they have always received, and ought to receive reasonable Tolls. They say that Time out of Mind there has been a Common Council in the City, and that for the like Time there has been a Custom, that they should make By-Laws for the better Regulation of the Markets, for the ordering where such and such Markets should be held, and for the assessing and reducing to Certainty the Tolls and Rates that are to be paid by Persons coming to the Markets, so as such Laws be profitable to the King and his People, and agreeable to the Laws of the Kingdom; and then again they set forth the several Confirmations of their Customs and Privileges by Acts of Parliaments and Charters.

And then, as to the second Branch of their Forfeitures, they set forth, that there was such a Plot, and such Proceedings in the Courts of Justice against the Conspirators, and that there were several Judgments and Executions upon it; and they set forth several of the King's gracious Speeches to his People in Parliament; amongst other Things, that he did there, in his Speech therein mentioned, recommend to the Lords and Commons in Parliament assembled, to pursue the further Examination of the Plot; adding, that he thought not himself nor them safe; till that Matter was gone through with, and that the Lords in the *Tower* might be brought to their speedy Trial, that Justice might be done. They set forth likewise an Address of both Houses for a Fast, wherein they desire that the King would issue forth his Proclamation, which Proclamation is accordingly issued; and in that it is expressed (I cannot repeat the Words, but to this Purpose) *That the Dangers impending could not be prevented, but by the Blessing of God upon the Councils of his Majesty and the Parliament.* Then they set forth; that the Parliament was preparing several Bills for the Preservation of his Majesty's Person and the Protestant Religion, and the Peace of the Kingdom; and those Bills could not be enacted elsewhere, and that they were then depending: And they set forth further, that the Parliament was prorogued before those Bills were enacted: And they set forth also, that the Lords impeached could not be tried, but in Parliament; and, that by the Law of the Land it is lawful for the King's Subjects in their Distresses, and for Redress of Grievances, humbly to petition the King for Remedy in that Behalf; and that for Satisfaction of the Citizens, who had made their Applications to the Common Council, and for the alleviating of their Fears; and out of their Zeal for the Preservation of the King's Person, and the Protestant Religion, they did give their Votes to this Petition, as is charged; and they give their Reasons for it, that is, it was ordered to be printed, to the Intent that false Rumours (concerning the Citizens petitioning of the King) might be prevented, and the Enemies of our Lord the King from proceeding in their Conspiracy be deterred, and the Fears and Perturbations in the Minds of the King's Subjects might be allayed, and that the Citizens and Inhabitants of the said City

City might better know what was done upon their Application to the Common Council.

My Lord, I have taken some Notes of what Mr. Solicitor has said; but I beg your Lordships Leave, that I may first deliver what I have prepared upon the Argument; and afterwards I will talk upon my Notes, and give particular Answers to the particular Things he has insisted upon, for so much of them as I shall not answer in my Discourse, which I must beg your Lordship's Patience in; for I fear I shall be pretty long.

I shall go on upon the same Points Mr. Solicitor has done, and endeavour to meet him, and give an Answer in all Particulars, and shall add a Point or two which he has not mentioned; as particularly, that this Information (as it is here laid upon this *Quo Warranto*) is not brought against right Persons; for it is brought against the Mayor, Commonalty, and Citizens of the City of London. Whereas it ought to be brought against particular Persons for usurping such a Corporation, if it can be brought at all.

The first thing that I shall go upon, is, *That a Corporation cannot be forfeited*; for now we must begin as it were from the Replication; for there is disclosed all the Matter, upon which the Strefs of this Point lies.

And that a Corporation cannot be forfeited, I think will appear by opening the Notion and Nature of a Corporation, which you may find in my Lord Coke's 1st Inst. fol. 202, 250. he says, It is a Body to take in Succession, framed as to that Capacity by the Policy of Man, and called a Corporation, because the Persons are made into a Body, and so are of Capacity to take or grant, &c. And he says, *That Persons capable of purchasing are of two sorts; Persons Natural created of God, such as private Men, as J. S. and J. N. and Persons created by the Policy of Man, as Persons incorporated into Bodies Politick.* So then if this be the true Notion of a Corporation, then all the Question is, Whether there shall remain such a Person in the World as this Corporation of the Mayor, Commonalty, and Citizens of London?

And that this is a meer Personality and Capacity will further appear even by this *Quo Warranto* itself, which says, *That we did claim and usurp to be a Corporation under such a Name, and thereby to plead and be impleaded, to answer and to be answered*: So that there is no more now can be considered in this Record, but whether we have or can have the Capacity of being Plaintiff and Defendant.

My Lord, in *Brook's Abridg.* tit. *Corporation* (I cite not what is said there as an Authority, but only as an Opinion) he joins the Titles Corporations and Capacities together: I say, it is only the Judgment and Notion of the Man, who your Lordship knows never uses to join any Words as Titles, but what are synonymous; and there he joins Corporations and Capacities, to shew the Nature of a Corporation is a Capacity. And suitable to this is what Justice *Windbam* says in *Dr. Patrick's Case*; *A Corporation is a meer Capacity, a civil Capacity*, says he, *I do call it an Ens rationis*; whether he did affect that Word because it was in the Case of a Man in the University. I cannot tell; but the Meaning was, that this was the Notion of a Corporation, that it

was an invisible Person and Capacity only.

Now, my Lord, I do not love to litigate about Words: I must confess that Mr. Solicitor does not speak without some Authority, when he calls a Corporation a Franchise; but I say it is not properly a Franchise to have a Power to be impleaded and to plead; for as to that they are Consequents, which belong to the Person rather than a Liberty or Franchise that is superadded to it. Therefore in *Hobart* 210. *Norris and Stap's Case*, the Case of the Wardens and Fellowship of the Weavers of *Newbury*; I think it unnecessary to cite the whole Case, but there my Lord *Hobart* says, *Though Licence or Power to make Laws is given to a Corporation by a special Clause*, yet it is needless, for I hold it to be included by Law in the very Act of incorporating; and so is also the Power to sue and be sued: Such Body is a Person that must answer the Law as a Defendant, and sue as a Plaintiff.

But I do agree, I say, that there is one Case, and yet but one in all the World, wherein a Corporation is called a Franchise; and it is in *Coke's Entries*, tit. *Quo Warranto, Placito primo*; a *Quo Warranto* is brought against several Persons, to shew by what Warrant they claim divers Liberties, Privileges, and Franchises, as to be of themselves a Body Politick and Corporate, by the Name of the Burgesses of *Helmefley* in the County of *York*. So that under that general Word I confess it may be called a Franchise; and the rather, because Mr. *Noy* (a Man of great Learning) in his great Argument of *Fulcher and Haywood's Case* in Mr. Justice *Jones* Reports, says it is a Franchise, for it was called so in such a Plea.

But now, my Lord, that it is not in it's own Nature forfeitable, is made plain by all those qualifications that have been attributed to it, and Expressions in our Law Books about it: As, that a Mayor, and Commonalty, or Body Corporate, can never die, 1st Inst. fol. 9. b. 3 *Coke* 60. a. 2 *Bulstr.* 233. 21 *Edw. IV.* fol. 13. a Mayor and all the Officers; but the Commonalty have Succession *in perpetuum*, and can never be said to die: And this Notion, my Lord, has gone further than *England*: I beg your Lordship's Pardon if I take the Liberty to cite a very learned Author *Grotius*, in his Book *De jure Belli & Pacis*, lib. 2. cap. 9. he says, *Cities are Immortal*; and a City does not therefore cease to be a City, though all the Citizens of it should die.

But the dissolving of a Corporation by a Judgment in Law, as is here sought, I believe is a Thing that never came within the Compass of any Man's Imagination till now, no, not so much as in the putting of a Case. For in all my Search (and upon this Occasion I have bestowed a great deal of Time in searching) I cannot find that it ever so much as entred into the Conception of any Man before; and I am the more confirmed in it, because so learned a Gentleman as Mr. Solicitor, has not cited any one such Case, wherein it has been (I do not say adjudged, but) even so much as questioned or attempted; and therefore I may very boldly call this a Case *primæ impressionis*.

1 *Inst.* fol. 13. b. there it is said, If Lands holden of *J. S.* be given to an Abbot and his Successors; in this Case, if the Abbot and all the Convent die, so that the Body Politick is dissolved, the Donor shall have again his Land, and not the Lord, by Escheat. So that he does allow

a Body Politick may be dissolved indeed; but it is not properly a dissolving, nor a dying of that Body, but a taking away of the Subjects in which it did subsist, or to which it did adhere. And therefore unless it be by such an Accident, as all of them dying, or by Violence, as in the Case of the Monks of *Bangor*, I never heard before that a Corporation was dissolved; to be sure not by a Judgment in Law. My Lord *Rolls*, in his *Abridgment*, Part 1. fol. 514. tit. *Corporation*, at the Letter *I*, makes it a Head of one of his Titles, *How a Corporation can be dissolved*; and therefore was led very properly to enquire into all Things that might dissolve a Corporation; for that Book is in the Nature of a Common Place Book. Now under that Head he cites not only the common Case, if all the Members die, then 'tis a Dissolution; but he says further, and he cites an Authority for it, If a Corporation consists of so many *Confratres*, and so many Sisters, and all the Sisters die, this Corporation is dissolved; for both the Brothers and Sisters are integral Parts of the Corporation, and it cannot subsist by halves. But he does not go further, he does not say, If they shall levy too much Money upon the Market, nay, he does not say, if they should commit Treason (if it were possible they could do so) which had been more proper to have instanced in, he being naturally led to it under that Title; for that is a thing that happens a thousand times oftner than the Death of all the Members. And, under Favour, if the Law be so as they would have it, every Penalty levied upon a By-Law does endanger the Corporation every whit as much as this of the Rates upon the Markets.

Littleton, my Lord, in his *Sect.* 108. (it is a general Rule, but commonly taken Notice of, and may be in this Case) says there, upon the Statute of *Merton*, An Action will not lie against a Guardian for the Disparagement of his Ward, because it was never heard of from the time of the making of that Statute, that such an Action was brought; and yet he adds, that the Words of the Statute might very properly ground such an Action. Now, my Lord, that was a matter of two hundred Years before *Littleton* wrote, that that Statute was made; and 'tis possible such an Action might have been brought, but not remembered, and that is an Action brought by an Inferior against a Superior, the Ward against his Guardian; but here this Suit, if it can be brought, is brought by the King, who is supreme, and therefore there can be no Reason to think, but he would have brought many of these Suits to have dissolved Corporations, if by Law it might have been done.

Besides, my Lord, Acts of Parliament can never be antiquated, because a Statute is a Law in Writing; but the Common Law is not a Law unless it be repeated and practised. And so is *Davis's* Opinion in the Preface to his Book, and in the Body of his Reports too: He says, That when People have tried and used such an Act, and found it useful and profitable to the Publick, and fit to be practised, that Act of Repeating begets a Custom, and so becomes in it's Name and Nature the Common Law of the Land. But now, my Lord, if I can challenge all the Times, and all the Precedents that ever were in this Kingdom, to shew me where ever there was a Forfeiture of a Corporation, or a Judgment given

against a Corporation to forfeit it, no, nor ever thought of till this last Year, I think I may assert 'tis not Law: And if it extend to this Corporation of *London*, it must have extended to all Corporations formerly, and it must do so to all still.

In the Case of Ecclesiastical Leases, in the fifth Report, and in several other Places, there is a large Discourse of what Bishops and other Spiritual Corporations might do at Common Law; 'tis said, They might grant for Years, for Life, in Tail, or in Fee. But what might they grant? their Lands and Tenements, their Possessions and Revenues; but never one Word, that they could grant away themselves, or Politick Capacity; still that which was their very Being, was not in their own Power to grant away; and, if it were not to grant, much less were it in their own Power to forfeit: For if it should be so, there is never an Hospital in *England*, but if it have taken too much Toll, were to be destroyed; and never a Bishoprick, Deanry, and Chapter (nay, almost particular Parsonages, for they are Spiritual Corporations too, and all the Corporations of *England* are under the same Rule of Law) if they have transgressed in any of the kinds assigned here for a Forfeiture, but were to lose their very Being.

That these were in the Power of these Spiritual Corporations at the Common Law, no Man doubts; and if any Man does tell me, that the restraining Statutes do extend to the Corporation, truly, I must deny it; for it is Lands, Tenements, and such Things, that are mentioned, and there is Provision made only against Grants, and not against Forfeitures. A Forfeiture, Mr. Solicitor says, must be a great Breach of Trust; and so it must indeed! and how then should they answer for it? If a Bishop, or a Dean and Chapter, have Lands in Fee upon Condition, and they break the Condition, their Lands are gone: But if that Breach of Condition should amount to a Forfeiture of their being a Corporation, that were very strange; this would dissolve and destroy all the Colleges in the Universities, and all the Charity in the Kingdom; for every Breach of such Condition would be a Breach of Trust.

My Lord, there was a very proper Time when this might have been thought of, if it could have been maintained for Law, and that was in the Time of *H. VIII.* He sent out Dr. *London* and others with a Commission of Inquiry, to examine into all the Misdemeanors of the Monasteries, Convents, and Colleges. To what Purpose was all this done? Could he not have brought *Quo Warranto's* against them? He needed not have hunted much for Misdemeanors and Offences; if they had but raised five Pounds, nay, for ought I know, if they had but raised five Pence upon a Market, or the like, they had all been dissolved; and 'twas so much the worse in this Case then, for this Reason: In those Regular, Religious Houses and Corporations, the Body of them was dead, and the Abbot or Head was only to appear for them, and plead and defend for them. Therefore 'tis said in the 1 *Inst.* 103. a. that in a *Quo Warranto* against an Abbot, or Bishop, or a Prior, for Franchises and Liberties, if the Abbot or Prior disclaim alone, this shall bind their Successors; and if it were possible that there might have been a Forfeiture, yet, without so much as troubling himself to assign that Forfeiture, he might

might have gone that way by *Quo Warranto* to get a Disclaimer.

And 'tis very well known, there were Men put in those Houses to be Heads of them, on purpose to try if they could surrender them: And that they needed not to have done, nor have asked the Consent of the Members to have surrendered; for they needed only to have brought a *Quo Warranto*; for after the Renunciation of the Pope's Power and Supremacy, King *H. VIII.* did grant his *Conge d'eslire* to choose the Heads of those Corporations; and when they were once there, and a *Quo Warranto* issued, the Abbot or Prior might say, This Corporation is but a Liberty or a Franchise, and I am the King's Creature, I will disclaim the Liberties, and there is an end of the Franchise: But this was not thought of *in diebus illis*.

I think, my Lord, that in case of a Town the Law is clear; though I shall not at present much contend with Mr. Solicitor upon that Point, that *London* stands upon greater and better Circumstances than other Corporations and Towns. It is all one as to the main Points, whether it do, or not; though I shall say enough as to the particular Reason, to answer what he says to the contrary, by and by. But yet this I will say, a Corporation in a Town is more protected in Law, than others are: For, says my Lord *Coke*, if a Town or Borough does decay, yet it shall remain a Town or Borough; as is plain in the Instance of the Burgesses of *Old Sarum*, and the like. So that it seems, that though the Death of the Abbot and his Convent does destroy that Corporation, yet the Dilapidations and Decays of a Town does not destroy it, but it remains a Town still; nor is the Liberty of sending Burgesses to Parliament destroyed, or forfeited.

I confess, my Lord, I do not see but that at this rate a *Quo Warranto* may be brought against a particular Man, to know by what Authority he claims to have the Liberty of a Subject, to sue and be sued, to plead and be impleaded: 'Tis a Capacity that's born with him, and belongs to him as he is born in *England*, or as he is by Act of Parliament naturalized, and made a Subject; especially in the case of Denization it comes home to the Point. Why should not a *Quo Warranto* be brought against a Man, to know by what Warrant he claims to be a Denizen, and in that respect to plead and be impleaded, to sue and be sued? These are relative Capacities, that stick and adhere to the Person; and if you once constitute the Person, you shall never say he shall not have the Incidents to such a Person.

This Case indeed, my Lord, that I put last, is so gross a Thing, that it was never drawn in question, though some others have, as Dignities, Lordships, and the like; and yet no *Quo Warranto* was ever brought, or can lie in these Cases. And that is the Opinion upon that great and solemn Argument of the Case of the Earl of *Oxford*, in Mr. Justice *Jones's* Reports; where it was held, that an Earldom, or the like, is a personal Dignity, and such a one is in the nature of a publick Person, and by no means can part with or surrender that Capacity. And so your Lordship knows it was adjudged lately in the House of Lords in Parliament, upon the Petition of the Lord *Purbeck*: They all voted there, that Peerage could not be determined, nor surrendered; no, although there was a Fine levied, and all the

Instruments of Law that could be contrived to annul it; and I cannot see, but that if this Capacity of a Corporation be liable to a Forfeiture, all others must be so too.

There is one Capacity indeed, and a small one, that a Feme Covert has by the Custom of *London*, That she shall trade without her Husband, as sole Merchant, and be sued so, and shall sue: The Husband indeed is named, but only for Conformity; the Action is against her, and the Judgment against her severally, and the Debt must be levied of her Estate; can it be thought that a *Quo Warranto* lies for such a meer Capacity? No more than it can lie to know, by what Warrant such an one claims to be an Executor, or Administrator, or an Overseer of a Will; and yet there an Action is brought against them in such a Capacity, and as such they sue and are sued, though perhaps they would be glad to be rid of that Capacity too.

My Lord, 'tis true what my Lord *Coke* says in his 2 *Inst.* 664. there was a Custom to take Tithes of Marriage Goods within the Dominion of *Wales*, which is taken away by a Statute; and there he says, If a Custom, that was once reasonable and tolerable become grievous, and not answerable to the Reason whereon it was grounded, yet it cannot be taken away but by Act of Parliament; for an Inheritance once fixed cannot be taken away but by Parliament. If this be so of a little Custom in *Wales*, how much more is it so of this great Corporation of *London*, and, which is more yet, of all the Corporations in *England*?

My Lord, Mr. Solicitor was pleased to say that a Corporation might be surrendered. I must confess, I should not willingly have meddled with that Point at this Time; but since it has been mentioned, I will only endeavour to say so much as may answer him in what he intended it for, as a Ground for the better proving the Point of Forfeitures. I believe Mr. Solicitor (because he cited no Authority for it) might rest very much upon the supposed Surrenders in the Time of *H. VIII.* the Surrenders that were made of the Monasteries then; and I do believe he does presume, as others have thought, that those were Surrenders of their Corporations: Truly, my Lord, I believe they were not; and to prove that they were not, I shall rely upon the Dean and Chapter of *Norwich's* Case, 3 *Coke* 73. which is also reported in 2 *Anderson* 120. and I shall at the same Time mention another Case, and that is the Case cited before of *Fulcher* and *Haywood*, in *Jones* 166. and in *Palmer* 491. where the same Question comes to be debated, *Whether the Deanry and Chapter of Norwich was given up and destroyed by their Surrender?*

My Lord, in the Report of that Case in *Palmer*, I will first remember your Lordship of what is said by *Whitlock* in his Argument of that Case; it is *fol.* 501. of that Book; there *Whitlock* sitting in this very Court, says, That although the King can create and grant a Corporation, yet he cannot dissolve a Corporation; and a Dean and Chapter being a settled Corporation, by their own Act cannot dissolve themselves; being once a settled Corporation cannot be *felo de se*. But I say further, those Acts of Parliament made in *H. VIII.'s* Time (they are all in your Lordship's Memory) that of 27 *H. VIII.* gave all the Monasteries under two hundred Pounds a Year to the King; that of the 30 *H. VIII. cap.* 13. recites, that several

other

other Monasteries had been granted, surrendered, and forfeited to the King; and it says, that the King shall have them, &c. I do allow there are the words *surrendered* and *forfeited*, and I mention them on purpose to answer them; and this is the Answer I give them.

First, for the Word *Surrender*. When the Monasteries were surrendered, that was only a Grant of the Lands, and nothing else; the word *Monastery* can carry nothing else in it. And so is *Wortly* and *Adams's Case* in *Ploverden's Com.* 194. where there is a great Discourse of the Surrenders of the Monasteries, and the Acts of Parliament about them, and what ensued upon them; but in all that Book it was not by any Means admitted, that the Corporation, or any of that, was by these Surrenders dissolved. And, my Lord, as to the word *Surrender*, it is fully satisfied by the words *Lands* and *Tenements*.

Secondly, as to the word *forfeited*, my Answer is this: The Corporation is not named in the Surrender, and therefore cannot be presumed to be intended to be surrendered; and then there are other Things, as Leets, Liberties, and Franchises, which are named, and are capable of being forfeited, and so the word *forfeited* may be applied to them, and very properly; for they are liable to a Forfeiture, but the word *Corporation* is not at all mentioned.

But for another understanding of the word *forfeited*, I desire your Lordship would give me leave to cite a Case in the 2d Part of *Roll's Reports*, fol. 101. (which is called the *Continuation* of his Reports) and it agreeth exactly with the History of those Times: There were some Abbots, as the Abbot of *Glastenbury*, the Abbot of *Reading*, and the Abbot of *Colchester*, that were stiff Men, and would not surrender; thereupon the King gets them indicted of Treason, (the Story is well known how he handled those Men) and thereupon they did graft a Kind of Opinion, that their Land was forfeited by this means; for a small Pretence would serve then to put People into an Act of Parliament of Attainder; and he tells you, that was the Reason why they put the word *forfeited* into the Act of Parliament; and then disbottom themselves upon the Statute 26 H. VIII. cap. 13. that Statute that gives to the King any Estate of Inheritance, whereof any one is seized that commits Treason: Though I do not by any Means allow it to be Law, that those Clergymen by their own Acts could forfeit so much as the Lands of their Corporation; but it was taken for a Pretence, and so they put in the word *forfeited*.

Besides, another Thing is this, the same Statute says, *The King shall have and enjoy the Things there given him, in the same manner as they the Abbots, Priors, &c. should have enjoyed them.* Now if the King shall enjoy all as they did, and in the same manner, what then must he enjoy? It may well extend to Lands, to Leets, and to Markets, and particular Franchises; all those Things the King may have: But shall the King have their very Corporate Capacity? Shall the King have and enjoy the Liberty of suing, and being sued, by the Name of the Abbot and Prior, or the like? That Office, sure, he cannot execute; it is inconsistent with Sense or Reason to say, that he shall have it, or can have it. And in these Statutes they did doubtless accumulate Words to make them look

the bigger; because they were to make a great Present to H. VIII. by these Means.

Then comes 32 H. VIII. cap. 24. that relates to the Corporation of the Knights of St. *John* at *Jerusalem*; and it seems by the penning of that Statute, that this very Question had been taken notice of since the Time of the making of the last Statute in 30; for there it is declared, That that Corporation of St. *John* at *Jerusalem* shall be dissolved, and that the King shall have their Lands. So that their taking notice, and providing directly to dissolve it, shews, that they had by that time considered, that neither the Surrender of their Lands, nor the vesting of them in the King, had done any Thing to the Corporation, save only they had deserted their House, and fancied themselves dissolved, because they were turned out of their Possessions.

My Lord, in the great Case of *Haywood* and *Fulcher*, 'tis again and again said there, That the Surrender of the Dean and Chapter, (where they surrendered all their Church, and all their Franchises and Hereditaments) was no Surrender of the Corporation, no, though the King did take it to be a Surrender, for he accepted it as a Surrender, and granted them a new Incorporation of the same Name, only adding, *Ex fundatione Regis Edwardi Sexti.* So that he did take it to be a good Surrender, but it was adjudged that it was not a good one; and so it is held in 3 *Coke* 73: And so says the Dean of *Wells's Case* in *Dyer* 273. the Surrender is, *Diaconatus Ecclesie Cathedralis de Wells*: One would think it impossible to have surrendered any Thing by a stronger Word; but yet there they say, 'tis not good without an Act of Parliament.

And whereas it hath been sometimes said, as it is there, they were dissolved, and they have been dissolved by the Surrenders, and the like; there is a very good Answer given to all that Discourse in *Palmer* 495. where 'tis said, When they speak of a Dissolution by Surrender, 'tis a Relation of Fact only, and not of Law; that is, they were dissolved in Fact, so as that they did desert their House, and did demean themselves as if they were discorporated, but they were not so in Law; for they fancied a Corporation could not be without Lands, and so, when their Lands and Church were given up, they thought all was gone and dissolved: For (said they) a Dean and Chapter must be a Dean and Chapter of some Place, and when the Land is gone, how can they be said to be of such a Place? No, said the Judges there, that is no Reason at all; for the Corporation was before they had any Lands; and if those Lands were all evicted, or they all disseized of them, yet they are a Corporation still. And in *Roll's Abr.* 2. Part 185. 'tis said, the Abbies came to the King by the Statutes of Dissolution; so that they had no Opinion that the Surrender did carry even their Lands, though I do admit they did carry their Lands; but I may say they could carry no more, they could not carry their Being of the Corporation.

There is a Case in *Dyer* 282. and 'tis the only Case that seems against us in this Point; there were two Deans and Chapters of St. *Patrick* and *Christ Church* in *Dublin* in *Ireland*; and these both, and not one of them, were together one Chapter of the Archbishop of *Dublin*, Time out of Mind, and one of these surrendered, and then their

their House was used for a Place for the Courts of Justice, and continued so; and then a Lease is made by the Bishop, and that confirmed by the only remaining Dean and Chapter, which was that of *Christ-Church*: And whether that Lease was good or no was the Question, and truly that was the only Question that is made there in that Book; and so 'tis of little Authority as to any Thing else; but 'tis true, that that Book does say in the End of the Case, that the Lease was held good, *quia Corporatio & Capitulum Sancti Patricii predicti fuit per donum & sursum redditionem Decani & Capituli predicti legitime dissolutum & determinatum.* My Lord, to that I answer:

First, There was no Occasion for this Reason, because it did digress from the main Point in the Case, as it is truly observed in *Palmer*, fol. 502. next.

Secondly, It was a private extrajudicial Opinion; it was the Opinion of but five Judges, and for ought appears seven might be of another Opinion, and yet the Case was sent for the Opinion of all the Judges here, because the Lawyers in *Ireland*, it seems, did make a great Doubt of it. And it was also an Opinion and Judgment of the favourable Side, for it was to confirm a Predecessor's Lease. But,

Thirdly, Certainly, my Lord, the Case is mistaken, for the Surrender could not be good without the Consent of the Bishop, which is also added in the End of the Case there: He is the Patron, and must necessarily confirm their Acts to make them valid, especially they being instituted, and given to him for his Advice in the Government of the Church, and the Disposal of its Lands.

Fourthly, my Lord, I have this further Answer to give it, that my Lord *Coke* says in 1 *Leon.* 234. (and 'tis not denied) that this Surrender was by Act of Parliament, or else it had not been good. And beyond that,

Fifthly, I have by me a Manuscript of my Lord *Dyer's* Reports, the most authentick one, which was my Lord *Coke's*, and has his own Hand to it in sundry Places; and by that he does often correct the Prints of *Dyer*, and so also he might have done in this Case; for there all these *Latin* Words are left out, there is not one of them, nor any Space left to put them in, nor any Blot for their being rased out, it is an Addition of the Publisher, and printed in another Letter than the rest of the Case is; 'tis not in that Book, which I take to be the truest Original of *Dyer*: Besides, my Lord *Coke's* Answer, that it was by Act of Parliament makes an End of all. And truly, my Lord, that the Determination of such Things should be by Act of Parliament I shall cite you one Authority, and I borrow it from Mr. Solicitor, who has mentioned it before, 'tis *Rot. Parl.* 3 R. II. num. 11. and it is taken Notice of by my Lord *Coke*, who cites it in his 4 *Instit.* 228. To which I add also, that the Liberties were seized, and the Case determined in Parliament: There the Case was this, the Mayor, Bailiffs, and Commonalty of *Cambridge*, had committed a notorious Uproar and Tumult; they had assaulted the Colleges of the University, they had imprisoned the Vice-Chancellor, and some of the Scholars, they had extorted from them two Releases, and a Bond of 3000 Pounds; and after all this great Uproar and Tumult a Writ went out, but whence? From

the Parliament, and there they are summoned to appear, and there they are to shew Cause why the Liberties should not be seized, as forfeited; and there upon full hearing it was adjudged by the King, with the full Consent of the Lords and Commons in Parliament, that the Liberties should be seized as forfeited: All this is taken Notice of by my Lord *Coke*. But yet, as if he thought it not enough to have said all this in the Body of the Book, he puts down in the Margin of that Book these Words, *Nota*, It was done by Act of Parliament. And that it was taken, that a Corporation cannot be dissolved but by Parliament, I shall cite your Lordship *Davis's* Reports, fol. 1. b. where he says, that neither by the Surrenders, nor by the Acts of Parliament that gave their Possessions to the Crown, were those Corporations dissolved; the Surrenders did not do it, and the Acts of Parliament did not intend it.

But, my Lord, I shall dismiss this Point, for indeed it will not conduce to the Question, which is not, *Whether a Corporation be surrenderable, or no*; but, *Whether it be forfeitable*?

Now there are many Things that are renounceable, that yet are not forfeitable; an Annuity *pro Consilio impenso & impendendo* may be surrendered, and so is *Empson's* Case in *Dyer*, fol. 2. but it cannot be forfeited for Treason, 'tis a Thing that adheres to the Person, and there is a Privity in it that makes it not forfeitable; so a Guardianship in Socage, a Man may renounce it as well as he may Executorship, but they are neither of them forfeitable; and so is the Trust of a Freehold, and several other like Things.

My Lord, as to what Mr. Solicitor has said, *That a Corporation may be seized, and therefore it may be forfeited*; I think certainly that is no good Conclusion at all. Those Words of Seizures of the Liberties, and seizing into the King's Hands, he has with great Learning collected a great many Records about them, and they make a great Sound at first, but when they are narrowly looked into, they make nothing of Argument at all; they have slept a long Time, and are but imperfectly remembered; they may serve to amuse People, but when they are considered they will signify very little. *Vet. Nat. Br.* fol. 161. He distinguishes there (and every Body must) between the Causes of the Seizure of a Franchise into the King's Hands, and the Causes of a Forfeiture; and there he sets down several Things, and then adds *stude differentiam istorum*; so that there is a Difference, and that Difference ought well to be advised upon. In 2 *Edw.* III. 28 & 29. *Scrope* gives the Rule, says he, in some Cases a Franchise ought to be taken into the King's Hands, and in some Cases it ought to be seized till a Fine be made to the King; and in some Cases it ought to be forejudged; and so he makes three Distinctions. Now, my Lord, this will answer (as I shall observe by and by) all that Mr. Solicitor has produced about Seizures, either by Act of Parliament, or for a Fine, or for a Distress for want of an Appearance. If a real Action, there goes out a *Grand Cope*, and there the Lands shall be seized into the King's Hands, and that look big upon Record; but if you come to know the meaning of it, 'tis only that the Sheriff should return Issues upon it, and that is a very little Thing; the King has no Pretence to the Title of the Land, nor is the Suit his Suit, but the Party's: So the seizing of a Bishop's Temporalities,

ties, and the Lands of Priors Aliens, and the like. But Words must have a reasonable and legal construction; as when a Statute is made, that if a Man does so and so his Body shall be at the King's Will, and he shall do with him at his Pleasure, as in the Statute of Maintenance, and the Statute against transporting of Money, that is nothing but that he shall forfeit the Use of his Body, and the Liberty of his Body, and shall be imprisoned for the Offences.

All this I shew, to distinguish about this Word Seifure, and by that distinction to answer the Weight of all the Records that Mr. Solicitor has cited. Those Seifures that were of any Towns, I say, they were only till they had made a Fine to the King; and when the King had so seifed them, what did he do? He put in a *Custos* upon them, which was to keep them in good Order; he put them into a safe Hand, but it was never intended to suspend or destroy the Corporation: For the Corporation went on as it did before, it might sue as it did before, and was as liable to be sued as before; it was to put a Guard upon them, not for their Destruction, but for their Preservation; to quell Insurrections, to keep Peace and good Order among them; the Seifure of the Liberties was not a seifing of the Corporation, because a Corporation is not a Liberty, it cannot be seifed; for the King cannot exercise the Liberty of a Corporation; the King may seife the Mayoralty, and the King may put in such a Deputy, that may be a *Custos*, he may seife the Sherifalty, he may seife a Leet, or a Market, or he may receive the Profits of them, and execute by Deputy the Purport of them: But what can he do when he has seifed the Corporation? Can he himself be the Mayor, Commonalty, and Citizens, of the City of *London*? or can he put in any one to be such Corporation? It is not a Thing manurable, 'tis not a Thing seifable, nor ever was seifed; for the King can seife nothing, but what he can have and use when he has seifed it. And therefore all those *Custodes* that were put into *London*, upon the seifing of the Liberties, were only in the Nature of the Lord Lieutenants, that were to keep Order in the City, and prevent Breaches of the Peace; but still the Customs, the Courts, and the Usages of the City went on as they did before; I cite not any Record indeed for it, because there is no need, 'tis so well known; but if there be any doubt of it, we will make it appear, that during all those times Mr. Solicitor speaks of, who has cited a great many Records, and if he can find as many more, yet still all along the City was in *Statu quo*, as to their being a Corporation; they did sue and were sued, and they did all manner of Acts as a Corporation, which shews that it was not so much as suspended, much less forfeited. This is without Contradiction very plain, during all the time of those Seifures. If it had been forfeited at all, it must have been extinct; and if there could have been a Judgment given against it, it could not have been taken into the King's Hands, but it must have been an *Ouster* of the Liberties.

In *Yelverton* there is a Case of the King against *Staverton*, a *Quo Warranto* is brought against *Staverton* for keeping a Court Leet, and a Court Baron, within the Hundred and Manor of *Warfeld*; the Defendant disclaims the Court Leet; as to the Court Baron, the great Doubt is whether a *Quo Warranto* can be brought for it, it appearing that he had a Manor; for that is in-

separable to a Manor. For he that has the Demesnes and Copyholds, must call his Tenants together to do Suit and Service; and 'tis agreed indeed a *Quo Warranto* will lie. But *Fleming*, Chief Justice, and *Fenner* doubted of it. And in that case Judgment must be, that he shall be ousted of the Liberty, and not that it shall be seifed; for the King cannot use it, and therefore 'tis impossible, that it should be taken into his Hands: And so 'tis, as I said, of a Bishop's Temporalities, and the Lands of Priors Aliens, and the like; it is a meer Personality, and cannot be seifed.

But Mr. Solicitor says a Corporation can commit a Crime: Truly I do very much question that, nay, I shall deny it by and by: But if they do commit a Crime, the Punishment must be by other means than a Forfeiture; and I will cite your Lordship a parallel Case: For as I said before, a Corporation is an Ability or Capacity like that of a Denizen, and so can no more be forfeited than a Denizenship can. There is *Verfeline Manning's* Case in *Lane's* Reports, 58. and the same Case is in *Rolls* 1. *Abr.* 195. in an Office of Intrusion, it is there found, that *Verfeline Manning* was a Denizen by Letters Patents, and in the Letters Patents there was a Clause, as is usual in Patents of Denization, Proviso, that *Verfeline Manning* the Denizen should do liege Homage, and that he should be obedient and observe the Laws of this Realm. The office finds that he never did Homage, nor was obedient to all the Laws of the Realm; and it was urged that consequently he had lost his Denization, for Breach of the Condition. No, says the Court there, by no means, this must have a reasonable Construction, not to take away his Capacity of being used as a Subject, and so suing and being sued; but the Proviso is to be interpreted thus, for his Non-obedience of the Law he shall forfeit the Penalties appointed by the Law: So, I say, a Corporation, if they do offend the Laws, shall forfeit and undergo the Penalties appointed by the Law, but not be dissolved, any more than a Denizen undenized.

My Lord, the next Point that I go upon is, what I at first mentioned, and that is this, That this *Quo Warranto* is not well brought, and there can be no Judgment given against us upon it, if we should admit (which I do not) that a Corporation is forfeitable; or if I should grant (which I do not neither, but shall come to that afterwards) that the Particulars assigned are Causes of a Forfeiture.

Now this *Quo Warranto* is brought against the Mayor, Commonalty, and Citizens, of the City of *London*, that is to say, against the Corporation (for that is the corporate Name, and no Man sure is so vain as to think that can be the Christian Name or Surname of any natural Person) therefore I say 'tis brought against us as a Corporation, and charges us, that we have usurped the Liberty of being a Corporation, under such a Name, for a Month before the Information brought. Now, my Lord, I say this is impossible, and this is repugnant; for the Question is here, whether we are a Corporation, and that is a Liberty to be Plaintiff and Defendant? And then comes Mr. Attorney, and admits us to be Defendants; for he sues by that Name, and yet the very Question that he does bring us to dispute on is, whether we are capable of being Defendants, or no: That is just as if he should have said,

I have

I have brought you into Court, and you must be Defendants, or else I have brought you here for nothing; for there is no Cause depending without Parties, Plaintiff and Defendant; and then I will assign for the Cause of my Suit, that you are no Defendants; nor is it possible for you to be Defendants.

My Lord, this is plain Reason; but I shall strengthen it with great Authority, and that is the Case upon a Writ of Error, out of *Ireland*, to reverse a Judgment given in a *Quo Warranto* against the Corporation of *Dublin*: It is in *Palmer* the first Case, and 2 *Rolls fol. 113 & 125*. A *Quo Warranto* is brought against *Cusack*, and other Aldermen of *Dublin*, who pretended to have Privileges, and a Guild, and to be a Corporation; and this I presume is for their being a Corporation; for there is a *Curia advisare vult* as to the Corporation, and so 'tis not put in the Case, but 'tis also brought for several Liberties that they did pretend to claim; as that they only, and none others, should sell and buy all Merchandizes, and nobody should buy of another, or sell to another, but to them; that all Merchandizes should be brought to their Commonhall, &c. Now, as to these Liberties, they are forejudged, that the Liberties should be seized, and they ousted; as to their being a Corporation, *Curia advisare vult*; so the Case is in *Palmer*: But in the other Book in 2 *Rolls 115*. it is agreed, if a *Quo Warranto* be brought to dissolve the Being of a Corporation, it ought to be brought against particular Persons; for the Writ supposes, that they are not a Corporation; and 'tis to falsify the Supposal of the Writ to name them as a Corporation. Now here this Writ, it supposes them to be a Corporation, or else they could not be Defendants; and then it comes and falsifies that Supposal, by assigning that they are no Corporation, nor ever were, or if they had been, they had forfeited it; and so all the Foundation that this Writ stands upon is destroyed.

In this Case of *Cusack* I am assisted further with a Report of it in my Lord Chief Justice *Hales's* Book; a Report of very great Authority with all Men of our Profession: And there he says expressly, If a *Quo Warranto* be brought for the usurping a Corporation, it must be brought against particular Persons, because it goes in Disaffirmance of the Corporation; and Judgment shall be given, that they be ousted of the Corporation; but if it be for Liberties claimed by a Corporation, then it must be brought against them as a Corporation.

Lord Chief Justice. What Folio is it in my Lord *Hales's* Book, Mr. Recorder?

Mr. Recorder. It is my Lord *Hales's* Commonplace Book, which is in *Lincoln's-Inn* Library, *fol. 168. placito 7.* and this is our Case directly. If you go about to say, our Corporation is forfeited, or must be dissolved, nay more, (as you say here) we never have been a Corporation; or by Forfeiture our Corporation is lost long ago, then there is nothing can come before the Court properly, but that *J. S.* and *J. N.* particular Persons, have usurped to be a Corporation, when they are none. This Information is brought in Disaffirmance of their being a Corporation; and therefore there must be set up somebody capable of being a Defendant in such a Suit; and who can that be but particular Persons, which ought to have been named, as they are in that

Case of *Cusack*? For as Judgment of Ouster of particular Liberties, given against particular Persons, will not bind the Body of the Corporation; so the Judgment, that they are not a Corporation, will not be good, unless it be given against those particular Persons that usurp the Corporation. And I do say further, that individual Freemen of *London* cannot possibly be bound by this Judgment: For they are not here before you, nor were they ever so; for it is the Corporation here that is made the Defendant. And I do not now consider the Number that make up that Body (*London's* being so populous doth not alter the Case); for the Case is the same, if it were the Corporation of *Queenborough*, or any other petty Corporation. Suppose Twenty Men be a Corporation, or pretend to be a Corporation, and you come to inquire by what particular Means these Twenty Men pretend to be a Corporation, or, as the Words of this *Quo Warranto* are, *usurped* to be a Corporation; you must not say that they are one, and then say, that they usurped it; for 'tis not the Corporation that usurps to be a Corporation, that is impossible; but it is the particular Persons that usurp to be a Corporation, when indeed they are not one. A Corporation may usurp a Market, they may usurp a Leet, but they cannot usurp themselves. In *Townsend's* Book of printed Precedents (which is a laborious Thing, and wherein he has collected all the Precedents, he could meet with, of *Quo Warranto's*) there is but one in all the Collection, that was brought against any Persons upon the Score of being a Corporation: And what is that? How was it brought? Not against a Corporation that was, but against a Corporation that never was, that is to say, a Parcel of People, that took upon themselves to be a Corporation, when they were not; and that is the same single Precedent in *Coke's Entries 527. tit. Quo Warranto.* The King against *Helden*, and other Burgeses of *Helmshley*, for usurping to be a Corporation, by the Name of The Burgeses of *Helmshley*. And how does the Attorney General there bring the Writ? He brings it against particular Persons. My Lord *Hobart*, who was then Attorney General, never thought he could have maintained his *Quo Warranto*, or expected Judgment against them, if he had brought it against the Burgeses of *Helmshley* generally, and then have said, that they were no Corporation; but he brings it against those particular Persons, and thereupon they come in and disclaim their being such a Corporation, and the having the other Liberties; and the Judgment is, That of those Liberties those particular People should be ousted, and should not intermeddle with them.

Now, my Lord, what Judgment can be given in this Case, that the Mayor, Commonalty, and Citizens, shall not intermeddle with the being of Mayor, Commonalty, and Citizens? 'Tis a very reasonable Judgment, that *Helden* and those particular Persons should not intermeddle with such a Liberty, or be in such a Corporation; but if such a Judgment be given against the City here, that would be as much as to say, That you have never been what you are, or you shall never be what you are, that is the *English* of it.

And, my Lord, I am sure, as there never was but one *Quo Warranto*, that we can find any printed Precedent of against the Being of a Corporation, so that very Precedent is not against those that really were so, but particular Persons that usurped

to be so. And if you search all the Records of this Kingdom, and all the Books in all the Offices, you will never find any that is brought against a Corporation, for being a Corporation, upon Pretence that they might be made none by a Forfeiture; and no Prerogative of the King shall extend to excuse this, but his Action shall abate, if it be not right brought, as well as the Subjects, and so is *Plowd' Com. fol. 85.*

Further, my Lord, I have another Authority in this Point; and that is in the Case of the Corporation of *Maidenhead*, which hath been so often cited by Mr. Solicitor, and it is in *Palmer 80, 81.* where it is said, When the Attorney General hath supposed them to be a Corporation, it is not usual to plead them to be a Corporation; otherwise, if he had questioned them as Inhabitants of such a Town, then they ought to enable themselves: Those are the Words of that Book; and what can be more plain? Here the Attorney General supposes us to be a Corporation, his Replication lies in his own Face; and he having supposed it at first, he is bound not to question us for our being a Corporation at any time after. As to the Business of *forisfecerunt*, it is a strange and a new Word, that never came into any *Quo Warranto* before, that I know of; but we will accept the new Word, but not the Thing, and that they have forfeited by such and such Acts: This sure will be very hard upon us; for if it be a Forfeiture, it must relate to the Time of the Thing done, to the Time of the making the Act of the Common Council, to the Time of the Toll levied, or to the Time of the Petition; and if it do so, it must relate like a Forfeiture for Treason; it must reach all mean Acts, all the Leafes that we have made since, are gone; all the Judgments that we have given in any Cause, are *coram non Judice*, and void; all the Acts of the Corporation are overturned by this Forfeiture; and we have been under a vast Mistake all this while. We have had no Mayors nor Sheriffs, no kind of Officers, no manner of regular and legal Proceedings; but we have been under a great Mistake ever since this Money was ordained or levied. We have forfeited all; and that it is so, is plain, because in all *Quo Warranto's*, wherein Persons are convicted for usurping of Liberties, there is a Fine set upon them for continuing that Usurpation, and Reason good; then if it be an Offence for continuing the Liberty, we must be fined for doing it ever since the Forfeiture, when, if Mr. Attorney General's Rule be right, there has been no such Corporation; but we ought to have discontinued all our acting as a Corporation, and laid it down; and so every Step that we have taken since hath been irregular, and every Act void.

If so be an Action be brought against Baron and Feme, and the Plaintiff should in his Replication say, they were divorced several Years before, has he not undone all his Pleading? Here then is our Case: Mr. Attorney General admits us to be sueable, and yet charges us to have no Capacity to be sued: I do implead you, but you have no Right to be impleaded; here he brings us into Court, and when he has brought us here, he quarrels with us for being here. He makes us Defendants, and then questions whether we ought to be so; and so his great Charge against

us is, that we are what he would have us to be, and what he hath made us to be; for it a Month before the Information, the Corporation was not, but the very Being of the Corporation was usurped, how come we at the Month's End to be Defendants? Here comes a new Creation interposed in that Time, and makes Parties sueable in the Court, when by the Charge in the Information we were not so a Month before.

And then, my Lord, the Information is not quite so bad, but the Replication is worse: First, he takes Issue, that we never were a Corporation at all; and the next Thing is, if ever you were a Corporation, you have ceased so to be, because you have forfeited it so and so several Years ago. This is just then to put a common Case, (and I confess, a very familiar one it is) if I should bring an Action against a Man, and when he hath pleaded, I should by way of Replication set forth, there never was any such Man as the Defendant, and take Issue upon it; or, if there were, that he was dead Ten Years ago: And yet this is the Substance of Mr. Attorney's Issue, and his Replication.

My Lord, the Authorities before cited in *Palmer, Coke's Entries, Rolls*, and my Lord *Hales's* Common-place Book, are not all; for I have some other that never saw the Light in Print yet; and that is the Case of the King against *Bradwell* and others, *Trin. 18.* of this King. A *Quo Warranto* was brought against them for usurping to be a Corporation or Company of Musicians; it had been a strange Thing, if the *Quo Warranto* had been brought against that Corporation, and then the Attorney General had said they were no Corporation, nor ever were; there they did think best and fittest to go against *Bradwell*, and the rest, and that by Name, and only so, not against the Body Corporate. So in that Case of the Corporation of *Worcester*, which was lately tried before your Lordship in this Court; when the *Quo Warranto* was brought against such Men for usurping to be all Aldermen and Common Council-men; if the Attorney General had once called them Common Council-men, it had been a great Repugnancy for him afterwards to say, that they were none; or if they were, that that Privilege of theirs was lost so long ago. So in the Case of the *Quo Warranto* against the *Bermudas* Company; it was against a Corporation, and against particular Persons by Name both. These Things have been considered, and doubtless they have gone on in an ordinary way. I must confess, I was not privy to that particular Case; but by the Report of that Case, which I have seen, I have been informed, that the Corporation never appeared; for they said, 'tis not Sense for us to appear; for it being a Question by what Warrant we are a Corporation, it is not we, supposing us a Corporation, that do usurp, but the particular Persons that do usurp, if it be at all usurped. Now, my Lord, if that had been a regular Suit, no doubt but there would have been Judgment against the Corporation, which there was not; and certainly the Replication of Forfeitures was not good against the Corporation, but against the particular Persons only.

All Mr. Solicitor's Authorities for seising, hold true, if the Corporation would never appear: And what is the Reason it should be brought against *J. S.* and *J. N.* but because Corporations do never appear in such a Case, in regard it were
not

not congruous they should appear? for the *Quo Warranto* must intend it so, that they were not a Corporation in Being, by implying a Forfeiture. Then say I, no Judgment at all can be given upon this Score; *Non admittitur exceptio ejusdem rei, cujus petitur dissolutio*; a Man shall never be admitted to controvert that to be in Being, which he himself desires should be destroyed, and so has allowed it to be. Shall Mr. Attorney be admitted to deny the Supposal of his own Writ? And truly I think I might very well leave this Part of the Case, and this Point, to Mr. Attorney General himself; for if he will have any thing to be answered by us, he must maintain us to be a Corporation capable of answering; and so I have Reason to expect, that against his own Replication he will be pleased to support the Being of our Corporation, and so dismiss us hence.

My Lord, I have done with this Point, and now I come to the Replication, which indeed is a Kind of a new *Quo Warranto*; for it brings in new Matter, and therein they do charge Two Forfeitures; the one is, by reason of the Abuse of the Market, the other is, by reason of the Petition. My Lord, I shall answer both of them. That we were seised of the Market, that is pleaded, and that is agreed: That we were seised of Tolls, and were to have reasonable Tolls, that is agreed too: That there is a Custom in *London* to have Common Councils, and that this was by Common Council, is agreed; all this is agreed by the Demurrer: That this Toll (though by the way I must confess, and will agree with Mr. Solicitor, that it is not properly to be called a Toll; for a Toll is only for Goods sold; and when they are sold, in Recompence for the Officer's Attendance for the Testification of the Contracts, and the entering them in their Books; but I agree, this is not such a Duty for Goods bought and sold, but it) is for the Accommodation of Persons repairing thereunto for their Stalls; and, if I would call it by any particular Word, I had rather call it Stallage than any thing else; it is for those Accommodations, which we have been at vast Charge in preparing and providing, and for the Maintenance of requisite Officers, and for the cleansing of the Markets. Now Mr. Solicitor objects, That we cannot prescribe for a Toll uncertain, and he cites the Case of Murage, and the like; and so I must confess, where Murage is granted, 'tis commonly a Thing uncertain; so is Pontage, and the like; but I believe (if I had thought, that it would have been a Point insisted upon) I could have brought you Instances where Murage, and such-like Things, have been granted in general, and they would have been ancient ones indeed: And there is a Necessity for it in some Cases; for when a Town will repair its Walls, the Charge may be greater or less, as the particular Accidents may be, and so perhaps a certain Duty would not do it. When a Wall is to be built, there the Duty may be certain; but when it is built, to keep it in Repair, the Duty of Murage may be uncertain, according to the Charge; and if the Case be not so, it will come little to our Purpose, which is a Duty upon a great and a continuing Charge. I will name him some Things that he must agree, and I know he will grant, are uncertain, as Pickage and Stallage, which are Duties for picking in my Earth to dig Holes for the Posts of Stalls to be fixed

in: Now there can never be, nor ever was, any circumscribing in those Matters; for Circumstances in every of those Cases must govern it. If I have Occasion for my Stall to use a Foot of Ground, one sort of Sum is necessary; if ten Feet, another Sum; it ought to be equal indeed, but it could never be good, if it were limited to a Sum certain; and in all Grants that ever were of Pickage and Stallage, they were never reduced to a Certainty; and those are Things too that relate to a Market.

And so I take it to be for Keyage, Anchorage, and the like; for when there are Posts or Places for Ships, to which they may be fixed, the Owner of the Port may have a Compensation for that; but that must needs be uncertain, according to the Circumstances; if a Ship be bigger or lesser, if a Ship stay a Month or a Day, it is not fit the same Rate should be paid; nor is it usually granted by particular Words, *Co. Entr. 535 & 526, Placit' 4.* the King against the City of *London* for the Water-Bailage, and other Things. They pleaded only a Right in general, and do not say what the Particulars were; and yet one of the Things demanded in the *Quo Warranto*, was, as I said, the Water-Bailage; which, sure, if any thing ought to be certain, that ought. In that Case it was good Pleading; though I think I could say more against it than this Thing, that is in the Nature of Stallage; so that all that Mr. Solicitor hath built upon that must, I think, needs vanish.

My Lord, I do not think but *London* ought to be, and is as much under the Obedience and Correction of the King, as any City; but yet I believe, in these Cases of their Customs, you will give that Allowance and Indulgence to it, that all your Predecessors have done, which is greater than they have given to any other Corporations in the Kingdom, and that because it was *London*. That there should be such a Thing as a Foreign Attachment, I think, is hardly allowed in other Places; I am sure, I have known it denied in some, that a Contract in Writing should be equal to a Book-Debt; that a Feme Merchant should sue or be sued without her Husband; or if he be named, he should only be named for Conformity. You take Notice, that *London* is a Port Town, and that Men that trade there, sometimes go beyond Seas, and in their Absence their Wives trade by themselves, and perhaps carry on distinct Trades while they are here; and so they may do in other Places, may be; but only for the sake of *London* do you take Notice of these Things there, and not elsewhere. Their Penalties, that are sued for in their Courts, a great many of them are such as would not be well maintained in other Courts, or in any other Place; and yet they are maintained there, as namely, That their Penalties should be sued for before the Mayor and Aldermen, when the Benefit of them goes to their Use; and yet that is allowed in the Eighth Report, notwithstanding the grand Objection, that they are in some sort Judges and Parties, *Rolls 2 p. Abr. Tit. Prescription, Letter H. Fol. 266. N^o. 2. & 3.* The City of *London* may prescribe to have a Court of Chancery in *London*, of Matters tried in the Sheriffs Court, though such a Court cannot be granted by the King's Letters Patents; but the Mayor and Citizens of *York* cannot prescribe for such a Court, because it were very dangerous, that such petty Corporations should have such Courts. And,

whatsoever is said by my Lord *Hobart* in his Reports, 63. I do affirm, there is no Act of Parliament that erects a Court of Chancery in *London*, or the Cinque-Ports. If Mr. Solicitor had struggled with me about the being, or not being of that Act of Parliament, I would have agreed with him, that there was no such, sooner than some that he says are none. The Customs of *London* have been upheld, and, I must confess, I think that is very strange, even against the general Words of an Act of Parliament, 2 *Inst.* 20. A Gaoler in *London* may permit his Prisoner, that is in Execution, to go at large with a Batoon in any Place within their Jurisdiction, and it is no Escape. And so is *Plowden's Com.* 36. A Citizen of *London* may set up one Retail Trade, though he was bred to another, notwithstanding of the Statute 5^o of the Queen. And for a general Rule take that that is said in *Palmer* 542. Those of *London* may prescribe against a Statute; and the Reason is, because their Liberties are confirmed by Statute, and other Towns are not. In *Rolls Rep.* 1 P. 105. *Spike* against *Tenant*, my Lord *Coke* being then Chief Justice, says, We take notice of the Customs in our Courts, and other Courts in *Westminster-Hall*, and in *London*. *Fleetwood*, Recorder of *London*, says a very strange thing in 1 *Leon'* 284. *Hollinghead's* and *King's* Case, and in 4 *Leon'* 182. that the King's Courts ought to take Notice, that those of *London* have a Court of Record; for if a *Quo Warranto* issues to the Justices in Eyre, it does not belong to them of *London* to claim their Liberties; for all the King's Courts have Notice of them. And truly I have been informed, I mean by Copies of Records, that when the Justices in Eyre came to the *Tower*, this was a Privilege allowed to them, they were not bound to set forth their Liberties, as others were.

My Lord, I think this, as it is pleaded, is a Duty very justifiable, and very well payable, by virtue of this Custom. I do agree, as I said, a Toll is properly for Goods sold, and this is a Custom for the Accommodation of those that brought Goods to be sold; and it is like that 1 *Leonard* 218. my Lord *Cobham's* Case, a Duty paid for the Standing in the Cellar; and there that is held to be good. In *Rolls* 2 p. of the *Abridgment*, 123. Letter B. *Hickman's* Case, the Lord of a Manor may prescribe to have the Eighth Part of a Bushel of Corn in Four Bushels that are brought to the Market within the Manor, in the Name of the Toll, and that is for Stallage only; for it is said there, Whether it be sold or not. And in the same Book, fol. 265. the City of *Dublin* set forth, that they are Owners of the Port of *Dublin*, and that they maintained Perches in the said River, to direct the Ships in the deep Chancel, and that they kept the Key and the Crane; and therefore, in Consideration of that, they prescribed and demanded Three Pence in the Pound for all Merchandizes in the said Port, and it was held good. Now I agree Toll-through, that cannot be prescribed for simply and generally; but by Toll-through I mean, as you know, for passing and repassing through only, and not for staying. But yet even that may be prescribed for too, in Consideration of repairing a great Highway, or a very foul Way, or maintaining a Bridge, and the like. And therefore, if our Considerations here be as good, then we maintaining those great Places may

prescribe for this Duty, as for passing through the Streets, though it were no Market.

There is a famous Case reported in *Rolls* 1 p. Fol. 1. & 44. and it is in 2 *Bulstrode*, and also in *Moor*; it was the Case of the Bell-man of *Litchfield*: A Prescription is made, that the Corporation of *Litchfield* hath a Market, and they ought to repair the Way to it, and to appoint a Bell-man that should sweep the Market-place; and that for this the said Bell-man, time out of mind, had taken of those that brought Corn to the said Market, and opened their Sacks to sell, a Pint of Corn, if but a Bushel or under; if more, a Quart. So that if it were opened and not sold, yet he was to have that Duty, and that Prescription was adjudged to them by all the Judges; and yet it does not appear there, whether the repairing that Way cost them 5s. or 5000*l.* and yet by Intendment they would not account it unreasonable, though it might have been urged it was very unequal; if they could take a Pint for that which was under a Bushel, perhaps they would take, by that Means, half of what the Party bought; but if there were Fifteen Bushels, they had but a Quart, and this was objected as to the Inequality of it; and yet they all passed over that by a reasonable Intendment, and would not deny the Prescription to be good. And the Case of *Cranage* in *Dyer*, and the Case of 21 *H. vii.* 16. are admitted to be good Law, where the Town of *Gloucester* prescribed for a Toll of Boats passing by the River near the Town.

Now, my Lord, for ours, there was very great Reason to induce it, the great Alterations that were made in *London* by the Fire; and it was not the first Time that *London* was burnt: And if there should be War, and so great Alterations and Confusions, there were great Cause, that the City, that lays out great Sums, and must be at such a publick Charge, should not be Losers by it.

And we do set forth more than they do in the Case of *Litchfield*, that we provided the Market-places at our own Charge; and if they will use them, they must expect to pay some Compensation for it; that we do keep Officers, and pay them for cleansing and keeping Order in the Markets: And above all that, we provide Standings and Stalls, and such Accommodations, and that I am sure is a Provision no Lord of a Market is bound to make, unless he will; and therefore the Market-people, that are accommodated by it, have great Reason to pay for it; and we pay all the Taxes for the Market-places, for the Ground is ours; and that is not alledged in the Pleading indeed, but it must be implied, because we pay the Taxes, and they that have the Standings are not liable to pay the Taxes: And so is the Judgment in *Rolls*, 2 p. 238. and the second *Abr.* 289. And in the Case of *Cusack* Justice *Dodderidge* says, that the redeeming of one Fair from the Abbot of *Westminster* cost the City of *London* 8000*l.* for he had a Fair at *Westminster*, and a Market for Forty Days, and that during that Time no Sale should be in *London*, or the Places adjacent; and a great Rate it was, if it were so. The Measure of a Toll is according to my Lord *Coke* 2 *Inst.* 58. when the Thing demanded for Wares or Merchandises does so burden the Commodity, that the Merchant cannot have a convenient Gain by Trading therewith; and thereby Trade is lost or hindered, then it is an evil Toll. But here indeed the Market-people are

are better accommodated than ever they were; and Trade is so far from being discouraged, as that it is increased, as is implied in the Replication; for it is said, we receive 5000*l.* a Year, which if it were so unequal, would not certainly be paid, nor could be, if there were not great Trade there. So that the Increase of Trade is the thing complained of in this *Quo Warranto*. And the Truth of it is, I have examined and looked into the Fact of these things, and there is nothing in this By-law, but what was really anciently paid, except only in one Instance, whether it were 6*d.* or no, that was paid when a Cart was drawn by Two Horses, which now is but 4*d.* and if we have increased the Toll, which I doubt whether it be so or no, it is only in a very Trifle.

Now, my Lord, this Case, I think, is a stronger Case than that in 5 *Rep.* the Chamberlain of *London's* Case; there is no Consideration of Stalls, or cleansing the Place, but only they had an Officer to search and view, and that was a new Appointment of their own; they could not prescribe for it, but it was thought a Penny was a reasonable Recompence, and the Subject had a Benefit by it; and if he would bring his Cloth to *London* to be sold, he should come thither to have it viewed, and give a Recompence for it. Now *London* is all Market indeed, every Shop is a Market; and it hath been well said of the Judges several times in *Westminster-Hall*, that *London* is the Market of all *England*; and there is never an Acre in *England*, but is the better for that.

As to the Imposition upon Coals, that is but an Inducement; and an Inducement is never to be relied upon; it is not to be stood upon; and Mr. Solicitor did very honourably decline it, and did not make any thing of it, nor trouble the Case with it.

When the City did make this Act of Common Council, they did consult with their Counsel for matter of Law, and with their Officers and Fellow Citizens for matter of Fact, and did adjust these Rates, and enacted them to be paid, they being reasonable ones, and according to the ancient Usage; but if they were mistaken, it will be no Cause for you to give Judgment against them, for many other Reasons: As first, you cannot judge this to be unreasonable. I have not heard one Word said, that this is an unreasonable oppressive Toll. Here is Money levied; What then? If it be a reasonable Sum, it is not so great; it does not deserve the Name of Oppression. I say, it is not so great an Oppression, if they should have been mistaken in the Form of instituting the levying of it; if they might have done it under their Common Seal, and now they have done it without that by Act of Common Council. Nay, it does not deserve that you should judge it unreasonable; you cannot do it here, for the Considerations are meritorious, and equivalent to it, the great Charge they were at in building, and they still daily are at in cleansing and repairing, and providing Stalls. But however, the Case is not so disclosed here, that you can judicially determine this to be an unreasonable Toll; according to the Rule in *Coke's Magna Charta* 222. the Toll of a Market need not be certain, only it must be reasonable; and what shall be deemed reasonable the Judges must determine, if it come judicially before them. So shall reasonable Customs, and reasonable Fines, and reasonable Ser-

vices, and reasonable Time to remove Goods, and the like, they must be judged by the Discretion of the Justices upon the true State of the Case before them. Now this Case must have all its Circumstances stated and agreed by Demurrer, or found by Verdict. And so is 4 *Rep.* 27. *b.* and *Hobart* 135. and 174. as in the Case of Copyholders Fines, the Quality and yearly Value of the Land must appear, or else there cannot be Judgment, whether it be reasonable or no. In the 13th *Report fol. 3. & Croke Car.* 196. where the Question was, Whether the Lord of a Manor might assess two Years and an half Value of Copyhold Lands, according to the Rack-rents for a Fine upon Surrender and Admittance, and upon Nonpayment to enter for the Forfeiture; as suppose Land, it be rented at 20*l.* a Year, here is 50*l.* demanded for Admittance; there it appeared judicially that it was unreasonable; and so it was adjudged, because the Value was certain. But who can here say, Whether the providing of Markets costs 5*s.* or 500*l.*? It is not estimable. Perhaps we have overbought all these Tolls that they call unreasonable; we aver it to be reasonable, the Demurrer agrees it to be so, and you must intend it to be so, unless the contrary be set forth clearly in its Circumstances; for he that will have a Forfeiture, must shew the Circumstances to make it out.

My Lord, another Thing is this, to answer Mr. Solicitor in that Point: I say, an unreasonable By-law is no reasonable Cause or Colour for forfeiting a Corporation, admitting it to be unreasonable, though I grant it not. My Lord *Hobart* in *Norris and Stap's Case*, *Hob.* 211. says, that though Power to make Laws is given by special Clauses in all Incorporations, yet it is needless; for that is included by Law in the very Act of Incorporating. For as Reason is given for the natural Body for the governing of it, so Bodies Corporate must have Laws as a politick Reason to govern them. Reason is a Faculty in them as 'tis in a Man, and may err; and therefore says he, If the King do grant Letters Patents of Incorporation to Persons, and he doth thereby make Ordinances and By-laws himself, they are subject to the same Construction and Rule of Law, as if they were made afterwards by the Corporation. For the King can no more make an unreasonable By-law than a Corporation; but if the King do, shall that affect the Corporation, and make the Corporation void by way of Repugnancy, or an instantaneous Breach of Condition? No, it shall not. And therefore as they may receive unreasonable Rules from the King, without defeating of the Corporation, or having their Being thereby vacated; so they may make unreasonable By-laws without the same Danger of destroying the Corporation. The Cases are very many, wherein By-laws have been judged unreasonable; the Truth of it is, there is a great Misfortune in the penning and making of those By-laws; by some Means or other there is something discerned that still proves an Exception to it, as we see in the Case of the Carmen and the Woodmongers; their By-law was made, and re-made, and corrected again and again, before it could be made to hold Water in this Court. So in the Taylors of *Ipswich's* Case, and *Bradnox's* Case, which was here lately. All these have been adjudged void; but what then? In all these Cases it was never said, Hereby your Corporation is destroyed,

stroyed, you have erred in making a By-law, and therefore you have lost your being of a Corporation. Besides, if there were but a Colour for it, and it were any thing tolerable, surely that were enough to make us excusable in such a matter. If it has been received, as we agree it has, the Officers are Trespassers, every Individual of them are sueable, and any Man may bring his Action against them. But they that come to the Market, think not fit to complain; if they did not like the Market, they would not come at all; and if they did not like the Payment, they would not come neither; and there is no levying of any thing unless they do come.

Now, my Lord, I will admit the levying and the receiving, and yet I say this is no Forfeiture; for here is a Mistake of Law, or a Mistake of Fact, by Colour whereof Money is received: This by no means will work a Forfeiture of a Corporation; for at that rate every Penalty that has been levied by a By-law will be adjudged a Levying of Money without Law, and so forfeit the Corporation; which has not been done in other Cases of By-laws, and those much worse than this; because most of those By-laws were made for levying Money upon Men for exercising a Trade; and 'tis much more to say that you should levy such Sums of Money upon every Stroke of honest Industry, whereby a Man gets his Livelihood, than that you shall pay so much for your Accommodation in my Ground for the better vending your Goods. This hath been held good in some Cases, but in others it hath been held naught; and this hath been all received and levied to the Use of the City too, and so 'tis a levying of Money, whereby they have a great Advantage; nay, 'tis worse still, because it is imposed by Force, and recovered by Force: but here 'tis a voluntary Penalty, no Force, no Compulsion, only the being removed from their Standings, no other Penalty, no Imprisonment, or the like; but if you do not like the Conditions, you may be gone: I desire you to walk out of this Market, if you don't like the Price of the Provisions; and to be gone from the Stall, if you don't like the Price of the Standing. We were not bound to provide these Stalls for you, but having provided them, if you don't like them, you may leave them; in other Cases, the Man is imprisoned, and sued by Action for the Penalty; here at any time, if you don't like, you may be gone.

My Lord, I am very confident, if this be so, that all Monies levied by a Corporation without Law are Forfeitures, or where the Law is mistaken; then I dare boldly affirm, that we never were a Corporation two Months since *London* was *London*; but by virtue of some old sleeping By-law or other, that has been set on foot, Monies have been levied, which perhaps will not be in Strictness allowed good: And if all these had been Forfeitures, we had been in a strange Condition, not one Month or two should pass over us, but we had forfeited it; and never can there be perhaps a Month to the End of the World, but we should still be forfeiting. And what is said of us, may be said of any other Corporation that happens to make By-laws. And I am sure in former times there were Monies levied with a witness, I mean not the late Times of Rebellion only, but an hundred Years ago, strange Exorbitances of that nature, were committed by *London* and

other Corporations; then they went by way of Information, but never was it thought that it could affect the Being of a Corporation: If it should do so, I do not know whither it will go at last. The greater or the lesser Sum is not that that will difference the Law. Is it a Forfeiture to receive 5000*l.*? Why is it not a Forfeiture to receive 500*l.* Why not to receive 5*s.*? Why not to receive 5*d.*? No Bounds can be set for that, if it be a Transgression of the Law; here is a Tort and a Wrong done by your By-law, that you have levied 5*d.* and therefore all this great Inheritance of *London*, this, that is the greatest Inheritance of the Kingdom, is forfeited for a Trifle, upon three Halfpence, or a Basket of Eggs.

Nay, my Lord, to go further, I say, if this be a Forfeiture, I say 'tis only a Forfeiture of the Market; nay, not so much neither, 'tis only a Forfeiture of the Toll: My Lord, I cannot but once more mention that excellent Notion of my Lord *Hobart*, That the Power of making By-laws is included in the Act of the Corporation; for as Reason, says he, is given to a natural Body to govern it, so a politick Body must have Laws, as its Reason, to govern it. Now then the making of these Laws is but the Exercise of that Reason, declaring the Mind of the Corporation, for the Direction of the Officers of it, what to do, and what to take; and 'tis but like the Mind of a Man that directs his Hand what to do. For this is not like the Duty of Stallage, that relates to the Publick, and relates also to something that before they had no Interest in; but only relates to the Administration of a private Property, and directs the Manner of that Administration. They are Lords of the Market, and that is casual to them, it is not necessary for them so to be. If any Corporation bid their Officers levy so much Money; suppose they bid them take more Toll than is due, or levy more Money for Rent than is due for the Land, why this might be looked upon as a great Breach of Trust and Encroachment: They should have had but 6*d.* and they took 7*d.* and this done by Act of Common Council, which is their way of expressing their Mind; yet surely it would be no Forfeiture, because the Land is their own, and the Administration of it belongs to them only in point of Interest and Property. Suppose a Gentleman has a Market, and his Reason, which is his By-law, as my Lord *Hobart* says, puts him upon taking of Toll; but he does a little mistake the Law or the Custom, he bids his Servant take so much, which perhaps may be too much for Toll; does this destroy his Capacity of suing and being sued? You may as well say such a particular Person shall not plead, or be impleaded, if he do so and so. Nay this, if he were a Denizen, does not forfeit his Denization, and yet a Denizen is as perfectly a Creature of the King's as a Corporation is. It is *Basilicon Doron*, it is the Bounty and Kindness of the King to one born out of his Dominions, to give him the Capacity of a Subject, to sue and be sued, and the like, which cannot be forfeited, even for Breach of Conditions in the Letters Patents of Denization. For this is within *Verfelin Manning's* Case; if he does not observe the Laws of the Land, 'tis true, he must be punished for it, but he shall not be undenizen'd.

My Lord, there is a Statute, which I think is a most plain Declaration of the Law in this Case,
and

and 'tis the Stat. of *West. 1. cap. 31.* Some call it the 30th, because they differ in the numerating and heading of the Chapters. 'Tis the Statute concerning those that take outrageous Tolls in Market Towns. The Statute says, *Le Roy prendra la Franchise del' March en sa Main.* The King shall seize the Franchise into his own Hands. My Lord *Coke* in his Comment upon that Statute says, he shall seize the Franchise of the Fair or Market, till it be redeemed by the Owner, that's all. But this is intended, says he, upon an Office to be found; for in Statutes all Incidents shall be supplied by Intendment.

Now in the *Quo Warranto* that was brought against the Corporation of *Maidenhead* in *Palmer's Reports*, there is this very Case. That Corporation took an outrageous Toll, too much Toll, or that that was not justifiable, for going over their Bridge. Yet it was so far from being imagined, that this should be a Forfeiture, (and yet the Case is the same, let any Man distinguish it that can) that it was a Question whether the Market was forfeited, or no, as you may see in that Book, fol. 82. And there 'tis said by *Doderidge*, and at last it was agreed by all the Court, that it should be a Forfeiture only of the Toll, and not of the Market. And I desire that that *Folio* may be noted by your Lordship, and that you will please to look into what is said in that Case; for 'tis debated before, and it seemed as if they would have forfeited the Market by it, but not the Corporation; and yet that was not forfeited neither. And to this I will apply that Rule that Mr. Solicitor himself did mention, *Puniatur in eo quo peccat.* You have offended in the Toll, therefore you shall suffer in the Toll, not in the Market, to be sure not in the Corporation. For if it were that, it should affect the Market, it would be because it hath some relation to a Market as a Toll hath; but how can this possibly affect or touch the Corporation? The Statute indeed goes thus far, and says, Whosoever shall take outrageous Toll shall forfeit the Market; but then shall we come and add, Whoever shall take outrageous Toll, shall forfeit his Capacity of holding a Market, or any thing else? Do they complain of us for taking the Legislative Power upon us, and therefore we shall forfeit our Corporation, when the Statute itself has appointed the Punishment, and says only, the Market shall be forfeited, and so make a new Law themselves? Statutes are supposed to be penal enough of themselves, and all penal Statutes are to be taken equitably as to the Penalty, and not stretch'd beyond the Letter. And where-ever a Statute inflicts a Penalty, and says you shall forfeit so much, as my Lord *Hobart* says, the Common Law shuts up the Negative, that you shall forfeit no more. How then is it possible we should forfeit that, which if it were forfeitable at all, is not within the Provision of this Law?

'Tis true, as Mr. Solicitor hath said in the Book of Assises that he cited in *Vet. Nat. Brev'* 161. it is said you shall forfeit in the Case of a Mis-user (where the Liberties are not depending one upon another) only the Liberty that is abused; but how that can be applied for him I understand not; for nothing can be more flat and plain against him: If so be we should forfeit our Toll or our Market, be it so; nay, if we should forfeit our Liberty of having a Common Council, what then? How is it possible to bring it up to a For-

feiture of the Corporation? You shall forfeit a Court of Pypowders, if you forfeit your Market, because 'tis incident to it, and dependent upon it, and subject to what Dangers the Market itself is subject to; but the Being of a Corporation, nothing can transcend that. To be sure what is incident to it, cannot transcend it; 'tis but a Subject to that which is superior.

For Example sake, my Lord, I will cite you a Case, which is the Case of the City of *London* too about the Measurage of Coals. It is Sir *Julius Cesar's* Case, 1 *Leon'* 106. And I chuse to cite that Book; for though it did not come out with your Lordship's Authority, yet my late Lord Chancellor gave this just Account of it, That it was one of the best of our later Reports. Sir *Julius Cesar* libelled in the Admiralty against the Officer of the City for measuring Coals upon the *Thames.* *Fleetwood* came to the Bar, and prayed a Prohibition, and *Edgerton* the Solicitor on the other Side complained, that the Mayor of *London* did take a Fine for this Measurage, and made an Office of it; and this he conceived was Extortion (which is the thing complained of here in so many Words); and being upon the *Thames*, should be punished in the Admiralty. As to that the Judges replied, By no means; and *Wrey* and *Gawdey* said, If it be Extortion in the Mayor; there is no Remedy for it in the Court of Admiralty, but in the King's Courts: And it shall be redressed here in a *Quo Warranto*, says *Gawdey.* 'Tis true, a *Quo Warranto* might well have been brought for redressing that Extortion; but it could not mean thereby, that the Corporation should be dissolved: And that it was so understood, is most plain; for accordingly a *Quo Warranto* is brought. You have it in *Coke's Entries* fol. 535. and 536. *placit'* 4. And the City of *London* appeared and pleaded, and prescribed to it; and thereupon the Attorney General that then was, my Lord *Coke* himself, was satisfied, and confessed their Title, and Judgment was given for them; and since it hath been held good, and they have enjoyed it in Peace; and this I hope is a good Example for Mr. Attorney to follow in this Case.

My Lord, I come now to that Part which I come least willingly to, I mean that of the Petition; and that which I have to say in it, is this, my Lord: First I say, That this Petition is justified in the Pleading, and I hope it is very justifiable; if it were but excusable, 'tis enough. That it is justifiable to petition the King in our Necessities and Extremities, is plain from what my Lord *Hobart* says, fol. 220. He says it was resolved by the Court in *Renham's* Case, that it was lawful for any Subject to petition to the King for a Redress, in an humble and modest manner: For, as 'tis there said, Access to the Sovereign must not be shut up in case of the Subjects Distresses. Now the Common Council are not less privileged than any other sure, but rather more in this kind of Addressing and Petitioning: I cannot tell what Crime to make of this, there is so much alledged against us.

I did very well observe truly, and would always observe and remember in all such Cases; what my Lord Keeper here said to your Lordship, *That Council should not so much speak, as if they would abet the Guilt of their Client, rather than advocate for their Innocency.*

My Lord, if the Words themselves that are alledged are not Words that are unlawful to be delivered

livered or spoken, then all this that they are dressed up with of the Intention to censure the King, and to bring him into Dislike with his People, all that must go for nothing, and are not to weigh in the Case. Now the Words are these: *That there was a Prorogation, and by means of this, there being depending so many Impeachments of Lords and others, and Bills in the Parliament in both Houses, which could not be perfected any where but there, the Prosecution of the publick Justice, and the making Provisions necessary for the Preservation of his Majesty and his Protestant Subjects, received an Interruption.* Now, my Lord, I conceive these Words are not Words that in themselves are unlawful, and for that your Lordship will be pleased to consider our Plea; I need not repeat it, you have it before you: If they are in Sense and Substance the same Words that have been spoken by the King, and the Lords and Commons in Parliament; he that will not be satisfied with that Authority, will not be satisfied with any. Then what do we say? We say, that the Prosecution of the publick Justice received an Interruption: Does not the King say so, and more, in his Speech we have set forth, wherein he recommends it to both Houses, that Justice may be done? What is the Meaning then but this? If the further Prosecution of the Offenders goes not on, Justice is not done. And so we speak but the King's Words. We say, they are not tried, or they were not tried; they themselves complain of it to this Day; and therefore Justice did receive an Interruption. I am confident, without Reflection, that honourable Person my Lord *Danby*, in this Point, hath said Words much more liable to Exception, though truly Words, that I believe deserve no Rebuke. He has complained, that Justice was not done in his Case, because he was not tried, and that when he desired to be tried too; but his Liberty taken away, and he forfeited that which was dearer to him than Lands or Honours, his Health, whereby he endangered his Life, and lost all the Comforts of Life. If it were lawful for him to say, as certainly it was, That Justice was not done in his Case, why might not the City say so? Either these Lords ought to be condemned, or they ought to be acquitted: 'Tis hard to say Justice is done, when they lie so long in Prison, and are not either acquitted or condemned.

Then we say this, That the making Provision for the Preservation of the King's Person, and of his Protestant Subjects, received an Interruption. To this Part we give this Answer: We set forth, That there were Bills depending in the Parliament for this Purpose, and that is agreed to us by the Demurrer; and that these Bills could not pass into Laws, any more than the Lords could be tried but in Parliament. Why then if it be so, that the Matter cannot be done, nor Provision made, but (as that Proclamation, that issued for the Fast, said, and as the Addressees of both Houses for the Fast do say) by the Blessing of God upon the Counsels of King and Parliament; if these Counsels, or the King and his Parliament are interrupted, this is not done. To make such an high Crime of this I do not understand; I would not be thought to speak any thing to justify that which is really a Crime; but this is that I say, 'Tis not in Law unlawful for us to petition the King, or address to him:

But, my Lord, to take off the Edge of this Business, I shall beg Leave to read to your Lordship a Speech of the King's, made the 6th of *March* following, and therein there are these Words, *The further Prosecution of the Plot.*

My Lord, let any Man read, and spell, and see how in Substance the Words in our Petition differ from the Words of the King, making those Laws necessary for the Security of himself and the Kingdom, and this spoken the 6th of *March*, when this very Petition now complained of was presented in *January* or *February* before, and there was no Parliament between. No Man will say, that there were Laws sufficient for the Security of the King and Kingdom, when the King himself speaks of the Necessity of making such: So then, those Laws that were preparing received an Interruption. The Lords were not tried: Is not that an Interruption of Justice? Since they could be tried no-where else, as must be granted; and the King recommends it to them as not done, but necessary to be done. So the King said before, and so it is implied here. There is no such thing said in the Petition, *That the King did interrupt Justice, and the Proceedings of the Parliament*: It is an Inference and a Consequence made by Wit and Art; not that the King did interrupt, or intend to interrupt Justice; but it says, *By the Prorogation of the Parliament the publick Justice received an Interruption.*

My Lord, suppose at that Time there had been a Pestilence here, and the King had been as much resolved to meet his Two Houses as they him, but by reason of the Pestilence he were necessitated and forced to make a Prorogation; then there comes such a Petition from the City, and says, That by reason of this Prorogation those Bills that were depending did not pass, and the publick Justice received an Interruption: What is the Offence of this? 'Tis all true. If there be Bills depending, and Impeachments, that can no other where be tried, they do receive Interruption by a Prorogation. Can any Man say this is false? The Charge in the Replication is, *That we did falsely and maliciously say, what? that which is true, and that which the King had said before, and that which the Lords and Commons said after him, That till those Things were done they were not safe; and those Things as yet were not done.*

My Lord, there is this further in it, the Petition is set forth *in haec verba*; and therefore I may take any thing out of it to explain it, and restore it to itself; for this indeed is a very restrained Construction of the Petition.

It says, when this Interruption by the Prorogation was receiv'd, *That the King, for urgent Causes, and very good Reasons, did prorogue the Parliament.* It is his Prerogative to do so; and God forbid but he should have it. I think, without doubt, we should be more at a Loss for want of that Prerogative, than we can by the Use of it. It is mine, and I believe every good Man's Opinion, that that Prerogative is very necessary and profitable for us all; but it is the Consequence of it, that this Interruption of Justice is received; nay, we are so far from saying, that the King did interrupt Justice, or intending it, that we say, we do hope the King's gracious Intentions were only to make way for the better Concurrence of his Majesty and his Parliament. The King does, *for great Causes*, and best known to himself, who has the Prerogative, *prorogue the Parliament*; where-
by

by, as a mere Consequence, not as the King's Intention, *the publick Justice is interrupted*: Nay, this we affirm was with a good Intention in the King, *that he might the better be enabled to concur with his Parliament*, as is set forth in the Petition. Can there be any thing more properly said? 'Tis the greatest Justification of the Prorogation that can be. The King has prorogued the Parliament: What to do? Why Justice hath in View received an Interruption, but not in the Intention of the King. We know what the Meaning of it is, and so we set forth in our very Petition, *it is to gain Time, that he may the better concur with his Parliament*. It is a great Commendation of the King's Purpose, instead of charging him with Injustice, that he did resolve to concur with his Parliament for such Ends, and accordingly did prorogue the Parliament.

Now the Attorney General hath put in, that it was *ea intentione*; there is the Sting of the Business to put in those Words, to make that which we may lawfully speak, of itself to be an Offence. But truly that signifies just nothing: It can never hurt a Thing that is true; it has great Authority in it, if it be applied to a Thing that is unlawful; but if in Substance it be true, and the Thing itself justifiable, those Words make nothing in the Case; and I think I need not argue that Point, but refer myself to the great Case that was in *Westminster-hall*; and that is the Reversal of the Judgment given in this Court against my Lord *Hollis*, which was a Reversal in Parliament; and is printed in the last Impression of Mr. Justice *Coke's* Reports by Order of Parliament; and there they explode all the Notion of *ea intentione*, and this Business. A Man speaks Words that he might speak in Parliament (though I know not whether he might, or no), but the great Thing is, if Words, that in themselves are tolerable to be spoken, be spoken, you shall not come and say they were spoken with an ill Intention; though, as I shall shew by-and-by, this hath a kind of Fatality in it, and that is this, that it is done with an ill Mind by a Corporation that hath no Mind at all.

Mr. *Attorney General*. Just now you said it had a Mind, and Reason was its Mind.

Mr. *Recorder*. I said as my Lord *Hobart* says, that a By-law to it is a Mind, as Reason is to a Man, but it hath no moral Mind. My Lord, then I say, the Citizens of *London* were indeed at that Time under great Consternation, by reason of the Conspiracies that had been discovered in Parliament, and in the Courts of Justice; and it had been declared by the late Lord Chancellor, at the Trial of the Lord *Stafford*, which your Lordship may very well remember, *That London was burnt by the Papists; and therefore it was no Wonder, that they were desirous, that themselves and the Kingdom should be put into great Security against those Enemies*. This, my Lord, I confess is a tender Point, and I would not speak a Word in it without a Law-book to back me. I remember that my Lord *Hobart* says, that Zeal and Indignation are fervent Passions. The City of *London* had great Indignation against the Papists for this Conspiracy against the King and Kingdom, and the Religion established by Law. There was no Disaffection in the City at this Time, when this Petition was made, sure; and I wonder, that any Man should say, that knows *London*, and was acquainted with it then, and looks upon this Peti-

tion; which passed *nemine contradicente*, that they had such an Intention as is insinuated; and pray let him read the Names of the worthy Aldermen that then sat upon the Bench, and the other Names of the Common Council-men then present, and then let him say, if, without Reflection, the King have more loyal Subjects in the City of *London* than these Men were. And do you think, if there had been in it any Sedition, or any of those ill Qualities that make up the ill Adverbs, which are joined to it in the Replication, not one of all those loyally disposed Men would have spoken against it? But alas! all of it passed *nemine contradicente*.

My Lord, I say, that if the Matter of it be justifiable, as I think it is, then all these Words will signify nothing, if there were never so many more of them: And the presenting and carrying of it to the King, that is no Offence, that is not so much as pretended to be one. And, my Lord, I think it a very harsh Translation of the Word into *Latin*, when the Petition says, That the Parliament's Proceedings, or the publick Justice, received an Interruption, to put that Word of *Obstructionem* in; truly I think a better Word might have been found to express the soft Expression in the Petition; and they need not have put that hard violent Word *Obstructionem*, when to make *English* of it they translated it *Interruption*.

But, my Lord, they do admit, I say, that the making and presenting of it to the King is not the Offence, so much as the Publishing of it, by which it is exposed to many others besides. Now to excuse that, the Answer we give is this; and 'tis that which will carry a very reasonable Ground of Justification in it: Certain Citizens, that were private Men, had petitioned the Common Council, and thereby they were importuned to make known the Desires of the City to the King, and it was reasonable to make known to those Citizens what the Common Council had done, to prevent false Rumours, which we knew were rise enough in those Days; and to shew, that there was nothing ill in it, we did print it. And 'tis also all driving at the common Interest, at the King's Safety, the Preservation of the Church and the Government established: All this they did desire might be known to these Citizens, and all others that inquired about it; and therefore they printed it, to evidence that there was nothing of ill intended in it. And I do wonder, I must confess, that this Objection of the publishing of this Petition should be so much insisted upon; for they say, that the Mayor, Commonalty, and Citizens of the City of *London* did it; and say not any thing of the Common Council, that they did print it: Now they that did vote it, knew it without printing; and 'tis alledged in the Pleadings, and confessed by the Demurrer, that the Mayor, Commonalty, and Citizens of *London*, that is, the Corporation, consists of above 50,000 Men, which cannot well be intended otherwise. Why then, here is a Petition that is agreed to be well enough lodged as to the Persons that voted it, it being the Liberty of the Subject to petition; and if this had been only presented to the King, though it had been by those 50,000 Men, nay, if it had been by 10,000 Men, who had been the Corporation, it had been well enough, so it had not been printed, but only kept private to themselves: Why then 'tis very strange, that what is

known to all *London*, so great a Part of the Kingdom, should be lawful, but it should be heinously unlawful to send the News of it further. It went further than the City of *London*; and therefore 'tis such an Offence as shall be a Forfeiture of the Corporation. My Lord, there is the Case of *Lake and King*, the Petition to the Parliament was scandalous in itself, yet it stood protected, being presented to the Parliament; and it was lawful to print it, provided it were delivered to a Committee of Parliament, or only to those that were Members; though 'tis said there, that the Printing of it is a great Publishing; for the Composers, Correctors, and other Persons, that are concerned in the Press, read every Letter of it. But it was answered, that Printing is but a more expeditious Way of Writing; and if he had employed 20 Clerks, it had been a greater Publishing than three or four Printers. Possibly the Printers might not read it, or not be able to read it well, or not all of them read it at that Time.

Now here, my Lord, sure it was lawful to acquaint the Citizens what they had done, if you take it to be the Act of the Common Council, and the Common Council to be the Representative of the City. It was always agreed by the House of Commons, that any Member might send the Votes to those that sent them thither, and whom they represented; they have blamed indeed Men for sending the Debates, but never for communicating the Votes: And what they may do by Writing, that they may do by Printing. Why then might not the Citizens of *London*, who by Custom choose those Common Council-men, well desire to know, and might well know, what they had done? And then what they might do by Writing, they might by Printing; for that is but another Way, though a more suitable and compendious Way, of exhibiting any thing that you would have go to many. And if it be lawful to impart it to all the City, and all the City does know it, though it does go further, 'tis no Matter; for what is known to *London*, may very well be known to all the Nation besides, without Offence, if it did go further. Besides, it shall never be intended it was published further, or that any others knew of it; for 'tis said to be published in the Parish of *St. Michael Bassishaw*, in the Ward of *Bassishaw*, and that is in *London*, to the Citizens of *London*; and so they only talked of it amongst themselves. Besides, the main Thing which I go upon, is, if there be no Ill in the Thing itself, the *ca intentione* can make no Crime by a bare Affirmation, which we deny; and if it might be well said or done, it is lawful to print it, and the Publication is no Offence neither.

My Lord, the next Point I come to is this, That a Corporation cannot possibly commit a capital Crime, or any other Crime against the Peace: And I shall offer this Dilemma, Either it was done seditiously, or not; if not, then there is no sufficient Assignment of a Cause of Forfeiture; if it were, then 'tis a Crime for which the Offender is indictable; and that, I say, is absolutely impossible for a Corporation to be guilty of. And here I will throw in also that Business of the Toll; and I will, for Argument's sake, admit the Taking of a wrongful Toll to be Robbery, and then let the Argument go on. I have heard it said within the Bar occasionally, that a Corporation is intrusted with

the Government; and that they may commit Treason, and raise Sedition, as Mr. Solicitor hath said; I suppose it must be under their Great Seal: But I confess, I believe it is rather spoken to amuse, than to satisfy: But I really think it is no ill nor unjustly Thing for me to say, nor against the Government to affirm, That 'tis impossible a Corporation can commit Treason, or that it is intrusted with the Government in any such Kind.

But first, my Lord, I shall shew you what Opinion former Times had, and that because such an Opinion as this hath been broached of late Days.

Lord Chief Justice. Mr. Recorder, will you be much longer? Because I must sit here at *Nisi prius* this Afternoon, and yet I would fain hear the Argument, if it would not be too long.

Mr. Recorder. No, my Lord: I have almost done, and will cut short.

In 21 *E. 4. fol. 13. b.* 'tis said by *Pigott*, That a Mayor has two Abilities; the one to his own Use, to make and to grant, and to do as another natural Person does; and then the Mayor, as Mayor and Commonalty, hath another Capacity to their common Use and Profit; and that is but a Name, an *Ens rationis*, a Thing that cannot be seen, and is no Substance; and for this Name or Corporation, 'tis impossible they can do or suffer any Wrong, as to beat or be beaten, as such a Body; but the Wrong is made to every Member of the Body, as to his own proper Person, and not as to the Name of Corporation; nor can the Corporation do a personal Wrong to another; nor can they commit Treason or Felony as to the Corporation, nor against any other Person. And if a Writ of Debt be brought against the Mayor and Commonalty, or other such Body, upon an Obligation, and they plead it is not their Deed, and it is found their Deed, they shall not be imprisoned as another single Person shall. The same Law is, if they are found Disseisers with Force, they shall not be imprisoned; nor in a Writ of Ravishment of Ward shall they either be imprisoned, or abjure the Realm; for such a Body is but a Name, to which such an Act cannot be done. So says *Catesby* in the same Book; In a Writ brought against them no *Capias* shall issue, because they are but as a dead Person in Law; and the Appearance upon a *Capias* cannot be otherwise than personal. And so to this Purpose says the Chief Justice there; If this Body will do any thing, it must be done by Writing. And all along it is the Tenor of the whole Case, that a Corporation cannot commit Treason, or any other Crime. But the Reason of the Thing is above any Authority. Suppose, that they under their common Seal should commit Treason, and you bring an Indictment of Treason against the Mayor, Commonalty, and Citizens of the City of *London*, what Judgment shall be given against them in their Corporate Capacity? What? It shall be, that *Suspendatur per collum Corpus politicum*. And then, what Execution shall be done upon that Sentence? What? must they hang up the Common Seal? Nothing else you can do can affect them; but in their private Capacity, there they may be punished as single Persons.

A Penal Statute says, that he or she, that offends against the Law, shall forfeit so much, or incur such a Penalty: Is a Corporation Male, or Female, that it should come under such a Provision? But the real Reason of the Law is this, it is a Civil Being, it is *Ens civile*, it is *Corpus politicum*;

liticum; it hath civil Qualities, but it hath no moral Qualities; and all Offences consist in the Immorality of them, and there must be Malice to make that Immorality. No Words or Acts are Treason or Felony, unless there be a traitorous Mind, or a felonious Mind; and therefore a Madman cannot be guilty of Treason or Felony. Sergeant brought an Action for these Words, that he had spoken Treason; it was moved in Arrest of Judgment, that this cannot be actionable; for he might speak Treason in putting a Case: Ay! that were well, said they, if it could be understood so; but we must intend it, that he spoke Treason, as his own Words *ex corde suo*, which makes it Treason; for Treason consists in the Immorality of the Mind.

Another Reason is what *Pigott* said, as I said before, That a Corporation is but a Name, an *Ens rationis*, a Thing, that cannot see or be seen, and indeed is no Substance, nor can do or suffer Wrong, nor any thing where a corporal Appearance is requisite. What my Lord *Dyer* says in *Moor* 68. that he never saw, is, I believe, true in general, what no Man ever did see, that a Corporation could be bound in a Recognisance or Statute Merchant; and why? because it must be acknowledged in Person: And so in this Case, the Guilt follows the Person, but cannot a mere Capacity. In all Crimes the Offender must appear in Person, and plead in Person, and suffer in Person; but you can never bring the Mayor, Commonalty, and Citizens into Gaol, to appear and plead to an Indictment, to receive a Judgment, or suffer Execution. Can a Body Politick, that is invisible, appear in Person? But then there is this great Objection: By this Means, they say, if there be no Punishing of them, there is no Government, and they may commit Treason under the Great Seal, they may raise Armies, and instigate a Rebellion, and all with Impunity. My Lord, I say no, and I give two Answers to it, that are not to be replied to; and the first is this:

1. All these Persons, that are met together, though they are met *corporaliter*, in their corporate Capacity, for the Acts of the Corporation at that Time; yet when they go out of their corporate Business, and commit Treason or Felony, the Crime does not *egredi personas*, every one of them is a Traitor or a Felon; and notwithstanding they appeared there under the Pretence of a Corporation, yet they are all liable in their private several Capacities, every one of them must be indicted personally, and suffer personally: For when they go about to do such a Thing, it is out of the Business of the Corporation; and they must answer for their own particular Offences. But,

2. I have another Answer to give to it. This Objection is to be retorted on the other Side, that if a Corporation authorize the levying of War under their common Seal, they shall be affected by it in their politick Capacity, and are liable to the Law in that Capacity only, and must suffer in that Capacity only: And the Consequence of that is, they are discharged in their private Capacity; and this is a Law of Indemnity and Protection for all Crimes; for a Man cannot be liable two Ways for Treason, or Felony, or any other Crimes: If he be not liable in his private, he is in his publick Capacity; if not in his publick, he is in his private. And what is the Consequence of that? This is a Dispensation for a Corporation

met together in a Body, to do any illegal Thing, or to commit any enormous Crime; for the King's Counsel say this, We are responsible for it in our politick Capacity; and what Execution can then be done to punish that Corporation with such a Punishment as the Law inflicts, that is, Imprisonment, or Death, any more than upon an Action of Debt brought against them upon a Bond, and *Non est factum* pleaded, and found for the Plaintiff? Can they be imprisoned? and the like. So that this shall protect and shelter them in the Commission of any capital Offence; for if they are to suffer for it as a Corporation, you must take Judgment against them, as the Law gives it; and how will that be done against an invisible Body? What will be the Execution against the *Corpus Politicum*, that can neither see nor be seen?

I think this mighty plain; and I must confess, I wonder how it could ever enter into the Mind of any Man, that a Corporation could commit a corporate Crime. I have, as it became me, in regard of the Duty of my Place, and before that, for my own Learning, read *Stamford's Pleas of the Crown*, my Lord *Coke's 4th Institutes*, *Poulton de Pace Regni*, my Lord *Hales's Pleas of the Crown*, *Dalton's Justice of the Peace*, and other Books on that Subject; but I defy any Man to shew me in any of those Treatises concerning criminal Matters, any Resolution, that ever a Corporation could be so concerned, that they should be brought before a Justice of Peace, or proceeded against upon any Law for Treason or Felony, or be hanged in their political Capacity.

My Lord, I shall conclude all my Discourse of this Kind (and I have almost done, because I perceive I incroach upon your Patience) with an Observation I have made upon the 19 *H. 7. c. 7.* and it is the Statute, that makes Provision against Corporations, that made By-laws against the Prerogative. That Statute says, That some Corporations did so; now an higher Offence than that, sure, cannot well be described; and there that Law says, that those that do so, that make such By-laws against the Prerogative, shall forfeit for so doing, for every Offence, forty Pounds, unless they are confirmed by the Chancellor and Treasurer, and Chief Justices, or any Three of them. Now to what Purpose was this Statute made; if the making of an ill By-law (and worse cannot be than a By-law against the King's Prerogative) should be a Forfeiture of the Being of a Corporation? How vainly did the King and Parliament employ themselves to make a Statute, that a Corporation should forfeit 40 Pounds for such an Offence? No Man will say they had rather take that Penalty than another, when they might have a greater, if a greater could be had by Law. If they might have had a *Quo Warranto*, and thereby destroyed the Corporation, surely they would not have stood for the Penalty of 40 *l.* for they might easily have got more Money: No, they might have said, We will never pass it by, unless you will give us 4000 *l.* or a far greater Sum; nor shall you have your Corporation again, without you give us a considerable Recompence for it. And when the Proceis and the Proceedings were so expeditious and easy to come at in a *Quo Warranto*, as it was easy in those Days, why should they put the King to the Delays in an Action of Debt for so small a Penalty as 40 *l.*? So that I take it to be a direct Judgment of the

Parliament in that Case, that no Corporation should or could be forfeited for the making of any By-law that was irregular, though it were even against the King's Prerogative.

But to hasten to a Conclusion, I have all this while, my Lord, supposed, that the Mayor, Commonalty, and Citizens of *London* have done this: But it is not so; this is not the Act of the Mayor, Commonalty, and Citizens, 'tis not the two hundredth part of the Corporation, 'tis but the Act of the Common Council; and we have distinguished ourselves by pleading, that it does not consist of above 250, when the City contains above 50,000. I must confess the Council is not taken notice of much in Law; as is seen in *Warren's Case*, 2 *Crook* 540. & 2 *Rolls* 112. *Warren*, being one of the Common Council of *Coventry*, and displaced, sued out a Writ of Restitution; and upon that Writ it was returned, that by Custom the City might place and displace *ad libitum*; they there held, that the Custom was good: But it is not so of a Freeman or Alderman, because he hath a Freehold; but a Common Council is a thing collateral to a Corporation, and the Office of a Common Council is nothing but only to give Assistance and Advice, which they may refuse at their Pleasure. In *Estwick's Case* in *Style* 32, & 2 *Rolls* 456. it is said, That 'tis a Place merely by Custom, and that the Common Council is properly but only a Court of Advice; and, my Lord, you shall never intend more than that they were a Court of Advice: All the Rise of their Power is but by Custom, and that Custom is pleaded to give Advice for the Benefit of the City, and make By-laws for the Good of the Corporation; and that is confessed by the Demurrer, and you shall intend no more than what is opened in the Pleading.

And then 'tis evident this was done by a very small Part of the Citizens of *London*; and that does no way affect the whole Corporation sure. In *James Bagg's Case*, 1 *Rolls*, fol. 226. it is said, That if a Patent be procured by some Persons of a Corporation, and the greater Part do not assent to it, that shall not bind a Corporation. And if so be a Charter sealed, and sent by the King, because not accepted *in pais*, by the greater Party, bind not, shall an Act done by a few, and an Act done, that tends to a Forfeiture, bind the Whole in point of their Being? There is no Ground to say, that the Common Council represents the City, no more than a Counsel does his Client, or an Attorney his Master; only as far as is for the Benefit of the City, they are chosen and intrusted to make By-laws; if they offend, they are but Ministers and Officers, and so they are within the Statute of *Edw. III.* which I mention, though I think we have no Need of that in the Case to help us; if they make an unreasonable By-law, it is void, and every Man that is aggrieved by it may have his Remedy, may bring his Action. Shall you supply this by an Intendment, that they have such a Relation? that they are the Representatives of the City of *London*? that they have a Power to forfeit the Corporation? No, my Lord, by Law they are Part of the Corporation, but they have no such Power to forfeit the Corporation. A Custom shall never be construed to enable a Man to do a Wrong; and a great Wrong it is, that they that are trusted, and trusted but for a Year, and trusted but for the Good of the Corporation of which they are Part, should give up

the Being, or, what is worse, forfeit the Being of that Corporation. The Custom of *Kent*, that makes an Infant capable of making a Feoffment, shall never enable an Infant Tenant in Tail to make a Feoffment, so as to work a Discontinuance of the Estate Tail, and put the Heir to his *Formedon*. Every illegal Act of theirs is beyond their Commission, and a Nullity of that is all in respect of themselves; and it is as if they had never done it as to the Corporation, for they are by no means the Corporation; for tho' they use the Common Seal in some Cases, at some Times, so do the Court of Aldermen in other Cases; but it is only in other Cases wherein they are particularly intrusted. If an Act of Common Council say, that I shall have such and such Lands of the City's, that Act signifies nothing, but as a Direction and Advice; when it is under the Common Seal, it is an Act of Corporation, and proceeding by Advice of Common Council, it binds.

Now, my Lord, this is the more unreasonable, because we know, that the Practice of the Common Council in *London* being to advise for all the Inhabitants, they are chosen by the Unfreemen as well as others; and it is a strange Thing, that they should have a Capacity to give away the Liberty of the Citizens, when they are chosen by others as well as them. They had no such Trust for them; nay, all Trust they had was to keep their Liberties, and not to destroy them. Has any Man a Trust to destroy himself? Sure no Man is trusted by God himself to be *Felo de se*. And certainly then you can never understand it to be in the Nature of a Trust to destroy another; and the least Citizen, my Lord, has as much and as true an Interest in the Corporation of the City of *London*, as the greatest: And therefore 250, if they had been much the greater Number of the Citizens, would signify nothing to the rest of the Body.

My Lord, I shall only say this little more: Here is no Crime charged relating to them as a Corporation: Here is indeed a fine Word used, that we did this *contra fiduciam in corpore politico repositam*; but all this is but an imaginary Trust, the King never gave them a Power or Authority, or intrusted them to make By-laws that were unreasonable; he gave them a Power to make reasonable By-laws, and so he does every Corporation. And the same Law that gave them the Power, limits that Power, and says, if they go beyond that Power, it is a Nullity. And these Acts relate not to them as a Corporation; the Petition is not so much as said to be against any Trust reposed in the Corporation; certainly there never was any such Trust. Did ever the King intrust them to advise him about the Matters contained in the Petition? And if not, then it is not *contra fiduciam*; therefore it relates to particular Persons: If it be an Offence, I hope it is none of the Corporation's.

But then the levying of Money, that is *contra fiduciam*; they took upon them an illegal and unjust Power in the Common Council. Suppose it so, how does this belong to the Corporation? It is an Inroad upon Property, it is the most arbitrary Thing in the World. Whether they have the Market, and the Dominion of it, or not, is matter of Fact, and being pleaded, is confessed by the Demurrer: And then for the Power of making By-laws, that is a Thing that cannot possibly be taken from them

them while they are a Corporation; it is that which must be in them as a Corporation, like the Faculty of Reason in a Man, to express his Resolutions by. And it is no more, than if a Man, that has a Market, bid his Servant go and remove such as have Stalls there, unless they will pay so much. That Direction is as good a Law as this, and as bad a Law as this, and no more. There is nothing else in it but the Direction of the Officers, what they shall do in the ordering of the Markets, and disposing of the City's Property.

Then as to the formal Method of expressing themselves, whether it be by Act of Common Council, or under the Common Seal, or by their natural Voice, it is all one, it is not a Thing that concerns them as a Body Politick: But if it were illegal and mistaken, I say, the Penalty is only, that it shall be void. What the Common Council, nay, what the Corporation does within the Limits of its Authority, is good; what beyond that it does, is void. If I command my Servant to distrain for Rent, and he kills a Man in the doing of it, this, as to me, is void; but as to himself, that is chargeable upon him. And what I say of the Common Council, I say of the Corporation itself, that it is a Capacity, and a limited Capacity; it is the Act of the Members, not of the Corporation, if they do wrong. The Common Council can act for the Good of the City, and the City can do no more, if they themselves should meet. *Crooke, Eliz. fol. 85.* the Queen makes a Lease for Years of Lands to the Men of *Chesterfield*, by the Name of Aldermen, and they by that Name grant all their Interest to *Clerk*; says that Book, This is void; for the Queen granting them a Lease as to the Aldermen of *Chesterfield*, this makes them a Corporation, and gives them a Capacity to take, but not to grant. And so *Rolls Abr. 1. p. 513.* And therefore no Corporation is to be considered as a Corporation, but only when it acts according to the Capacity allowed to it; and as to the rest, it all turns into their private Capacity, but it affects not the Body, nor hath any such Relation as to bind it.

My Lord, all the Question here is, Whether there shall be such a Person *in esse* as this Corporation? Whether the City of *London* shall subsist as such a Person, to sue and be sued, to plead and be impleaded? There is nothing of Government or Misgovernment in the Case; but it is all about our Capacity, and nothing else, whether we shall be Defendant or Plaintiff in any Court.

My Lord, *Magna Charta*, and all the other Acts, that have gone in Confirmation of it, shew the great Care of the Government in all Ages to preserve the City of *London*; and I look upon them as so many Declarations of the Immortality of it, and of all other Corporations. I shall use a strange Argument perhaps at first Hearing, but it is to me a great Evidence for us, that *Magna Charta* does not confirm our Being, but our Liberties and Privileges; it says, That the City of *London* shall have all its Liberties, it confirms its Leets, its Markets, and all those Things, that is, it confirms all that it has; it has not saved indeed, if a Corporation indeed be built upon a Corporation; but that particular Liberty may be destroyed, as that of *Bridewell*, and the like; but it does more than confirm its Being, for it does implicitly declare, that that was impossible to be forfeited: They confirm what needed Confirmation; but for their Being there was no Need of

that; it only confirmed the supervenient Liberties, without which it might be a Corporation; but as to its Being, it meddled not with that. And if it were not so, it were an unreasonable Thing, that we should have so many Acts of Parliament, that give such particular Powers to the Mayor and Commonalty of *London*; and scarce any Act of Parliament, that relates to the Publick, but *London* is mentioned, and taken care of in it. Are not all these Declarations, that *London* should stand for ever? Would not any one have said else, Pray what do you put such Confidence in *London* for? There is not such a fickle Thing upon the Earth as the Being of the Corporation of *London*. If they lay but 6 *d.* upon a Joynt of Meat, they are gone, and there is not a Month in the Year but they forfeit their Being.

The Act for Administration hath a Proviso, that says, it shall not extend to *London*: Why does any Man think, that this Law was not intended to be as perpetual for *London*, as for other Parts of the Kingdom? They did not question but *London* would be a Corporation as long as *England* was *England*. It would be a strange Thing in the Example of it, that the World should be taught by one Instance, that a Corporation can be ruined; when so many People put their Trusts in those Corporations, and so many vast Inheritances depend upon them. And I think the King and the Government, or those you call so, are more concerned to preserve *London*, than all the Persons that are in it. I would not speak it in this Place by way of Argument for my Client, but I think I could maintain it in all Places; only I hope and believe I shall have no Need for it.

My Lord, all Innovations (as this must certainly be a very great one) are dangerous; this Frame of Government has lasted and been preserved for many Hundreds of Years, and I hope will be so as long as the World endures.

My Lord, I am sensible I need your Patience; but I have just done. Here is a Charge that has very little, indeed there is nothing in the Matter of it; but the Weight and Consequences are fitter to be meditated upon, than spoken of. And therefore for these Reasons I do pray, that these Liberties may be adjudged to us, and we may be dismissed out of this Court.

Now, my Lord, if your Lordship please, I will give an Answer to Mr. Solicitor's Authorities.

Lord Chief Justice. I suppose you do intend to argue it again, and therefore there will not be so much Need of that now; besides, it is late, and I cannot stay.

Mr. Attorney General. My Lord, I think it may be very proper to have one other Argument, the first Week in *Easter Term*.

Lord Chief Justice. Take what Day you will; Mr. Attorney.

Mr. Attorney General. Let it be the first *Friday* in the Term, if you please, my Lord.

Lord Chief Justice. Let it be so. Look you, Mr. Recorder, I perceive you do agree; that the *Petition*, setting forth, that the King having prorogued the Parliament, and thereby that Common Justice had received Interruption; you have justified in your Plea, (I took it always to be so) and now at the Bar, That the King by the Prorogation did interrupt the Justice of the Kingdom.

Mr. Recorder. No, no, my Lord: Then I have Reason

Reason to speak again, to make myself rightly understood.

Lord Chief Justice. Why, look you, you do agree, that the King had prorogued the Parliament, and thereby that publick Justice was interrupted; if that were so, by whose Means, and by whom did the publick Justice receive Interruption, if not by the King? I did take it to be so really, and that you had justified it.

Mr. Recorder. My Lord, I do agree, as we say, and the King himself said, that these Acts were not passed, nor the Lords tried; and so Justice was not done: And I would ask your Lordship, or any other indifferent Person, whether Justice were done, or necessary Provision for these Things made, if those Bills were unpassed? If it were so, it is a natural Truth, that thereby the Trial, and Acquittal, or Condemnation of the Lords was interrupted; and so was the Security of the King's Person, and the Protestant Religion, the Bills not being passed. For the King calls upon the Parliament to pass them the next Session, therefore they were not passed in the former Session. This is by no means a charging of the Interruption of Justice upon the King; every great Thing, that is done by the King, may have a prejudicial Influence, it may be, as to some Particulars; but to say, that thereby Justice is interrupted, is not to charge any Blame upon the King; because, though it may be prejudicial in one Particular, yet it may be useful to the Publick. No doubt, if the King do prorogue the Parliament for never so great Ends, and necessary Causes, yet if I have but one Bill passing there, suppose it be a private Bill about Naturalization, or the like, if a Prorogation comes, it is naturally true, that that is interrupted; but that is not laying a Blame upon the King.

Lord Chief Justice. May it be said, that the publick Justice is interrupted, if a Bill for Naturalization, or the like, pass not before the Prorogation? I speak it for this only, that they that argue next may think upon it. The Petition does say, that the publick Justice was interrupted: Did they mean it was true? or did they mean it was not true? If they did mean it was true, then you have done well to justify it, to say it was so, and the King had done amiss in proroguing the Parliament. Yet it seems, the Common Council of *London*, neither by Charter nor Prescription, had any Right to controul the King, nor to be of the King's Council neither; and therefore it was a Matter purely *dehors*. If the Matter were not true, why do you put in your Petition? If it be true, justify it, if you can. But here is the Matter; I would have a good Answer given me to this Point: The Petition was to the King; if so be the Petition had been delivered to the King, (as it may be it was) it was but one single Petition to the King; that might be well enough, if there had been no more in the Case, it is very possible it might not have been a Question at this Time: But pray, I would know of them that argue next, by what Law or Authority it was, and what was the Meaning of it, that that which did not require two Clerks to write, in order to its being presented to the King, must be printed? By what Law is it to be justified? the Printing and Publishing of this Petition, and sending it all over the Nation, whereby the Mayor, Aldermen, and Common Council of the City of *London*, do let all the Nation know, that they do look upon the King as one, that by the Prorogation of the Par-

liament had given the publick Justice of the Nation an Interruption? Pray by what Custom or Law is this published? In the Case *de Libellis famosis* (even in the Case of a Subject) it is adjudged, that if you print a Libel, though the Matter of it be true, you shall be punished for it: Now when it is argued again, I would desire some good Satisfaction in that, what Reason or Ground there was for printing or publishing this Petition, unless it be to that Intent which is set forth by Mr. Attorney General in his Replication?

Now for the other Point, as you have ordered the Matter, you hold, that a Corporation cannot be forfeited. Mr. Solicitor did take some Pains to argue, that there was no Statute, that did protect you from a Forfeiture; he was not aware of what you did insist upon: You say, that by the Common Law Corporations cannot forfeit their Being; if so be they cannot, there is an End of the Question. But I pray you do you take it, that a Corporation can commit any corporate Act, or no? For according to your Definition of the Matter, if nothing will serve but the Act of the Mayor, Aldermen, and all the Citizens, I believe I may safely say, and so will every one else, that never any corporate Act was done by the City of *London* since it was a City.

We know on the other Side, and you, when it makes for your Turn, told us, that the Mayor, Aldermen, and Common Council could make By-laws, and they were good, and binding, that is, when it lay in your Way. For you make a Prescription in your Plea, and so also you have said at the Bar, that they may make By-laws to bind the Corporation, so that it seems when it is for your Conveniency, then the Mayor, Aldermen, and Common Council can do as much as all the Corporation; but when you come to be touched with something, that you have done, in which you have gone beyond what you should have done, then the Citizens are 50,000 Men, and these are but 250 Persons, that have done these Things. Either the Mayor, Aldermen, and Common Council are the governing Part of the Corporation, or else they signify just Nothing: If they be, then whatsoever they agree upon binds the Whole, and must be taken as a corporate Act; or otherwise you will bring it to this pass, that the Corporation can do Nothing at all. For if the whole Corporation be not bound by such an Act, then it is impossible for you ever to do an Act that shall be an Act of the Corporation; so that that will be pretty hard for you, that are for the City, I think, to maintain. Then I have but one Word more (I give no Opinion, but only tell you what I would have you apply yourselves to): Is the Trust of making By-laws annexed to the Lord of the Market? or it is annexed to the Lord Mayor? or it is annexed to the Corporation? Surely the Power of making By-laws is annexed to the Corporation; and I cannot see how, as Owners of the Markets, they have that Power. Now by your Distinction, where there is a Franchise, that does necessarily depend upon another, there the Abuse of any Part does forfeit the whole Franchise. If then this Power be annexed to the Corporation, as sure I think it is, (but I reserve myself till I have heard a further Argument about it) then consider, whether or no, when they have abused that Power, in making this By-law, that is knit to them as a Corporation, it does not affect the Being of a Corporation? For it is strange a
Cor-

Corporation should commit a Fault, and not be punished for it. I tell you, I deliver no Opinion in any thing now, but these Things I would have you give me some Satisfaction in; and there are indeed several other Things, that will require Consideration: I only hint these now.

The Second Argument was in Easter Term, on Friday, April 27.

Attor. Gen. THIS Case between the King and the City must be acknowledged to be a Case of Importance, both as it refers to the general Government of the Kingdom, and that of the City in particular. As it concerns the Particular of the City, it doth not bode such dismal Consequences, as some Men endeavour to frighten their Neighbours with; as if it were hereby designed to demolish at once all their Liberties, and to lay waste and open the City of London, and to reduce it to the Condition of a Country Village; than which nothing could be more maliciously suggested of so excellent a Prince, who hath given such large Demonstrations, not only of his general Care of all his People's Welfare, but of his more especial and particular Kindness to this City of London. This *Quo Warranto* is not brought to destroy, but to reform and amend, the Government of the City, by running off those Excesses and Exorbitances of Power, which some Men (contrary to their Duty, and the known Laws of the Land) have assumed to themselves under Colour of their Corporate Capacity, to the Reviling of their Prince, the Oppression of their Fellow Subjects, and to the infinite Disquiet of their Fellow Citizens. I shall not recount the Mischiefs which those Exorbitances have of late wrought within the City, both as to its Peace and Profit, as likewise to the Obstruction of the free Course of Justice, that few Causes escaped the Crime of Maintenance from a divided Party. These Exorbitances committed by the City, casting so great an Influence over the whole Kingdom, make the King's Interposition in a Course of Law necessary, by gently laying his Hands upon them for their Cure. Herein the Politick Body of his Subjects resembles the Natural, that the disaffected Members are best cured by laying on the King's Hands upon the Body. It hath been observed, that the City of London was never better governed, nor flourished more, than after it came from under the King's Hands. The Reason given by *Edw. 1.* at his Parliament in 18 *Edw. 1.* of Denial of the Petitions of the Citizens of London, to be restored to their former State, *scil.* To have a Mayor and their ancient Liberties, is this: *Quia sunt in bono Statu, & omnia bene, & in pace, & nullum Commodum apparet* to change it then. The City was in as good Plight, both as to its Quiet, and good Government and Profits too, whilst in the Hands of the King, under the Common Law Government, as it would be in the Hands of the Corporation. Neither did the City suffer by being in the Hands of the Crown, as it was in the Reigns of *Edw. 1. Edw. 2. Edw. 3.* and *Richard 2.* nor their ancient Customs and Privileges destroyed; but they were thereby indeed restrained and held within the modest Rules of Government, in Subordination to the general Government of the Kingdom: And therefore the Danger threatened by this Suit will not be so fatal to the Being or Well-being of the City, as was suggested. Nay, I may with

great Assurance say, That if the City receive the least Harm hereby, their, or their Managers, obstinate and final Impenitence must draw it upon themselves. For though the Conclusion of the Replication upon the Assignment of the Forfeiture be, That the Liberties be seized, and they *ab iisdem penitus excludantur*, that is but the formal Conclusion upon Assignment of Forfeitures; it shews what the Judgment of the Law may be, if demanded by the King's Attorney, and necessitated by the City's Obstinacy, but doth not exclude the King's Grace. But the Importance of this Case, to the general Government of the Kingdom, is of another Nature; and the Consequences thereof, both to the King, and his Subjects in general, appear now far greater than before, from the Manner and Grounds of the Defence made for the City at the Bar: *viz.* from the general Topics of Corporations, That they are immortal and indissoluble; that no Treasons or Seditious against their Prince can be committed by the Members of a Corporation, even though those Members meet, and act jointly in the same Manner and Method, as they do all other Corporate Acts; no, though they should vote Raising of Men against their Prince; and should give Authority (under their Common Seal) to levy Money for that Purpose; that Murders, Felonies, and Oppressions of their Fellow Subjects, either by unjust Imprisonments, or levying Money upon them; that none of these Crimes committed by the Majority of the Members of any Corporation, and authorized under the Common Seal, will affect the Corporation, or the Government thereof, in point of Forfeiture: But a Corporation once constituted, is out of the Reach of the Common Law, to determine its Being, or its Governments, for any Causes whatsoever. If such Notions as these could be true, or should receive the least Countenance in a Court of Law, it would be unsafe, either for the King or any of his Subjects, to live in or near a Corporation. And the Complaint made by the Commons in Parliament 21 *Edw. 3.* that the Increase of Franchises tended to the Extinguishment and Overthrow of the Common Law, would soon be made good to the Purpose, when such great Bodies of Men, as the Corporations within England consist of, shall jointly have a Power allowed them, *Quidlibet impune audendi*, without being capable of Separation. The Distinction between the Politick Capacity and the Natural, to subject the one to Punishment, and not the other, was framed in the *Jesuits* School, to encourage Subjects to rebel against their Princes; but never yet so far improved the Distinction to apply it to Corporations, which (if they had thought of it) would have been more efficacious to their Purpose, than as they applied it; Assurance of Impunity being the strongest Argument for a Commission of any Crime. The Case being of such Consequence both to the King, and his Subjects in general, I shall endeavour to examine it by the Rules and Precedents of Law, that I may sever what is mere notional, from what is of Substance in it. I forbear to trouble the Court again with opening the whole Pleadings, but shall take the Case as it hath been opened: Wherein the general Question is, *Whether by any thing disclosed upon the Pleadings, it appear to the Court, that the Mayor, Citizens, and Commonalty of London, have forfeited their Right of being and acting as a Body Politick,*

tick, and subjected that Right to be seized into the King's Hands?

In stating of the Question, I forbear to style it a Franchise or Liberty, that I may not by anticipating preclude the Force of Mr. Recorder's Argument, That it is no Liberty or Franchise; but may reserve the entire Consideration thereof to its proper Place. And therefore I shall call it a Right, for such most certainly it is; and it includes both *Jus agendi*, & *Jus habendi*. Before we can arrive at the main Question, certainly preliminary Points have been moved and debated; some to the Form of the Suit and Pleadings, others relating to the Matter thereof.

To the Form Mr. Recorder took three Exceptions:

1. That the Information is not well laid, because not brought against particular Members by Name, which ought to be in all Cases, where the Right of Corporations is questioned or struck at.

2. That the Replication is worse, importing a Contradiction both to the Supposal of the Information, and to itself; because it denieth *London* to be a Corporation, which the Information allowed, and admitted it too, to be a Corporation, by assigning Causes of Forfeiture.

3. That no Judgment can be given upon these Pleadings, either of *Seizure* or *Ouster*; not of *Seizure*, because the King cannot seize what he cannot hold when seized: And the Body Politick, by which Name it is sued, cannot be ousted of itself.

The great Triumph Mr. Recorder erected upon the Strength of these Exceptions, as for an assured Victory already obtained, makes it necessary for me to give a more particular Answer to them, than their Weight would otherwise require. For the Authorities cited by him argue very little, to this Purpose: And indeed he hath been so unfortunate in quoting of Authorities, that how little soever they seem to make for him, as to the Point he produceth them, yet they flatly make against him in some other material Point, not only by his Authorities, but his Objections themselves, to the Form of the Information, admit, that a Corporation is in its Nature separable by Judgment of *Ouster* against the particular Members by their Natural Names. The Opinion of my Lord *Hales*,

in his Common-place Book, *Quo Warranto*, fol. 168. pl. 7. argues, he did not think of the Indissolubility of Corporations; but it is no

Opinion, that the only Way to impeach them was by a Suit against particular Persons; for it is only a short Reference to the Cases of *Cusack*, and others of *Ireland*; and *Farrer*, and others of the *Virginia* Company: Which Cases (as also that of *Fisher*, *Helden*, and others of the Borough of *Hebmerley*; the Case of the *Musicians*, and the *Bermudas* Company; and the other Cases cited by Mr. Recorder) do fully prove, that Corporations are Franchises, and may be questioned and impeached in the very Point of being Corporations, by Suits of *Quo Warranto*. And they do prove, that the Suit may be brought against some particular Members by Name: And against the rest of the Corporations by the general Words; as, *Et alios Liberos homines, & alios Burgenses, & alios de Fraternitate*. And these general

Words are material and operative; for a Judgment thereupon binds the Whole. In the Case of *Cusack*

against particular Members by Name, *cum diversis aliis Civibus Civitat' Dublin'*, Judgment

was given to out not only the particular Men, but *alios Cives, & Successores suos*. Upon the Writ of Error, it was assigned upon Record as one of the Causes of Error, that Judgment was given to out the Corporation of those Liberties; yet no Parties by their Names of Incorporation; but Judgment was affirmed. And the *Quere* that is made in *Rolls 2 Report*, in the Case of *Ferrars*, and others of the *Virginia* Company; Whether the Corporation were barred? probably did arise from the Non-observance of the Records, where Judgment was given, as well against the *alios Plantatores*, as the particular Men made Parties. In both these Cases the Suit was as well against the rest of the Corporation as the particular Men: The Appearance by Attorney was entered for both, and the Plea as well in the Name of the rest, as the particular Men, and Judgment against both. And the Judgment against the *Virginia* Company discharged that Company.

These, and the other Precedents produced by Mr. Recorder, do prove, that the King's Suit may be brought against particular Persons by Name, and against the Residue of the Corporation, by a general Name of *& alios homines*; or against particular Persons, and also against the Corporation, by the very Name of Incorporation, as the Case of *Bermudas* Company: But they do not argue the King hath not a further Election, either to bring his Suit for questioning the Corporation, by the proper Name of Incorporation, without naming of particular Person, or by some other general Name, which sufficiently describes the Persons. I shall therefore apply these Answers to the Objection warranted by Precedents of Law; that where ever many Persons are jointly concerned in Charge or Discharge, and the King hath Cause of Suit against them, he may sue them, either by naming some particular Persons, with a general Reference to others; or he may sue only by a common Name of Description, without admitting them to be a Corporation, especially where the general Name sufficiently describes the Persons, who took this Corporation; and this as well for Offences at Common Law, as against Statute Laws. Where Murder is committed in the Day-time in a walled Town, *tota Villata oneratur*; and so for Repair of Highways, or Nuisances in Highways, Repairs of Bridges, and for levying of the Hue and Cry. The King's Suit, either by Indictment or Information, hath been used both ways, either naming some few particular Inhabitants, but then always with a general Reference *& alios Inhabitantes*, which is essential, otherwise both Indictment and Information would be naught; or they are frequently only by the general Name of Inhabitants, within a Parish, Hundred, or County, as the Case is, without naming any particular Inhabitants at all. To produce Instances of this Nature would be infinite, the Cases frequently falling out both at the Assizes, and in this Court. It is so in Cases of *Quo Warranto*. Rot. 15. 23. R. a *Quo Warranto* against the Inhabitants of *Denbigh*, for using several Liberties, as to hold a Court of Pleas before the Bailiff, and choosing two Aldermen, &c. upon Plea and Demurrer, Judgment of Seizure is given, & *quod*

Mich. 21. Jac. 1.
Rot. 9.

Mich. 27. E. 2.

Co. Ent. 52.

quod Inhabitantes capiantur. A Quo Warranto brought by Gerrard the Queen's Attorney, against *Homines & tenentes Manerii de Kings Haurston in Com. Bedford*, for claiming to be discharged of Knights Wages, &c. they pleaded the Manor to be ancient Demesne; and their Plea was confessed, and Judgment for the Tenants, without naming any particular Tenant. These general Names of Inhabitants and Tenants were sufficient Descriptions of the Persons whom the King sued; and yet this Suit, by those Names, works no Conclusion that they were a Corporation. So *Cives, Burgenses, & Communitas* of such a Place, are general Names to describe the Inhabitants of the Place by, antecedent to their being a Corporation. The like of *Mayor, Bailiff and Burgeses, Mayor and Citizens, and Pontenarii*; where *Burgeses* is but an Addition of the Name of an Officer to the common Name of the Inhabitants, and properly describes the Persons whom the King sueth. By these Names of general Description, they are capable to take this Right of Incorporation by the King's Grant. The Grant doth not enable them to take this Right; and if by such general Names in the King's Grant they may take, there can no Reason be assigned, why they may not be sued by the same Name they took, when they are questioned for this Right, be the Name of Corporation the same, or any other. Upon Pleadings in the Case of a common Person, *Major & Cives* shall not necessarily be intended a Corporation, without it be especially set forth.

Inter Jerom & Neal 20 Eliz. B. R. 1 Leonard 106. in Trespass and Battery, the Defendant pleads *Salisbury* an ancient City, and a Custom there, that if any Affray be committed upon any Officer, upon Complaint to the Mayor, he, as a Justice of Peace, might send for the Offender, and justifies, under the Commandment of the Mayor, to bring the Plaintiff before him: And on Demurrer joined, and Judgment against the Defendant, one of the Grounds thereof was, that it did not appear that *Salisbury* was a Corporation, although it did appear that *Salisbury* was a City, and had a Mayor; much less shall it conclude the King, who is not so strictly bound in his Suits as common Persons are. It is true, that in the Case of *Maidenhead* there are three Judges against

Mountague, of Opinion, that they need not set forth they are a Corporation, because they are not questioned for it by their Information, but supposed to be one, and questioned only for a Market, which they claimed by the King's Grant. In the same Case it is agreed, if they had been sued by any other general Name, but the very Name of Incorporation, they should not be intended a Corporation, according to the Case of the King against the Corporation of *Denbigh*. And whoever looks into the Record, must conclude *Mountague's* Opinion to outweigh that of the other three Judges. The Suit against them was by the Name of the *Pontenarii*; the Grants which they plead, recite the Corporation of the *Pontenarii* to be dissolved, and the Grant is a new Grant to the Bridgemasters: So that there was no room for any Intendment, that it was a Corporation before the Grant, against their own Plea; but that which seems in the Case to have preserved the Bridge-

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masters, is, that the Judges inclined to an Opinion, that it being for Maintenance of a Bridge, which was of necessary and publick Use, the Grant itself might amount to a new Incorporation, which was a plain Waiver of the former Opinion; and if the three Judges had continued their Opinion, Judgment would have been entered for the Defendant; but no Judgment was ever given in that Case: So that *Mayor, Citizens, and Commonalty of London* being a general Name, sufficiently describing the Persons against whom the Suit is brought, may be used in the King's Suits without any manner of Conclusion to the King. But in the next place, it is yet stronger, where one of the Articles of the Suit is for usurping the Corporate Right, that prevents all Colour of Pretence for any Conclusion; herein this Case differs much from that of *Maidenhead*, as to the Form of the Information. And in such Cases, where the questioning the Right is a special Article, the Form of the Information is the same against all Corporations, whether by just Title, or altogether usurped, and by Wrong; the Suit supposeth them all to be by Wrong, and usurped; and whether by Right or Wrong, cannot be known, till the Title by Pleading be disclosed and discussed; and many times not then neither, because the Liberty may be lost by Default of Pleading, upon *Nihil dicit*, or Mispleader, by pleading a wrong Title, or insufficiently pleading a right Title.

A Quo Warranto contra *Præpositum & Burgenses burgii sive villæ de Card*, for claiming to be a Corporation, and divers other Liberties: They plead, that they claim nothing but under the Bishop of *Bath and Wells*. It appears by the Plea, that they had no good Incorporation, and Judgment might have been entered against them: But the Bishop obtained a Grant from the King of a new Incorporation, which I have seen and perused, and thereupon a *Noli prosequi* was entered.

A Quo Warranto against the Commonalty of the City of *Canterbury*, for claiming to be a Corporation, and divers other Liberties: They plead to all, and several Issues taken in several Parts of the Plea, and Breaches assigned to others for a Forfeiture. Quo Warranto against the Bailiff and Aldermen of *New Radnor* is of the same Nature; and Multitudes of others I could produce, where the Suit is brought in the same Form as ours, to question the Right of a Corporation against them by their Corporate Name.

My last Answer is, That where the King proceeds for a Forfeiture upon Breach of Condition, the Right is not determined till Judgment of Seizure; for it is a mistaken Ground, that Forfeitures to all Purposes relate to the Time of the Forfeiture: For as to Copyhold Estates, Offices, and Liberties, in case of the King, which may be determined by Breaches of Fact, they are not avoided till the Fact, which causes the Forfeiture, be found upon Record: So that the Suit is well grounded against them, by the Name of *Mayor, Citizens, and Commonalty*: for they continue such till Seizure, and till then are a Corporation *de facto*.

B. R. R. 5 Car. 1.
Rot. 28.Hil. Car. 1.
Rot. 25.B. R. Mich.
20 Jac. 1. R. 17.

2. I shall be short in my Answers to the Objections to the Replication, because they are in Effect already answered by what I have said. The Traverse of the Title by Prescription is pursuant to the Supposal of the Information, which supposeth they have usurped that very Liberty, and puts them upon shewing their Title by that Name; even put the Case they have a good Title by that Name, by this Patent, or by Act of Parliament, and they will waive it, and set up a Title by Prescription. And this was done in the Case of *Canterbury* before, and in the Case of *New Malton*; where, upon the very same Information as ours, against the Bailiff and Burgeses of *New Malton* in *Com. Ebor.* they pleaded their Title to their Corporation by Prescription, and Issue taken; and it proved fatal to them; for Verdict and Judgment went against them.

Then for the Contrariety of the Replication to itself, none appears; for the Traversing of the Prescription by such Name, is no Denial; but it may be a Corporation by Prescription by another Name, or it may have that Name also by Grant. And the farther Replication is, That assuming upon themselves to be a Corporation by that Name, they committed the several Acts, which are assigned for Breaches. And that is the only Advantage the King hath. By Informations of *Quo Warranto* he may go upon the Title, and take Advantage of any Defect therein, or of the Pleading thereof, and may also assign Breaches for a Forfeiture, as is held in the Case of *Maidenhead* Bridge. In the Case of *Canterbury* Issue was taken upon some Liberties, Breaches assigned to others. The King may plead several Pleas, and take several Issues, and demur to part, as he shall be advised.

3. The Objection, That no Judgment can be given upon these Pleadings, ariseth principally upon two notable Errors, against plain and express Authorities of Law:

- (1) That nothing can be seized into the King's Hand, which the King cannot hold and enjoy when it is there.
- (2) That every Judgment upon a Forfeiture ought to be a Judgment of Ouster.

These mistaken Grounds having been so often made use of by Mr. Recorder in other Parts of his Argument, for supporting a Supposition, That a Corporation cannot be forfeited, I shall (to avoid Repetition) leave them to be considered when I come to his main Argument; and therefore shall proceed to consider the preliminary Points moved relating to the Matter; viz.

First, Whether the Right of Incorporation of being a Body Politick may be forfeited, or seized into the King's Hands.

Admitting it may be, then,

Secondly, Whether the Acts of Common Council, or the Members assembled in Common Council, which is all one, may work such Forfeiture, or Cause of Seizure.

First, As to the first Point, I must confess the Weakness of my Understanding, that upon what hath been offered from Reason or Authorities of Law, I cannot apprehend it rendered in the least doubtful to a Court of Law, whatever it may be in a Common Hall, and Publick Assemblies of the City, where strong Lungs have a Preference before a rational Head, but that the Right of be-

ing a Body Politick may be forfeited, or suspended.

It was moved as a Doubt by Mr. Solicitor, but as a vulgar Error obtruded from publick Prints upon the unthinking and unwary Citizens; which possibly gave Encouragement to the many Exorbitances committed within the City, and particularly to those now laid to their Charge; and, I thought, sufficient had been spoken by Mr. Solicitor to have prevented the Growth of so mischievous an Error. But for that Mr. Recorder did *ex animo* espouse that Opinion, as if no Man were in his right Wits, that did not concur with him in Opinion, and as if there were something in it indeed, hath laid his main Stress upon it, and erected it as his *Palladium* to defend the City by. And probably this Image (for, if examined, I fear it will prove no other than a Work of Imagination) may make that Impression upon some Men, that, conceiting themselves to be Citizens and Aldermen of an invincible and immortal City, incapable of Dissolution, they may dream of being an independent Commonwealth within a Kingdom, and unaccountable to the King, or his Laws. It is therefore made necessary for me (with your Leave) to mispend some of your Time in speaking again to this Point; which I shall do,

1. By briefly stating what this Right is, whence it ariseth, and for what Purpose it was framed or introduced.
2. I will examine the Reasons and Grounds produced by Mr. Recorder, why it cannot be forfeited.
3. Then I shall offer the Reasons and Authorities of Law, that it may and hath been forfeited and seized into the King's Hands.

In speaking to all which I will not so far distrust the Memory of the Court, as to repeat what hath been so well urged by Mr. Solicitor from Reason and Authorities, but shall endeavour to avoid it what I can.

1. As to the first thing proposed, This Right of a Corporation, aggregate of many, (to which I shall confine my Discourses, being the only thing under Consideration) is a Right granted to many natural Persons to be, have, enjoy, and act as one Body and Person. It confers *jus Personæ, & Personam efficit*, which our Law Books express by the Names of *Persona Politica*, and *Corpus Politicum*, and, as such, is capable of all Civil Rights, both *habendi & agendi*. The Instruments of Creation of this Right, and the Claims thereof upon Pleadings, do best declare the Nature of it, viz. *Quod homines Inhabitantes, Cives, Burgeses*, or such other general Name, describing the Persons who are to take, *sunt unum Corpus Corporatum re, facto, & nomine*. And when Prescription is made for a Body Politick, &c. *Quod Homines & Cives, or Homines & Burgeses sunt, & à tempore cujus, &c. fuerunt unum Corpus Corporatum re & facto per nomen*—So that it is something more than a Notion, or mere Name, *Corpus Corporatum* fully expresseth it, a Body made up of several visible Bodies *in unum collecta, & vinculo Juris unita*. And a Corporation is every whit as visible a Body, as an Army: For though the Commission or Authority be not seen by every one; yet the Body, united by that Authority, is seen by all but the Blind; and if the King or the Law demand the Authority, it must be produced and shewn, and is as visible in the Eye of the Law, as any other

other Right whatsoever, whereof natural Persons are capable. It seems strange, and almost beyond all Excuse, that the Recorder of *London* should never have seen that great Body Politick assembled; unless he will excuse himself, that he is the Mouth of the City, and not the Eyes. Sir

James Bagg's Case, Co. 11. b. allows it to be such a Right, that every Member, separately considered, hath a Freehold therein; and all, jointly considered, have an Inheritance which may go in Succession.

It is the same Right which the Civilians style *Collegium*, or *Universitas*, and so styled here in *Bracton's* time; *scil. Si Rex concesserit alicui—Universitati, sicut Civibus vel Burgensibus.*

Natural Persons, as such, are capable of taking and holding this Right. It is neither taken nor held in their Politick Capacity, but their Natural; for many Men, as Men, are capable of Union, which is evident by the Charters of Creation, and the Pleadings in all such Cases; it is *Homines & Burgenses, Homines & Cives*, who are constituted *unum Corpus Corporatum*. And as the Natural Persons are an essential Part constituting the Body Politick; so all the Operations and

Exercise of this Right are only performed by the Natural Persons, 21 *Ed. 4. fol. 14.*

That Book, and other Authorities, are express in the Point; though in a Case so evident, there needed no Authority. And therefore when the Question is of *Non user* or *Abuser* of Franchises by a Corporation, it must of Necessity be intended for some Acts or Negligence of the Natural Persons, or those Officers that are employed by them. And the Question will rest only upon this, What Acts, or what Omissions of the Natural Persons, will affect this Right, wherein all the Members of the Body have an Interest?

This Right is merely of human Institution; and therefore as to its Birth, Form, Extent, or Limits, is directed and supported by the municipal Laws of each Country, and therefore for that Reason is styled by our Books *Political*. By the Constitution of our Laws, this Right, as all Jurisdictions and Franchises, is lodged in the Crown, and thence only is derived. *Bracton* upon the Question, *Quis concedere possit libertates, & quibus, & qualiter transferuntur?* thus resolves it: *Dominus Rex habet omnia Jura in manu sua, quæ ad Coronam & Regalem pertinent potestatem, & Regni gubernaculum; habet etiam Justitiam & Judicium, quæ sunt Jurisdictiones; habet etiam ea quæ ad Pacem pertinent. Ea quæ dicuntur Privilegia, licet pertineant ad Coronam, possunt ad privatas Personas transferri, sed de gratia ipsius Regis speciali.*

And then sheweth, that such Grantees as Usufructuaries may enjoy them, *donec amiserint per abusum vel non usum.* The whole Current of our

Books to this Day concur with this ancient Author in this Point, That none can make a Corporation, but

the King; such Power cannot be prescribed for, it is so inherent to the Crown. The principal Case was of the Whitelawes in *London*, who prescribed, That by the Custom of *London*, the Men of any Art or Mystery might act as a Guild or Fraternity, and were capable of a Devise; and plead their Custom confirmed by several Charters; and, no doubt, would have pleaded some of the Acts of Parliament now pleaded, if the learned Coun-

sel had then thought there had been any thing of Force in them. Judgment was given against them, for that none had such Power but the King. In that Case it appears, that the Abbot and Prior of *Westminster* were one entire Corporation, and divided by the King, and, after the Severance, a *Quære impedit* maintained by the Prior against the Abbot.

Some Corporations are by the King alone, as Dean and Chapter, Mayor and Commonalty; some by the Pope alone; some mixt, by the King for their Temporal Possessions, by the Pope for their Spiritualities. Whether the King grant them by Charter out of Parliament, or in Parliament, or by Act of Parliament, the King is still the Donor, and the Fountain and Spring from which this and all other Liberties flow. A Title by Prescription always supposeth a Grant in or out of Parliament, and is allowed by Law for supporting long Possessions, grounded upon ancient Grants before, time out of Memory; but by what Title soever these, or any other Rights are derived down, whether Grant or Prescription, their Natures remain the same, and they are governed by the same Rules of Law, and are equally subject to the like Civil Accidents, the one as well as the other.

The last thing inquirable into this Head is, To what End and Purpose such Corporations were elected, and allowed by the Policy of our Laws.

The general Intent and End of all Civil Incorporations is in order to better Government. Government relates principally either to Persons or Things: That which relates principally to Persons may be properly called General Government; because, properly speaking, Persons only are the Subjects of Government. That which relates to Things is called Special Government, because limited to the Managery of particular Things, as Trade, Charity, and such-like; for the Government whereof several Companies and Corporations for Trade were erected, and several Hospitals and Houses for Charities. Of this Nature are the *Trinity-Houses* for regulating Navigation; and so the College of *Physicians*, the Corporation of *Parish-Clerks*, and a Multitude of other Special Corporations in *England*. The only End of erecting these Special Corporations was, for the better Order and Government of the several Matters specially committed to their Care.

The Corporations for General Government only, are those of Cities and Towns, Mayor and Citizens, Mayor and Burgeses, Mayor and Commonalty, and such-like. The Corporations, as they are for the Government of Men only, having nothing specially committed to their Care upon the Incorporation, so they are erected for no other End or Purpose than Government. And if either at the Time of the Incorporation, which very few are, or afterwards, they have any Special Matter committed to their Care, it is purely collateral to the Ends and Design of erecting these sort of Incorporations within Cities and Towns. This appears by the Charters of Creation both ancient and modern; the Form is much the same, which is after this manner: *Nos volentes, quod de cætero imperpetuum in eadem Civitate, Burgo, aut Villa [as the Case is] Libertat' & Precinct' ejusdem habeatur unus certus & indubitatus modus pro custodia pacis nostræ, ac pro bono regimine*

mine & gubernatione Civitatis, Burgi, & Villæ, ac Populi ibidem inhabitantium, & aliorum illic confluentium; & quod Civitas, Burgus, aut Villa, pace, concordia, & quiete sint, ad formidinem & terrorem malorum delinquentium, & in præmium bonorum; ac etiam ut pax nostra ceteraque facta justitia & bono regimine ibidem melius custodiri valeant & possint. These are the Grounds upon which Corporations are erected.

The Limits and Extents of their Corporations, and Jurisdiction, are limited by their Characters; and there is a plain Difference made in many Charters between this and other Liberties, as to the End of granting; this being erected only *pro bono regimine*, being a Burden, and chargeable in the Execution of that publick Trust. Many other Liberties and Privileges, both of Ease and Profit, are granted to them *pro meliore sustentatione* of those Charges, which the Government would necessarily require. Since the Statute of *Mortmain* they cannot purchase without a special *Non obstante*. They cannot engross Trade, by excluding Foreigners; *Norris* and *Stap's Case*, *Hob. 211.* So that no private Benefit can be assigned to be the End of erecting them. The Power of making By-laws, which is incident to a Corporation, is only for better Government; and by that Rule they must be judged.

Having considered the Nature of a Body Politick aggregate, whence it flows, and for what Purpose it was erected,

2. I proceed to examine the Grounds and Reasons produced, why it cannot be forfeited, or seized into the King's Hands.

Many things were produced by Mr. Recorder, to make good his Assertion, more *ad captandum populum*, than to persuade a Court of Law. I will not mispend your Time in perusing the jocular Part of the Argument, which may make the Citizens smile one way, and the Learned in the Law another way; but I shall collect together what seems to have any Force of Argument. The Grounds the Argument went upon seem to be these:

- (1) That a Corporation is no Liberty or Franchise, but a mere Capacity of suing, and being sued.
- (2) That a Corporation, in its Nature, is not capable of being forfeited or dissolved.
- (3) That it cannot be surrendered.
- (4) That the Forfeiting or Dissolving of any Corporation was never put in Practice, nor so much as ever came within the Compass of any Man's Imagination.

(1) As to the first, *A Corporation is no Liberty, but a Capacity*. Now it is proved, even just as all the rest will appear to be proved, by strong Averments, and Quotations of Books that prove no such thing. The Authorities were 1 *Inst.* 250. *Bro. Tit. Corporation and Capacities*. In the Institutes the Words are, *A Body Politick is a Body to take in Succession, framed as to that Capacity by Policy*. The Authority is express against him, that a Body or Person Politick hath a Capacity to take in Succession, and is not a mere Capacity; and the other Words of the same Author are, *And made into a Body and Capacity to take and grant*: So that this Authority fails; it neither proves it no Liberty, nor to be a mere Capacity.

That of *Bro. Tit. Corporation*, proves less; for *Capacity* is of larger Signification, and incident

to Natural Persons, as well as Corporate Persons; and such Instances are set down under that Title of *Alienees, &c.* and it is a great Imputation to the Memory of so learned a Person, that he should think, that *Corporations* and *Capacities* were synonymous, or that he should tautologize in a Title in an Abridgment.

The Definition Mr. Recorder gives of a Corporation, that it is *a Capacity of suing and being sued*, which served him for many a Jest in his Discourse, is no better than to define a Man to be *Animal bipes*, or, which is nearer, a mere Capacity of walking with two Feet. Although the Authorities fail, and prove not the Matter, yet it is of that Importance to the Cause, that a Corporation be no Liberty, that something must be thought upon to make it out. For if it be admitted to be a Liberty, the Authorities will be too strong, that every Liberty and Franchise carries with it a Condition, that it be used, and well used, the Breach of which will amount to a Forfeiture. And therefore, when nothing else can be found to prove it no Liberty, recourse must be had to the negative Argument, backed with strong Averments, that it was never so styled in any Authority of Law, except in one Case, in the Town of *Helmshy*, *Co. Ent. Q. W. Co. Ent. Quo Warranto*, and Mr. *Noy's* Opinion in *Hayward* and *Fulcher's Case*, grounded only upon the Case of *Helmshy*. But one Swallow makes no Spring; and it was well Mr. Recorder spied it in that Case, otherwise the Averment had been without any Exception.

If the Point had rested upon that Precedent, and Mr. *Noy's* Opinion, it would have better Authorities for it, than any could be produced against it. But there are Multitudes of Authorities, whereby Corporations are not only called, but appear to be Liberties and Franchises; several have been cited by Mr. Recorder, but not seen, or overlook'd by him.

In the Case of *Cusack* and others, in all the Parts of the Record it is styled a Franchise or Liberty; and particularly in the Continuance, *Curia advisare vult*, and time taken to advise upon it as a Liberty. So in the Case of *Farrer*, and others of the *Virginia Company*, throughout the Record styled a Liberty and Franchise, even in the Judgment itself. Mr. *Noy* knew of these Cases, and many more before this time; but knew it to be the Guise of learned Men, in clear Cases, and of daily Experience, not to repeat many Authorities.

The Records of the Cases cited by Mr. Recorder of the Borough of *Hebmerly*, the Case of the *Musicians*, and *Bermudas Company, &c.* do all call it a Franchise or Liberty. The Cases I have already cited do so too; Against the Bailiff and Burgesses of *New Malton*; against the Mayor and Commonalty of *Canterbury*; against the Portreve and Burgesses of *Chard*. Many more I have perused, but conceive it too much to trouble the Court with them at present. It is certainly true in all the Records of *Quo Warranto*, where-ever there is a special Article against a Corporation for being a Body Politick, it is always impeached by the Name of a Franchise and Liberty; and Multitudes there are of that Nature. And in so clear a Case

Pat. 17 Jac. 1.
Ret. 2.

Mich. 2. Jac. 1.
R. 39.

T. 6. Jac. 1. R. 1.
Hil.

2 Car. 1. R. 25.
P. 5 Car. 1. R. 25.

a Case I omit to mention the Writs of *Non omit-tas*, for entering into Corporations, and the Returns of their Bailiffs; which make out evidently, that Corporations are Franchises, and the Limits of the Corporation; and Limits of the Franchises are all one.

(2) The next Argument is drawn from the Nature and Qualities of Bodies Politick; That they are invisible, immortal, impeccable, and therefore impatible, with a large Jargon of *non ens, & ens rationis*. Certainly this Argument was fetched from the Clouds at the City's Charge; and it cost them dear: For I cannot believe it could enter into the Reason of any Man, much less of learned Men, that a Body framed by the Policy of Man can be immortal; or that a Body, compacted of many bulky visible Bodies, can be invisible; or a Body, whose very Parts and Members are mortal, is in its own Nature immortal. Mr. Recorder admits, that the Death of all ends the Corporation; and therefore if any learned Men have used such hyperbolical Expressions, most certainly they never intended the Citizens of London, or other populous Town or City within England, of whom the Question is, but of some Corporation in Utopia, where the Citizens neither eat, drink, nor die, or at least of some Corporation, that never had other Existence but in the Brain.

The Authorities cited were *Co. 1. Inst. 9. Bul-frod. 233. 21 Edw. 4. 13.* and many others; and many more might have been cited, and to as much Purpose; as *Co. 10. fol. 32. Sutton's Hospital*, brings in a whole Regiment of Authorities speaking to the same Purpose. I do not remember that Book was cited, and there was Reason for it; for in Conclusion it spoils the Argument, *viz.* that these Expressions are of Corporations in Abstracts, not coupled with particular Men of this or that Town, where the Men act all, and the Corporation doth nothing otherwise than what the Men do. If it be considered abstracted from particular Men, it is but a bare Right, and coupled in the Notion of it with Men in general, who are the proper Subjects of Government, and remains only in Notion, and may well enough sustain these Epithets which have been given it, as all other Rights and Notions may; but whilst it remains such, it can no more sue or be sued, than commit Treasons, Felonies, Riots, or other Trespases, either against the Government or particular Men; neither hath it any Existence *in re & facto*, but in the Brain.

The Case indeed that is cited *1 Inst. 9.* is applicable to any particular Corporation; the Case is thus put: If a Man gives Lands to a Mayor and Commonalty, or other Body aggregate, consisting of many capable Persons, without naming Successors, the Law construes it a Fee Simple, because in Judgment of Law they never die. If this be any Authority, it is from the Immortality of many Persons capable, for they are the Persons who are said in Judgment of Law not to die. Where my Lord Coke's Sense is plain, that these natural Persons, though capable to take in their natural Capacities jointly, which the Law would adjudge an Estate for Lives; yet the Grant being made to them by their Corporate Name, they take in that Capacity, and the Grant is not determinable upon their Death, but shall continue with the Corporation whilst it continueth. That my Lord Coke never dreamt of Immortality of a Body Poli-

tick, fully appears in his Writings: *1 Inst. 13.* where he puts the Case insisted on by Mr. Recorder of a Dissolution by Death of Abbot and Monk. He after puts the Case generally of other Corporations, as Dean and Chapter, Mayor and Commonalty: If Lands be given to them, and the Corporation be dissolved, the Lands shall escheat to the Donors, upon a Condition in Law: in the first Grant, if the Law raise such Condition upon Grant of Lands, much rather doth it upon the Grant of the Incorporation, where the Intent of the Donor is as special; and upon a greater Trust. That my Lord Coke understood it of other Dissolutions than by Death only, he refers in the Margin to the Case of the Knights Templar, which was not dissolved by the Death of the Members. That Corporations were dissolved many Years before the Statute *De terris Templariorum, 17 Ed. 2.* the Statute recites, the Corporation was dissolved, and that the King and several other Lords had entred upon all their Lands and Escheats: The Judgment of the Parliament was; they were well dissolved, and the Lords well intitled by Escheat; as the Law stood; and therefore by Act settles them upon the Hospitallers. This Corporation was dissolved by the Pope, and upon the Ground of *Non user*. The End of their Corporation was for guiding Christian Pilgrims to the Holy Land and Jerusalem, which the Saracens and Turks having over-run, and possessed themselves thereof, the Members of the Order never came there, but disposed of themselves in several Parts of Christendom. The Order was created by Pope Honorius, *21 H. 1. Anno 1120.* and was dissolved by *Clemens Quintus, 4 Ed. 2. Anno 1311.* thirteen Years before the Statute; and their Spiritual Corporation, which was the Principal, being dissolved, the Power of holding Lands, conferred by Temporal Princes, determined, *2 Inst. 431. & H. 432.*

1 Inst. fol. 102. the Case is put where the Tenant held by *Homage Ancestrel* of a Body Politick dissolved; the Homage is gone, though a new Corporation be founded by the same Name. That my Lord Coke never entertained such an Opinion, appears by his Argument in the Case of the Dean and Chapter of *Norwich*, when Attorney General. His Mistress's Heart was much upon that Case to preserve their Lands; and it was well argued by Mr. Attorney, and no doubt well studied; but this Topick, from the Indissolubility of Corporations, never came into his Head. Besides the Statutes of Confirmation; he insisted upon these things: *First*, That the Words of the Surrender were not sufficient to surrender the Corporation; *Secondly*, That they were the Bishop's Council, and in some sort one Corporation with him; *Thirdly*, From the great Mischiefs which would ensue. This new Invention alone would have done the Business, if he had been so fortunate to have found it out; or if any of the Judges had thought of it, they would not have gone about it so long, as at length to ground their Resolutions only upon the Points which did arise upon the Statutes. *Fitzherbert* is of the same Opinion, That if an Abbey be dissolved, a Presentation shall escheat to the Lord of whom it was held. Fitzh. N. Brev. fol. 33.

(3) The next Argument produced by Mr. Recorder was; *That a Corporation could not be surrendered;* upon which Head I will not entertain your Time, for

for these Reasons: *First*, Because it was not to the Question, and that Mr. Recorder admits, that many things may be forfeited, which cannot be surrendered; *Secondly*, Because the Point may come judicially into Debate, some Dillike having been taken to Surrenders lately made; and I choose to refer myself to that Question which comes properly in Judgment; *Thirdly*, But my last and principal Reason is, that he hath produced no Authority of Law to make good his Assertion.

The Authorities of the Cases of the Dean and Chapter of *Norwich*, *Mich. 40 & 41 Eliz.* and *Hayward* and *Fulcher's Case*, *Hil. 3 Car. 1.* which both relate to the same Surrender, and are in effect the same Case, only in the latter Case the Surrender is disclosed to the Court to be larger than did appear in the former Case; and though many Books are cited, yet they all contain but these two Cases, which make strongly against him. For throughout these Cases, both in stating the Question, Arguments of Counsel, and Resolutions of the Judges, it is plainly admitted, that a Corporation might be surrendered. Otherwise the stating of the Question in the first Case, upon the Effect of the Words in the Surrender of *all their Possessions and Cathedral Church*, Whether sufficient to surrender the Corporation? and the Arguments thereupon, and the Resolution of the Judges was needless; but it was plainly admitted, that a Corporation may be dissolved; and it was the Common Law Point they did resolve, that they were all idle and illusory. And so in the second Case,

Palmer 507.
Jones 168.
Palmer 503.

Whether the Dean and Chapter, without the Bishop, could surrender the Corporation? it is all along admitted, both by the Counsel upon the Grounds they went upon, and by the Judges in their Resolutions, that it might be surrendered, *concurrentibus his que in jure requiruntur*; and therefore, by the Resolution of the Judges, it could not be done without the Bishop, because he had an Interest in them. And when *Whitlock* in his Argument had recourse to a more general Reason, which was, That the Surrender could not be good, because then they should be *Felo de se*, which is against Nature; *Jones* takes him up, and flatly denies it, and saith, That a Dean and Chapter might dissolve themselves by *Cesser*; or if all die, or resign, the Corporation is dissolved; but concurred with him, that the Surrender did not dissolve it, because the Bishop was no Party, nor consenting; and in the End *Whitlock* concludes his Argument, that it could not be done without the Bishop. And the Saying of *Whitlock* in that Case, *That the King may grant, but not dissolve a Corporation*, is certainly true in the same Sense as it is of Lands, and all other Rights whatsoever; the King may grant, but cannot resume without Cause; yet all may be forfeited upon due Cause, and by Judgment of Law returned to the King.

(4) The last Topick of Argument, by which Mr. Recorder concluded a Corporation cannot be forfeited, is a *Non user*; because never any Corporation was forfeited, nor did it ever enter into any Man's Imagination, that it could be forfeited. This indeed doth put the Proof upon me; and Mr. Solicitor hath already made it out with great Learning, by several Instances of Corporations seized into the King's Hands for Forfeitures committed by them; some by Judgments,

others by Inquisitions finding those Forfeitures. But Mr. Recorder with one Blast hath blown them all away, that they are but mere Sounds, and look big with Seizure, and seizing of Liberties into the King's Hands, but, when strictly examined, they are of no Substance; and the Fruit of all the Examination ends in a Difference he hath found out between *Seizures* and *Forfeitures*; much such another Difference as was that between a *Liberty* and a *Capacity*, upon which the whole Weight of the Argument turned, *That a Corporation was no Liberty, but a Capacity*. And if so little a Distinction be enough to answer the Weight of Mr. Solicitor's Arguments, it will be in vain for me to attempt further Instances, unless I can reconcile this little Difference, and shew it to be as ineffectual as that between a *Liberty* and a *Capacity* was before; and therefore I crave leave, in the first place, to examine this short Answer to so many and so great Authorities.

It is objected, That those are Precedents of Seizures, but not of Forfeitures; for Seizures in the Case of the King's Suits, and of the Bishop's Temporalities, are of the same Nature as Seizures upon the *Grand Cape's* and *Disfringas* in Suits between Party and Party, only to answer Issues. And when Liberties of Towns are mentioned to be seized, the Towns only are seized, and not the Corporation, which remains *in statu quo*; but where a Forfeiture is, there must be Judgment of *Ouster*. Every Sentence almost of this Answer is contrary to all the Books and Records of Law, that I know of. The Authorities cited to prove the Differences are *Nat. Brev. fol. 161, 162.* which saith, Inquire into the Causes of Seizures, and Causes of Forfeiture; but what these Causes are, which may be Causes of one, and not of the other, are not disclosed. But my Lord *Coke*, in the Countess of *Shrewsbury's Case*, determines the Difference, and makes them all one. There are, saith he, three Causes of Forfeiture or Seizure of Offices for Matter of Fact, *Abuser, Non user, and Refuser*. He makes the Causes of both to be the same: Forfeiture is but the Fact upon which the Seizure is grounded, where the Subject hath Title of Entry for a Forfeiture, in the Causes of the Entry, different from the Causes of the Forfeiture. So in the King's Case, where Liberties are seized for an *Abuser*, whether it be by Judgment, or upon an Inquisition, or Presentment, finding the Abuse; can it be a Question with any learned Man, but the Seizure is for the Forfeiture? The King cannot seize without Cause, and the Cause must be some Fact in Breach of the Condition in Law annexed to the Liberty. The other Authority produced is of the *Quo Warranto* against *Roger Mortimer*, cited 2 *Ed. 3. 29. in Strata Marcella, Co. 9. fol. 28.* where upon Denial of Aid, and the Defendants not answering over, Judgment was given of Fore-judger of the Liberty, and Error brought; where *Scroop* saith, That in some Cases Franchise shall be put into the King's Hands, in some Cases seized in the Right of the King until Fine; and in some Cases it shall be fore-judged, which holds for ever. I do admit this Case to be good Law, but it makes nothing to the Purpose to prove the Difference; or that Seizures by the King for Misusers are not for Forfeitures, or that Judgment of *Ouster* are only Evidence of Forfeitures,

feitures, or to prove a Seizure in the King's Suit; is of the same Nature as the *Grand Cape* or *Distingas*, upon mean Proceſs in the Suits of common-Persons. And because neither the Book Cases, nor Mr. Recorder have given any Light into the Cases, which may vary the Judgment in a *Quo Warranto*, I will endeavour to ſtate the Matter, how it ſtands upon Seizures of Liberties:

1.) Liberties may be ſeized into the King's Hands by Award of the Court, which in that Book is ſtyled, *Put into the King's Hands*; and that in two Cases principally:

Where the Defendants are ſummoned to appear at the King's Suit, and make Defaults.

Where a Contempt appears upon Record, in returning or executing the King's Proceſs.

I ſhall give Inſtances of each. For the latter; 2 *Ed. 4 fo. 5.* in caſe of Bailiffs, upon Error, the Bailiff appeared, and prayed a Day to bring in the Record; they failed at the Day: The better Opinion is, their Franchiſe ſhall be re-ſeized. And *Lawſon* there ſaith, If a Lord of a Franchiſe do any Treſpaſs, or Contempt to the King's Court, it is Cauſe in the ſame Court to reſeize the Franchiſe. For the former, 15 *Ed. 4. 6. in Quo Warranto*, if the Defendant appear not at the Day, the Liberties ſhall be ſeized; and if he do not replevin them, as in *Eyre*, they ſhall be abſolutely forfeited; for the Statute of *Quo Warranto* directs the King's Courts to proceed in *Quo Warranto* as in the *Eyre*.

Trin. 16 Jac. 1. Brigg's Caſe, in *Quo Warranto*, the Defendant appeared not at the Day; the Liberties were ſeized, *Roll. Rep. 2 part. fo. 46.*

Trin. 17 Jac. 1. Roll. 2. part, 92. Quo Warranto againſt the Mayor and Burgeſſes of *Wygmore in Com. Lancaſt.* upon Default made at the Day, it was agreed by the Court, That if they ſhewed not good Cauſe to excuſe their Default, their Liberties ſhould be ſeized into the King's Hands: This being in the Caſe of a Corporation, the *Capias in manus* ſhould be of the Politick Perſon which made the Default. Where Seizure is by Award of the Court for a Contempt in Court, the Court may admit the Parties to affix and order Reſtitution; ſo where by Award of the Court, on Default of Appearance at the King's Suit, a Seizure is made, which is in Nature of a Diſtreſs, to bring in the Party, by putting him out of the Poſſeſſion of the Liberty, till he appear and replevy; the Court, if the Defendants come in time, and pray it, may deliver them the Poſſeſſion upon Replevin; and this by the new Statute *de Quo Warranto*, 30 *Edw. 1.* Before that Statute the general Writ of Summons to answer to Liberties, as alſo the particular Writs of Summons upon the King's Special Suits, ſuperſeded the Uſe of any Liberty till the Juſtices met on the Day of Return. Which Miſchief was remedied by that Statute; if they appeared not at the Day, the Liberties were to be ſeized in Nature of a Diſtreſs, to enforce their Appearance. And upon Appearance, if they demanded to replevy them, the Judges might deliver back the Poſſeſſion of the Liberties, upon Security to proſecute their Claim, and answer the mean Profits, if any, in caſe Judgment were againſt them; much in the ſame manner as the Practice is in the Court of *Exchequer* upon all Seizures to this Day, by the Seizures the King is in Poſſeſſion: But if the Party appear and plead,

and put in Security, he is by Rule of Court permitted to receive the Profits. But this Statute not limiting any Time for his Appearance, or to reply; that remained as it did before upon the old Statute of *Quo Warranto*, 18 *E. 1.* which refers to the Practice in *Eyre*: So that if the Party did not Replevin in Time, the former Seizure would amount to a Seizure after Judgment by Default, which is final.

2.) Again, Liberties are ſeized into the King's Hands by Judgment of Court in the King's Suits, whether the Judgment be by Default, or *Nihil dicit*; upon Demurrer, or Iſſue tried, this Judgment is final, and the Court cannot admit to a Fine, or award Reſtitution, unleſs upon Error brought. This Court is to ſet the Fine upon the *Caſiatur*, but not the Fine for Redemption; that is purely in the King's Breſt, & *ex gratia Regis*. There is no ſuch formal Judgment of Seizure until Fine; but this upon Judgment and another Seizure upon Inquiſition, or Preſentment, which I ſhall mention, are the Seizures in the King's Right, repreſented in *Mortimer's Caſe*, but frequently entered *quouſque Dominus Rex aliud præceperit*. What was intended by a Judgment of Ouſter in that Book, and in what Caſes by the Courſe of the King's Courts it ought to be, will beſt appear by an ancient Rule, taken and agreed by the Judges in *Edward* the Fourth's Time, before they were promiſcuouſly uſed. The Rule is thus: Where it clearly appears to the Court, that where a Liberty is uſurped by Wrong, and upon no Title, either by the King's Grant, or otherwiſe, there Judgment only of Ouſter ſhall be entered: But where it appears, that the King or his Anceſtors have once granted a Liberty, and the Liberty be miſuſed, Judgment of Seizure into the King's Hands ſhall be given. Theſe Rules carry their own Light with them: That which came out of the King's Hands, as *Bracton* uſeth the Word, is properly returned there again by Seizure, or (as our ancient Books phraſe it) by Re-ſeizure. But that which never came thence, but merely uſurped upon him, ſhall be vacated, and by Judgment of Law declared null and void.

There is another Caſe, which is there likewiſe reſolved, and that is, where it is doubtful to the Court, whether the Liberty commenced by Grant, or by Wrong; that for the Uncertainty the beſt and ſafeſt Courſe is, that Judgment be given of Seizure. This laſt Caſe was the principal Caſe in that Book, the Queſtion ariſing upon a Default, What Judgment ſhould be given? and by that Rule Judgment was given of Seizure, not of Ouſter. And agreeable to theſe Rules; all the Judgments which I have met with have been given; and this Courſe hath been found moſt beneficial to the Subject, who, though by Forfeiture, Miſpleading, or Default, he may loſe his Liberty, may have recourſe to the King's Mercy for Reſtitution.

In the Caſe of the Bailiffs and Aldermen of *New Radnor*, which was by Default, Judgment of Seizure only was given. Mich. 20 Jac. 1.
Rot. 17.

In the Caſe of *New Malton*, though the Iſſue, that the Corporation was by Preſcription, was tried againſt them; yet having long acted as a Corporation, they might have miſpleaded their Title, as the City of *London* hath done, in claiming that Trin. 6 Jac. 1.
Rot. 3. by

by Prescription, which commenced by Grant within Time of Memory, Judgment only of Seizure was given, and not of Ouster. In all Cases of Disclaimer, Judgment only of Ouster shall be given; upon the same Rule Judgment only of Ouster was given in the Case of *Staverton*, reported in *Yelverton* and *Crook*: But the Entry there is mistaken; for it is entered *Mich. 8. Jac. I. Rot. 2.* for it appeared to the Court, that it was a mere Usurpation without Title; for that no such Court as he claimed, could be gained by Prescription, nor indeed by Grant, through the Meanness of his Estate. Mr. Recorder insisted upon this Judgment, as a Measure for all Judgments upon Forfeitures of Liberties, but plainly mistook the Reason of it. Upon the Reason of these Rules, in such Cases where Grants do appear, but either the Parties are not capable of taking, or the Liberty granted, not allowable by Law, the Course hath been to enter a mixed Judgment both of Seizure and of Ouster.

Hil. 27 Eliz.
Rot. 15.
Co. Ent. 537.

In the Case of the Inhabitants of *Denbigh*, who claimed by Charter several Liberties; but it appearing they had no Capacity to take, yet the Usurpation being by Colour of Letters Patents, the Judgment was mixed both of Seizure and Ouster; for there was no Possibility of Restitution, because they were not capable.

And in the Case of *Cusack* it appearing to the Court, that the Liberties granted did not pass, nor could be lawfully used; yet the Usurpation being by Colour of a Grant, Judgment of Seizure was given, as well as Ouster, in these Cases, as likewise in Sir *George Reynell's* Case; and by Multitudes of Cases of Offices seized, it appears how vain the Objection was, that the King cannot seize a Corporation, because he cannot have it, or be the Mayor and Commonalty; for not only what the King may have or hold, but what he may dispose of, are in Judgment of Law, said to be in his Hands; and it is the proper Office of the Hand *disponere*, as well as *teneri*. And what but colourably came out of the Crown, though it cannot subsist by Law in a Subject, shall be seized, as in *Cusack's* Case.

3.) In the last Place there are other Seizures, which are by Process by Commission of Inquiry upon Inquisition found, or upon Presentment; and such are always for Forfeitures, upon Faults found in Breach of Conditions annexed by Law. That the King is in Possession of all incorporeal Rights by such Seizures upon Inquisition, appears by the Resolution in Sir *George Reynell's* Case. In these Cases of Seizure for Forfeitures, no Court, or the Lord of the Liberty, whether Body Politick, or Natural, can admit to a Fine, and thereupon make Restitution; neither is there any other way by Law to take off the King's Hands, but by direct Traverse of the Fact, if the Fact found be not true; or by Demurrer, if the Fact found be not in Law sufficient Cause of Forfeiture. The Facts upon which such Seizures have been made, have been generally so notorious, and the Consequence of Law upon them, taken to be so evident, that I never met with any such Inquisition ever traversed or demurred to; but the Application for Restitution hath still been to the King's Grace. And these Inquisitions have been taken either *ex officio* by the Sheriff, or by

special Commissions. The Sheriff by his general Commission is intrusted with the Preservation of the whole County, and the publick Peace thereof.

And though in the Grant of Corporations and other Liberties, there be special Clauses exclusive, *Ita quod, &c.* Yet these Clauses, as the Grants themselves, have another *Ita quod* annexed to them by Law, that they preserve good Government, and do not abuse the Franchise, by committing or permitting Riots and great Disorders in Breach of the publick Peace which if they do, is by Law a *Non omittas* to the Sheriff to inquire and take care of the publick Peace within the Liberty.

The Town of *Hereford* was seized into the King's Hands by the Sheriff of the County, for holding of a Market contrary to the King's Prohibition. Upon Certificate thereof into Chancery, the King's Writ issues to the Sheriff, approving thereof, and commanding him to keep it in the King's Hands, *Donec dominus Rex aliud inde preceperit. Rot. Clauso. 15 H. 3. memb. 7. Hales lib. K. fol. 41.*

Of Seizures made upon Presentments, and Inquisitions taken by Commissions, there are many Instances, some whereof I shall mention when I come to the Precedents. The Seizures upon Judgments, or for a Forfeiture, which are always in the King's Right, do as effectually put the King into Possession, and oust the natural Persons from using the Right, as any Judgment of *Ouster* whatsoever. And the Difference between such Seizures, and those upon the *Grand Cape*, which are only upon Mean Process, and in Right of the Subject, and in his Aid, is too apparent to be further enlarged upon. There is some Resemblance between this Seizure upon the *Grand Cape*, and that in the King's Suit for Default, that Appearance for both are upon Mean Process, and both repleviable, if the Defendant or Tenant come in Time.

There is also a further Resemblance between them, which makes not for Mr. Recorder's Purpose; and that is, in that both are lost for ever, if the Parties come not in Time. For at Common Law, if upon a *Procipe quod reddat*, and the Lands seized into the King's Hands upon the *Grande Cape*, the Tenant makes Default, and come not within forty Days, he could not wage his Law to excuse his Default, but the Demandant should have Judgment to recover the Land presently, *15 Ed. 4. fol. 7.*

The Difference that it was not the Franchise or Liberty of the Corporation, but the Towns themselves were seized into the King's Hand, is as void of Authority as of Law. Sometimes indeed *Civitas & Villa*, in Records, are used promiscuously for the Franchise and Freedom, which is jointly used and enjoyed by the Inhabitants, exempt from the Common Law Jurisdiction: And in such Case, the Seizure of the City or *Ville*, and of the Franchise, is all one; and the Inhabitants thereby put under the Government of the Common Law, discharged of the Franchise. But if the Town or City be taken for the natural Persons who are the Inhabitants, or for the Houses wherein they inhabited, which they must be upon Mr. Recorder's Distinction, otherwise it will be a Distinction without a Difference; neither the Inhabitants nor Houses were ever seized, or could be seized, into the King's Hands upon such Inquisitions as have been found, and Judgments of Seizure that have been given. The only Proof for this Difference was a strong Averment, that whilst the City of

London lay under the several Seizures, sometimes of the Mayoralty only, at other times of the whole Franchise, the Corporation was as vigorous as ever, and in *Statu quo*; not so much as suspended, but did exercise all Corporate Acts as before. An Averment against the express Sense of all the Citizens when under those Seizures, and against many Authorities of Law.

At the Parliament, 18 Ed. 1. the Citizens (for they had then no Mayor) petitioned the King in Parliament, *Quod Rex velit eis concedere pristinum Statum, sc. Majorem & antiquas Libertates.* They petitioned not for their Houses, or the Liberty of their Persons, those were never seized; but to be restored to the Mayoralty, and their ancient Liberties, which were under Seizure in the King's Hands. If the Corporation had been in *Statu quo*, they would not have troubled the Commons to present such a Petition, nor the King to grant so idle a Petition, as *eis concedere pristinum statum*; but they, who knew their Condition better than Mr. Recorder, could admit themselves out of Possession both of the Mayoralty, and their ancient Liberties, and pray to be restored to them. And the King's Answer was, he was not at present advised *statum mutare.* My Lord Coke's Opinion is, that the Chapter, when no Dean, or Commonalty, when no Mayor, have not Capacity so much as to make continual Claim, nor to take by Purchase, nor sue any Action.

If the Commons of London meet on *Michaelmas-day*, and choose a Mayor, the old Mayor not present, the Election is void; and so any other Act without the Mayor. If the Commonalty in the Vacancy of a Mayor make Obligation under their Common Seal, it is void; how much stronger will the Case be, when the whole Franchise is seized?

I have now removed the Objections which lay in my Way, by opening the Nature and Effect of Seizures of Liberties into the King's Hands, and where Judgment of Seizure, and whereof Ouster are properly given; whereby it may appear, that this special *Capias* of *Capias in manus Regis* is as proper an Execution against the Body Politick, as the common *Capias* against the Body Natural; and in Judgment of Law the Politick Person is as properly said *civiliter mortua* by Judgment of Seizure, as the Natural Person is said *civiliter mortua* by Judgment of any Attainder for any capital Offence. Mr. Recorder acknowledges, that in case of Natural Persons, when the Law gives Forfeiture of the Body, or of the Liberty of the Body, it is all one in Judgment of Law; the Law is the same when it speaks of Bodies Politick, to forfeit the Liberty of the Body Politick, and to forfeit the Body Politick.

3. My Way thus cleared, I will lay down the Grounds and Reasons of Law, upon which I conceive with some Clearness, that Corporations may be forfeited and seized into the King's Hands, as well as Offices, or any other Liberties whatsoever; and then shall instance in some further Precedents, whereby it will appear they have been forfeited and seized. My Grounds are principally these:

(1) That there is a Condition in Law annexed to the Franchise of a Corporation upon its first Erection, as strong, if not

stronger, than to any other Franchise or Liberty whatsoever.

(2) That there is nothing extraordinary or peculiar in the Nature of a Corporation, to hinder taking Advantage of the Condition broken, or to exempt it from the common Condition of other Liberties in Consideration of Law.

(1) As to the first, Where-ever the Law introduceth or alloweth any Right upon a Trust, or for the Benefit of the Publick, it implies a Condition, that the Trust be discharged, and the Ends of its Creation complied with. This Condition implied by Law is of stricter Obligation than Conditions express; it shall bind Infants and Females Covert, 8 Co. 44. The principal Case is of Offices; but the Book saith, *So it is of all Liberties and Franchises.* And indeed throughout our Books, the Cases of Offices of Publick Trusts and Franchises run parallel; and the greater the Trust is, or of greater Necessity to be performed, the Condition is still the stricter. And therefore in Franchises, as well as Liberties, if the Franchise be for the better Administration of Justice, and of Necessity, *Non user* will be adjudged a Breach of Condition; but where not of Necessity, bare *Non user* will not be a Breach; yet *Refuser*, which is an obstinate and wilful *Non user*, may be a Breach; but in case of all Liberties and Franchises whatsoever, *Abuser* was ever judged a Breach of the Condition. This Matter, upon the Question of Forfeiture of an Office, is well stated in the Countess of *Shrewsbury's* Case, 9 Co. 50. Now this Franchise of a Corporation is granted upon a far greater Trust and Confidence, than any other Liberty whatsoever, as I have already shewn; *viz.* For the Government and Peace of the Inhabitants, and others coming within the Liberty of the Franchise, in Subordination to the general Government of the King; and that they are intrusted therewith by the King upon the publick Account of Government only, and not for any private Respect or Benefit whatsoever. Other Franchises are either subordinate and auxiliary to this, as to hold Courts, have Gaols, and such-like, for the better Administration of the several Parts of Government; or else are of Profit or Ease, *pro meliori sustentatione* of the Charge and Burden of this subordinate Government. And therefore *Banks*, in the Argument of *Hayward* and *Fulcher's* Case, *Palmer* 495. calls it the *Principal Liberty*, and other Liberties the *Accessories.*

In the Case of Knights Templars, the Corporation was dissolved upon *Inst.* 432. the Account of *Non user*, though without their Default; but the End of their Institution ceased. The Case is much stronger where it is a voluntary *Cesser*, as where the Abbots and Monks put off their Habit, and leave their Houses; this *Non user* will be a good Cause of discharging the Order. Where the Commonalty have Power to choose every Year a Mayor, if they do not choose a Mayor, their Franchise shall be forfeited, or they may be fined, upon this Reason, that common Justice fails for want of such an Officer, which was a Breach of the Condition annexed to their Liberty by *Non user*, 21 E. 4. 14. It appears by this Case, That the Commonalty, in the Vacancy of a Mayor, are to this Purpose a Corporation, to choose a Mayor to perfect the Body; and 'tis the only Corporate Act, that they are by Law enabled to do

do without a Mayor; and this Right may be forfeited too. And as by never choosing a Mayor, they themselves would dissolve the Corporation; so by forfeiting their Right, it is in the Power of the Law to dissolve them. It also appears expressly by this Case, that the King may proceed either for a Fine, or upon a Forfeiture, as he may do in the Cases of all Offices and Franchises whatsoever, as he shall be advised.

If *Non user* in some Cases (as I have shewn) will forfeit a Corporate Right, no Shadow of Reason can be offered, why *Misuser* or *Abuser* will not do it as well as in all other Liberties. For as greater the Trust is, or stronger the Condition, so an *Abuser* of that Trust is a far greater Breach of the Condition, than a simple *Non user*. Single Bodies Politick have indisputably such Conditions annexed to them upon the Trust of their Creation; and the Breach of the Condition is in Law good Cause of separating the politick Person from the natural, by Deprivation, which in the Civil Law is of the same Effect as Judgment of *Ouster* by the Common Law; and their Suspension hath some Resemblance with our Seizures into the King's Hands. If Mr. Recorder had but observed the different Laws that Spiritual Corporations and Civil Corporations are guided by, he would not have raised his Wonder to that Height, that *Quo Warranto's* were never brought against Monasteries, Bishops, Deans and Chapters, Parsons and Vicars, and that bringing it now against City of London threatened the whole Hierarchy of the Church; when, with his Leave, all these, if they offend, may by Law lose their Corporate Right, which may be severed from them by a certain Instrument called *Deprivation*, the Edge of which is no sharper than Judgment of Seizure, or *Ouster* in our Law. And certainly the Union between the politick and natural Body is as close and as strong in single Corporations, as in aggregate; and the same Authors have bestowed upon them the same Epithet, and that they cannot commit Treason and Felony; and the Body Corporate of the Bishop, Parson, Prior, Alien, &c. is as invisible, immortal, and as politick as that of aggregate Bodies. Yet not only Reason and Felony, but far less Misdemeanours committed by the natural Persons will forfeit the Corporate Right, and amount to a Breach of the Condition annexed by Law. So little Crimes, as Waste, and wilful Dilapidations, will be Causes of Forfeiture; many of the Cases thereof are put in Sir James Bagg's Case, to which I refer, 11 Co. 98. For I do take that Case to be an express Judgment in Point, That there is a Condition annexed by Law to every Corporation, and that the Breach thereof is a Forfeiture. The Resolution there is, that any Member of the Body may forfeit his Corporate Right, and may by Law be divested of it, which Right is there called his *Freedom* and *Liberty*. And it is the same Right or Liberty, in which all, jointly considered, have an Inheritance, wherein each Member hath a Freehold; for they are not seized of this Right in their Corporate Capacity, but as Natural Persons, the Question being of that Right which gives them the Corporate Capacity. And what any Member may forfeit, every Member may; and the same Acts which will forfeit the Right of every Member, separately considered, if done jointly by all the Members, will have the same Effect. What Act will amount to a Forfeiture, that Case generally

determines, whatsoever is contrary to the Duty and Trust of a Member; especially if the Fact be contrary to his Oath, the Oath of Allegiance by the Statute 7 Jac. cap. 6. is made a Part of the Freeman's Oath. The Case goes further, and assigns many Particulars, which will be Breaches of the Condition, viz. Attainders, Forgery, Perjury, Conspiracy, or any other infamous Crimes at the King's Suit; if these will be sufficient Cause, there can be no doubt but Treasons, Felonies, and Oppressions, Seditions, and other Attempts in disturbing the Government, will be good Causes of Disfranchisement of any or many of the Members, who commit such Crimes; and this upon the Trust and Condition implied by Law, upon the first Erection of the Corporation; for the present Members are under no other Trust or Condition as to this Matter, than what the Law imposed upon the first Members.

I cannot see how the Counsel for the City can evade the Force of Sir James Bagg's Case, unless it be by a Distinction or two:

- 1.) Between every Man, and all Men; every Man may forfeit his Part, but all Men cannot forfeit the Whole: Just such another Distinction as was made to all the Precedents between Seizures and Forfeitures.
- 2.) The other Distinction seems to have a little more Colour, and it is between the King and the Corporation.

The Corporation, say they, are intrusted by Law with Power over their Members to remove them for acting against their Duty; but the King cannot disfranchise any particular Member; and if he cannot disfranchise any one Member, much less can he all Members, or seize their Liberties into his Hands, which in Law amounts to a Disfranchisement of all the Members.

I answer, The King may do both the one and the other; and in saying the King can do it, I mean in Course of Law.

1.] The King doth it, when the subordinate Ministers and Governors within the Corporation do it; for they do it as his Ministers in Execution of his Laws; and it is their Duty to do it, according to the Trust he hath reposed in them, and the Power he gave them; and this Authority is greater or lesser, as he is pleased to grant it, as appears by Sir James Bagg's Case. If the King grant them express Authority to remove, they may remove the Offender before Conviction at Law. But if no express Power be granted, a Conviction at Law must be first had; and the Judgment of the Law directs their Duty, and they are accountable herein to the King in his Courts of Law: If they mistake the Law, and displace a Member convicted of an Offence, which amounts not to a Forfeiture, the Party shall be restored by *Mandamus*; an excellent Precedent of Restitution, if they do not their Duty, to disfranchise where the Offence requires it.

2.] The King may do it, by commanding them to do it by his Writ out of the Court where the Conviction remains, or out of the Chancery, as he may the Coroner of the County, Mayor, and other Officers, as the Precedents have been. A Writ to remove the Mayor of *Berwick*. So where an Alderman is dead, the King may send his *Mandamus* to choose another, as done in the Case of *Lanceston*, P. 8. Car. 1.

Dier 333.

13 Co.

9 Car. 1. Memb. 29.

23 *R. Hale*, Corporat. Pl. 5. If they yield not Obedience, they may be fined, or may incur the Forfeiture of their Liberties, as the Case may require.

3.] In case the Corporation cannot do Justice in punishing and displacing the Offenders, either because the Majority are Offenders, or favouring, or abetting the Offenders, there being a Failure of Justice in the Franchise, which the Law will not permit, by Judgment of Law the City or *Ville* shall be restored to the Government and Jurisdiction of the Common Law, by Seizure of the Franchise into the King's Hands.

4.] Failure of Justice, and the not suppressing and punishing of notorious Riots and Tumults, have been adjudged good Causes of Forfeiture of Liberties; and the Plea of *Non Ability* to suppress them, disallowed as any Cause of Excuse, as to the Point of Forfeitures of the Liberties, which doth and will appear by the Precedents insisted on by Mr. Solicitor, and what I shall superadd. So that I conceive the Authority of Sir *James Bagg's* Case remains unshaken, that there is a Condition annexed to the Franchise of a Corporation, the Breach whereof will be a Forfeiture. The greater the Trust of any Member of a Corporation is, the stricter is the Condition; as where any of the Members are chosen into any Places, which more immediately concern the good Government of the Corporation, a less Crime will be the Cause of his Removal, than will be of Disfranchisement of a private Member, as in the Case of an Alderman.

It was resolved, for being a Drunkard and Haunter of Taverns, he being a Magistrate more immediately intrusted with the Government, was Cause of Removal; though he have

Taylor's Case
T. 14.
J. 1. B. R. Roll
Re. 455.
pl. 1.

Freehold in the Place, yet it is upon special Trust and Confidence. The Law will be the same, if the Magistrate gives the least Encouragement to popular Tumults, or frequent Conventicles, and unlawful Assemblies. And it is no Objection to say, that some Statute Laws have laid a Penalty for the Offences, as it is in the Case of Drunkenness, and many Offences of Officers; and in Common Law Offences, the Law provides a Penalty against the Offender by Fine or Imprisonment; and yet the same Offence, if a Breach of Condition, will be Cause of Disfranchisement, as appears in Sir *James Bagg's* Case. The Penalties inflicted by Statutes or Common Law, are for the Breaches of particular Laws; but the displacing of a Magistrate is for Breach of the general Trust of his Place, wherewith he is intrusted for the Publick; and having broken that Trust and Condition, the Law adjudgeth him unfit to be intrusted, *ne quicquam detrimenti capiat Respublica*. The Question, What Acts of a Member will forfeit his Corporate Right, is no-where in our Books so distinctly put as in Sir *James Bagg's* Case. But the Question, What Acts of the Members, and of what Number of the Members, will forfeit the whole Franchise, I know no-where distinctly put in our Books, but as they lie scattered in the Instances of Forfeitures taken, and Franchises seized; otherwise than upon the general Rules of *non user* & *abuser* of the Trust committed to them. But the Civilians do largely treat upon these Questions; Whether the Cities, Colleges, and Universities may be forfeited and dissolved, and

what Acts of the Members will be Causes of such Forfeitures. And therefore I crave Leave, before I conclude this Head, from the Condition annexed by Law to all Corporations, only to mention one of them. It is *Oldradus de Ponte*, in his Book intituled, *Consilia sive Responso, & Aureæ Quaestiones*: Where he debates the Point at large *Pro* and *Con.* and puts the Objections of some Authors, which are much the same enthusiastick Raptures, as have been made use of in this Case; *viz.* that they have no Souls, but are immortal Bodies, and such-like Stuff. But he resolves the Question thus; I will repeat his own Words: *Sed licet non habent veram personam, tamen habent personam fictam fictione Juris. Et ideo dicit Lex, quod Municipium Curiae & Societatem personae sustinent: Et sic eadem fictione animam habent, & delinquere possunt, & puniri, eâ tamen pena quae possit cadere in eas, scilicet, quod privetur Privilegiis, & sic Capite minuitur. Et sic sicut vera persona per mortem naturalem desinit esse quod erat, sic ista persona ficta per mortem Civilem, quae est, ut privetur Privilegiis, desinit esse quod erat, quia amodo non erit Universitas.* And then assigns the Causes generally: *Et quod Privilegia possint revocari, cum incipiunt esse iniqua vel damnosa. Et non potest esse magis iniquum, si utatur eo in contumeliam concedentis.* Though this be a full Opinion of a learned Man, as to the Case in question, both as to the general Question of Forfeiture, and the particular Breaches assigned; yet I use it not as an Authority; but only to shew the Concordance of other Laws with the Law and Practice within this Kingdom; and that learned Men have before now not only dreamt of such a thing, but have concluded the Point upon Debate and Reason of Law, That Corporations may be forfeited and dissolved, when their Privileges, as used by the Members, *incipiunt esse iniqua vel damnosa.*

Oldradus de
Pont. fol. 29.

(2.) My other Ground is, that there is nothing extraordinary or particular in the Nature of Corporations aggregate, to exempt them from the Condition of single Corporations, or of other Liberties: If there be, it hath not yet been shewn. It must arise either from the Number of the Persons who take, and are the Subjects of this Liberty, because they are many; or from the Right conferred upon them. The Number of the Persons constituting this Body contributes nothing towards the Indissolubility thereof, pleaded for. They were several natural Persons before the Union, and remain so many natural Persons; and by retaining their natural Capacities, are as capable of being separated, as they were before capable to be united by taking this Right. And as to the Number of the Persons, a Corporation differs nothing from other Communities, which may assemble and act in a Body: As the voluntary Societies in Inns of Court and Chancery, and Armies, which act under Commissions, to some Persons to collect and assemble, others to act jointly under them. These Societies have their peculiar Rules and Laws to act by, and act jointly, and in a Body, as Corporations do: But yet, in the one Case, if the Members so agree; or in the other Case, the Commission be revoked, they are all separated, and the Union dissolved. So as to the Nature or Numbers of the Persons collected, a Corporation differs nothing from other Societies not incorporated.

incorporated. From Number may be presumed a greater Duration, and it is most probable many may outlive one; but it is certain, that many shall die as one Man, and probable, that all may die before others elected, which was admitted to be a Dissolution of the Body Politick: but ingeniously distinguished, that this was rather a Separation of the Persons from the Body, than of the Politick Body from the Persons. Be it so, it is admitted then they are separable, and that Number cannot protect the Natural Persons from being severed from the Body Politick by natural Death. And I have already shewn, that Number contributes nothing to the Indissolubility of a Corporation, by Separation of the Members one from the other, which is called a Civil Death; and in Cases of Civil Death, the separating the Liberty from the Person, or the Persons from the Liberty, is all one. To take the Office from the Officer, or remove the Officer from the Office, is all one; and so in Disfranchisement, to take away the Freedom of a Member, or to remove him from his Freedom, is all one: And so in Forfeiture of Franchises, the Judgment of *Ouster* is formally putting the Persons from the Franchise, and Judgment of Seizure taking the Franchise from the Persons; but in effect they are the same, viz. a Separation between the Persons and the Franchise. And this Separation being wrought by a Condition in Law annexed upon the Union, the Number of Persons can no more prevent it, than where Lands, or incorporate Inheritances, are granted to many, and their Heirs, upon an express Condition, that no Advantage could be taken of the Condition broken, because the Grant is to many Men.

From the Nature of the Right or Franchise, as little can be inferred for this inseparable Union pretended.

1.) In its Creation, it is merely by the Policy of Man, and the Rule is taken in *Calvin's Case*, 7 Co. fo. 25. That what is by the Law of Man, may be altered. And divers other Books speaking of the Effects of human Constitutions, laying down as a certain Rule, *Quicquid colligitur, dissolvi potest*; mortal Beings cannot confer Immortality.

All Rights whatsoever are incorporate, and sometimes *abusivè* are stiled immortal, which by Intendment of Law is only, that they have Continuance so long as any Persons subsist capable of having them: And in this Sense the Right to Lands and Corporate Inheritances are of greater Duration than many Liberties, and particularly those of Corporations; because they subsist when they return to the Crown, which many Liberties do not, but are then extinct. *Strata Marcella*, 9 Co. 15 Ed. 4. fo. 6.

2.) As to the Nature of this Right, whether it be considered as a Right of taking and holding in another Capacity than that of natural Persons, or as a Right of taking in Succession, under neither Consideration can it import any inseparable Quality. In the former, it is both the same with that of single Corporations, and plainly implies a Trust. In all the Cases of our Law, where-ever any Persons take in another's Capacity than their own, it is always upon Trust, as Executors or Administrators, Churchwardens, &c. and all single Corporations: And where the Law creates the Trust, the Law provides Remedy, if the Trust be broken, for putting

the Trust into safer Hands. And likewise, if considered as a Right framed by Policy, to take in Succession, it is in Substance the very same with that of single Corporations, and if any Advantage be in point of Duration, it inclines to the Side of single Corporations; as better framed by Policy to have Continuance, than the other of aggregate Corporations.

1.] Because the Choice of the Successions, whether elective, donative, or presentative, is placed elsewhere, and not in the Person himself, that it cannot be in his Power to prevent the Succession.

2.] Because the Law leaves it not in his Power to determine the Corporation, either by Surrender or Forfeiture, but during his Life; and so cannot prejudice his Succession.

But in Lay Corporations the Power of Succession being intrusted with them by Elections to continue it, the whole Right is in them, and consequently in their Power to determine it, either by not electing, or electing those the Law incapacitates, which is the Case of *Worcester*; or every Man of them may for good Cause be disfranchised, or the Franchise for Cause seized, and consequently, for want of Succession, fail. Besides, to go in Succession, doth not necessarily imply a Perpetuity: Goods may go in Succession, as to Churchwardens. A Chattel Lease may go in Succession. The King grants Lands for Years, rendering the Rent to the Aldermen of *Chesterfield*; they take in Possession as a Corporation, *Cro. Eliz.* 35. (*Micb.* 26). The same Case, *Hales, Corporation pl.* 25. Upon these Grounds, that there is a Condition annexed to all Corporations, as well as other Liberties, and that there is nothing peculiar in the Nature of Corporations aggregate, to exempt them from being liable to Seizure for Breaches of that Condition, I conclude, Corporations may be taken into the King's Hands by Seizure; which is a Separation of the Liberty of being a Body Politick from the Natural Persons, who (as *Brañton* phraseth it) were but *Usufructuarii*, and had not *Absolutum Dominium*. And by this Separation the Natural Persons are only restored to the Government of the Common Law.

The Mischiefs that would inevitably follow, were the Law otherwise, have been insisted on by Mr. Solicitor. It were to set up independent Commonwealths within the Kingdom; and according to the Judgment of the Parliament 21 Ed. 3. would 21 E. 3. p. 17. certainly tend to the utter Overthrow of the Common Law, and the Crown too, in which all sovereign Power to do Right, both to it self and the Subjects, is only lodged by the Common Law of this Realm.

The Answer Mr. Recorder applied to the Mischiefs, That they may be otherwise punished, is of little avail. Though he did not express in what Manner they might be punished, yet it must be intended by Fine, or at the Suit of the Persons injured by their Oppressions. The same Answer may be applied to the Oppressions by Officers, and the Abuses of all Liberties whatsoever, and likewise to excuse the Disfranchisement of any one Member of a Corporation: But that is no sufficient Remedy to cure the Mischiefs, whilst the Cause still remains, and is in as great Power to oppress, as before; which nothing can sufficiently restrain, but the Loss, at the least the Fear of the

the Loss, of that Power. To put the Subjects grieved to contend with Corporations for their Relief by their several Actions, were for the Common Law to lay a greater Burden upon them, than what they suffered from the Corporation; as was sufficiently experimented in the Case of the Duty of Water-bailage of *London*, before the *Quo Warranto* was brought to rescue them: And if they recover Damages, those Damages can only be levied upon the common Goods and Estate of the

19 H. 6. 64.
9 H. 6. 30.
Fitzh. Ex. 123.

Corporation, 8 H. 6. 1. And many Corporations have little or nothing in Common Stock, and few Corporations sufficient to make Satisfaction

for all their Oppressions. And to prosecute for a Fine is no Satisfaction to those who are injured, nor doth remove the Cause of the Oppression. And the Law would be deficient, if such inferior Jurisdictions, or Corporations, were not subject to the Common Law upon the like Conditions as other Liberties, Franchises, and inferior Jurisdictions are.

Mr. Recorder hath affirmed it with great Assurance, That never any till this Suit ever so much as thought of resuming Corporations, which are subordinate Governments. I shall only request of him, and of the other Gentlemen of the City's Counsel, to shew me the Opinion of one learned Man of this Kingdom, or any other Nation, deliberately delivered upon the Question, That sedatory and subordinate Governments cannot, for any Cause whatsoever, be forfeited or resumed. That *de facto* they have been resumed in other Nations, is testified by many Authors, with their Opinions, that *de Jure* they may so be; which I forbear to trouble the Court with. Within this Kingdom of that Nature are Counties Palatine, the Cinque Ports, the Liberties of *Ely*, Lordships, Marches, and such-like, and the Corporations of Cities and Towns; which are all held of the Crown of *England*. What the Practice and judicial Opinions have been concerning these Liberties, according to the Law of this Land, Mr. Solicitor hath shewn in several Instances; which I shall not repeat, but shall produce some others to prove the same Matter. I beg Leave to rescue a very considerable Precedent produced by Mr. Solicitor, from the Gloss Mr. Recorder was pleased to put upon it, That it was an Act of Parliament; when 'tis no such Matter, but a Judgment of the King's Bench in Point upon a Forfeiture. It is the Case of *Sandwich*, cited p. 9. *Ed. 1. Rot. majus 35. Kanc.* The Record is amongst the Plea Rolls, in the Treasury or Tally Office.

It was upon an Information at the King's Suit, presented by the Sheriff of the County against the Mayor of *Sandwich*, and Three others, for assaulting the Sheriff's Bailiff upon Execution of the King's Writ within *Stanore*, beating the Officer, and taking the Writ from him, and tearing it, and stamping it under his Feet. They plead to the Jurisdiction, that *Stanore* was within the Liberty of *Sandwich*, within the Cinque Ports; and that *De aliqua seductione fac' corporis Regis, non tenentur respondere alibi*, than at the Court at *Shepway*. The Plea was over-ruled upon this Ground, That none could claim such a Liberty without express Grant; and they shew no Charter for it, and were ruled to answer over. They insist upon that Exemption, and refuse to give any farther Answer; whereupon Judgment was given, that they be committed to Prison: And

the Judgment goes farther, *Et quia Johannes Dennis Major de Sandwich convictus est de transgressionibus predictis; & factum Majoratus in his que tangunt Comitatum est factum ipsius Communitatis, consideratum est, quod Communitas de Sandwich amittat Libertatem suam.* This is an express Judgment of this Court upon the Forfeiture of the Liberty, for a Crime committed by the Mayor and others, in a Matter relating to the whole Liberty. Before this, the Franchise of *Sandwich* was seized, as forfeited into the King's Hands for a notorious Riot committed by the Inhabitants, in Obstruction of Justice, 3 *Ed. 1.*

The Case upon that Record was thus: Upon an Inquisition found of Purprestures within the King's Warren of *Dover*, by stopping a Water-course, whereby the Warren was overflowed, a Writ issued from the Court of *Dover*, to distrain the Offender by his Goods, to amend and remove the Purpresture: The Officer distrains the Cattle of *Simon Erchefton*, who was the Offender, and lived at *Sandwich*, within the Cinque Port. Some of the Men of *Sandwich* make Rescous; and when the Constable of *Dover* sent Messengers to complain to the Mayor of *Sandwich* of this Rescous, and to require Redress; after the Complaint made, and no Redress had, several of the Men of *Sandwich* fell upon the Messengers, and severely beat them. Then the Constable sent more Officers to see Right done, against whom the Town was barrocaded and chained, and his Officers kept out by the Townsmen in hostile Manner. Then the Constable went in Person, and after some time suppressed the Tumult, and upon their Submission, the Commonalty prayed the Constable would deliver their Submission to the King, which they then delivered to him under their Common Seal; and accordingly was delivered by the Constable to the King and Council, and adjourned into Parliament: And the Mayor, Bailiffs, and Commonalty ordered to be there at a certain Day, before the King and his Council in Parliament. Upon hearing thereof in the Presence of the Mayor and Bailiffs for the whole Commonalty, Judgment is thus entered upon that Record; *Consideratum fuit per Dominum Regem & concilium suum in Parlamento, quod Majoratus & Libertas de Sandwich pro predictis Transgressionibus in manus Regis capiatur, & tradatur in custodia Constabulario de Dover, ad disponendum de predicta Villa secundum communem Legem & Consuetudinem Regni, non obstante aliqua Libertate.* It evidently appears, both by the Form and Matter of it, that that Form was judicial, and not legislative, and agreeable to the Forms of Judgment in the other Common Law Courts, and in our Law Books. Here is a Judgment only of Seizure upon a Forfeiture, yet it amounted to a real Ouster; for the Town was actually divested of the Liberty, and delivered up to the Government of the Common Law. For *capiatur Majoratus & Libertas de Sandwich* in the Singular Number, in *manus Regis tradatur in custodia Constabulario suo*, who is the Common Law Officer, within the Cinque Ports, is no more than leaving the Town to the Government of the Common Law; which is fuller explained by the subsequent Words of *disponendum de Villa secundum Legem & Consuetudinem Regni.* And it appears by this Record, that there is a Difference between the Liberty and the *Ville*, though some-

Pasc. 3 Ed. 1.
Kanc' 54.
Dorfo Rot.
majus.

times *Ville* is used for the Liberty of the *Ville*; but here the Mayoralty and the Liberty are seized, and the *Ville* delivered over to the Common Law Officer.

The next Precedent I insist upon, is that recited by Mr. Recorder, the Case of the Town of *Cambridge*, but lamentably defaced by my Lord *Coke's* marginal Note, and Mr. Recorder's Averment, that by the Record it appears to have been by common Consent of Parliament. I rather insist upon this, for that Mr. Recorder hath acknowledged its Force, that it worked upon the Corporate Right, and was upon a Forfeiture; but lays the Force of it in its being an Act of Parliament, when in Truth it

is a plain Judgment of a Court of Law, and it appears by the Record it was no Act of Parliament.

Mr. Recorder cited the Record, 8 R. 2. No. 11. 4. *Inst.* 228. and it is probable Mr. Recorder looked no further than that Book for it: In the Margin it is so cited, but miscited; yet in the Body of the Book, in putting the Case, it is truly cited; for the Record is 5 R. 2. 45. to 66. and it is evident by the marginal Note; and my Lord *Coke's* saying it was the common Consent, misguided Mr. Recorder, to affirm it to be an Act of Parliament, when the contrary appears by the Record. The Complaint to the King and his Council in Parliament against the Town of *Cambridge* was for a great Riot committed, and an Assault upon the University; and the Fact in Substance is the same as related in the Fourth Institutes. It was prosecuted at two Suits, the one against the late Mayor and Bailiffs, who were at the Time of the Riot in their Natural Capacity; the other against the Mayor, Bailiffs, and Commonalty, in their Corporate Capacity; the Writs returnable *coram nobis & concilio nostro*. The former Mayor and Bailiffs appear, and plead in their Natural Capacity, that they were neither assenting nor aiding to the Riot; neither did or said any thing, that might turn to the Damage of the University, unless only by Coaction, and outrageous Compulsion: And there seems to have been no further Proceedings in that Suit. Upon the other Writ, the Mayor, Bailiffs, and Commonalty appear, and pray they may have a Copy of the Articles, which were read to them, and Counsel allowed to them, and Time to answer; and such Answer was returned, as is mentioned in the 4th *Inst.* But in the Record it is said, it was answered by the Court; and that the Court told them, that at present they should not be put to answer to the Crime, (which must be in order to a Fine) but only touching their Liberties.

Then touching their Liberties, they put in a Plea by their Counsel, to the Jurisdiction of the Court, which is omitted in my Lord *Coke*; only he saith, after many dilatory Shifts and Subterfuges following therein, the Court overruled the Plea to the Jurisdiction, and ruled them to answer in chief; and if not, Judgment should be entered by *Nihil dicit*. They then pleaded a frivolous Plea, partly Not guilty, partly in Excuse; and the King's Sergeant replied, and the Plea was held naught. Thereupon they submitted, as to the Franchise, to the King's Grace, saying that it might be no Conclusion to them, if they should be called in Question for the Crime. Whereupon Judgment of Seizure was only given.

The Words of the Record say thus: *Nostre Seigneur le Roy de Assent des Prelates & Seigneurs en cest Parliament fist seiser la dit Franchise en sa maine come forseit pur la ditz Causes*. Throughout the Record it appears by all the Proceedings they were judicial; but the Plea to the Jurisdiction of the Court, and the Judgment by the King and Lords, only are Demonstrations it was no Act of Parliament, nor adjudged by the legislative Power, but by a Court of Law.

It appears upon the same Record, that the King granted several of the Particulars which were seized, to the University, who enjoy them to this Day. *Et la Remnante de la Franchise de la dit Ville* the King granted to the Mayor and Bailiffs, to hold of him and his Heirs, at the ancient Rent of 101 Marks.

33 Ed. 1. *Plac. parl.* 277. The Liberty of the City of *Winchester* seized into the King's Hands by Judgment of the King and Lords, for suffering a Hostage of *Baion*, who was committed to their Charge by the King for safe Custody, to escape, to the King's great Damage. The Writ of Seizure is directed to the Sheriff of the County, *quod prædictam Civitatem Wintonie, & Libertatem ejusdem Civitatis, cum omnibus ad eas tangentibus sine dilatione capiat in manum Regis, & eas salvas custodiat, donec Rex aliud præceperit*. Whereby the Franchise being seized, the Men of the City are put under the Government of the common Law Officer. Afterwards the City compounded with the King for 500 Marks, and then the King *reddidit eisdem Majori & Civibus Civitat. & Libertat. prædict. habend. & tenendum in forma qua eas tenuerunt ante captionem earundem in manus Regis*, and Letters Patents of Restitution were granted, and a Writ of Restitution directed to the Sheriff.

These were Judgments by the King and Lords in Parliament, upon Forfeitures, and were Judgments of Seizure only, according to the settled Rule and Practice in the Common Law Courts.

Mich. 18. *Ed.* 3. *Rot.* 161. *B. R.* in the Treasury or Tally Office. A Judgment of the King's Bench against the Town of *Ipswich*, upon a Forfeiture. The Bailiffs of *Ipswich* are impleaded by the King, upon a special Information, reciting that in the *King's Bench*, sitting there, several Malefactors were indicted for the Death of one *John Holtby*; and that many of the said Town, *tam de majoribus quam de mediocribus*, did comfort and encourage the Felons after the Felony committed, and treated and entertained them with Viands and great Joy. And, after the Departure of the Justices, kept a mock Court publicly, and summoned the Justices, and the Officers of the Court, to appear under several Pains. To which the Bailiffs appeared, and were opposed, by the Court, Why they did not attach and stay the Malefactors? They answered, The Malefactors flew to Sanctuary. Being further opposed, that they did not attach those of the Town, that furnished the Malefactors with *esculenta & poculenta*, they pleaded, *quod non ausi fuerunt, eo quod tanta fuit multitudo gaudentium, & plures eorum fuere e parentela Malefactorum*: Whereupon Judgment was given *contra Balivos & Communitat. quod custodia ejusdem Ville seiscatur in manus Regis, & quod aliquis ex Parte Domini Regis, qui sit ausus ad pacem Domini Regis manutenendam, se intromittat in eadem Villa, quousque Dominus Rex aliud inde dixerit*. Which the Record

Record shews, is the Bailiff of the County, the common Law Officer. And the Mayor and Bailiffs in open Court surrendered their Staffs of Office. This Judgment is agreeable to those in Parliament, and of Seizure only.

R. Claus. 7. *Joban' Memb.* 24. *Civitas & Libertas Norwici* was seized into the King's Hands, for hanging Approvers without the License of the King or his Justices; and the Mayor was summoned to answer for the Damage done to the King. *Rot. Fin' Memb.* 10. (13 *Ed.* 1.) the Liberties of *Norwich* seized for a great Riot, and burning the Church: The Case is mentioned *Roll. Prerogative, fol.* 204. The Liberties of *Norwich* were again seized, 21 *H.* 6. upon a Presentment of a great Riot taken before *Fortescue*, and afterward regranted to them, 27 *H.* 6. *Pat. Roll. Memb.* 19. The Case is cited by Mr. Noy, in the Case of the City of *London*, concerning the Death of Dr. *Lamb*, *Cro. Car.* 252.

The Liberties of *Oxford* were seized, 32 *H.* 3. for a great Riot committed by the Townsmen, when the King's Brother was there, and killing of his Brother's Baker. The Writ to the Sheriff runs thus; *Quod capiat in manus Regis villam de Oxon. ut eam salvam custodiat ad opus Regis, ita quod Major & homines ejusdem nullam inde habeant administrationem*; the King in the same Year pardons them, and grants them Restitution, and a Writ to the Sheriff to put them into Possession, 32 *H.* 3. *Memb.* 13. *Hal. Lib. L. f.* 326.

Again the Liberties of *Oxford* were seized 29 *Ed.* 3. and Part of their Liberties granted to the University, which are enjoyed by them to this Day, and the Residue restored to the Town; the Seizure was for a Riot committed, *Rot. Claus.* 29 *Ed.* 3. *M.* 21.

20 *H.* 3. The Liberties of *Evesham*, for using false Measures, when the King was there, and afterwards, upon Submission of the Abbots and Monks, the King makes Restitution to them, *R. Cl.* 20. *H.* 3. *M.* 8.

18 *Ed.* 1. The Town of *Southampton* was seized into the King's Hands, for wounding, even to Death, an Officer in serving the King's Writs: They after submitted to a Fine, and took a new Grant, and raised their Fee-farm Rent to 20l. *per Ann. Roll. Prerog. fo.* 204.

It would be too great a Trouble to the Court, to cite more Precedents of Seizures for Forfeitures. In all these Instances Restitution was never made by the Court, but by the special Grace of the King, after Submission to him, and upon such Terms as he was pleased to accept; and in some Cases was pleased to restore them to the Whole; in other Cases, but to the Part of the Liberties. That this Liberty of being a Body Politick may be seized into the King's Hands by *Quo Warranto*, Mr. Recorder in Effect hath admitted it, if the Suit be brought against particular Members, and the Cases produced by him prove it. For in Case of *Cujack*, the *Curia advisare vult* was upon that very Point of being a Body Politick: And the Case of the *Virginia Company*, the very Liberty of being a Body Politick is by the Judgment seized into the King's Hands.

I will give some Instances where it hath been done, in Cases of *Quo Warranto*, against them by the incorporate Name.

Fitz. Aversary 129. In the *Iter* of *Lancaster*,

a *Quo Warranto* against the Bailiffs and Commonalty of *Lancaster*: They appear, and claim by a Charter of King *John*, whereby the King grants to them all such Franchises, which the Borough of *Northampton* had; but do not set forth upon Record what Franchises *Northampton* had; nor do make Title to the Franchise by Prescription: And for that Reason Judgment was given, their Franchise be seized into the King's Hands; as forfeited.

In the Case I before cited, a *Quo Warranto* against the Bailiffs and Aldermen of *New Radnor*, and Judgment against them by Default, that the Liberty should be taken and seized into the King's Hands, though afterwards it was reversed, because *in misericordia* was entered instead of a *Capiatur pro fine*; yet it is a Judgment in Point, that a Corporation might be forfeited and seized by Default in Pleading.

The Case of *New Malton*, *Trin.* 6. *Jac.* 1. *R.* 3. is an express Authority, that this Liberty may be seized by Judgment in a *Quo Warranto* against the Inhabitants of a Town, by their Corporate Name. It is brought against the Bailiffs and Burgeses of *New Malton*; and the Form of the Information is the very same with this against the City of *London*. They plead by their Corporate Name, and intitle themselves to the Liberty by Prescription; and Verdict and Judgment against them by their Corporate Name of Seizure only, that the Liberty be taken and seized into the King's Hands; and which is more, the *Capiantur pro fine* against them is entered against them by the Corporate Name of *Ballivi & Burgenses*, though the Corporation by the Seizure was dissolved; and the Reason no doubt was, that that general Name was a sufficient Description of the Persons who were liable to the Fine for their Usurpation. And no Doubt can be made, but that the true Liberty may be forfeited and lost, by insisting upon a wrong Title, as well as by Default, or any other Forfeiture whatsoever. This Town lies under the Weight of that Judgment to this Day; and are no Corporation; and being opposed by the Interest of the Lord *Eure*, who prosecuted that *Quo Warranto*, did never obtain any Restitution or Regrant.

A *Quo Warranto* against the Bailiffs and Burgeses of *Berkhamstead* in *Com. Hertford*: They appeared, and Judgment *pro defectu responsi* given of Seizure, *Pasch.* 16 *Car.* 2. and they are no Corporation at this Day. In the ancient Eyres, the Justices in Eyre, when upon Claims put in, the Liberties were lost, either upon some Defect in Pleading, or for some small Abuser or Mistake, the Justices were intrusted with the King's Mercy, to admit to a Fine for Redemption, and make Restitution: But Judgment first passed for Seizure. And regularly upon the general Summons of *Quo Warranto* in Eyre, or special Suit of *Quo Warranto*, which are all founded in the same Right, no other Judgment can be given, if for the King, but a *Capias in manus*, or of *Ouster*; if for the Defendants, a Judgment of Allowance, or *Eat sine die*. The *Capias pro fine* is collateral, and for the Usurpation, not for the Cause of Forfeiture or Seizure. It was one of the Articles of Inquiry in Eyre, how they had used their Liberties; if an Abuse was found, though never so small, Judgment of Seizure was given; though after-

B. R. Mich.
20 Jac. 1. Rot.
17.

Mich. 15 Car. 2.
23 R.

afterwards redeemed by Fine upon Submission.

Ristal pl. 1.
l. 343.

Quo Warranto upon a Claim of View of Frank-pledge in Eyre. It was demanded of the Defendant, If he had any Pillory or Tumbrel? He answered, He had not. Judgment was prayed on the Behalf of the King; for that amounted to a Forfeiture; and if that were not sufficient, that then it might be inquired on Behalf of the King, how they had used the Liberty. The Jury find, that the Defendants and their Ancestors had View of Frank-pledge, but find that the Defendants had taken Amerciaments of Offenders against the Assize for Bread and Beer, amounting to two Shillings, in such Cases where the Offenders should have been punished by the Pillory and Tumbrel. *Ideo consideratum est, quod Visus capiatur in manus Regis.* And then they pray they may have their Liberty again upon a Fine, which is granted to them, upon Pledges for well using of their Liberties. And there is no Difference where the Liberty is lost upon a defective Claim or Mispleading, or for a Forfeiture in *Quo Warranto*; the Judgment is the same of *Capias in manus*; and it is all one, whether the Cause of Forfeiture be found by a Jury, or confessed upon the Pleadings, in a *Quo Warranto*.

The next preliminary Point which was moved, is, Whether the Acts of Common Council be the Acts of the Corporation, and do oblige them?

It seems a strange Question, that when to assemble, consult, determine, and to make Orders and By-laws for the Rule and Government incident to every Corporation, without special Clauses of Grant, and that herein only consists the Exercise of the Politick Reason of the whole Body, it should be doubted, Whether what they determine and resolve upon, being so jointly assembled, be a Corporation Act, or may affect the Corporation? Upon the Erection of all Corporations, this Power of assembling, deliberating, and determining for the Corporation, is either intrusted with a few particular Members, whose Continuance in that Trust (both as to the present Members, and the Succession of them) is directed by the several Charters: Or else it is intrusted with the whole Body, and that either expressly in plain Words, or by Implication of Law, when the Charters are altogether silent therein: The Law in such Case lodgeth the Power of assembling, debating, and determining for the Corporation, in all the Members; and the Whole, jointly assembled, (or so many of them as upon Notice shall appear) constitute the Common Council: And such Assembly is not styled the Common Council from being retained and giving of Counsel, as Mr. Recorder would have it, in which Sense he only, and the Common Sergeant, are the Common Council of the City; but they are so called from their joint assembling and consulting for themselves, who constitute the Body Politick. In the same Sense, the Parliaments of *England*, by many Authorities, are called *Communia Regni Concilia*. This Power, thus lodged in the Whole, may be the Whole, or the major Part, which always binds the Whole, being lodged or delegated to a certain Number, which may represent the Whole. In such Case, where the Power is transferred, those Members to whom it is transferred constitute the Common Council in the same manner, and their Acts are

of the same Obligation, as where all meet, unless the Delegation were not general, but certain Cases reserved for the Determination of the Whole, as hath been done in several Corporations; but in all Cases not excepted, their Acts are the Acts of the whole Body. Where the Common Council is constituted of the whole Body, or of all the Members, who will meet upon Notice, there is no room left for Doubt, but their Acts, and the Acts of the whole Corporation are the same. Mr. Recorder seems the only Person that ever doubted it, and is not to be beaten from his Holds:

First, That the Common Council consist only of particular Members, and their Acts bind only the Members; & *Actio non egreditur Personam*.

Secondly, That no Corporation Act can be without the Common Seal.

Thirdly, That the Acts of the Common Council of *London* are under the Protection of the Statute or Charter in Parliament of 1 *Ed.* 3. their Acts are personal, and they but Ministers of the City; and that the Charter provides, that the Liberty of the City shall not be taken into the King's Hands for any personal Trespass of any Minister of the City.

For the first, I have already demonstrated, that there are no Acts of the Corporation, but what are performed by the particular Members; I will not repeat. I have produced many Instances, that in point of Crime the Acts of particular Members do affect the Corporation, touching their Liberty. That they do so in point of Wrong between Subject and Subject, the Cases are infinite; I will only mention the Authorities: 9 *H.* 6. 36. *b.* 8 *H.* 6. 1. *a.* & 14. *b.* 45 *Ed.* 3. 2. *b.* 15 *Ed.* 4. 1. *b.* 5 *H.* 7. 26. *a.* 4 *H.* 7. 13. *a.* 32 *H.* 6. 9. *a.* 7. I shall add one Case more, that absolutely destroys Mr. Recorder's Hypothesis, upon which he relies, *That a Corporation cannot do or suffer any Wrong*; it is 48 *Ed.* 3. 17. *b.* The Mayor and Commonalty of *Lincoln* bring Covenant against the Mayor and Commonalty of *Derby*, upon a Deed of Covenants made by the Predecessors of those of *Derby* to the Predecessors of *Lincoln*, that those of the Town of *Lincoln* should be discharged from Toll for their Merchandizes brought to *Derby*. In their Count they assign for Breach, that two of the Burgeses of *Derby* by Name did exact and take Toll of several of the Burgeses of *Lincoln*. The Defendants first take Exception to the Count for Variance from the Writ; that the Writ supposeth and alledgeth the Breach to have been committed by the Mayor and Commonalty, and the Count assigns the Breach by two Burgeses: The Exception is over-ruled, and the Court held pursuant to the Writ for the Breach of Covenant, which binds the Whole, and must be made by the Members. Then it was insisted upon, in point of Law, That the Act of the two Burgeses did not oblige the Corporation. It was admitted, that the Act of all the Members met together would oblige the Corporation: But it was resolved, that it was a Breach, and obliged the Corporation; and that the taking of Toll by their Officers was a taking of Toll by the Corporation; and the Reason given is, that all the Members of the Corporation cannot, by any common Intendment, be understood to meet together to take Toll. Here is an express Judgment

ment, that *Crimen egreditur Personam*, and shall render the Corporation liable for Wrongs done to a particular Member of another Corporation. Much stronger is the Case of the King upon Breaches of the Condition in Law, as I have shewn, where the Acts of the particular Members, committed against the King's Officers, are adjudged done against the King, and render the Corporation liable; but when all meet together, and do not act, I may say it was never yet doubted, but the Corporation was obliged.

The Case of *Warren*, which was cited, of the Place of Common Council Man of *Coventry*, is nothing to this Purpose; nor the Reason given, That such Place was collateral to a Corporation; which was no more, than that the Court could not *ex Officio* take Notice of it as a fixed Place or Office, but must take it upon the Return; it being variously used in several Corporations, as I have shewed; and the Custom being returned to choose and remove them *ad libitum*, the Court could not judge otherwise, as they may of the Freedom of any Member, which is the same in all Corporations. And therefore in the Case of *Estwick* and *Bret*, Common Council-men of *London*, where the Court could take notice, they were chosen for a Time certain, the Court adjudged they could not be removed without Cause, and granted Restitution. That the Members

of a Corporation can be punished only in one Capacity, and not in both Capacities, and impeaching them for Treasons and Felonies in their Corporate Capacities, will be licensing them, or at least giving them an Exemption and Encouragement to commit these Crimes *impune* in their Natural Capacities, is a Strain so much above *Ela*, that I cannot understand it. Sir *James Bagg's* Case teacheth other Doctrine, That the punishing of any of the Members criminally for infamous Offences, by Fine, Imprisonment, or Pillory, at the King's Suit, doth not exempt the Criminal from Disfranchisement.

The many Precedents I have produced do prove, that the Rioters or Members, who committed the Cause of Forfeiture, were not discharged by proceeding against their Liberties. In the Case of *Norwich*, for hanging the Approvers, the Liberty was seized for Mi'government, and Process issued against the Mayor to answer it at *Westminster*, *criminaliter*. And in the Case of *Cambridge*, the Court told them, they did not then put it upon them to answer criminally, but as to their Liberties. And they themselves knew, that by Seizure of their Liberties they were not discharged of their Crime: And therefore in the Plea of Submission they insert a Saving, that it might be no Conclusion to them, in case they were impeached criminally. Mr. Recorder doth admit, that if all the Members commit Treason, and be executed, the Politick Person is destroyed as well as the Natural Persons, and that justly too for so great an Offence; and therefore the Extent of Forfeitures doth not encourage, but deter Offenders from Commission of the Crimes. And the Citizens, when they know that their Riots, Oppressions, and Libelling of the Government, do not only subject their Persons to Punishment, who are the immediate Actors, but also subject the Constitution and Government of their City to be questioned, will look upon themselves under

stricter Bonds for discharging their Duties, than common Subjects are. And therefore the Nobility, who have so great a Share in the Government, for Treasons, do not only forfeit their Lands and Lives, but their Right of Peerage, which is a special Trust for Government; and that was forfeited in Cases where their Lands were not forfeited, but only during their Lives, upon the Condition annexed to that special Trust; as before the Statute of 26 *H. 8.* if a Nobleman (to him and the Heirs Males of his Body) having entailed Lands, commit Treason, his Lands are not forfeited from his Heir in Tail; but the Dignity is forfeited and extinct, and not supported by the Statute of *Donis*, by reason of the Condition annexed, *Nevil's Case*, 7 *Co. fo. 34.* The Law is the same, where the Dignity is granted in Parliament, or by Act of Parliament, it is no less forfeitable in one Case than in the other; the Condition the Law annexed is still the same. If when the Members of a Corporation, *corporaliter* assembled, commit Treason against their Prince, it must certainly be acknowledged to be against their Duty, in whatever Capacity they be considered; especially since the Statute of King *James*, which makes the Oath of Allegiance to be Part of every Freeman's Oath; and the corporate Right is held of the King. If the Law allowed no other Way of taking Advantage of Forfeiture of the corporate Right, but by executing of all the Members, the Law itself might be accused of as great Tyranny as ever was practised by the greatest of Tyrants. And to this, and nothing else, the Principle laid down by Mr. Recorder, that Treasons, Murders, and Felonies of the Members do not affect the Corporation in Law, doth directly tend, *viz.* to introduce Cruelty.

The Objection that no Acts are corporate Acts, or can affect the Corporation, but what are under the Common Seal, nothing certainly can be more vain than such an Assertion. Then no Mayor, Sheriffs, or other Officers, ever acted legally in their Choice by the Corporation, because not under the Common Seal: Then no By-laws are valid as corporate Acts, because not under the Common Seal: The same may be said by most of the corporate Acts in Cities and Towns.

In the Case of *Cambridge* before the King and Lords, 5 *R. 2.* *Birdfield* and other Burgesses appeared on the Behalf of the Commonalty. The Court demanded of them, If they had Authority under the Common Seal of the Town? They answer, The Town had no Common Seal, but that they were chosen at a common Assembly of the Town summoned for that Purpose, which is the Common Council, to appear for the Commonalty, to answer and receive *ce queux la ley volt.* and the Authority was adjudged sufficient. The Common Council, say they, are but Ministers of the City, and the Liberty of the City hath a special Protection against the personal Acts of their Ministers by the Charter in *Parl. 1. E. 3.* I have a Copy of that Charter by me from the Records in the Tower. The King's Grant indeed is, *de assensu Prælatorum, Comitum, Baronum, & totius Communitatis Regni in instanti Parlamento.* The Considerations of the Charter are *pro melioratione Civitatis*, and for the laudable Services of the Mayor, Aldermen, and Commonalty, performed to the King and his Ancestors; but the Grant is only *Civ. Civitatis prædictæ habendum sibi*

sibi & successorib. suis. The Words of the Grant are: *Quod pro aliqua personali transgressione vel iudicio personali alicujus ministri ejusdem Civitatis non capiatur libertas illius in manum nostram vel heredum nostrorum, nec custos in eadem Civitate ea occasione deputetur; sed hujusmodi Minister, prout qualitas transgressionis requirit, puniatur.* These are all the Words in that Charter, which refer to this Matter; and the same were granted to them, in some former Charters out of Parliament. This appears by this Charter in Parliament, that *Libertas Civitatis*, which is the Franchise or Corporation, had been seized, and might be seized, for some personal Miscarriages of the Ministers; for it is merely the King's Grant, that exempts them from it for the time to come. I do agree, that every personal Miscarriage of their Ministers was never any Cause of Forfeiture; but it must be Miscarriages of Omission or Commission, which amounted to a Misgovernment within the Corporation. As 30 *H. 2. Rot. Cl. memb. 5.* The City of *London* was taken into the King's Hands, for not levying a Hue and Cry upon the Death of Persons who were slain, *Hale Lib. L. fo. 269. H. 3. memb. 2.* Their Liberty seized for giving of false Judgment in the Hustings, *Lib. L. 309.* These are sufficient to shew what are the *personalis Transgressio*, and *personale Iudicium* intended to the Charter; though many the like Instances may be produced. Who are the Ministers intended, partly appears by the Charter, but fuller by other Authorities, *viz.* Mayor, and Aldermen, and Sheriffs, who are in that Charter expressly mentioned. But this Charter did not prove of any great or long Advantage to the City, in differing them as to this Privilege from other Corporations; for they were met with, either by excessive Fines, set upon their Officers for personal Defaults, and false Judgments; or that it excused the City only upon the first Offence; and if again they committed the like Offence, it was no longer personal, but become their Offence, because they did not displace their Officer to provide against his reiterated Crimes. And therefore, as Mr. Solicitor hath shewn, the Liberty of the City of *London* was after this seized into the King's Hands for Misgovernment; besides the Punishment of their Ministers became difficult, because the Offences being committed in *London*, the Inquiry of them must be by Men of the same, who favoured these Officers. And thereupon, to settle this Matter, an Act of Parliament was made by the same King, which is in Print. The principal Grounds of the Act, as the Act recites, 28 *Ed. 3. c. 10.* were that the notorious Errors, Defaults, and Misprisions for Default of good Governance of the Mayor, Sheriffs, and Aldermen of *London*, could not be inquired of, nor found by Men of the same City. The Act settles the Rule, that for the first Default of the Mayor, Sheriffs, and Aldermen, they shall forfeit 1000 Marks; for the second Offence 2000 Marks; and for the third Default, the Franchise and Liberties of the City shall be taken into the King's Hands, and this for the Defaults of their Ministers; which is a plain Judgment in Parliament, that the Franchise of *London* may be forfeited; and explains the Charter of the 1st *Ed. 3.* And to make the Remedy effectual, these Defaults are omitted to be inquired after by the Juries of Foreign Counties; and so shut the Door against

all Pretences for the Charter, 1 *E. 3.* and former Charters. It is enacted, that the Ordinance shall be held firm and stable, notwithstanding any Franchises, Privileges, or Customs. By this Law the Fines of their Ministers for their first and second Offences, in Breach of good Government, are ascertained, which by the former Charters were at Discretion; but for the third Offence of their Ministers, their Franchise might be seized as before 1 *E. 3.* and their other Charters might, for the Offence of Misgovernment, and from thence till this Statute for the second Offence. But neither the Charter 1 *E. 3.* or this Law, did extend to any outrageous Acts of their Members, as Breach of their Duty and good Government, but only to the personal Acts of the Mayor, Sheriffs, and Aldermen, in their several Trusts committed to their Managery. Under this Law the City of *London* stood till 1 *H. 4.* from which King the City expected greater Favours than ordinary, as having merited them by being the chief Instruments of his Promotion to the Crown; but the manner wherein they were instrumental, I forbear to mention. Yet from that King they could obtain no more, as to the Forfeitures for the personal Offences of their Ministers and Officers, than to be put into equal Condition with other Cities and Boroughs. The Statute, after Recital of 28 *Edw. 3.* That our Lord the King considered the good and lawful Behaviour of the Mayor, Sheriffs, and Aldermen, and of the Commonalty of *London* towards him, and therefore willing to ease and mitigate the Penalty aforesaid, by Assent of Lords and Commons hath ordained and established, that the Penalty aforesaid, as well of the 1000 and 2000 Marks, and the Seizure of the Franchise, shall not be limited in a Certainty; but the Penalty in the Case shall be by the Advice and Discretion of the Justices, as other Cities and Boroughs be within this Realm; and that the Remnant of the Statutes stand in their Force: So that from 1 *H. 4.* the City of *London* never could pretend to any other Exemption from Forfeiture of their Franchise than other Cities and Boroughs may.

Here I crave leave to join some other Records to those produced by Mr. Solicitor, particularly relating to the City of *London*.

2 *Pat. Roll. pars 2. memb. 9.* The King appoints *John Lord Breaton Custos* of the City, with Commission to amerce and punish the Aldermen and others of the City, according to their Demerits.

8 *Ed. 2. Memb. 3. dorf.* A Writ issues for the orderly choosing of the Mayor and Sheriffs, which began then to be tumultuous, and, as the Record saith, *Quod quidem populares & plebes, conspiratione inter eas habita, dissidia innumeraque facinorosa in dicta civitate nocte dieque perpetrantes, conventiculaque clandestina in locis privatis facientes, non vocati & summoniti, hujusmodi Electionibus se immiscent communicationibus & clamoribus.* The Writ recites the Elections to have been *per Aldermanos & alios cives discretiores & potentiores*; and commands that they be so done, *prout in eadem civitate antiquit' fieri consuevit*: otherwise, that the King would not admit them, when presented to him, or his Exchequer.

14 *Ed. 2. pars 2. memb. 22.* The King grants the Office of Mayor, seized into his Hands at the *Iter* in the Tower, to *Robert Kendall*, *durante beneplacito.*

15 *Ed. 2. pars 1. memb. 2.* The King first replevins to the Aldermen, Sheriffs, and Citizens the Office of Mayor, who present to the King *Hamond de Cbigwel* for the Office, and the King admits him; and then the King grants to the Aldermen, Sheriffs, and Citizens, the Mayoralty to hold at the King's Pleasure.

26 *Ed. 2. memb. 5.* The King absolutely restores to them the Mayoralty, to choose as before the Seizure into his Hands.

16 *R. 2. pars 1. memb. 28. dorso.* A Commission issueth to the Duke of *Gloucester*, and several Lords and Judges, to inquire of the Defaults of the Mayor, Aldermen, and Sheriffs, upon the Statute of 28 *Ed. 3.*

16 *R. 2. memb. 2. dorso.* The Commissioners sat at *Eaton, in Com. Bucks*, and the Mayor, Sheriffs, and Aldermen, were convicted of several Miscarriages, and the Liberty of the City (by the Judgment of the Court) seized into the King's Hands; and the King (by the Advice of his Council at *Windsor*) constituted *Baldwyn Badington* Mayor in the Room of *William Venner*, and two other Sheriffs, and 24 Aldermen, to hold during the King's Pleasure; and they all took their Oaths before the King and his privy Council: And in that Record the Prior of *Christ Church* was sworn an Alderman.

16 *R. 2. pars 2. memb. 31.* In the same Year the King, at the Intercession of the Queen, grants to the Aldermen, Sheriffs, and Citizens, that they might use their Franchises as they did before the Seizure; but with this Clause of Restriction, *Quousque aliter ordinaverimus*. Upon which the City chose *John Hend* Mayor, and *John Shadworth* and *Henry Venner* Sheriffs, who were removed the same Year by the King, and *Henry Dalingrugs* appointed Mayor, to hold during the King's Pleasure.

16 *R. 2. pars 1. memb. 36.* The Record assigns the Cause, *Pro minus discreta & insufficienti gubernatione & regimine civitatis nostræ.*

20 *R. 2.* The King makes full Restitution to them of their Liberties; in Print, and in the Charter pleaded.

22 *H. 6. memb. 25. dorso.* Elections of Mayor and Sheriff beginning again to be tumultuous, a Writ in the nature of that in *Edward the Second's* Time issued, commanding the Choice to be *per Aldermannos, necnon discretiores dictæ civitatis, ad hoc specialiter summonitos*, according to the ancient Custom: And after, in *Edward the Fourth's* Time, the Choice was settled upon the Livery-men by Act of Common-council.

So then there can remain no Question, but that the Mayor, Sheriffs, Aldermen, and all the Commons in Council assembled, may commit Acts for which their Franchise may be seized: And though there may be no real Difference where all the Commons assemble, and where only a certain Number elected by the rest; yet I shall not farther discuss that Point at this Time, because that Question doth not arise upon this Record. For the Offences wherewith they are charged are both laid, in the Replication, to be committed by the Mayor, Citizens, and Commonalty of *London*, by which must be intended the whole Body.

The whole Body plead to it; but in the Rejoinder they do not traverse; and deny they did the Facts: So that as to the Actors, it must be intended they are the same Persons, who are sued and defend upon Record; which are all the Members of the Corporation.

There are two Branches of the first Offence laid in the Replication:

1. That the Mayor, Citizens, and Commonalty in Common Council assembled, did make and publish a Law for levying of Money.

2. That the Mayor, Citizens, and Commonalty, by Colour of that illegal By-law, did exact and levy upon the King's Subjects divers great Sums of Money.

In the Rejoinder they take it by Protestation, that no Act or Fact of the Mayor, Aldermen, and Common Council, is an Act or Fact of the Body Corporate, or Politick; which is *Protestatio Juris, non Facti*, and is that Error I have endeavoured to refute, that the Acts of all the Members of the Corporation assembled in Common Council, are not the Acts of the Corporation. But yet by this Protestation of Matter of Law they would insinuate a Not Guilty as to making of the Law, and seem afraid to own it, and do not barefacedly own it. But after they have intitled themselves to the Markets, in such a manner as I afterwards consider, then they proceed to number the People, which surely was not done upon any legal Ground to move your Judgments. Then say they, that Time out of Mind there hath been a Common Council not exceeding 250 Persons, elected out of the Freemen; but do not say of what Number it doth consist, nor by whom elected, whether by Citizens or Foreigners, by the Mayor, Aldermen, or by whom chosen, so as the Court may judge of the Matter of Law so strongly protested, whether they were the Representatives of the whole Body, or no. Then they say, *Sir William Hooker* Mayor, and the Aldermen of the City, *ac communarii, sive cives de Communi Concilio ejusdem Civitatis*; which may as well be intended of Mr. Recorder and the Common Serjeant, who are *de Communi Concilio civitatis*, as of any other; for the Persons are not named, nor is it said they were elected, nor by whom, nor any Words of Reference to the Custom alledged; but generally, that they met in *Communi Concilio secundum consuetudinem civitatis*, not referring to the former Custom alledged. But being met, they made the By-law for the several Sums of Money, to be received for the Use of the Mayor, Citizens, and Commonalty. Which Rates, and no other, the Mayor, Citizens, and Commonalty, *exegerunt & perceperunt*, according to the By-law. *Qui quidem Actus sive Ordinatio est eadem Lex* supposed, by the Replication, to be made by them the Mayor, Citizens, and Commonalty. And traverse *absque hoc*, that any Law was made for Monies of Persons coming to the Markets *aliter vel alio modo* than they had before set forth. I know those learned Gentlemen who signed this Plea, and the other to the Charge of the Petition, if they could have found sufficient Matter of Justification to either, they would not have suffered them to appear upon Record in such uncouth Dresses; and therefore Deficiency of Matter may excuse the Insufficiency of Pleading; for there is Skill shewed in the Contrivance to have drawn on a Demurrer; for nothing was dreaded more than an open Examination of the Facts upon a Publick Trial, which would have fallen very little short in both Cases, as to the Aggravation laid in the Replication.

Upon this Pleading the Mayor, Citizens, and Commonalty have confessed, that the By-law was made for them, and the Monies to be levied for their Use. They have also confessed, that by Force