

APPENDIX A

House of Lords.

Monday, May 10, 1920.

THE ATTORNEY-GENERAL (on behalf of His
Majesty) *Appellant*

AND

DE KEYSER'S ROYAL HOTEL, LIMITED . *Respondents.*

LORDS PRESENT :

LORD DUNEDIN.
LORD ATKINSON.
LORD MOULTON.
LORD SUMNER.
LORD PARMOOR.

JUDGMENT ¹

LORD DUNEDIN : My Lords, it will be well that I should first set forth succinctly the facts which give rise to the present Petition, all the more that as regards them there is no real controversy between the parties. [*His Lordship then stated the facts as set out at pp. 1 to 3, ante.*] The relief asked was : ‘ (1) A declaration that your suppliants are entitled to payment of an annual rent so long as Your Majesty’s Principal Secretary of State for the War Department or Your Majesty’s Army Council or any other person or persons acting on Your Majesty’s behalf continues in use and occupation of the said premises. (2) The sum of £13,520 11s. 1d. for use and occupation of your suppliants’ said premises by your suppliants’ permission from the 8th day of May 1916 to the 14th day of February 1917. (4) A declaration that your suppliants are entitled to a fair rent for use and occupation by way of compensation under the Defence Act, 1842.’ To this reply was made by the Attorney-General on behalf of His Majesty to the following effect : ‘ (7) No rent or compensation is by law payable to the suppliants in respect of the matters aforesaid or any of them either under the Defence Act, 1842, or at all. The suppliants have been offered on behalf

¹ From the shorthand notes of Walsh & Sons, 4 New Court, Carey Street, W.C.

of His Majesty payment of such sum as in the opinion of the Defence of the Realm Losses Commission ought in reason and fairness to be paid to them out of public funds in respect of direct and substantial loss incurred and damage sustained by them by reason of interference with their property or business in the United Kingdom through the exercise by the Crown as aforesaid of its rights and duties in the Defence of the Realm.' The case depended before Mr. Justice Peterson, who dismissed the Petition,¹ holding himself bound by the decision of the Court of Appeal in *In re Petition of Right*.² Appeal being taken to the Court of Appeal, that Court, by a majority, Lord Justice Swinfen Eady (Master of the Rolls) and Lord Justice Warrington, Lord Justice Duke dissenting, reversed the decision of Mr. Justice Peterson and made the following declaration: 'And this Court doth declare that the suppliants are entitled to a fair rent for use and occupation of De Keyser's Royal Hotel on the Thames Embankment, in the City of London, by way of compensation under the Defence Act, 1842.'³ Against this Order the present Appeal has been brought.

My Lords, I shall mention first, in order to put it aside, one argument put forward by the respondents. It was that the Crown should pay a reasonable sum for use and occupation of the premises upon the ground of an implied contract, the entry of the Crown to the premises having been permitted by the Receiver, and taken by the Crown in virtue of the Receiver's permission. The simple answer to this argument is that the facts as above recited do not permit of its application. In any case of implied contract there must be implied assent to a contract on both sides. Here there was no such assent. There was no room for doubt as to each party's position. The Crown took as of right, basing that right specifically on the Defence of the Realm Act.⁴ The Receiver did not offer physical resistance to the taking, and was content to facilitate the taking. He emphatically reserved his rights, and gave clear notice that he maintained that the Crown was wrong in its contention, and that no case for taking under the Defence of the Realm Act had arisen: in other words, that the Crown had under these circumstances, according to their proposals, unlawfully taken. To spell out of this attitude on either side an implied contract is, to my mind, a sheer impossibility. Now that the act of taking by the Crown

¹ 34 T.L.R. 329.

² 1915, 3 K.B. 649.

³ (1919) 2 Ch. 197.

⁴ Defence of the Realm Consolidation Act, 1914, 5 Geo. V, c. 8.

was in itself legal is necessarily admitted by both sides. It is the basis of the case for the Crown, who said at the time that they took under the Defence of the Realm Act, and now add in argument that whether that was so or not they took *de facto*, and can justify that taking under the powers of the Prerogative. It must necessarily be admitted by the respondents, for if taking in itself was purely illegal, then it would be a tort not committed by the Crown, who cannot commit a tort, but by the Officers of the Crown, and the Petition of Right would not lie. The question in the case is therefore narrowed to one point, and one point only; the Crown having legally taken, is it bound to pay compensation *ex lege*, or is the offer to pay compensation *ex gratia*, as that compensation may be fixed by the Losses Commission, a sufficient offer and an answer to all demands?

My Lords, I have already quoted the letter of May 1, which shows that the War Office propose to take possession of the hotel under the Defence of the Realm Regulations, but in the argument in the Court below, and before your Lordships, the taking has been justified by the power of the Prerogative alone, and there has been a very exhaustive citation of authority on the powers of the Crown in virtue of the Prerogative. I do not think it necessary to examine and comment on the various cases cited. The foundations of the contention are to be found in the concessions made in the speech of Mr. St. John in *Hampden's Case*,¹ and in the opinion of the consulted Judges in the *Saltpetre Case*.² I do not quote them, for they are fully quoted in the judgments of the Courts below and in the opinions of the learned Judges in *In re a Petition of Right*. The most that could be taken from them is that the King, as *suprema potestas*, endowed with the right and duty of protecting the Realm, is for the purpose of the defence of the Realm in times of danger entitled to take any man's property, and that the texts give no certain sound as to whether this right to take is accompanied by an obligation to make compensation to him whose property is taken. In view of this silence it is but natural to inquire what has been the practice in the past. An inquiry as to this was instituted in this case, and there has been placed before your Lordships a volume of extracts from the various records. The search is admittedly not exhaustive, but it is sufficient to be illustrative. The learned Master of the Rolls in his judgment³ has analysed the documents produced. He has divided the

time occupied by the search into three periods, the first prior to 1708, then from 1708 to 1798, and the third subsequent to 1798. The first period contained instances of the acquiral of private property for the purposes of defence by private negotiation, in all of which, it being a matter of negotiation, there is reference to the payment to be offered for the land taken. With the second period we begin the series of statutes which authorize the taking of lands and make provision for the assessment of compensation, the statutes being, however, of a local and not of a general character, dealing each with the particular lands proposed to be acquired. The third period begins with the introduction of general statutes not directed to the acquisition of particular lands, and again making provision for the assessment and payment of compensation.

I shall refer to the statutes presently, but, generally speaking, what can be gathered from the records as a matter of practice seems to resolve itself into this. There is a universal practice of payment resting on bargain before 1708, and on statutory power and provision after 1708. On the other hand, there is no mention of a claim made in respect of land taken under the Prerogative for the acquisition of which there was neither bargain nor statutory sanction. Nor is there any proof that any such acquisition had taken place. My Lords, I do not think that from this usage of payment there can be imposed on the Crown a customary obligation to pay, for once the taking itself is admitted to be as of right the usage of payment so far as not resting on statutory provision is equally consistent with a payment *ex lege* and a payment *ex gratia*. On the other hand, I think it is admissible to consider the statutes in the light of the admitted custom to pay, for in the face of a custom of payment it is not surprising that there should be consent on the part of the Crown that this branch of the Prerogative should be regulated by statute. It is just here that the full investigation into the statutory history which has been made in this case, and of which the Court of Appeal and your Lordships have had the advantage, serves to dislodge a view which I cannot help thinking was very influential in determining the judgment of the Court of Appeal in the case of *In re a Petition of Right*.¹ Digressing for the moment to that case, I am bound to say that I do not think that this case can be distinguished from that in essential particulars. The existence of a state of war is common to both. As to the necessity for the

¹ (1915) 3 K.B. 649.

taking over of the particular subject, the Crown Authorities must be the judge of that, and the evidence as to the necessity for the occupation of these premises in the opinion of the Crown advisers is just as distinct and uncontradicted in this case as it was in that. I confess that had I been sitting in the Court of Appeal I should have held the same view as was expressed by Mr. Justice Peterson, namely, that it was ruled by the case of *In re a Petition of Right*.¹ This, however, is immaterial, for *In re a Petition of Right*¹ is not binding on this House, and it would have been equally proper for the learned Master of the Rolls, Lord Justice Swinfen Eady, and for Lord Justice Warrington who had obviously changed his opinion on further argument, to give your Lordships the benefit of the opinions they had come to on the merits, even if, being unable to distinguish between the two cases, their judgment had been formally given to the opposite effect from what it was.

Now the view which I think prevailed in *In re a Petition of Right* was that the Prerogative gives a right to take for use of the moment in a time of emergency, that when you come to the Defence Acts of 1803 and 1842 you find a code for the taking of land permanently in times of peace as well as of war, and that consequently the two systems could well stand side by side; and then as there was no direct mention of the Prerogative in the statutes you were assisted by the general doctrine that the Crown is not bound by a statute unless specially mentioned. That in cases where the burden or tax is imposed the Crown must be specifically mentioned, no one doubts. Instances are given by the Master of the Rolls in the cases of *Wheaton v. Maple*,² and *Coomber v. Justices of Berks*,³ and there are many others. None the less, it is equally certain that if the whole ground of something which could be done by the Prerogative is covered by the statute, it is the statute that rules. On this point I think the observation of the learned Master of the Rolls is unanswerable. He says: 'What use would there be in imposing limitations if the Crown could, at its pleasure, disregard them and fall back on Prerogative?' The Prerogative is defined by a learned constitutional writer as 'The residue of discretionary or arbitrary authority which at any given time is legally left in the hands of the Crown.' Inasmuch as the Crown is a party to every Act of Parliament, it is logical enough to consider that when the Act deals with something which before the Act could

¹ (1915) 3 K.B. 649.² (1893) 3 Ch. 64.³ (1883) 9 A.C. 61.

be effected by the Prerogative and specially empowers the Crown to do the same thing but subject to conditions, the Crown assents to that, and by that Act, to the Prerogative being curtailed.

I have read very carefully and considered the judgments delivered in *In re a Petition of Right*,¹ and it is, I think, apparent that the view of the series of statutes there presented was that the general statutes had their inception for the purpose of permanent acquisition in times of peace as well as of war, but in the fuller citation that has been made in this case we find that this is not so. It is somewhat significant that in the first statute of all dealing with the acquisition of land, 7 Anne, c. 26, we have a reference to 'the usual methods' that had been taken to prevent extortionate demands, and the usual methods are said to be a valuation by jury. It is also significant that in the whole statutory series there is no trace of any claim to take under the Prerogative and not to pay. On the contrary, for instance, in 31 Geo. II, c. 39, date 1757, we find during the war (that is the Seven Years War) land had actually been taken, that extravagant claims were feared, and then that is followed by a statutory provision for vesting the lands taken in trustees till the price may be paid as fixed by assessment by jury, and then on payment the trustees are to hold for His Majesty. But the real point seems to me to be that we find that even before the idea of a general Act, that is to say, when the Acts were limited in time to the continuance of a war, there is provision made for a temporary taking and for payment, or, in other words, for getting by statute, with the concomitant obligation of payment, that very temporary possession which, according to the view expressed above, was the function of the Prerogative to provide free of charge, leaving it to statute to provide for a permanent acquisition. Thus in 38 Geo. III, c. 27, date 1798, in the middle of the war with the revolutionary Government of France, which began in February 1793 and ended with the Peace of Amiens in March 1802, we find in section 10 powers given to His Majesty to authorize a general officer to mark out any piece of ground wanted for the public service, and to treat with the owner thereof or any person or persons having any interest therein 'for the possession or use thereof during such time as the exigencies of the service shall require', and in case of refusal, to take the land and get the value assessed by jury. This Act was limited to the continuance of the war. War again broke out against France on

¹ (1915) 3 K.B. 649.

April 29, 1803, Napoleon being first Consul for life, and 43 Geo. III, c. 35, July 1803, repeated the provisions of 38 Geo. III, c. 27. It again was limited to the duration of 'the present hostilities with France'. Then in 1804, there being still war with France and a prospect of invasion by Napoleon, 44 Geo. III, c. 95, was passed. This had no temporary clause. It recited that doubts had arisen as to whether the Act of 1803 authorized permanent acquisition, and it proceeded to provide for temporary taking, using the old phrase 'for such time as the exigencies of the public service may require', and contained the old arrangements for assessment of the payment by a jury. This Act was the forerunner of, and was superseded by, the existing Act of 1842,¹ which again repeats the words 'during the exigencies of the public service'. This Act was passed in time of peace. It thus appears that the inception of the legislation was during that very period and connected with that very requirement which, if the argument in *In re a Petition of Right* was sound, was satisfied by the powers of the Prerogative alone, that is to say, it dealt with temporary acquisition during a period of war, and the Act of 1842 only continued that legislation. It is therefore impossible, in my opinion, to say that the whole field of the Prerogative in the matter of the acquisition of land or rights therein was not covered by the Act of 1842. It follows from what I have said above that there is no room for asserting an unrestricted Prerogative right as existing alongside with the statutory powers authorizing the Crown to acquire on certain terms. The conclusion is that the Crown could not take the Petitioners' premises by the powers of the Prerogative alone.

I now come to the Defence of the Realm Consolidation Act of 1914,² the Act under the powers of which the Crown professes to take. Now, just as the statutes must be interpreted in view of what the rights and practices antecedent to them had been, so we must look at the Defence of the Realm Act in view of the law as it stood previous to its passing. The Defence of the Realm Consolidation Act, 1914, passed on November 27, 1914, declares by section 1, subsection (1), that His Majesty has power during the continuance of the war to issue regulations for securing the public safety and the defence of the realm. Subsection (2) says that any such regulations may provide for the suspension of any restrictions on the acquisition or user of land . . . under the Defence Acts, 1842 to 1875. Pursuant to

¹ 5 & 6 Vict. c. 94.² 5 Geo. V, c. 8.

this Act a regulation was issued on November 28, 1914, which empowered the competent Naval or Military Authority, or any person authorized by him, 'when for the purpose of securing the public safety or the defence of the realm it is necessary to do so (subsection (a)) to take possession of any land, and (subsection (b)) to take possession of any buildings.' It is clear that under these subsections the taking possession of De Keyser's Hotel was warranted, but there was no necessity for the public safety, or the defence of the realm, that payment should not be made, such payment being on the hypothesis that the views above expressed as to the Act of 1842 were sound—a necessary concomitant to taking. The very structure of the Act points the same way. Why provide by subsection (2) for the suspension of restrictions under the existing Act which allowed of taking land if a mere taking *simpliciter* was all that was wanted? The thing may be tested in another way. Suppose the regulation as to taking land had had added to it the words 'without making any payment therefor'. That would have left no doubt as to the regulation. The question would have been, was it *ultra vires*? It could only be *intra vires* if it were necessary for the safety of the realm, and that is the same question over again, and again the existence of the powers of subsection (2) of the Act can be appealed to. The argument is practically analogous to the argument that prevailed, and I think rightly prevailed, in the judgment of Mr. Justice Salter in the case of *Newcastle Breweries Company v. The King*,¹ where the taking of the goods was held a necessity, but the extrusion of the subject where goods were taken from the King's Courts in the event of non-agreement as to value was not. It will have been noticed that the regulation which authorizes the taking of land says nothing about doing away with restrictions, or, in other words, does not specifically purport to be made in virtue of subsection (2) of the Act. None the less, it may well be held to be virtually so. There are various restrictions as to the initiation of proceedings, notices, &c., which I have not thought it necessary to quote. These may be taken as swept away by the simple authority to take. There remains the question whether the obligation to pay can be considered as a restriction and also swept away. I think it cannot. The word 'restriction' seems to me appropriate to the various provisions as to notice, but not at all appropriate to the obligation to make compensation.

¹ (1920) 1 K.B. 854.

There are two other matters as to which I should say a few words. The learned Attorney-General laid great stress on the words of section 1 of the Defence of the Realm (Acquisition of Land) Act, 1916,¹ which, providing for a continuation of powers after the war, begins thus : ' Where during the course of or within the week immediately preceding the commencement of the present war possession has been taken of any land by or on behalf of any Government Department for purposes connected with the present war, whether in exercise or purported exercise of any Prerogative right of His Majesty, or of any power conferred by or under any enactment relating to the defence of the realm, or by agreement or otherwise, it shall be lawful,' &c. This, he argued, was a statutory confirmation and declaration of the power to take under the Prerogative. So it may be, but if the views expressed in the first part of my remarks are right it leaves those views untouched. And, further, the words used really amount to this. They do not in any way define the rights which the Crown has to take, but they say if the Crown has *de facto* taken *quo cunque modo* then it shall be lawful as thereafter provided to continue possession.

The other point is as to the remedy. I am of opinion that a Petition of Right lies, for it will lie when in consequence of what has been legally done any resulting obligation emerges on behalf of the subject. The Petition of Right does no more and no less than to allow the subject in such cases to sue the Crown. It is otherwise when the obligation arises from tort, but, as already insisted on, what was done here, so far as the taking of the premises was concerned, was perfectly legal.

On the whole matter I am therefore of opinion that the judgment of the Court of Appeal was right and ought to be affirmed, and the Appeal dismissed with costs.

LORD ATKINSON : My Lords, the facts have been already stated by my noble and learned friend who has preceded me.

If anything be clear in this important case it is, on the correspondence already referred to, this : that the Army Council, acting through their agent Captain R. C. Coles, did not claim to take possession of the respondents' hotel by virtue of the unrestricted and unqualified Prerogative of the Crown. On the contrary, they justified their action and claimed the right to do what they in fact did by virtue of the power and authority conferred upon them by the legislative provision of the Defence

¹ 6 & 7 Geo. V, c. 63.

of the Realm Regulations in force on May 1, 1916. It is, I think, equally clear that the respondents never admitted that the Crown possessed under these regulations the power it claimed to exercise. This is apparent from Mr. Whinney's letters of May 3 and 5, 1916. In only three ways, it would appear to me, could the respondents resist or oppose the action of the Crown: (1) by physical force—which is of course impossible; (2) by immediate proceedings at law; and (3) by protest. They adopted the last-named of these methods, but subject to that they yielded only to *force majeure*. Mr. Whinney no doubt informed Captain Coles that notwithstanding what he had said, all those interested in the hotel felt that every assistance should be given to the military authorities and that no steps should be taken which would cause inconvenience or delay, and further, that he had caused notice to be given to all the guests in the hotel and would hand over possession in accordance with the notice (i. e. the letter of May 1, 1916). Possession was handed over accordingly on May 8. It appears to me impossible on these facts to hold that this handing over by the respondents of the possession of their hotel was not in reality done *in invitum*. The respondents having done this and expressly reserved all their legal rights, they, like good citizens, without prejudice to those rights, facilitated those officers in taking over the possession in order to help the aerial service to be better carried on. If anything resembling what has taken place in this case had taken place between two citizens, it is obvious that the most appropriate remedy of the party aggrieved would have been to sue in trespass for damages. The respondents cannot proceed by Petition of Right to get redress for a tort-like trespass, for the King can do no wrong, and the principle of *respondent superior* does not apply to the Crown where the wrong is committed by its officers. It by no means follows, however, that because the respondents cannot sue in tort by Petition of Right, they can sue in contract for compensation for the use and occupation of their premises. It is no doubt quite true that a private person, or in some instances a public body, can, as it is phrased, waive a tort and sue in contract, but that can only be true where both of these remedies are open to him or it. The aggrieved party may then elect which remedy to pursue, and this though both causes of action arise out of the same transaction. The familiar case of a passenger in a railway train who takes and pays for a ticket to be carried to his destination and is injured in *transitu*

by the negligence of the company's servants is an instance of this. He can sue the company in either form of action. That, however, of course does not apply to a case where a trespasser enters into and holds possession of a man's land against his will while purporting to act under a power the existence of which the owner challenges and against the exercise of which he protests.

The Court of Appeal, as I understand their judgment, held that the Crown could be proceeded against by Petition of Right to recover compensation in use and occupation for the breach of its contract to pay for the use and enjoyment of the respondents' hotel, and several authorities had been cited to support this view. Differing as I do on this point from the views of the two learned Lords Justices who constituted the majority, and entertaining, as I do, the most sincere respect for the survivor of those two Lords Justices as well as for the memory of the distinguished Lord Justice since unhappily deceased, I feel bound to justify my dissent from their views by an examination of the authorities on the point at greater length, perhaps, than might otherwise be excusable. These authorities establish, I think, this proposition, that in order to recover in the ordinary action for use and occupation the plaintiff must prove the existence of an agreement, expressed or implied between him and the defendant, to the effect that the latter shall at least be the tenant at will of the former of the lands or premises occupied and shall pay for that occupation. In *Phillips v. Homfray*,¹ Lord Justice Bowen, as he then was, at page 461, said : ' Actions for use and occupation according to the better opinion have been confined to the class of cases where the defendant is not a trespasser setting up an adverse title, and where there are no circumstances that negative the implication of a contract (see *Churchward v. Ford*,² per Pollock C.B.). No doubt the mere enjoyment by one man of another man's property, real or personal, may be held under such circumstances as leave still open as a reasonable inference the presumption that it is on the terms of payment, just as a man who takes a bun from the refreshment counter at a railway station takes it on the implied promise to pay for it.' A familiar example of the class of cases in which the circumstances negative the implication of such a contract is where a purchaser enters with the owner's permission into possession of property sold under a contract of sale, the purchase of which subsequently

¹ (1883) 24 Ch. D. 439 : affirmed on the ground that the appeal was out of time (1886) 11 A.C. 466.

² (1857) 2 H. & N. 446 ; 157 E.R. 184.

goes off. In *Howard v. Shaw*,¹ Baron Parke, at page 122, said : 'If the defendant had entered into possession under an agreement there is no doubt he would have been a tenant at will until the lease was granted. Here he may be assumed to have entered into possession under an agreement for sale which was to be carried into effect by a conveyance. . . . I quite agree, however, that while the agreement subsisted, the defendant was not bound to pay any compensation for the occupation of the land, because the contract shows that he was to occupy without compensation, but still he was tenant at will. When the agreement went off he was still tenant at will, but after that there was nothing to show that he was not to pay compensation because the stipulated compensation by payment of the purchase money was at an end. From that time, therefore, he became liable to be sued in an action for use and occupation.' Baron Alderson gave judgment to the like effect, as did also Chief Baron Palles in *Markey v. Coote*.²

Even on the assumption that the Crown went into possession of the hotel, not by virtue of a legislative title or by force of a paramount power, but by the permission of the respondents, for which the reasons already given I think it impossible to hold, I am at a loss to see how an agreement binding at law to pay for compensation for the occupation can be inferred in face of the distinct refusal of Captain Coles in his letter of May 1, 1916, to pay any compensation whatever *ex debito* but merely *ex gratia*. Chief Baron Pollock in delivering judgment said, 'There are authorities to the effect that where nothing appears except that one person is entitled to land which another has occupied and enjoyed an action for use and occupation may be maintained because a contract may be implied. That explains the decision in *Hellier v. Silcox*.³ But the taking of possession as of right by a disseisor could not be turned into a contract on the notion that the trespass may be waived and some imaginary contract substituted. Here the defendant was in possession claiming title under Mrs. Foss with whom he had contracted. It cannot be implied that there was a contract with the plaintiffs.' It would certainly appear to me that in this case the position of the Crown in reference to this matter resembles more closely that of the disseisor whom Chief Baron Pollock mentions than it

¹ (1841) 8 M. & W. 118 ; 151 E.R. 973.

² (1876) L.R. 10 C.L. 149.

³ (1850) 19 L.J. (Q.B) 295.

does that of a person entering with the permission of the owner of the premises.

I now turn to the authorities relied upon by the Court of Appeal. The first of these is the case of the *Marquis of Camden v. Batterbury*,¹ reported on appeal from the Common Pleas. There a certain builder named J. W. Elliott entered into an agreement with the landlord of certain lands, the plaintiff in the action, to build certain houses on these lands, the plaintiff agreeing as soon as one or more of these houses should be erected to make a lease to Elliott for a term of years upon certain terms of each messuage upon which a house was built. By the articles of agreement Elliott contracted that until the land with the buildings upon it should be leased to him, he would pay the same yearly rents or sums as were to be reserved by the lease when granted. Elliott assigned his interest in this agreement to the defendant, who took possession of the lands, erected certain buildings upon them, paid the stipulated yearly sums, and then assigned his interest to one White. The action was brought for money claimed to be payable by the defendant (White) to the plaintiff in respect of the defendant's use by the plaintiff's permission of certain of the latter's lands and premises. It was held, affirming the judgment of the Court of Common Pleas, that neither Elliott nor the defendant acquired any interest in the land under the building agreement, nor was any tenancy from year to year created thereby, nor by the occupation of the lands and the payment of the stipulated sums. With all respect, this case is, I think, an authority rather against the proposition it was cited to support than in favour of it. The next case is that of *Levi v. Lewis*,² affirmed on appeal to the Exchequer Chamber.³ There Knight, the superior landlord, let the subject of the occupation to Levi the plaintiff for a term of years. Levi underlet to Lewis, the defendant, for the whole term, leaving no reversion to himself. The interest of both having expired together, Lewis applied to Knight to allow him to become his (Knight's) tenant. Knight refused and referred to Levi as still his tenant. Lewis continued to occupy, and Knight, to the knowledge of Lewis, continued to insist on holding Levi liable. Levi then sued Lewis for use and occupation of the land since the expiration of the term, and Levi then paid the rent for that period to Knight, who accepted it. The trial judge, Mr. Justice Willes, holding that

¹ (1860) 7 C.B. (N.S.) 864 ; 141 E.R. 1055.

² (1859) 6 C.B. (N.S.) 766 ; 141 E.R. 652.

³ (1861) 9 C.B. (N.S.) 872 ; 142 E.R. 343.

there was no evidence to go to the jury of the use and occupation of the premises by Lewis as Levi's tenant, directed a non-suit. The Court of Common Pleas held that there was evidence to go to the jury on an implied contract by Lewis to pay Levi for the occupation of the premises. Mr. Justice Willes in delivering judgment said, 'Conceding that the relative position of the parties would not have enabled Levi to bring an action, yet their conduct was such that we think there was evidence from which a jury might infer an understanding or implied contract between Levi and Lewis that Lewis should pay for the occupation of the premises. . . . The jury might have thought that Lewis might have known he was not considered tenant to Knight, but that he was considered tenant to Levi, and that Knight and Levi had severally shown by their conduct that they severally took that view, adding, however, that the Court gave no opinion as to the conclusion to which the jury ought to come.' On appeal to the Exchequer Chamber Justices Wightman, Crompton, and Hill held that the decision of the Court of Common Pleas was right and should be affirmed. Barons Bramwell and Channel thought it was wrong and should be reversed, Baron Bramwell adding that Baron Martin when he left the Court was very much of his (Baron Bramwell's) opinion. If Lewis immediately on the termination of the term had told Levi that he stoutly refused to admit that he was under any legal liability to pay for compensation for his future occupation of the premises, there might possibly be some resemblance between this case and the present. As matters stand, there does not appear to me to be any resemblance whatever between them. The next case is that of *Hellier v. Silcox*.¹ In reference to this case, Lord Justice Bowen in *Phillips v. Homfray*,² at page 461, said, 'There have been, no doubt, instances in which, nothing further appearing in evidence, but that one person is the owner of the land and that another person has taken possession of it and enjoyed it, an action for use and occupation under the Statute has been upheld¹ (see *Hellier v. Silcox*). In such cases the inference, in the absence of proof to the contrary, has been allowed to be drawn that the enjoyment was by permission of the rightful owner.' Then follows the passage as to the more correct view already cited. The two facts (1) that the Crown in my view did not enter into possession with the free leave and consent of the respondents, but by the coercion of a superior power ;

¹ (1850) 19 L.J. (Q.B.) 295.

² (1883) 24 Ch. D. 439.

and (2) that the Crown, when it did, through its officers, enter into possession absolutely refused to acknowledge any legal liability to pay compensation in respect of their use and enjoyment of the hotel, fundamentally distinguish all these cases from the present. In my opinion, therefore, a Petition of Right, not based upon the statutes of 1798, 1842, or 1914, nor the regulations made under them, but merely on such legal liability as arises between citizens when one occupies and enjoys the property of another with the express or implied permission of that other to pay compensation for that enjoyment, would on the facts of this case fail. It is an entirely different question whether on those same facts these statutes and regulations do not impose upon the Crown a statutory liability to pay reasonable compensation, in the form of a rent or otherwise, for the possession, occupation, use and enjoyment, acquired compulsorily, of the respondents' hotel.

The late Master of the Rolls in the following pregnant passage of his judgment¹ put a rather unanswerable question. He said: 'Those powers which the executive exercises without Parliamentary authority are comprised under the comprehensive term "Prerogative"'. Where, however, Parliament has intervened and has provided by statute for powers previously within the Prerogative being exercised in a particular manner and subject to the limitations contained in the statute, they can only be so exercised; otherwise what use would there be in imposing limitations if the Crown could at its pleasure disregard them and fall back upon Prerogative?' It was not contended, it could not, I think, be successfully contended, that the Act of 1842 and the Defence of the Realm Consolidation Act of 1914² (hereinafter referred to as the Act of 1914) do not bind the Crown, seeing that they deal with what is the special trust and duty of the King to provide for, namely, the defence and security of the Realm, and prescribe the mode in which and the methods by which land or its use is to be acquired by the Crown's officers, the Ordnance Department, the Admiralty, Army Council, the members of His Majesty's Forces, and other persons acting on his behalf for these very purposes, whether one applies the test suggested in Bacon's Abridgement (7th ed. vol. vii. 462), quoted apparently with approval by Sir John Jessel (Master of the Rolls) in *Ex parte Postmaster-General*³ or that laid down by Lord Lindley in *Wheaton v. Maple*,⁴ viz. that the Crown is never bound by

¹ (1919) 2 Ch. 216.² 5 Geo. V, c. 8.³ (1879) 10 Ch. D. 595.⁴ (1893) 3 Ch. 64.

a statutory enactment unless the intention of the Legislature to bind the Crown is clear and unmistakable.

I think these statutes and regulations satisfy both tests. Before dealing with them, I desire to express my complete concurrence in the conclusion at which the late Master of the Rolls arrived as to the result of the searches made by the Crown touching the nature and particulars of the commissions issued in early times in order to determine what sums were paid *ex gratia* where lands were taken by the Crown or its officers for the defence of the realm and the occupation of them connected therewith by the military. The conclusion, as I understand it, is this, that it does not appear that the Crown has ever taken for these purposes the land of the subject without paying for it and that there is no trace of the Crown having, even in the times of the Stuarts, exercised or asserted the power or right to do so by virtue of the Royal Prerogative. I also concur with the conclusion at which that distinguished and learned judge arrived as to the purpose, object and effect of the body of legislation passed from the year 1708 to the year 1798, enabling land or the use of it to be compulsorily acquired by the Crown on the terms of the owner being paid for it. I further concur with him in his analysis of the provisions of the Acts passed in 1803, 1804, and 1819¹ dealing with the public service. I agree that in all this legislation there is not a trace of a suggestion that the Crown was left free to ignore the statutory provisions and by its unfettered Prerogative do the very things these statutes empowered the Crown to do, but free from the statutory conditions and restrictions imposed by the statutes. It is quite obvious that it would be useless and meaningless for the Legislature to impose restrictions and limitations upon, and to attach conditions to the exercise by the Crown of, the powers conferred by a statute if the Crown were free at its pleasure to disregard all these provisions, and by virtue of its Prerogative do the very things the statutes empowered it to do. One cannot in the construction of a statute attribute to the Legislature, in the absence of compelling words, an intention so absurd. It was suggested that when a statute is passed empowering the Crown to do a certain thing which it might theretofore have done by virtue of its Prerogative, the Prerogative is merged in the

¹ The reference should be, not to an Act of Parliament, but to the extract from the Earl of Chatham's papers printed App. F, p. 295 *post*, from which it appears that legislation was contemplated—see per Swinfen Eady, M.R. (1919) 2 Ch. p. 223.

statute. I confess I do not think the word 'merged' is happily chosen. I should prefer to say that when such a statute expressing the will and intention of the King and of the three Estates of the Realm is passed, it abridges the Royal Prerogative while it is in force to this extent, that the Crown can only do the particular thing under and in accordance with the statutory provisions, and its Prerogative power to do it is in abeyance. Whichever mode of expression be used, the result intended to be indicated is, I think, the same, viz. that after the statute has been passed and while it is in force the thing it empowers the Crown to do can thenceforth only be done by and under the statute and subject to all the limitations, restrictions, and conditions thereby imposed, however unrestricted the Royal Prerogative may theretofore have been.

If that be so, as I think it is, then the first question to be determined is what particular things the Defence Act of 1842,¹ which is really the culmination of the legislation passed from 1800 downwards, enacts; what the Defence of the Realm Consolidation Act of 1914,² coupled with the regulations issued under it, empowers the Crown to do, and what are the conditions, if any, imposed upon the doing of them. By section 2 (1) of the Defence of the Realm Consolidation Act, 1914 (5 Geo. V, c. 8), passed on November 27, 1914, the two previous statutes 4 & 5 Geo. V, c. 29, and 4 & 5 Geo. V, c. 63, are repealed, but it is provided that nothing in that repeal shall affect any orders made thereunder and that all such Orders-in-Council shall until altered or revoked by an Order-in-Council under this Act (i.e. 5 Geo. V, c. 8) continue in force and be in effect as if made under this latter Act. By section 1, subsection (1), it is provided that during the continuance of the then present war His Majesty may issue regulations for securing the public safety and the defence of the realm, and as to the powers and duty for that purpose of the Admiralty and Army Council and the members of His Majesty's Forces and other persons acting on his behalf, and may by such regulations authorize the trial by court-martial or, in cases of minor offences, by courts of summary jurisdiction and punishment of persons committing offences against the regulations, and in particular against any of the provisions and regulations designed for the five particular purposes mentioned. The regulations must be designed to secure the public safety and defence of the realm. Section 2 provides that any such regulations, that is, any regulations issued to effect those two

¹ 5 & 6 Vict., c. 94.

² 5 Geo. V, c. 8.

objects, may provide for the suspension of any restrictions on the acquisition or user of land, or the exercise of the power of making by-laws or any other powers under the Defence Acts, 1842 to 1875,¹ or the Military Lands Acts, 1891 to 1903. There is no independent express provision in this Act of 1914 enabling the Crown, in the emergency of the war, to acquire land or the use of it for the purpose of securing the public safety and the defence of the realm. It must, therefore, I think, be assumed that by reason of the provisions of this second section it was designed and intended by the Legislature that the ample powers for the acquisition of land or the use of it either by agreement or purchase compulsorily conferred upon the Crown by the Act of 1842 should be availed of. Whether the land or its use were presumed to be acquired by voluntary purchase under its sixteenth section or compulsorily under its nineteenth section, the owner in each case was to be paid or compensated for what he parted with. In addition, by its twenty-third section a further restriction was placed upon the exercise of the power of compulsory purchase. That section enacted that no lands or buildings or other hereditament should be taken without the consent of the owner unless the necessity or expediency of taking it should be certified by the lord lieutenant of the county in which the land or hereditament lay, or, in the alternative, by one or more of the other public functionaries named, and unless the taking of the land or buildings or other hereditament should be authorized by a warrant signed by the Lord High Treasurer or one or more of the Commissioners of the Treasury of the United Kingdom for the time being.

The methods of modern warfare have so vastly changed since this Act of 1842² was passed, that if it was availed of as it stood by the Crown in the course of the late war, the restrictions might seriously delay and embarrass the Crown in taking through its officers adequate measures to secure the public safety and the defence of the realm, while if the restrictions were removed its amended machinery must be adequate for the occasion. It is apparently with this view that section 2 of the Act of 1914 is confined to the removal of those restrictions. There is no attempt to set up new machinery. The powers conferred by the Act of 1842, thus unfettered, are to be allowed to remain operative and available for use. The words of section 2, however, are 'restrictions on the acquisition or use of land'. When those

¹ See n. 1, p. 10, *ante*.

² 5 & 6 Vict., c. 94.

restrictions are examined it is, in my mind, clear that the legal obligation to pay for the land or its use, temporarily or permanently acquired, is not a restriction upon the acquisition of either, or a condition precedent to its acquisition. There is nothing in the statute to suggest that this liability to pay is to be affected or taken away by the regulations which may be issued, and if the regulations purported to do that I doubt if they would not, having regard to the wording of section 2, be *ultra vires*. Neither the public safety nor the defence of the realm requires that the Crown should be relieved of a legal liability to pay for the property it takes from one of its subjects. The recognized rule for the construction of statutes is that unless the words of the statute clearly so demand, the statute is not to be construed so as to take away the property of a subject without compensation. Lord Justice Bowen, in *London and North-Western Railway Company v. Evans*,¹ at page 28, said: 'The Legislature cannot fairly be supposed to intend, in the absence of express words showing such intention, that one man's property shall be confiscated for the benefit of others or of the public without any compensation being provided for him in respect of what is taken compulsorily from him. Parliament in its omnipotence can override or disregard this ordinary principle . . . if it sees fit to do so, but it is not likely that it will be found to disregard it without plain expression of such a purpose.' There is not in the Act of 1914² or in the regulations framed under it any indication of such a confiscatory purpose. The Regulations 2, 2A, do not expressly suspend any restrictions on the acquisition of or user of land imposed by the Defence Act of 1842.³ They commence with the statement that the enjoyment of property will be interfered with as little as may be permitted by the emergency of the measures required to be taken for securing the public safety and the defence of the realm, and provide that the Admiralty, Army Council, and Air Council, and members of the Naval and Military Forces and the other persons executing the regulations shall, in carrying them into effect, observe these general principles. Thus, by section 2, it is further provided that the Naval and Military Authority (defined in Regulation 62) or any person duly authorized by him may, when necessary for the purpose expressly indicated, namely, for securing the public safety and defence of the realm, do several things involving the taking possession of land and user of the real property of

¹ (1893) 1 Ch. 16.² 5 Geo. V, c. 8.³ 5 & 6 Vict., c. 94.

the subject without any of the preliminaries prescribed by the Defence Act of 1842 ;¹ for instance, he may take possession of any land, construct military roads thereon, remove any trees, hedges or fences therefrom ; take possession of any buildings or other property including works for the supply of gas, electricity, or water, or any sources of water supply ; take such steps as may be necessary for placing any buildings or structures in a state of defence ; cause any buildings to be destroyed, and finally do any other act involving interference with the private rights of property for the aforesaid purposes. As to real property, no preliminary procedure of any kind is prescribed, and no mention whatever is made as to payment or compensation in respect of it. As regards personal property, however, it is provided by the last clause of section 2 that if after the competent Naval Authority has issued notice that he has taken or intends to take possession of any movable property in pursuance of that regulation, any person having control of any such property sells, removes, or secretes it without the consent of the competent Military Authority he shall be guilty of an offence against the regulations. Presumably some such notice should be given in the case of real property, though that is not expressly provided. Then one finds a most significant provision in section 2B, namely, that where any goods the possession of which has been so taken are acquired by the Admiralty, Army Council or Air Council or the Minister of Munitions, those regulations on their very face justify an immediate taking possession of the real property of the subject without any preliminary formality or procedure. They are in absolute conflict with the provisions of the Defence Act of 1842,¹ imposing restrictions on the acquisition of land or its use and prescribing formalities. The two cannot be reconciled, and the irresistible conclusion must therefore be that the earlier provisions have been suspended by the later.

Again, it appears to me to be almost inconceivable that the Crown should claim the right to do such things as prostrate fences, take possession of the great industrial works mentioned, or cause any buildings to be destroyed without being bound at law to compensate the owners thereof therefor. The fact that no provision to a contrary effect has been introduced into these regulations touching real property, while one is introduced touching goods acquired, suggests, I think, that the provisions of the Defence Act, 1842,¹ touching payment or compensation for real

¹ 5 & 6 Vict., c. 94.

property taken or used were left to apply. There is nothing in these regulations inconsistent with their being so left. Much reliance was placed by the Crown on the Defence of the Realm (Acquisition of Land) Act, 1916¹: First, because in its first section it recognizes that possession of land may be taken by a Government Department for the purposes connected with the war in exercise of a Prerogative Right of His Majesty, as well as under any statute relating to the defence of the realm or by agreement or otherwise. And it enables this Department to continue in possession of the land for any period not exceeding two years after the termination of the war. And, second, because by the same section it provides that the Department which continues to occupy the lands after the termination of the war shall pay a rent in respect of this continued occupation. As the regulations to be issued under the Defence of the Realm Consolidation Act, 1914, can only be issued and be operative during the war, of course they could not deal with possession of land after the war had ended, and therefore further possession had to be provided for, but it is difficult to see upon what just or rational principle the owner of land should be paid a rent for his land in respect of the possession of it while held by a Department after the war has terminated (obviously for the purposes of winding up the business of the Department), and not paid a rent or compensation for its use and possession by a Department of the State while the war continued. This last provision, it would appear to me, hinders rather than helps the contention of the Crown. I should be sorry to attempt to lay down any rule of general application by which the limits of the Royal Prerogative might be determined. That is not necessary, in my view, in this case. In my opinion in this case a statutory liability is imposed upon the Crown to pay for the use and occupation of the respondents' property. I base that opinion upon the facts of the case and the provisions of the legislation upon which the Officers of the Crown justified their action. The Attorney-General in his able argument relied much on the word 'temporary'—temporary use, temporary occupation. What does the word 'temporary' mean in such a connexion? It might cover years, yet mean only the duration of the war. In this case it covered over three years. At the beginning of the early stages of a war its duration never could be prophetically fixed even approximately. It has already been decided in your

¹ 6 & 7 Geo. V, c. 63.

Lordships' House in several instances that contracts whose performance is interrupted by war are terminated because the duration of the interruption cannot be even approximately foretold, so that the word 'temporary' would in the result mean in most cases of this kind the duration of the war, which might be years.

The only remaining point is whether a Petition of Right will lie in respect of the statutory liability for an unliquidated amount, not a fixed sum. In my opinion, based on the authority of *The Queen v. Doutré*,¹ and *Windsor and Annapolis Railway Company v. The Queen and the Western Counties Railway Company*,² such a Petition will lie. I can see no valid distinction between a sum due under a contract or grant made on behalf of the Crown mentioned by Chief Justice Erle in *Tobin v. The Queen*,³ and compensation due for the lawful and authorized use and enjoyment by the Officer of the Sovereign on the Sovereign's behalf of the lands or buildings of a subject. Both seem equally untainted by tort, both equally untouched by the principle that the King can do no wrong. I therefore think that the Appeal fails, that the judgment of the Court of Appeal was right and should be affirmed, and this Appeal be dismissed with costs.

LORD MOULTON: My Lords, the present Appeal is in the matter of a Petition of Right presented by De Keyser's Royal Hotel, Limited, the owners of the well-known hotel of that name, for compensation for the compulsory occupation of certain parts of their premises by the War Office acting in the name and on behalf of the Crown for purposes connected with the Defence of the Realm during the late war. The Crown contests the right of the suppliants to compensation for such compulsory occupation, and pleads that it was an exercise of the Royal Prerogative and gave no right of compensation to the subject. The facts of the case are not substantially in dispute, the real issue being a question of law of great and general importance. I shall therefore deal very shortly with the evidence as to what actually took place at the time when occupation of the premises was taken by the Crown.

In April 1916 the authorities at the War Office came to the conclusion that the premises in question were the most suitable for housing the heads of the Department having charge of the Army Air Service, and accordingly they, by a letter dated

¹ (1884) 9 A.C. 745

² (1886) 11 A.C. 607.

³ (1863) 16 C.B. (N.S.) 310.

April 18, 1916, instructed the Office of Works to make immediate arrangements to acquire them for that purpose. Negotiations were thereupon commenced between the Office of Works and Mr. Whinney (who then represented the suppliants' interest) for such acquisition. It was at first proposed that they should be acquired voluntarily at an agreed rent, but as the parties differed as to the amount of this rent the Board of Works abandoned the negotiations and informed Mr. Whinney that they were about to 'communicate with the War Office with a view to the total premises (excluding the shops) being requisitioned under the Defence of the Realm Acts in the usual manner'. The War Office agreed to this course being taken, and on May 1 the Office of Works, by their direction, wrote to Mr. Whinney a letter, the material parts of which are as follows: 'De Keyser's Royal Hotel, E.C. Dear Sir, I am instructed by the Army Council to take possession of the above property under the Defence of the Realm Regulations (excluding the shops, the other portions unlet, and the wine cellars). . . . We do not propose to take possession until the 8th instant, but I shall be glad if you will accept this as formal notice of the Department's intention to take possession on that day.' In accordance with this notice a representative of the War Office attended on the 8th instant and took possession of the premises, which were forthwith occupied by the Military Authorities and continued to be so occupied throughout the period of the war. It is in respect of this occupation that the suppliants claim compensation.

The representatives of the Crown have throughout insisted that possession was taken of the premises under the Royal Prerogative, and that therefore the suppliants were not entitled as of right to any payment by way of compensation, but that their sole remedy was to apply to a certain Commission named the Defence of the Realm Losses Commission, for an *ex gratia* allowance in respect of the losses that they would suffer by the occupation of their premises on behalf of the Crown. This Commission was appointed by Royal Order on March 31, 1915, 'to inquire and determine and to report what sums (in cases not otherwise provided for) ought in reason and fairness to be paid to applicants . . . in respect of direct and substantial loss and damage sustained by them by reason of interference with their property or business in the United Kingdom through the exercise by the Crown of its rights and duties in the Defence of the Realm'. It is evident that the existence of the powers of this Commission can have

no bearing upon the question raised by this Petition of Right. Its jurisdiction is restricted to 'cases not otherwise provided for', and the whole basis of this Petition of Right is that the case is already provided for. The suppliants claim that they have a legal right to the compensation, and it is that right which they are seeking to enforce by this petition. In the petition the suppliants put forward an alternative ground for their claim, viz. that the premises were given up to the Government by them voluntarily under circumstances which would in law imply a contract on the part of the Crown to pay for use and occupation of the premises. Without discussing the conditions under which such a contract may be implied, it suffices to say that in my opinion it is abundantly clear that the premises were not surrendered voluntarily but were taken compulsorily. Both parties in their letters written at the time treat it as a case of commandeering, as it in fact was, and Mr. Whinney protested strongly against the action of the Government in the matter. In short, he did everything to prevent their taking the premises, short of refusing to give them up unless the Government used physical force to obtain an entry. Had he gone further in his resistance than he actually did he would clearly have put himself in the wrong, for whatever be the suppliants' right as to compensation, the Government were undoubtedly entitled to commandeer the premises if they needed them for the purposes of the Defence of the Realm.

In deciding the issues raised herein between the Crown and the suppliants, the first question to be settled might in the present case be, to my mind, treated as a question of fact, viz. Was possession in fact taken under the Royal Prerogative or under special statutory powers giving to the Crown the requisite authority? Regarded as a question of fact, this is a matter which does not admit of doubt. Possession was expressly taken under statutory powers. The letter of May 1, 1916, from the representative of the Army Council to Mr. Whinney says: 'I am instructed by the Army Council to take possession of the above property under the Defence of the Realm Regulations.' It was in response to this demand that possession was given. It is not competent to the Crown who took and retained such possession, to deny that their representative was acting under the powers given to it by these regulations, the validity of which rests entirely on statute. It was not a matter of slight importance whether the demand for possession purported to be made under the statutory powers of the Crown or the Royal Prerogative. Even

the most fervent believer in the scope of the Royal Prerogative must admit that the powers of the Crown were extended by the Defence of the Realm Consolidation Act and the regulations made thereunder. It was for that purpose that the Act was passed and the regulations made. But even if that were not so, there was a manifest advantage in proceeding under the statutory powers. It rendered it impossible for the subject to contest the right of the Crown to take the premises by the exercise of the powers given by the statute. The statutory powers of the Crown were formulated in the regulations in a manner which was beyond mistake. For example, the regulations gave to the Crown the power 'to take possession of any buildings'. Mr. Whinney, therefore, was clearly bound to surrender the premises when demanded. It would have been a very different matter had the demand been made under the Royal Prerogative. This litigation itself is enough to show how debatable a proposition it would have been if the claim had been made that the ancient Prerogative of the Crown covered the taking of an hotel in London for the more comfortable housing of a military staff and its clerks and typewriters. All such questions were put at rest by the Legislature giving express statutory authority by the regulations. There could henceforward be no doubt that the Crown possessed the powers formulated in the regulations and this was the object of the legislation. But when the Crown elects to act under the authority of a statute, it, like any other person, must take the powers that it thus uses *cum onere*. It cannot take the powers without fulfilling the condition that the statute imposes on the use of such powers.

The Defence of the Realm Consolidation Act, 1914,¹ commenced by enacting that 'His Majesty in Council has power to issue regulations for securing the public safety and the defence of the Realm, and as to the powers and duties for that purpose of the Admiralty and Army Council and of the Members of His Majesty's Forces and other persons acting on his behalf'. It then goes on to particularize certain subjects to which these regulations may relate, and in subsection (2) it deals with the question of the acquisition of land as follows: '(2) Any such regulations may provide for the suspension of any restrictions on the acquisition or user of land, or the exercise of the power of making by-laws, or any other power under the Defence Acts, 1842-75, or the Military Lands Acts, 1891-3.' The Defence

¹ 5 Geo. V, c. 8.

Act, 1842¹ (which may be taken to represent the whole of the Defence Acts, inasmuch as the latter Acts only modify it in details which do not concern the matter in this case) is the last of a series of Acts regulating the acquisition of lands and interests in land for purposes of the Defence of the Realm. These Acts commence in 1708 and occur at intervals up to 1842. At first they related only to land for fortifications at places mentioned in the Act, but later they became more general in their character, and authorized the Crown to select suitable land and acquire it. In all cases compensation was given to the owners for the land taken. But it is not necessary to dwell on their provisions, seeing that the Defence Act, 1842,¹ repealed all such existing Acts, and laid down general provisions which have regulated since that time the procedure for the acquisition by the Crown of land for such purposes. This Act gives very wide powers to the Crown. It has unrestricted powers of selection of the necessary lands, buildings, &c., to be taken. It contemplates, in the first instance, voluntary purchase; but, if that cannot be arranged, then the lands, &c., may be acquired compulsorily, subject to certain certificates being obtained as to the necessity or expediency of the acquisition, or in case of actual invasion. I am satisfied that it enables the Crown to acquire either the property or the possession or use of it as it may need. In all cases compensation is to be paid by the Crown, the amount to be settled by a jury. The regulations and the Act under which they are made must, of course, be read together, and it is, in my opinion, a sound inference from the language of subsection (2), that the Legislature intended that, so far as the acquisition or user of land was concerned, the regulations should take the form of action under the Defence Act, 1842,¹ facilitated by the suspension of some or all of the restrictions which it imposes. The particular provisions relating to the taking of land or buildings are to be found in section 2 of the regulations. They empower the Military Authorities to take possession of any land or of any buildings where, for the purposes of the defence of the Realm, it is necessary so to do. These are very wide powers, but so general are the powers of the Defence Act, 1842,¹ that they would be attained by simply suspending the restrictions therein contained, and allowing its powers to be put in force without them. Reading, therefore, this regulation with subsection (2) of the Act, I think it is clear that in the case of acquisition and

¹ 5 & 6 Vict., c. 94.

user of land under the regulations, we ought to consider them as authorizing action being taken under the Defence Act, 1842, save that no restrictions therein appearing are to be enforced. The duty of paying compensation cannot be regarded as a restriction. It is a consequence of the taking but in no way restricts it, and therefore, as the acquisition is made under the Defence Act, 1842, the suppliants are entitled to the compensation provided by that Act.

On these grounds, therefore, I am of opinion that the suppliants are entitled to our judgment in this Appeal. But it would be unsatisfactory in a case of such general importance to leave unconsidered the question whether, apart from the fact that the Crown, expressly purported to be acting under powers given to it by statute, the suppliants' claim could be maintained. To decide this question, one must consider the nature and extent of the so-called Royal Prerogative in the matter of taking or occupying land for the better defence of the Realm. I have no doubt that in early days, when war was carried on in a simpler fashion and on a smaller scale than is the case in modern times, the Crown, to whom the defence of the Realm was entrusted, had wide prerogative powers as to taking or using the lands of its subjects for the defence of the Realm when the necessity arose. But such necessity would be, in general, an actual and immediate necessity arising in the face of the enemy and in circumstances where the rule *Salus populi suprema lex* was clearly applicable. The necessity would in almost all cases be local, and no one could deny the right of the Crown to raise fortifications on or otherwise occupy the land of the subject in the face of the enemy, if it were necessary so to do. Nor have I any doubt that in those days the subjects who had suffered in this way in war would not have been held to have any claim against the Crown for compensation in respect of the damage they had thus suffered. It must not be forgotten that in those days the costs of war were mainly borne by the Royal Revenues, so that the King himself was the heaviest sufferer. The limited and necessary interference with the property of the subjects of which I have spoken, would have been looked upon as part of the damage done by the war which it had fallen to their lot to bear, and there is no reason to think that any one would have thought that he had a claim against the Crown in respect of it. Certainly no trace of any such claim having been put forward is to be found.

This state of things lasted for several centuries. The record

of the preparations made by Queen Elizabeth to resist the attack of the Spanish Armada, which are contained in the papers in this case,¹ show that it was in full force in her time. I am not surprised that the careful (though necessarily incomplete) researches into the Public Records have found no precedent for the claim as of right against the Crown for acts done under its Prerogative in occupying or using land under the stress of such a necessity as I have spoken of, and I do not think that a complete investigation would have met with greater success. But in the last three centuries very important changes have occurred which have completely altered the position of the Crown in such matters. In the first place, war has become far more complicated and necessitates costly and elaborate preparations in the form of permanent fortifications and otherwise, which must be made in times of peace. In the second place, the cost of war has become too great to be borne by the Royal Revenues so that the money for it has to come from the people through the Legislature, which long ago assumed and has since retained the command of all national resources. In the third place, the feeling that it was equitable that burdens borne for the good of the nation should be distributed over the whole nation, and should not be allowed to fall on particular individuals, has grown to be a national sentiment. The effect of these changes is seen in the long series of statutes relating to the occupation of land for the purposes of fortifications or otherwise for national defence, to which I have already referred and which cover the last two centuries. In all these Acts provision was made for compensation to the individual whose lands were taken or used, and, indeed, there is clear evidence that for many years prior to the first of these statutes the Crown acted on this principle. It is not necessary to examine these Acts in detail. They were mostly local in their operation, and frequently temporary and usually related to specific fortifications which it was proposed to erect. But towards the beginning of the last century the Acts take on a more general and permanent form, and eventually they culminate in the Defence Act, 1842,² which gives to the Crown through its properly appointed officials the widest possible powers of taking land and buildings needed for the defence of the Realm under a minutely defined procedure set out in the Act. It contemplates that the acquisition shall, as a rule, be by agreement, but it gives ample powers of compulsory acquisition

¹ App. D, p. 247, *post*.

² 5 & 6 Vict., c. 94.

if the necessity be duly vouched, or in case of an actual invasion. In all cases compensation for the taking or using of the land by the Crown is to be assessed by a jury who (in the words of the Act) have to find 'the compensation to be paid, either for the absolute purchase of such lands, buildings, or other hereditaments or for the possession or use thereof as the case may be'. This Act was not limited either in time or place, and with small modifications which are not material for our present purpose, is still in force.

What effect has this course of legislation upon the Royal Prerogative? I do not think that it can be said to have abrogated that Prerogative in any way, but it has given to the Crown statutory powers which render the exercise of that Prerogative unnecessary, because the statutory powers that have been conferred upon it are wider and more comprehensive than those of the Prerogative itself. But it has done more than this. It has indicated unmistakably that it is the intention of the nation that the powers of the Crown in these respects should be exercised in the equitable manner set forth in the statute, so that the burden shall not fall on the individual but shall be borne by the community. This being so, when powers covered by this statute are exercised by the Crown it must be presumed that they are so exercised under the statute, and, therefore, subject to the equitable provision for compensation which is to be found in it. There can be no excuse for reverting to Prerogative powers *simpliciter*, if, indeed, they ever did exist in such a form as would cover the proposed acquisition, a matter which is far from clear in such a case as the present, when the Legislature has given to the Crown statutory powers which are wider even than any one pretends that it possessed under the Prerogative, and which cover all that can be necessary for the defence of the nation, and which are, moreover, accompanied by safeguards to the individual which are in agreement with the demands of justice. Accordingly, if the commandeering of the buildings in this case had not been expressly done under statutory powers, I should have held that the Crown must be presumed to have acted under these statutory powers and thus given to the subject the statutory right to compensation.

In the argument for the Crown reference was made to the Defence of the Realm (Acquisition of Land) Act, 1916.¹ This Act was passed subsequently to the taking of the suppliants' lands, and, therefore, has no bearing on the question before this

¹ 6 & 7 Geo. V, c. 63.

House. There is nothing in it which purports to take away any right already acquired by the suppliants, and if it modifies in any way the quantum of the compensation, that is a matter for the tribunal which will have to assess it and is not relevant to the present Appeal. I am, therefore, of opinion that the suppliants are entitled to the declaration in the form approved of by the Court below, and that this Appeal should be dismissed with costs.

LORD SUMNER: My Lords, the petition alleges in substance two rights to compensation, one for a rent for the use and occupation of this hotel, of which the Crown took possession with Mr. Whinney's permission, the other for a fair rent as compensation because he voluntarily delivered possession, though protesting against the rights then alleged and maintaining his own claims of right, whatever they might be. The answer and plea, beside traverses, allege an exercise of the Royal Prerogative for the defence of the Realm, and also rely on the Defence of the Realm Consolidation Act, 1914,¹ and the Regulations issued thereunder. Mention is made of an offer to pay whatever the Defence of the Realm Losses Commission might award, but I think this topic has no relevance. The payment would have been none the less an *ex gratia* payment, though the sum to be paid had been calculated under the forms of a judicial proceeding. Its acceptance would have involved a waiver of the suppliants' alleged right; its refusal cannot be an answer to that right, if they can establish it.

Another introductory argument may be mentioned to be put aside. The appellant, as I understand it, contends that what was done was done under the Prerogative, and not otherwise. If the Prerogative was exceeded then every servant of the Crown who used the premises would be personally guilty of trespass, and trespass being the suppliants' real remedy, the Crown succeeds. It is the typists and the clerks who are liable. If, on the other hand, the Prerogative was not exceeded, the Crown succeeds again. The singularity of this result certainly invited criticism, and I was at first inclined to think that there might be an answer analogous to the rule of waiving a tort and suing on an implied assumpsit. When a civil right may be vindicated in more ways than one, there is a choice of remedies (*Rodgers v. Maw*),² nor does it necessarily follow that this choice only arises between such remedies as are available against one and the same party.

¹ 5 Geo. V, c. 8.

² (1846) 15 M. & W. 444; 153 E.R. 924.

If the servant of a company, acting *ultra vires* the company, converts a stranger's chattel and, having sold it, pays the proceeds into the company's account as its servant, I suppose conversion would lie against the servant and for money had and received against the company (cf. *Smith v. Hodson*).¹ I have, however, come to the conclusion that no real advantage will be gained by pursuing arguments turning on forms of actions, for this reason. The suppliants must make out their right, and when they allege a right under the Defence Acts they negative any wrong done in the name of the Crown. There was no trespass by the clerks and the typists. They acted on a possession lawfully taken by the Crown, but a possession taken upon terms, and those terms were such as gave the suppliants a right to compensation. The only question is whether there is a statutory right against the Crown under the Defence Acts. In terms the Crown purported to requisition under the Defence of the Realm Acts, and, on the correspondence, I think that there was no such request by the Crown for leave to occupy, followed by consent on the part of the respondents as would support a claim to a *quantum meruit* compensation of rent apart from the statutes. There was nevertheless such assent as prevents the occupation from having been taken wholly *in invitum*, so as to leave the respondents no position but that of the sufferers of a wrong. Obviously Mr. Whinney's duty and interest alike impelled him to insistence on compensation, not to resistance to taking possession. It was money, not the hotel, that he wanted, and it does not matter whether he knew or not on what legal ground to put his claim. The question does not legally turn on permission or submission. On the facts he cannot say that he so gave possession as to imply a contract for rent, but I see nothing in them to exclude his assertion of a right to compensation, if he can establish that right in law.

The Crown has throughout purported to act on statutory rights (whether fully or correctly referred to or not), and the Prerogative has not been vouched except in argument in the present case. I do not mean that it is not open to the Law Officers to rely on the Prerogative now, or that I assume the writer of the letter dated April 29, 1916 to have had any authority to bind the Crown by an election between its statutory and its Prerogative rights. If, however, under the statutes, including the Defence of the Realm Acts, which deal with taking buildings

¹ (1791) 4 T.R. 211 ; 100 E.R. 979.

for the public safety and the defence of the Realm, the Crown had the power to requisition this building on terms as to compensating the respondents, I think it cannot contend now that by the course taken the exercise of statutory powers was excluded, and that none were in fact exercised. To begin with 1914, the question then arises, whether the premises could have been acquired simply under the Defence of the Realm Consolidation Act, 1914,¹ and the Regulations made thereunder, to the exclusion of the Defence Acts, and so to the exclusion of any right to compensation, or whether if statutory powers were exercised at all, they must have included the powers (and the obligations) for which these Acts provided. I think that no real importance attaches to the re-arrangement of section 1, which was made when the Statute of November 27, 1914 superseded that of August 8. The Defence of the Realm Consolidation Act, 1914,¹ does not purport to embody in the form of an enactment the Crown's existing Prerogative. The Act empowers the Crown to issue regulations. Now there is no Prerogative to make regulations, though it may be that some of the things which may be regulated under the Act might also be done under the Prerogative. It is, however, also clear that some things which may be validly ordered under regulations under the Act could not have been done under the pre-existing Prerogative. Further, under this Act alone no building could be requisitioned unless and until some regulation had been issued to that effect. Two kinds of regulations might be issued, one for the purpose of securing the public safety and the defence of the Realm, and the other in order to alter the existing Acts of Parliament for the time being by providing for the suspension of any restrictions on the acquisition or user of land contained in sundry named Acts. Section 1, subsection 1, provides for the first kind ; section 1, subsection 2, for the second. Of the Regulations, No. 2 is that material to the present purpose ; it deals with taking possession of any buildings and with doing any act (other than those specially described) involving interference with private rights of property. If the Crown were to exercise the powers of taking buildings, which are given by the Defence Acts, this regulation could well be held to dispense with the formalities prescribed by them. They would be restrictions, which the regulation would have suspended. The obligation to pay compensation to the dispossessed owner, which that Act provides for, is, however, not

¹ 5 Geo. V, c. 8.

a restriction on the acquisition of his land. It might discourage the exercise of the power of acquisition but it does not limit that power. The power is complete independently of payment, and it is fully exercised before the obligation to pay arises.

The next question is, should Regulation 2 be regarded as having been made in exercise of the powers given by the first or by the second subsection of section 1 of the Defence of the Realm Consolidation Act ¹? In other words, is it to be regarded as an exercise of a power to requisition under regulations issued for the purpose, or as an exercise of the power to facilitate requisitioning already authorized? It is true that it authorizes the competent naval or military authority to do the above-mentioned things 'for the purpose of securing the public safety, or the Defence of the Realm', but that is the purpose mentioned in section 16 of the Defence Act, 1842,² and the words may only be a reference to that section. Furthermore, the regulation deals with many matters beside the acquisition of land and buildings, and these would in any case require a substantive reference to the above purposes, which sufficiently accounts for the use of the words without its being necessary to read them as pointing to the exercise of a new power of requisitioning. With all respect to the opinion expressed by Mr. Justice Avory,³ I think it should be treated as only an exercise of the power of suspending restrictions given by subsection 2. If it were held that this regulation is to be deemed to have been made, so far as the acquisition of land or buildings is concerned, in exercise of new powers given by subsection 1, on the ground that the regulations to be issued are regulations as to the powers of the Army Council from time to time and not merely as to the exercise of its powers, then it would follow that the Crown, having full power of accomplishing the desired acquisition under the Act of 1842,² and of suspending any inconvenient restrictions on that power, must be deemed to have been advised to exercise a new power of accomplishing the same object, differing from the existing power in one respect only, namely, that it is accompanied by no obligation to pay the subject anything. I think it should not be assumed that, even if the Crown has such a power under section 1, it has been advised to exercise it solely to avoid paying a subject for the exclusive use of his property. The presumptions must be, both that the executive action was taken under powers by which it can be justified, rather than beyond all powers whatever, and that the

¹ 5 Geo. V, c. 8.² 5 & 6 Vict., c. 94.³ (1915) 3 K.B., p. 653.

available powers have been exercised so as to prevent and not so as to cause avoidable injury to the subject. Further, the Defence of the Realm Consolidation Act¹ by subsection 2 of section 1 gives an express and limited power of altering by regulation what is enacted by the Defence Acts. I think that no further power of restricting those enactments is intended to be conferred by the general words of subsection 1, nor ought that subsection, couched as it is in general terms only, to be construed as authorizing the Crown to do by regulation what the Legislature itself has already fully provided for by statute, least of all when that regulation would have the effect of taking the subject's property without compensation contrary to the intention of the prior Acts.

The next question must be, is the Defence Act, 1842,² with the other Defence Acts, adequate to enable the Crown to effect such an object for the purpose of the Defence of the Realm as that involved in the taking of this hotel? It is true that the Act enables much more to be done and that the provisions for a greater or a less exercise of the power of taking lands are not kept separate. The same series of sections enables the Crown to take lands under the Act in peace or in war, in absolute ownership and in perpetuity, or for temporary occupation only, but there is no difficulty in severing these provisions. It is true that, except for an express saving in section XXXIV, the Royal Prerogatives are not named, but the powers of taking land are such as only the Crown by its proper officers and departments can exercise, and the restrictions on the exercise of the statutory powers, which the Act requires, must necessarily be restrictions upon the powers of the Crown. It is true that some of these restrictions might in time of war be inconvenient in moments of extreme peril; of these the most formidable is the giving of a fourteen days' notice, though I observe that some overtures for this hotel were made in November 1915, and when the officials came to business in 1916, eleven days were passed in negotiating for a rent, and the parties got as close together as £19,000 and £17,500 before it was thought necessary to refer to the Defence of the Realm Act. If, however, formalities not inconsistent with the exigencies of a state of war in 1842 would have been prejudicial to the public service in 1916, the powers given by subsection 2 of section 1 of the Act of 1914¹ had only to be exercised, as in fact they were, and all these difficulties

¹ 5 Geo. V, c. 8.

² 5 & 6 Vict., c. 94.

would vanish. I see no reason to doubt that the Act of 1842¹ gave all the powers necessary for the exigencies of the recent war, subject only to the removal of restrictions contained in it, and there is, therefore, nothing to rebut the natural presumption that Regulation 2 is, in so far as it deals with the matters to which the Defence Acts would apply, only an exercise of the power of removing existing statutory restrictions, and is not new legislation by which the Crown takes new and unrestricted powers in order to obtain the same result.

The appellant further contended that all that was done could be done and was done independently of any statute by virtue of the Royal Prerogative alone. I do not think that the precise extent of the Prerogative need now be dealt with. The Legislature by appropriate enactment can deal with such a subject-matter as that now in question in such a way as to abate such portions of the Prerogative as apply to it. It seems also to be obvious that enactments may have this effect, provided they directly deal with the subject-matter, even though they enact a *modus operandi* for securing the desired result which is not the same as that of the Prerogative. If a statute merely recorded existing inherent powers, nothing would be gained by the enactment, for nothing would be added to the existing law. There is no object in dealing by statute with the same subject-matter as is already dealt with by the Prerogative, unless it be either to limit or at least to vary its exercise, or to provide an additional mode of attaining the same object. Even the restrictions (such as they were) imposed by the Defence Acts on any powers of requisitioning buildings in time of war were in no way inconsistent with an intention to abate the Prerogative in this respect, if not absolutely (*New Windsor Corporation v. Taylor*²), at least for so long as the statute operates. In truth, the introduction of regulations so reasonable only strengthens the substance of the Royal authority by removing all semblance of arbitrary power. When, however, the matter is looked at, as it now must be, in the light of Regulation 2, no room for doubt remains. The Regulation has the force of statute, and under its amelioration of the Defence Acts everything could be done for this purpose that could be done under the Prerogative, equally efficiently and with equal speed. One difference, and one only, can be found. According to the argument, under the Prerogative the subject could claim no compensation for losing the use of

¹ 5 & 6 Vict., c. 94.

² (1899) A.C. 49.

his property ; under the statute he could. Is it to be supposed that the Legislature intended merely to give the Executive, as advisers of the Crown, the power of discriminating between subject and subject, enriching one by electing to proceed under the statute, and impoverishing another when it requisitions under the alleged Prerogative ? To presume such an intention seems to me contrary to the whole trend of our constitutional history for over 200 years. Nor is it a reasonable interpretation to say that the object of the Defence Acts was merely to supplement the Prerogative by enabling the Crown to pay compensation out of public funds to a subject damnified by the exercise of the Prerogative, which otherwise it would not be able to do. A Prerogative Right to take without paying must have been a right to take without paying out of the Royal funds, but, in truth, Prerogative can at most extend to taking, and stands quite apart from payment. There is no Prerogative Right to elect not to pay. Conversely, if there is adequate power to do all that is required by proceeding under the Statute, where is the emergency and public necessity, which is the foundation for resort to the Prerogative ? My Lords, for these reasons I think that the Executive did not take possession under the Prerogative, for the Defence Acts had superseded it ; that the Act of 1914 and Regulation 2 did not in themselves enable possession to be taken ; that the taking of possession must be referred to the powers given by the Defence Acts ; and that, in consequence, the suppliants are entitled to be compensated in accordance therewith. I do not refer to the many statutes which preceded the Defence Act, 1842, from the time of Queen Anne, because they only seem to me to justify without altering my reasons for this conclusion.

This being so, there are only two further matters to which I wish to refer. They are the search which was made into the Public Records at the suggestion of the late Master of the Rolls, and the passages which have been cited from the opinion of the Judicial Committee in the case of *The Zamora*.¹

That the search for documents relating to the taking of land for fortifications and similar purposes in times past was left incomplete and, indeed, was not much more than begun, is matter of considerable regret. So far as it went, it is said to have been inconclusive. Probably it will never go any further, for the result has scarcely been such as would encourage the Executive

¹ (1916) 2 A.C. 77.

to proceed with it, and the subject does not greatly attract the student of history. The records cover both peace and war. The result, as it stands at present, seems to be this. Many documents are forthcoming which relate to the taking of land for such purposes by agreement and on payment of compensation. None can be found relating to taking land as of right and without any compensation at all, even in time of war. No Petition of Right is to be found in which a suppliant seeks to recover compensation, but whether this be, as the Crown suggests, because no subject ever had the temerity to put forward such a contention, or, as the respondents argue, because the Crown never gave him occasion to do so, is a matter which remains unknown. There appears to be no reported case which has decided that the subject is entitled to compensation for lands taken by the Crown in purported exercise of the Prerogative, but to this circumstance the same observation applies. The point that no suppliant has presented a Petition of Right with such an object seems to me to be of minor importance. Experience in the present war must have taught us all that many things are done in the name of the Executive in such times purporting to be for the common good which Englishmen have been too patriotic to contest. When the precedents of this war come to be relied on in wars to come, it must never be forgotten that much was voluntarily submitted to which might have been disputed, and that the absence of contest and even of protest is by no means always an admission of the right. In a lesser degree, I see no reason why similar courses may not have been taken in times of less gravity. At any rate the fact remains that the claim of Prerogative right maintained by the appellant is one of the exercise of which history has preserved no record.

As to the judgment in *The Zamora*,¹ I concede what was there said to have been correct, but I think that it has been pressed beyond anything for which, truly understood, it is an authority. What has to be borne in mind is that no issue as to the Royal Prerogative arose for determination in that case. The question was, whether it was consistent with the law of nations that a Court of Prize should release to the Crown, against deposit of the value in Court, the property of a neutral held in its custody pending adjudication, whenever the Crown duly declared that it was necessary for the defence of the Realm to requisition it. As part of the reasoning of the judgment their Lordships dealt with

¹ (1916) 2 A.C. 77.

two points : First, that such requisitioning imposed no greater burden on the neutral than was borne by the subject, but rather less ; and, second, that, if on comparison of the municipal laws of different countries the power of requisitioning was found to be exercisable in some cases with compensation and in some without (of which latter class this country was an example (page 100)), this circumstance would only show that the right contended for was, as against the neutral, as moderate as any municipal law warrants, and more so than what is warranted by our own. The legislation on the subject of national defence was not material, and was not discussed. I think it is plain that the judgment in *The Zamora* made and could make no attempt to formulate an exhaustive definition of the Prerogative as to requisitioning ; that it took and could only take decisions on the subject as it found them, in order to draw from them legitimate inferences throwing light on the matter in hand. The *Shoreham case*,¹ as it is now called, for obvious reasons meagrely reported as to the facts under the name of *In re a Petition of Right*, was the most recent exemplification of the ancient rule traced back to the Year Books that for the purpose of repelling invasion the King, and indeed the subject too, may enter another's close in order to raise bulwarks therein without committing a trespass. Rightly or wrongly, the facts of the *Shoreham case*¹ were assumed to have been analogous to the case of raising bulwarks. No question arose of the taking of buildings for the mere use of administrative officials, although employed in one of the combatant branches of the administration. The statement about the absence of compensation was an exact statement of the state of the reported cases then existing. It did not purport to lay down that no right to compensation could exist in law, but merely recorded that none had been decided to exist. The statement that no Court ought, in time of war, to require of the officers of the Crown proof (*ex hypothesi* public proof) of the reasons of State which had led them to hold that—in a particular case—a certain course should be taken, seems to me to be an obvious statement. It is not in conflict with what seems to me to be an equally obvious proposition, namely, that, when the Court can see from the character and circumstances of the requisition itself that the case cannot be one of imminent danger, it is free to inquire whether the conditions, resting on necessity, which are held to exist in the *Shoreham case*,¹ are applicable to

¹ *In re a Petition of Right* (1915) 3 K.B. 649.

the case in hand. If so, the argument, in the judgment of *The Zamora*,¹ did not touch such a case. Unless the Court has such a power, the mere fact that the competent military authority honestly believed that what he demanded was needed for the defence of the Realm, would, on the Appellant's argument, enable everything to be taken and nothing paid. Of course, with the progress of the art of war, the scope both of emergencies and of acts to be justified by emergency extends, and the prerogative adjusts itself to new discoveries, as was resolved in the *Saltpetre Case*; but there is a difference between things belonging to that category of urgency, in which the law arms Crown and subject alike with the right of intervening, and sets public safety above private right, and things which, however important, cannot belong to that category, but, in fact, are simply committed to the general administration of the Crown.

My Lords, I think that the judgment of the Court of Appeal was in accordance with the law, and ought to be affirmed.

LORD PARMOOR: My Lords, the question in debate in this Appeal is whether the respondents are entitled to rent or compensation for the temporary use and occupation of the De Keyser's Royal Hotel on the Thames Embankment. Possession of the hotel was taken during the war by the Executive Government as representing the Crown for purposes admittedly connected with the defence of the Realm. It is not necessary to restate in detail to your Lordships the negotiations and letters which passed between the representatives of the Executive Government and the respondents in connexion with taking possession of the hotel.

On May 8, 1916, Mr. Fane, of the Office of Works, attended at the hotel to take over possession from Mr. Whinney who delivered possession by giving the keys to Mr. Fane. Mr. Whinney protested against the proceedings and only surrendered possession under protest. It was stated that the Office of Works did not recognize any claim for occupation rent and required that any claim for compensation should be sent to them for transmission to the Defence of the Realm Losses Commission, and that the premises had been commandeered for military purposes under the Defence of the Realm Acts. It is contended by the appellant that compensation, if payable at all, is only payable *ex gratia* at the discretion of the Commission and not as

¹ (1916) 2 A.C. 77.

a matter of legal claim. This Commission was appointed to inquire and report to the Treasury with regard to claims for direct and substantial loss and damage 'in cases not otherwise provided for'. In my opinion the case under appeal is a case 'otherwise provided for', and therefore a case which the Commission would have no jurisdiction to entertain. On February 14, 1917, the respondents presented a Petition of Right alleging that Mr. Whinney had delivered up possession of the hotel to representatives of the Crown and that the use and occupation thereof by the Executive Government was by permission of the respondents, and they claimed a sum as rent in respect thereof. Having come to the conclusion that the representatives of the Crown took possession under rights conferred by statute, it is not necessary to determine whether or not there was any use and occupation of the hotel by permission of the respondents. The respondents further claimed that they were entitled to a fair rent for use and occupation by way of compensation under the Defence Act, 1842, and it is under this head that a declaration has been made by the Court of Appeal in their favour. On October 15, 1917, the Attorney-General filed his answer and plea on behalf of His Majesty, traversing the allegation in the Petition that Mr. Whinney voluntarily delivered up possession of the hotel to the representatives of the Crown and that the Crown's use and occupation of the hotel was by permission of the respondents, and pleading that such possession was properly and lawfully taken by virtue of His Majesty's Royal Prerogative, as well as by virtue of the powers conferred by the Defence of the Realm Consolidation Act, 1914, and of the regulations issued thereunder, and that His Majesty had acquired no right in or over the premises beyond the right to take and use the same for so long as might be necessary for securing the public safety in the defence of the Realm during the continuance of the war. Mr. Justice Peterson dismissed the Petition with costs, but this judgment was reversed in the Court of Appeal and a declaration made that the respondents were entitled to a fair rent for use and occupation by way of compensation under the Defence Act, 1842.

The first question raised and argued at great length before your Lordships was whether the Executive Government could justify their action in taking possession of the hotel without payment of rent or compensation, under the sanction of the Royal Prerogative. The Royal Prerogative connotes a discretionary

authority or privilege exercisable by the Crown or the Executive which is not derived from Parliament and is not subject to statutory control. This authority or privilege is in itself a part of the Common Law, not to be exercised arbitrarily but *per legem* and *sub modo legis*. In the present Appeal it is not alleged that if the Royal Prerogative did authorize the taking of possession of the premises of the respondents for temporary use and occupation without payment of rent or compensation, the authority was used improperly or in an arbitrary manner. Under this head no objection is put forward. The growth of constitutional liberties has largely consisted in the reduction of the discretionary power of the Executive, and in the extension of Parliamentary protection in favour of the subject under a series of statutory enactments. The result is that whereas at one time the Royal Prerogative gave legal sanction to a large majority of the executive functions of the Government, it is now restricted within comparatively narrow limits. The Royal Prerogative has, of necessity, been gradually curtailed, as a settled rule of law has taken the place of an uncertain and arbitrary administrative discretion. A similar tendency may be traced in the growth of our legal system. Portions of the Common Law have been systematically incorporated in or modified by Acts of Parliament, and in this way the obligations which the law imposes have become more definite and more certain in their application. Apart from the implication from precedents which will be referred to later, the appellant states that he relied on the Royal Prerogative, because in a case of necessity for the public defence the Crown has by the Common Law a Prerogative Right which has not been abated, abridged, or curtailed by any of the Defence Acts of 1842-73, or by any other statute, to enter upon, or take possession of, or to occupy and use the land of any subject without payment of compensation. It is not necessary to inquire how far in certain cases of necessity for public defence the Executive has power to act without statutory authority, but a generalization of this wide character requires careful analysis in its application to special conditions such as have arisen in the present Appeal. In this instance the De Keyser Hotel was required for administrative purposes. Under modern conditions the use and occupation of land for administrative facilities is a matter of necessity for public defence, but the necessity is not of the same character and cogency as arise when the use and occupation of land is required on the occurrence of invasion or during the occurrence

of actual fighting. On this point I agree with the decision of the Court of Appeal. Assuming that there is a public necessity to take possession of land for administrative purposes in connexion with public defence, there can be no reason why this necessity should be urged as an answer to a claim for compensation. It is clear on the negotiations and correspondence that Mr. Whinney did not raise any objection to handing over the hotel for the use and occupation of the Executive Government, but that his protest was limited to the claim of the Executive Government to take this action and at the same time to deny any claim for compensation except such as might be offered, as a matter of grace, by a reference to the Defence of the Realm Losses Commission. An illustration of the distinction which arises in the character and cogency of the necessity when land or buildings are required for the exigency of the public service is to be found in section 23 of the Defence Act, 1842,¹ which provides certain safeguards for the protection of the subject unless the enemy shall have actually invaded the United Kingdom at the time when the lands or buildings have been taken. It is further noticeable that the Prerogative Right claimed is limited to an entry upon, or to taking temporary possession of, or to the temporary occupation and use of the land of any subject without payment of compensation. It is not claimed that it can be extended to a case of disseisin. Since Magna Carta the estate of a subject in lands or buildings has been protected against the Prerogative of the Crown. It is not easy to see what the distinction is between disseisin and an indefinite use and occupation which may extend beyond the estate of any particular owner. The later statute law gives the same claim to compensation to the subject in either case. An analogy arises in the case of taxation. Money is of primary necessity for public defence during war, but it has long been established that in order to obtain the requisite supplies the Executive must follow constitutional precedent and obtain Parliamentary sanction. If, however, it could be established that there had been at one time such a Prerogative Right as is claimed by the appellant, I am unable to accept the further proposition that such a right has not been abated, abridged, or curtailed by any of the Defence Acts, 1842-73, or any other statute. The provisions, however, of the statute law, as they affect the Royal Prerogative which the appellant claims, will be considered subsequently.

¹ 5 & 6 Viet., c. 94.

The precedents on which the appellant relies in support of his Appeal are *R. v. Hampden*,¹ the *Case of Saltpetre*,² *Hole v. Barlow*,³ and *The Zamora*.⁴ No one would dispute the high character of the arguments of Mr. St. John against the Crown in the case of ship money, but admissions made in such an argument do not constitute precedents, and the arguments applicable to the Royal Prerogative before the revolutionary period must be read subject to the restrictions which have been subsequently imposed. Lord Justice Duke in his exhaustive review⁵ refers to the judgments of two of the Judges whose opinions were given adversely to the claim of the Crown, and quotes passages from the judgments of Mr. Justice Crooke and Mr. Justice Hutton. The quotation from Mr. Justice Crooke is: 'The law provides a remedy in case of necessity and danger, for then the King may command his subjects without Parliament to defend the kingdom. How? By all men of arms whatsoever for the land, and by all ships whatsoever for the sea, which he may take from all parts of the kingdom and join them with his own navy, which has been the practice of all former Kings.'⁶ This opinion of Mr. Justice Crooke would, in any case, be no precedent for the claim made in the present Appeal, but it is doubtful whether the Royal Prerogative would at the present time cover so wide an exercise of authority. During the war a Conscription Act was passed, and Parliamentary authority was obtained. The quotation from Mr. Justice Hutton is: 'The King is bound to defend the kingdom.'⁷ There is no need to question the accuracy of this general statement, but it cannot be intended to cover the proposition that the Executive Government is entitled, without regard to the limitations which have been imposed from time to time, to take all such steps as in the discretion of the Government for the time being may be considered necessary for this purpose.

The *Saltpetre Case*² was decided in 1606, at a time when the claim to act by Royal Prerogative was carried to an extreme limit. This case, however, is no precedent for the contention put forward by the Appellant. The saltpetre was taken under the Right of Purveyance, and payment was made. Purveyances were abolished in 1660 by 12 Charles II, c. 24. The volume of extracts from Public Records made for the purposes of this case by the Record Agent contains warrants for the searching for

¹ (1637) 3 How. St. Tr. 825.² (1606) 12 Rep. 12; 77 E.R. 1294.³ (1858) 4 C.B. (N.S.) 334; 140 E.R. 1113.⁴ (1916) 2 A.C. 77.⁵ (1919) 2 Ch. 238.⁶ 3 How. St. Tr. 1134.⁷ Ibid. 1195.

saltpetre, but in every case on the payment of rent or compensation. The importance of the case consists in the terms of the resolution of the Judges : ‘ When enemies come against the Realm to the sea coast it is lawful to come upon my land adjoining to the same coast, to make trenches or bulwarks for the defence of the Realm, for every subject hath benefit by it. And therefore by the Common Law every man may come upon my land for the defence of the Realm, as appears by 8 Edward IV, 23, and in such place on such extremity, they may dig for gravel for the making of bulwarks : for this is for the public, and every one hath benefit by it, but after the damage is over, the trenches and bulwarks ought to be removed, so that the owner shall not have prejudice in his inheritance ; and for the commonwealth a man shall suffer damage : as for the saving of a city or town, a house shall be plucked down if the next be on fire : and the suburbs of a city in time of war for the common safety shall be plucked down : and a thing for the commonwealth every man may do without being liable to an action, as it is said in 3 Henry VIII, Fol. 15.’ A right common both to the Crown and all subjects is not in the strict sense a Prerogative Right of the Crown. Royal Prerogative implies a privilege in the Crown of a special and exclusive character, but in any case the illustrations contained in the Resolution cannot be relied upon in support of the claim made by the appellant. To take premises for administrative purposes is essentially different from an entry upon land adjoining to the coast to protect the realm from a landing by enemy forces. The analogy of plucking down a house if the next be on fire for the saving of a city or town is an apt instance of the restrictive limitations under which the right referred to in the Resolution can be exercised, and it would be impossible to suggest that any subject would have been entitled to take possession of the hotel of the respondent for temporary use and occupation. A Statute ¹ of 4 Henry VIII, c. 1 (1512), which was to endure to the next Parliament makes special provision for the protection of the County of Cornwall against invasion from Bretayne and also the Haven of Brest, and authorizes every one of the King’s subjects under the conditions mentioned to enter upon land for the making of bulwarks, &c., without any manner of payment to be demanded or any manner of action, by any manner of person or persons at any time thereafter to be attempted. This statute illustrates the nature of a right which is based, not on an exclusive

¹ App. B, p 220, *post*.

privilege of the Crown, but on the duty of all subjects within the specified area to make common cause in defence of the Realm. Lord Justice Duke refers to a series of cases between subjects in which there was no determination of the rights as between the Crown or the Executive Government and the subject. The decisions in these cases do not, in my opinion, assist to solve the questions raised in this Appeal.

*The Zamora*¹ was a prize case which raised a question of the authority of Royal Prerogative in International Law and of the right to requisition vessels or goods in the custody of the Prize Court of a belligerent power. As regards the authority of the Royal Prerogative the dictum of Lord Stowell in *The Fox*² was disapproved and it was held that, prior at any rate to the Naval Prize Act, 1864, there was no power in the Crown by Order in Council to prescribe or alter the law which Prize Courts have to administer. So far the case cannot be quoted in favour of the claim to take possession of the property of the subject without payment of compensation. In the course of his judgment, Lord Parker does incidentally refer to the authority of the Royal Prerogative within the domain of municipal law, but this was not a matter in issue in the case, and there was no argument addressed to the question now in appeal before your Lordships. So far as the *Shoreham Case* is concerned, it need only be added that Lord Parker was sitting in your Lordships' House when the arrangement was come to which made a formal judgment unnecessary. The dictum of Mr. Justice Willes in *Hole v. Barlow*,³ is not in favour of the contention of the appellant. It states the general proposition that every man has a right to the enjoyment of his land, and then by way of illustration limits the application of the power of the Royal Prerogative to the event of a foreign invasion. Apart from legal precedent, it was urged by the appellant in the Court of Appeal during the argument, that where lands had been taken over for temporary use and occupation for the purposes of the defence of the Realm without obligation on the part of the Crown to pay rent or compensation, special commissions had been issued from time to time to determine what payment should be made by the Crown *ex gratia*. Consequently a search was made, with the result stated in the judgment of the Master of the Rolls. 'The result of searches which have been made is that it does not appear

¹ (1916) 2 A.C. 77.

² (1811) Edw. 312.

³ (1858) 4 C.B. (N.S.) 345; 140 E.R. 1118.

that the Crown has ever taken subjects' land for the defence of the country without paying for it, and even in the Stuart times I cannot trace any claim by the Crown to such a prerogative.' These latter words are important in considering the claim of the Executive Government in the present case to act under the Royal Prerogative. If no precedents can be found prior to the year 1688 of a claim to use and occupy the land of the subject for an indefinite time without the payment of compensation, it would be improbable that such precedents would be found at a later date.

The documents and warrants extracted from Public Records give no support to the claim put forward by the appellant. A large number of them are concerned with the acquisition of estates in land which admittedly could not be acquired compulsorily by the exercise of the Royal Prerogative. In some of the instances it is difficult to determine whether an estate in the land was acquired or possession was taken for temporary use and occupation. The extracts to which the attention of your Lordships was specially directed during the argument are as follows: On November 24, 1668, and on December 22, 1688, there are two Ordnance Minutes¹ ordering in one case the payment of rent for ground upon which a battery is standing, and in the other case compensation for damage at the time of 'Ye proveing the Morter Peece nere Bishoppes hall'. Both these minutes appear to relate to a case of temporary use and occupation. On September 4, 1805,² a letter was written urging the necessity of obtaining the mills at Cheshunt for purposes of increasing the supplies of gunpowder for His Majesty's service. The Board concurred in the opinion, and recommended to the Master General to authorize the mills of Cheshunt to be taken possession of under the Defence Act, which will be attended also with the further advantage of removing some legal obstacles arising from a claim of the poor of the neighbourhood to have their corn ground at the mill. Proceedings were accordingly taken under the Defence Act to get possession of the mills, in order that by the acquisition of the water the manufacture of gunpowder might be increased. The subsequent orders and minutes relate to valuation for the purchase of all interests in the premises. At this date the Act 43 Geo. III, c. 55, was in force, authorizing His Majesty to survey and mark out ground wanted for public service and to treat and agree for 'possession

¹ App. F, pp. 284, 285, *post*.

² *Ibid.*, p. 291, *post*.

and use of it during such time as the exigence of the public service shall require', and in default of agreement compensation to be paid for possession and use, to be ascertained by the jury. In the following year a further Act was passed enabling land required for the exigencies of the service to be purchased absolutely and for ascertainment of the price by a jury in default of agreement. These Acts were temporary in character, but contained provisions similar to those which were made permanent in the Defence Act, 1842. On June 20, 1813,¹ a report was made on the claims of a Mr. Cowel, of Margate, and other persons in reference to damage done by stopping up gateways by which farmers drew up seaweed from the beach as a manure for lands, at a time when an enemy landing was apprehended. A money payment appears to have been made in each case, with the further recommendation that the gateway should be reopened at the expense of the Government. It was stated at the hearing before the Court of Appeal that the documents which had been extracted were illustrative, and that there was no reason for thinking that a further search would disclose documents of a different import. The conclusion is that the Executive Government has not established a right under the Royal Prerogative to take the hotel of the respondents for temporary use and occupation during war without payment of compensation or by referring the respondents to a Commission which could only make grants *ex gratia* within the limits of its jurisdiction.

I am further of opinion that the plea of the Appellant that the Prerogative Right of the Crown, whatever it may have been, has not been abated, abridged, or curtailed by any of the Defence Acts, 1842-73, or by any other statute, cannot be maintained. I propose to examine the main statutory provisions which regulate the rights of the subject and the obligations of the Executive when lands or buildings are taken temporarily for use and occupation on the occasion of a public exigency. The constitutional principle is that when the power of the Executive to interfere with the property or liberty of subjects has been placed under parliamentary control and directly regulated by statute, the Executive no longer derives its authority from the Royal Prerogative of the Crown but from Parliament, and that in exercising such authority the Executive is bound to observe the restrictions which Parliament has imposed in favour of the subject. I think that the statutory provisions applicable to

¹ App. F, p. 293, *post*.

the interference by the Executive with the land and buildings of the respondents bring the case within the above principle. It would be an untenable proposition to suggest that courts of law could disregard the protective restrictions imposed by statute law where they are applicable. In this respect the sovereignty of Parliament is supreme. The principles of construction to be applied in deciding whether the Royal Prerogative has been taken away or abridged are well ascertained. They may be taken away or abridged by express words, by necessary implication, or, as stated in Bacon's Abridgement, where an Act of Parliament is made for the public good, the advancement of religion and justice, and to prevent injury and wrong. Statutes which provide rent or compensation as a condition to the right of the Executive to take over the temporary possession of lands or buildings on the occasion of public exigency come, in my opinion, within the category of statutes made for the advancement of justice and to prevent injury and wrong. This is in accord with the well-established principle that, unless no other interpretation is possible, justice requires that statutes should not be construed to enable the land of a particular individual to be confiscated without payment. I am further of opinion that where a matter has been directly regulated by statute there is a necessary implication that the regulation must be obeyed, and that, as far as such regulation is inconsistent with the claim of a Royal Prerogative right, such right can be no longer enforced.

In 1798 (38 Geo. III, c. 27) power is given to take possession of land during such time as the exigencies of public service should require, with a provision for compensation; but this Act was limited in its operation to the continuance of the then present war. In 1803, by 43 Geo. III, c. 55, similar powers are given. This, again, was a temporary Act during the then present war with France. A doubt arose whether this Act would enable the Executive to take land for a definite period of time extending beyond the immediate exigency. In consequence, it was repealed in 1804, and 44 Geo. III, c. 95, enacts that land may be acquired either by absolute purchase for public service or for use and possession during such time as the exigence of the public service may require. Sections 11 and 12 provide compensation either for purchase of land or for its temporary use. In 1842 the Defence Act¹ was passed to consolidate and amend the laws relating to the services of the Ordnance Depart-

ment and the vesting and purchase of lands and hereditaments for those services and for the defence and security of the realm. This Act has been subsequently amended, but not on any subject material to this Appeal prior to 1914. Section 16 empowers the principal officers of Her Majesty's Ordnance to treat and agree with the owner or owners of lands, buildings, and hereditaments, or with any person or persons interested therein, either for the absolute purchase thereof or for the possession or use thereof during such time as the exigence of the public service shall require. Section 19 enacts that if bodies or other persons thereby authorized to contract on behalf of themselves or others or other person or persons interested in any such lands, buildings, or other hereditaments, shall for the space of fourteen days next after notice in writing decline to treat or agree, or shall refuse to accept such sum of money as shall be offered for absolute purchases, or such annual rent or sum as shall be offered for hire, or rent thereof either for a time certain, or for such period as the exigence of the public service may require : the principal officers may require two or more justices of the peace, or other authority named, to put them or any person appointed by them into immediate possession of such lands, buildings, or other hereditaments. Then follows a complete provision for summoning a jury to assess the compensation to be paid either for the absolute purchase of such lands, buildings, or other hereditaments, or for the possession or use thereof as the case may be.

Section 23 provides that no such lands, buildings or other hereditaments shall be taken without the consent of the owner or owners or other interested person or persons unless the necessity or expediency of the taking the same has been certified as directed or 'unless the enemy shall have actually invaded the United Kingdom at the time when such lands, buildings or other hereditaments shall be taken'. This latter provision is important since it clearly shows that the Legislature was providing against such an emergency as invasion which might occur during a period of war and introducing in such a case an exceptional procedure. Section 34 empowers the principal officer of Her Majesty's Ordnance to bring actions, suits or other proceedings, provided that in all such actions, suits or other proceedings, the legal rights, privileges and prerogatives of Her Majesty, Her heirs and successors shall not be defeated or abridged. It is not alleged that procedure by Petition of Right defeats or abridges the legal rights, privileges or prerogatives of the Crown

if the conditions are such as entitle the respondent to resort to this form of procedure. If this Act and the amending Acts prior to 1914 had stood alone it would have been no answer to say that the statutory conditions were inconvenient or unduly cumbrous to meet the exigency of the public service in defence of the realm. It is for Parliament to determine what the exigency of the public service may require and, if amending provisions are found to be necessary, to enact them in an amending statute. It will appear subsequently that this course was followed on the outbreak of the war in 1914.

It was further argued on behalf of the appellant that, apart from the Royal Prerogative or from any power vested in the Executive under preceding statutes, a subject was deprived of his right to compensation by virtue of the powers conferred by the Defence of the Realm Consolidation Act, 1914,¹ and of the regulations issued thereunder. Under this Act 'His Majesty in Council has power during the continuance of the present war to issue regulations for securing the public safety and the defence of the realm'. There is a special provision that such regulations may provide for the suspension of any restrictions on the acquisition or user of land, or the exercise of the power of making by-laws or any other power under the Defence Acts, 1842 to 1873, or the Military Lands Acts, 1891 to 1903. The regulations issued authorize the competent Naval or Military Authority, and any person duly authorized by him, where for the purpose of securing the public safety or defence of the realm it is necessary so to do, to take possession of any land, building, or other property, or to do any other act involving interference with private rights of property which is necessary for the purpose aforesaid. The effect of this regulation is to enable the competent Naval or Military Authority to take immediate possession of land or buildings where it is necessary for securing the public safety or defence of the realm. In Regulation 62 the competent Naval or Military Authority may be any commissioned officer not below the rank of a Lieutenant-Commander in the Navy or Field Officer in the Army or Air Force. There is no provision for compensation for acts done under the powers conferred by Regulation 2. Nor is any such provision necessary. Compensation was already assured under statutory enactment. Regulation 2B does contain a method of determining the price to be paid on taking possession of war material, food, forage, and stores in default of agreement,

¹ 5 Geo. V, c. 8.

and the attention of your Lordships was not called to any preceding statute containing a right to compensation. My Lords, I agree in the view expressed by Lord Justice Warrington, that the Defence Acts, 1842 to 1873, and the Act of 1914, and the regulations made thereunder, must be read together. The power to take possession of land or buildings for temporary use or occupation is derived from the Defence Act, 1842, and the Act of 1914, and the regulations made thereunder. The Act of 1914 and the regulations made thereunder adapt the exercise of the powers conferred by the Defence Act of 1842 to the exigencies of modern warfare during a period of war; but they do not affect the provisions of the Defence Act which confer a right to compensation and provide procedure for assessment of the amount in default of agreement. I think that there is no difficulty in applying the ordinary rules of construction, but if there is room for ambiguity, the principle is established that, in the absence of words clearly indicating such an intention, the property of one subject shall not be taken without compensation for the benefit to others or to the public (*Attorney-General v. Horner*¹; *London and North-Western Railway Company v. Evans*²). So long as the possession of land or buildings can immediately be taken for purposes of public safety there is no inconsistency in subsequently determining under statutory procedure the amount of payment either by way of rent or compensation. It is not necessary in your Lordships' House to distinguish the present Appeal from *In re a Petition of Right*, 1915.³ Mr. Justice Peterson thought that the present case was covered by the judgment of the Court of Appeal in that case, but when that case came before your Lordships' House an arrangement was made rendering it unnecessary to give a formal judgment.⁴

The Appellant, in the statement of contentions tabled in the appellant's case, claimed 'that the Legislature had by the Defence of the Realm (Acquisition of Land) Act, 1916,⁵ recognized the existence of and had confirmed the Prerogative'. Reliance is placed on the words in section 1, which allows the Government Department in possession of lands to continue in possession for the specified time, where possession had been taken whether in exercise or purported exercise of any Prerogative Right of His

¹ (1884) 14 Q.B.D. 245.

² (1915) 3 K.B. 649.

⁵ 6 & 7 Geo. V, c. 63.

² (1893) 1 Ch. 16.

⁴ (1916) W.N. 311.

Majesty, or of any powers conferred by or under any enactment relating to the defence of the Realm. This section does not enlarge or extend the Royal Prerogative in any direction, or deprive the subject of compensation if, apart from this section, he would have been entitled to claim it. In the letter of May 9, 1916, the Controller of Supplies states that the premises have been commandeered by the Military Authorities under the Defence of the Realm Act, and this statement is, in my opinion, well founded.

If the respondents are entitled to a declaration in the terms of Head No. 4 of the Petition of Right, the proper form of procedure to obtain such a declaration in favour of a subject against the Crown has been followed. There is no allegation of any tortious conduct on the part of the Crown. On the contrary, the claim to compensation assumes that the entry on and the taking of possession of the hotel are acts which are legally justifiable. In an ordinary case under the Lands Clauses Acts, when promoters enter into possession of lands in conformity with their statutory rights and delay or refuse to put in force the necessary procedure for the assessment of compensation in default of agreement, the remedy is by *Mandamus*. The remedy would not be applicable against the Crown. I did not understand the Attorney-General to raise any objection to the Procedure by Petition of Right if the respondents could establish a claim to compensation, or to the form of the declaration made by the Court of Appeal.

My Lords, in my opinion, the Appeal should be dismissed with costs.

Questions put :

That the Order appealed from be reversed ?

The Not Contents have it.

That the Order appealed from be affirmed and this Appeal dismissed with costs ?

The Contents have it.

APPENDIX B

STATUTES NOT PRINTED IN RUFFHEAD'S
EDITIONPUBLIC RECORD OFFICE. PARLIAMENT ROLLS
No. 133. (10.)*(Statutes of the Realm, iii. 48.)*

ACT OF PARLIAMENT. 4 HENRY VIII. CAP. 1. A.D. 1512

For making Bulwarks

*Rotulus Parliamenti de Anno Regni Regis Henrici Octavi
Quarto, A.D. 1512*

Prayen the Comons in this present parliament assembled that for asmoch as the land of Bretayne and also the haven of Brest lyeth streight ayenst the south see costes of the Countie of Cornwall and that the frenchemen our auncien enemyes and Bretaynes enemyes by reason of their fysshing upon the se costes knowe aswell every haven and creke within the sayde Countie as every landyng place in as large maner as any subgiectt of our Sovereigne Lorde the Kyng dooth ; And that the said Countie is thre score and ten myle in length and the substance thereof right litle more than six myle in brede from the southsee to the northsee, by reason whereof they also knowe that grete multitude of people can not shortly resort to put theym of at their landyng ; And that in divers and many of the seyde landyng places nother pile blockhouse ne Bulwark is made to greve or annoy theym at their landyng : Whiche consideracions unto our sayd enemyes grete audacite comfort and corage gyveth to arrive and land in the same parties, to the grete annoyance of our Sayd Sovereigne Lorde's subgiettes there and to the utterly undoyng of dyvers and many of theym oonles a remedie be the soner provyded : Therfor be it enacted by the Kyng our Sovereign Lord his Lordes Spirituell and temporell and the Comons in this present parliament assembled and by auctorite of the same that the Justices of the Peace and Shiref of the sayd Countie do ride and viewe all the sayd south cost from Plymmouth westward, to the Landes end. And that doone incontynent to appoynt within theym self such borowghes townes and parisshe as they shall thinke resonable to make bulwerkes brayes walles diches and al other fortificacions for the same cause in maner and forme and

facion as shalbe thought by theire discrecion in every of the sayd landyng places betwene this and the first day of Marche next now cōmyng.

And ferder be it enacted by the sayd auctorite that every Maire and Constable of the sayd countie by the sayd Justices of Peace or Shirief appoynted do cōmaunde all the inhabitantes within the precyncte of theire office, to bee at the see side with such instrumentes as they have or can gett for the makynge of the sayd bulworkes and other the premisses in such landyng places as shalbe assigned by the sayd Justices of the Peace or Shirief, and that the said Maire or Constables do cōmytte to warde all such wilfull persones as will not obey, cōme nor send any oder person to the see side to make the sayd Bulworkes and oder the premisses at the day and tyme by the said Maire or Constables to be appoynted, and there to remayne without baile or maynprise by the space of x daies or lesse at the discrecion of the sayd Maire or Constables. And if any of the sayd Maires or Constables do not theire dutie as is aforesayd that then the Justices of the Peace next adjoynynge do cōmytte to warde the same Maire or Constable so offendyng, there to remayne without baile or maynprise by the space of a moneth or lesse at the discrecion of the Justice of Peace.

And be it also enacted by the sayd auctorite that goode and substanciall bulworkes brayes walles diches and all oder fortifications in every landyng place in maner forme and facion as is aforeseid, as well from Plymouth aforesayd, by the se costes estward as in all other parties within the realme of Englund, be made there as the Justices of the peace and Shirief within that shire where any such landyng places be shall thynke nedefull. And that every Justice of Peace Maire and Constable within every shire where any such landyng places be, have like and as good auctorite by this present acte to cōmaunde the inhabitantes of every borough towne and parisshe adjoynynge to the see side or els where after the discrecions of the Justices of Peace, to make the sayd bulwerkes and other the premisses and also to cōmitte to warde all such wilfull personnes as will not obeye in like maner as the Justices of the peace Maires and Constables of the sayd Countie of Cornwall may do bi any of the actes aforeseid.

And over this be it enacted by the sayd auctorite that it be laufull for every of the Kynge's subgiettes within this Realme of Englund by thadvyse and assignement of the sayd Justices of the Peace or Shirief to make all maner of bulwerkes and oder

the premisses in every mannys grounde of what astate or degree he be of and also to digge and to delve aswell for erth stones and turfes as to cutte and to hew heth in any mannes grounde for the makyng of any such bulworkes and other the premisses as ofte and as many tymes as nede shall require, and the sayd erth stones turfes and heth to take occupie and carrie away out of the sayd ground to any oder mannes grounde for makyng of any such bulwarkes and other the premisses in whos grounde so ever the sayd erth stones turfes and heth happen to be without any interupcion or lett of any person or persones beyng lord or lordes of any such grounde or having any oder interest in the same, And without any maner of payment to be demaunded for any of the premisses or any maner of accion bi any maner of person or persones at any tyme hereafter to be attempted or in any wise mayntened ayenst any of the Kynge's subgiettes for any such matier or cause. And this acte to endure to the next parliament.

Responsio—le Roy le vult.

[*Endorsed*]

Rotulus Parliamenti prorogati usque quartum diem Novembris anno regni Regis Henrici octavi quarto et postea de die in diem usque vicesimum diem Decembris extunc proximo sequentem continuati et extunc usque septimum diem Novembris proximo sequentem prorogati.

ANNO QUARTO.

STATUTES OF THE REALM. 14 CHARLES II. CAP. 20

An Act for providing carriage by land and by water for the use of his Majesty's Navy & Ordnance.

WHEREAS by an Act entitled an Act for taking away the Court of Wards and Liveries and Tenures in capite and by knights' service and purveyance, and for settling a revenue upon His Majesty in lieu thereof, it was amongst other things enacted, for the reasons and recompense therein expressed, that from thence forth no person or persons by any warrant, commission or authority under the Great Seal or otherwise by colour of buying or making provision or purveyance for His Majesty or any Queen of England for the time being, or of any the children of any King or Queen of England that shall be or for his, their

or any of their household, shall take any cart, carriage or other thing whatsoever of any of the subjects of His Majesty, His heirs or successors without the free and full consent of the owner or owners thereof, had or obtained without menace or enforcement, nor shall summon, warn, take use or require any of the said subjects to furnish or find any horses, oxen or other cattle, carts, ploughs, wains or other carriages for the use of His Majesty, His Heirs and successors, or of any Queen of England or any child or children of any the Kings or Queens of England for the time being, for the carrying the goods of His Majesty, His Heirs or successors or the said Queens or children or any of them, without such full and free consent as aforesaid, any law, statute, custom or usage to the contrary notwithstanding, Be it notwithstanding enacted by the King's most Excellent Majesty, by and with the advice and consent of the Lords Spiritual and Temporal, and the Commons in this present Parliament assembled, and by the authority of the same, that from and after the four and twentieth day of June in the year of Our Lord, one thousand six hundred sixty and two, as often as the service of His Majesty's Navy or Ordnance shall require any carriages by land within the Kingdom of England, and dominion of Wales and town of Berwick upon Tweed, upon notice given in writing by warrant under the hand and seal of the Lord High Admiral of England for the time being or under the hands and seals of two or more of the principal officers or commissioners of His Majesty's Navy, or under the hand and seal of the Master of His Majesty's Ordnance for the time being, or under the hand and seal of the lieutenant of [His] Majesty's Ordnance for the providing of carriages for the respective service of the Navy or Ordnance unto two or more Justices of the Peace dwelling near unto the place where the said carriages shall be required, the said Justices of the Peace may and shall immediately issue forth their warrants to such of the adjacent parishes, hundred or divisions as they shall judge fit within their respective counties or divisions, not being above twelve miles distant from the place of lading for the sending to a certain place and at certain times (to be specified and appointed in the said warrants) such numbers of carriages with horses or oxen sufficient for the said service as by the Lord High Admiral of England for the time being or by the master or lieutenant of His Majesty's Ordnance for the time being, or by the principal officers or commissioners of His Majesty's Navy respectively as abovesaid shall be, by writing under their hands and seals, required, the

owners of which carriages or their servants shall receive for every load of timber per mile, one shilling for every reputed mile which they shall go laden, and for other provisions, the sum of eight pence per mile for every ton they shall carry.

And be it further enacted by the authority aforesaid that it may and shall be lawful for the Lord High Admiral of England for the time being by warrant under his hand and seal and also for the principal officers and commissioners of His Majesty's Navy by warrants under the hands and seals of any two or more of them as also for the Master of His Majesty's Ordnance for the time being by warrant under his hand and seal, and also for the lieutenant of His Majesty's Ordnance by warrants under the hands and seals of either of them as often as the service of His Majesty's Navy or Ordnance respectively shall require any carriage by water, to appoint such person or persons as they shall judge fitting to impress and take up such ships, hoys, lighters, boats or any other vessel whatsoever as shall be necessary for the accommodation of His Majesty's said service, the owners of which said ships, hoys, lighters, boats or other water carriage aforesaid, or such as they shall appoint, shall receive for the hire of every such ship, hoy, lighter, boat or other vessel per ton according to the rates usually paid by merchants, from time to time, and in case His Majesty's officers and the owners of such ships, hoys, lighters, boats or other vessels shall not agree on the said rates, then the rate to be settled by the Brotherhood of Trinity House of Deptford, Strand.

And be it further enacted by the authority aforesaid that in case any of His Majesty's subjects of this Realm shall refuse or wilfully neglect, after reasonable notice, to make their appearance with sufficient carriages by land or to fit provide and furnish their ships, hoys, lighters, boats or other vessels for the service of His Majesty's Navy or Ordnance, as is before expressed, or shall after they shall have undertaken such service, neglect or delay the same, that then upon due proof and conviction of such refusal or neglect by the oath of the constable, or other officer or two other credible witnesses, before the said Justices of the Peace of the county or Maior or other chief officer of the city or corporation where he or they inhabit (which oath they shall have power to administer) for the land carriages and for the water carriages, by the oath of such person as shall be appointed by the Lord High Admiral, the principal officers or commissioners of His Majesty's Navy, the Master of His Majesty's Ordnance,

or the lieutenant of His Majesty's Ordnance, as aforesaid, or other two credible witnesses, before the principal officers or commissioners of His Majesty's Navy or Master or Lieutenant of His Majesty's Ordnance respectively (which oath they shall have likewise power to administer) the party so refusing or neglecting shall for every such refusal or neglect forfeit the sum of twenty shillings for the land carriage and for carriage by water treble the freight of such ship or vessel not exceeding fifty pounds in the whole, to the King's Majesty's use to be forthwith levied in default of payment upon demand by distress and sale of his goods and chattels by warrant from the said Justices of the Peace, Mayor or other chief officer or from the principal officers or commissioners of His Majesty's Navy or Master or lieutenant of His Majesty's Ordnance respectively (rendering to the parties the overplus upon every such sale if there should be any) the charge of distraining being first deducted.

Provided always that no horses, oxen, cart, wain or other land carriage shall be enforced to travel more days journey from the place where they receive their lading or be compelled to continue longer in the employment than shall be appointed by the Order of the said Justices of the Peace and that ready payment shall be made in hand for the said carriages at the place of lading without delay according to the aforesaid rates.

Provided always that in case any Justice of the Peace, Mayor, Chief Officer or Constable or any person or persons which shall be appointed by the Lord High Admiral, the principal officers or commissioners of His Majesty's Navy, the Master of His Majesty's Ordnance or the lieutenant of His Majesty's Ordnance as aforesaid respectively, shall take any gift or reward to spare any person or persons from making such carriage by land or by water or shall injuriously charge or grieve any person or persons through envy, hatred or evil will who ought not to make such carriage or shall impress more carriages than the necessity of the service shall require or than he shall be commanded to impress by his superiors, that then, upon due proof and conviction thereof, the parties so offending shall forfeit the sum of £10 to the party thereby grieved, who may sue for the same to be recovered by action of debt in any of His Majesty's Courts of Record, wherein no essoign, protection or wager of law shall be allowed, and in case any person or persons shall presume to take upon him or them to impress any horses, oxen, wains or carriages for land, or any ships, hoys, lighters, boats or other vessel for the service of

His Majesty's Navy or Ordnance other than the persons so empowered as aforesaid, then he or they so offending shall upon due conviction of the said offence, incur or suffer the punishment in the first recited Act.

Provided always, and be it enacted, that no ship, hoy, barge or any other vessel whatsoever, that shall be really and bona fide freighted by charter party if there be other vessels in the port fitting for the service, nor any vessel quarter laden with any goods, wares or merchandizes outward bound shall be liable to be impressed for any the services aforesaid, any thing in this Act to the contrary notwithstanding.

Provided that this Act and the powers therein contained shall continue and be in force until the end of the first session of the next Parliament and no longer, anything herein contained to the contrary in any wise notwithstanding.

Provided nevertheless that in regard of the more than ordinary charge and burden which the inhabitants of the New Forest in the county of Southampton, will be liable unto by reason of the quantities of timber usually felled and carried thence for the use of His Majesty's Navy, it shall and may be lawful for the Justices of the Peace, who shall by warrant summon the carts and carriages within the division of the New Forest in the county of Southampton aforesaid, to have power (as to the carriage of timber only) to allow as aforesaid to the several owners of such carts and carriages not exceeding fourpence per mile for so many miles as any cart or carriage so summoned shall go empty to the place of lading, anything in this Act contained to the contrary in any wise notwithstanding.

An Act for vesting and setting the Fee Simple of certaine Lands on his Māty his Heyres & Successors, which haue been taken into, & Spoyled by makeing new Fortifications, about the Towne of Portsmouth.

An^d. 22^o et 23^o Car : 2^{di} No. 43.

WHEREAS his Maiesty hath caused the Fortifications of his Towne of Portsmouth, in the County of Southampton, to be enlarged, and new Fortifications to be made there, and about the Dockyard neere the said Towne, in order to the rendring that Place more Defensible, for the doing whereof, the seuerall parcells of ground of, and belonging to the seuerall persons, and of the particular quantities, qualities, and yearly values, in a schedule hereunto annexed, mentioned, and expressed, haue been inclosed,

Spoyled, and taken away, as well within the said Workes, as by the Counterscarpes, and forelands belonging to the same, and other Dañages haue been there done ; And whereas the Lords Comissioners of his Maiesties Treasury, being by Order of his Maiesty in Councell directed, to purchase the said Lands for his Maiesties vse, and to make satisfaction for the Dañages aforesaid, and being certified by his Maiesties Surveyor Generall, that the Summe of Thirteene hundred and Nynety pounds, would be a sufficient compensation for the same, haue made an Agreement with Richard Norton of Southwicke in the County of Southampton Esq. (who is Owner of parte of the said Lands, and hath authority from the rest of the Owners, and persons concerned in the same, to make an Agreement, on their behalfe, for the purchase of the said Lands, and the said Dañages) that in consideration of the said Summe of Thirteene hundred and Nynety pounds, to be payed to the said Richard Norton, for the vse of himselfe, and the rest of the Owners, Proprietors, and persons concerned in the said Lands, in full satisfaction for the purchase thereof, and for their said Dañages, the said Lands shall be conveyed to his Maiesty, his Heyres and Successors, and that all persons, who haue done any injury to any of the said Owners of the said Lands, by reason of the makeing of the Fortifications aforesaid, shall be discharged of and from the same. And his Maiesty haveing approved of the said Agreement, hath, by his Letters of Privy Seale, directed the said Lords Comissioners of his Treasury to give order for payment of the said Thirteene hundred and Nynety pounds to the said Richard Norton, for the use aforesaid, when his Maiesty shalbe Legally vested and settled in the Possession of the said Lands, and for payment of the Interest thereof, in the mean time. And they haue thereupon given Order to the Officers of the Receipt of his Maiesties Exchequer, for payment of the same accordingly, Now for that the said Lands belong to many seuerall persons, who live in seuerall Places, some whereof are very remote, and the haueing particular Conveyances, and Assurances of their seuerall, and respective Interests in the same, from euery one of them, will be very troublesome, and a delay to the payment of the said purchase money, And to the intent the said money may be speedily paid to the said Richard Norton, for their vse, And for that the said Richard Norton for himselfe, and the said Owners, and Proprietors of the said Lands, hath consented, that the said Lands shalbe settled on his Maiesty, his Heyres, and

Successors by Act of Parliament, BEE it Enacted by the Kings most Excellent Maiesty, by and with the Consent of the Lords Spirituall, and Temporall, and of the Comons in this Parliament assembled, and by Authority of the same, That his Maiesty his Heyres and Successors shall, from henceforth, and for ever hereafter stand, and be seized of a good, sure, perfect, absolute, and indefeazible Estate of Inheritance in Fee Simple, of, and in all, and singular the Lands, Tenements and Hereditaments, in the Schedule hereunto annexed, mentioned, and of, and in euery part and parcell thereof, with their, and euery of their Rights, Members, and Appurtenances whatsoever, and that all and euery persons whatsoever (who by reason of the entring upon the said Lands, to make the said Fortifications as aforesaid, haue done any Trespasse, Damage, or injury whatsoever to any of the Owners, Proprietors, or persons concerned in the said Lands, or to their Corne, or Grasse standing, or growing, or which did stand & grow upon the said Lands) their Executors and Administrators and euery of them be, and are hereby acquitted pardoned, Released, and Discharged of, and from all such Trespasses, Damages, and injuries whatsoever, And of, and from all Actions, and suites and Cause and Causes of Actions, and Suites, already had or brought, or hereafter to be had or brought against them, or any of them, their or any of their Heyres, Executors, or Administr^{rs} for, or in respect of the same.

A Particular of the Lands vested, and settled in his Maiesty,
his Heyres and Successors by virtue of this Act.

(Schedule of Lands Vested.)

STATUTES OF THE REALM. 1 JAMES II. CAP. 11

An Act for reviving an Act for providing of carriages by land and by water, for the use of His Majesty's Navy and Ordnance.

WHEREAS an Act of Parliament was made and passed in the thirteenth and fourteenth years of the reign [of] His Late Majesty of Blessed Memory, entitled, An Act for providing carriages by land and by water for the use of His Majesty's navy and ordnance, which said Act is since expired.

And whereas the said Act hath been by experience found to be of necessary use and fit to be revived and continued, be it therefore enacted by the King's Most Excellent Majesty, by and with

the advice and consent of the Lords Spiritual and Temporal, and of the Commons, in this present Parliament assembled, and by the authority of the same, that the said Act and all and every the clauses, sentences and articles therein contained shall by virtue of this Act be revived and continued and have the full force, power and virtue of a law during the continuance of this Act.

And be it further enacted and declared by the authority aforesaid, that this Act shall continue and be in force during the space of seven years from the four and twentieth day of June, in the year of Our Lord 1685, and from thence to the end of the First Sessions of Parliament then next ensuing and no longer.

APPENDIX C

DOCUMENTS RELATING TO VESTING ACTS AND COMMISSIONS, INQUISITIONS, PROCEEDINGS, DECREES, ETC.

(1759.—PORTSMOUTH, CHATHAM, AND PLYMOUTH.)

Crown Office (Chancery) Commissions, Inquisitions, & Decrees relating to the purchase of land &c for the purchase of land for Fortifications No. 2.

GEORGE the SECOND by the GRACE of GOD of Great Britain France and Ireland King Defender of the Faith And so forth To our Right Trusty and Welbeloved Councillor Arthur Onslow Esquire Speaker of Our House of Commons Charles Marquis of Winchester James Marquiss of Carnarvon Lord Harry Powlet Lord George Sackville Sir William Courtney Baronet Sir John Barrington Baronet Sir Thomas Hales Baronet Sir Francis Henry Drake Baronet Sir Richard Warwick Bampfylde Baronet Sir William Gardiner Baronet Sir George Yonge Baronet Sir John Molesworth Baronet Sir James Creed Knight Henry Bilson Legge Lewis Watson Robert Fairfax Charles Yorke Charles Pratt James West Samuel Martin James Buller John Buller Richard Edgcombe Jonathan Rashleigh Richard Hussey John Harris Henry Reginald Courtney George Treby Browse Trist John Harris of Pickwell John Evelyn John Tuckfield John Rolle Walter Andrew Wilkinson Nicholas Haddock Isaac Townsend Charles Frederick Gabriel Hanger Mathew Robinson Morris the younger Charles Whitworth Alexander Thistlethwaite

Job Staunton Charlton Henry Penton Thomas Lee Dummer
 Thomas Holmes Major General Holmes Harry Burrard Anthony
 Langley Swymmer Charles Cocks Robert Bristow Henry Archer
 William Rawlinson Earle Hugh Valence Jones William Glanville
 Phillips Gybbon Henry Gould Thomas Stanyford William Davy
 Philip Drake Thomas Bewes Frederick Rohers John Ommanney
 William Basturd Thomas Neale John Parker William Eyre
 John Richmond Webb Richard New Richard Hughes Pusy
 Brooke John Peachy Thomas Missing John Moody John Gringo
 William Yalding William Pescod Thomas Cooper James Best
 Joseph Brooke Thomas Fletcher John Russell Roger Pilcher
 Thomas Chiffinch Charles Petley John Cockain Sole Samuel
 Eyre Charles Taylor Jacob Pickering John Hollis Richard Leigh
 Francis Filmer Charles Robinson and William Hay Esquires
 Greeting WHEREAS in and by One Act of Parliament made in
 the last Session Entituled AN ACT for vesting certain Messuages
 Land Tenements and Hereditaments for the better securing
 His Majestys Docks Ships and Stores at Portsmouth Chatham
 and Plymouth and for the better Fortifying the Town of Ports-
 mouth and Citadel of Plymouth in Trustees for certain Uses and
 for other Purposes therein mentioned It was Enacted that for
 the better ascertaining the several Owners and Proprietors of
 certain Lands therein particularly mentioned lying near the
 Docks of Portsmouth Chatham and Plymouth which have been
 made use of in making Intrenchments and raising Lines and
 Fortifications for the Defence and Security of the said Docks
 and their respective Titles and Claimes thereto It should and
 might be Lawfull to and for Us by One or more Commission or
 Commissions by Letters Patent under the Great Seal of Great
 Britain to Authorize and Appoint any Number of Persons to
 be Commissioners to hear and Determine all Titles and Claims
 that shall or may be made to the said Lands Tenements and
 Hereditaments or to any part or parcel thereof which Commis-
 sioners so to be Appointed or any Five or more of them are
 thereby Authorized and Required and shall and may in a sum-
 mary manner Proceed Act and Determine by and upon the
 Testimony of Witnesses upon Oath (Which Oath they or any
 Five or more of them are thereby impowered to Administer)
 Inspection and Examination of Deeds Writings and Records or
 by Inquest of Twelve good and lawfull MEN TO BE Impanelled
 and Sworn in manner therein mentioned and directed or by all
 or any of the said Ways or otherwise according to their Direc-

tions all and all manner of Rights Estates and Interests and all Controversies Debates and Questions which shall happen and arise between any Person or Persons whatsoever or any other matter or thing relating to any of the Premises or any part thereof as in and by the said recited Act of Parliament amongst other things therein contained relation being thereunto had may more fully and at large appear Now KNOW YE that we repósing especial Trust and Confidence in your Great Abilities Care Fidelity and Circumspection HAVE Nominated Constituted and Appointed And do by these presents Nominate Constitute and Appoint You

(Here follow the names of Commissioners)

or any Five or more of you to be Commissioners for Putting in Execution the said Act of Parliament And to you or any five or more of you as aforesaid We do by these Presents Give full Power and Authority to do Perform and execute or cause to be done Performed and executed all Powers Directions Clauses Matters and Things Whatsoever in the said Act contained HEREBY Willing and Requiring you or any Five or more of you as is aforesaid from time to time to proceed and act according to the Rules and Directions of the said Act of Parliament and diligently to Intend the execution thereof in all things as becometh AND these Presents or the Inrollment or Exemplification thereof shall be to you and every of you a sufficient Warrant and Discharge in that behalf IN WITNESS whereof we have caused these Our Letters to be made Patent WITNESS ourselves at Westminster the Twenty Seventh day of July in the Thirty Second Year of Our Reign

YORK & YORK

(Here follow the signatures of six Commissioners)

Inquisition indented had made and taken at the house of Timothy Bayly Scituate in Plymouth Dock in the County of Devon the Eleventh day of September in the Thirty Second year of the Reign of our Sovereign Lord George the Second (by the Grace of God) of Great Britain France and Ireland King Defender of the Faith and so forth and in the year of Our Lord One thousand Seven Hundred and Fifty eight Between the severall Commissioners whose hands and Seals are hereunto set appointed among others by his Majesty's Letters Patent under the Great Seal of Great Britain pursuant to an Act of Parliament

made and passed the last Sessions of Parliament intituled an Act for vesting certain Messuages Lands Tenements and Hereditaments for the better securing his Majesty's Docks Ships and Stores at Portsmouth Chatham and Plymouth and for the better fortifying the Town of Portsmouth and Citidel of Plymouth in Trustees for certain uses and for other purposes therein mentioned of the one part and Richard Doidge John Harris Robert Lake Thomas Lear Waltham Savery Evans Cove John Charles Hayne William Kitson Rawlin Mallock William Neyle Nicholas Brooking John Wolston Arthur Tremayne Arthur Kelley Arthur Champernowne John Hawking John Fowell William Strode and Charles Hale Esquires good and lawfull men Substantial Gentlemen and Freeholders of the said County of Devon Impannelled and returned before the said Commissioners by Peter Comyns Esquire High Sherriff of the said County of Devon pursuant to a precept from Five of the said Commissioners to the said Sheriff directed duly Sworn and Charged to inquire into and present the true and real values of the Messuages Lands Tenements and Hereditaments in the said Act comprized and mentioned to be situate within the said County of Devon and of every part and parcell thereof at the time they were first made Use of for the purposes in the Act mentioned And who respectively are the Owners and propretors thereof and their respective Estates and Interests therein and all Controversies Debates and Questions touching or concerning the same or any part thereof of WHOM the underwritten being twelve of the said Jurors say and present upon their Oath that the True Value of all the said Messuages Lands Tenements and Hereditaments and of every part and parcell thereof and who respectively are the Owners and propretors thereof and their respective Estates and Interests therein are mentioned expressed and Sett down in the Schedule hereunto annexed Signed by the said Jurors IN TESTIMONY whereof to one part of this Inquisition remaining with the said Jury the said Commissioners (partys hereunto) have hereunto sett their Hands and Seals and to the other part thereof returned with the said Commission the said Jurors have hereunto Interchangeably putt their Hands and Seals the Day and year above written.

(Here follow the signatures of twelve Jurors)

A SCHEDULE of the true and reall Value of the Messuages Lands Tenements and Hereditaments at the time they were

first made use of for the purposes in the Act mentioned and every Part and Parcell thereof and who respectively are the Owners and proprietors thereof and their respective Estates and Interests therein referred to by the Indenture annexed.

WHEREAS in pursuance of an Act of Parliament made in the last Sessions Intituled an Act for vesting certain Messuages Lands Tenements and Hereditaments for the better securing his Majesties Docks Ships and Stores at Portsmouth Chatham and Plymouth and for the better fortifying the Town of Portsmouth and Citadel of Plymouth in Trustees for certain Uses and for other purposes therein mentioned And by Virtue of a Commission under the Great Seal of Great Britain issued in pursuance of the said Act bearing Date at Westminster the Twenty seventh day of July last past directed to us and others WEE Sir Richard Warwick Bampfylde Baronet Sir William Courtenay Baronet Sir John Molesworth Baronet John Rolle Walter John Tuckfield James Buller John Buller Henry Reginald Courtenay George Treby Charles Cocks Browse Trist Frederick Rogers William Basturd John Ommanney Charles Taylor Esquires and William Davy Esquire Serjeant at Law Being Sixteen of the Commissioners thereby named and authorised having taken upon Us the Execution of the said Commission as to such part of the Messuages Lands Tenements and Hereditaments in the said Act mentioned as are situate in the County of Devon did on the Eleventh Day of September in the two and thirtieth year of the Reign of our Lord George the Second meet at the House of Timothy Bayley known by the name or Sign of the Kings Arms in Plymouth Dock and proof was duly made before us on Oath and otherwise That Notice in Writing was fixed up at the Dock Gate of his Majesty's Yard and at the Town Hall of the Borough of Plymouth and likewise published in the London Gazette thirty Days and more before this meeting and as well on the Testimony of Witnesses Inspection and Examination of Deeds Writings and Records as by and upon the Inquest of Richard Doidge, John Harris, Robert Lake, Thomas Lear, Waltham Savery, Evans Cove, John Wise, Charles Hayne, William Kitson, Rawlyn Mallock, William Neyle, Nicholas Brooking, John Wolston, Arthur Tremayne, Arthur Kelley, Arthur Champernowne, John Hawkins, John Fowell, William Stroude and Charles Hale Esquires good and lawfull Men Substantial Gentlemen and Freeholders Impannelled Summoned and re-

turned by Peter Comyns Esquire Sheriff of the said County of Devon to take the Inquest Twelve of whom upon their Oaths duly administred upon the Holy Evangelists did present and say that Sir John St. Aubyn Baronet is seized in his Demesne as of Freehold for the Term of his natural Life Remainder to John St. Aubyn son of the said Sir John St. Aubyn and all and every other the sons of the said Sir John St. Aubyn in Tail Male Remainder to John Molesworth Esquire for his life Remainder to his first and other Sons in Tail Male Remainder to William Molesworth Esquire for his Life Remainder to his first and other Sons in Tail Male Remainder to the Right Heirs of Sir William Morice deceased of and in the severall parcells of Land herein-after more particularly described and containing together One hundred Eighteen Acres three Rood and Eleven Rod and that the true and real Value of the said several pieces or parcells of Land at the Time they were first made use of for the purpose in the said Act mentioned was the Sum of Thirteen thousand One hundred Twenty six pounds Ten shillings of lawfull Money of Great Britain Now WEE the said Commissioners do on mature Consideration order direct adjudge decree and determine that the said Sir John St. Aubyn is Seized in his Demesne as of Freehold during the Term of his naturall Life Remainder to John St. Aubyn son of the said Sir John St. Aubyn and all and every other the sons of the said Sir John St. Aubyn in Tail Male Remainder to John Molesworth Esquire for his Life Remainder to his first and other Sons in Tail Male Remainder to William Molesworth Esquire for his Life Remainder to his first and other Sons in Tail Male Remainder to the Right Heirs of Sir William Morice deceased of and in a piece of Land called Little Cliff Field (Description of property follows) All which said pieces or parcells of Land contain together One hundred and eighteen Acres three Rood and eleven Rodd and that the true and reall Value of the said several pieces of Land and premises at the time they were first made use of for the purposes in the Act mentioned was the Sum of Thirteen thousand One hundred Twenty six pounds and Ten shillings of lawfull Money of Great Britain And that the said Sir John Aubyn and the persons in Remainder are intituled to the said Sum of Thirteen thousand one hundred Twenty six pounds and Ten shillings to be laid out in the purchase of other Freehold Messuages Lands Tenements and Hereditaments to be settled to the same Uses.

2. PRITCHARD Esquire. AND the Jurors aforesaid upon their

Oath aforesaid did further present and say that John Pritchard Esquire is possessed

(Here follow statements of property & tenure & value)

Now wee the said Commissioners do adjudge decree & determine that the said John Pritchard is possessed etc. etc.

And that the true and reall Value of the said several pieces of Land and premises last mentioned at the time they were first made use of for the purposes aforesaid was the Sum of etc.

(Following finding of Jury)

AND WEE do further adjudge decree and determine that etc. etc.

(Here follows apportionment of purchase money and next follow a number of similar findings etc.)

(Here follow the signatures of twelve Commissioners)

WHEREAS in Pursuance of an Act of Parliament made in the last Sessions Intituled An Act for Vesting certain Messuages Lands Tenements and Hereditaments for the better securing his Majestys Docks Ships and Stores at Portsmouth Chatham and Plymouth and for the better Fortifying the Town of Portsmouth and Citadel of Plymouth in Trustees for certain Uses and for other purposes therein mentioned and by Virtue of a Commission under the Great Seal of Great Britain Issued in Pursuance of the said Act bearing Date at Westminster the Twenty seventh day of July last past Directed to us and others WE Henry Gould Charles Whitworth Charles Petley Thomas Chiffinch Joseph Brooke Thomas Cooper Thomas Fletcher James Best Jacob Pickering Samuel Eyre and John Russell Esquires being Eleven of the Commissioners thereby named and Authorised having taken upon us the Execution of the said Commission as to such part of the Messuages Lands Tenements and Hereditaments in the said Act mentioned as are scituate in the County of Kent Did on the First day of November in the Thirty second Year of the Reign of our Sovereign Lord George the Second meet at the Guildhall of the City of Rochester scituate in Rochester in the County of Kent and Proof was duly made before us on Oath and otherwise that Notice in writing was fixed up at the Dock Gate of his Majesty's Yard at Chatham and at the Town Hall of the City of Rochester and likewise published in the London Gazette Thirty days and more before this Meeting and as well on the Testimony of Witnesses Inspection and Examination of

Deeds Writings and Records as by and upon the Inquest etc. [Here follow the names of Jurors] who upon their Oaths duly Administered upon the Holy Evangelist Did present and say &c. Now WEE the said Commissioners Do Adjudge Decree and Determine etc. etc. [Here follow findings etc. of Commissioners in accordance with the findings of the Jury.]

AND WE the said Commissioners in further Execution of the said Commission to us Directed do hereby Certify That we have in pursuance of the said Act of Parliament upon the Complaint of Thomas Feild the Tenant of Lands adjoining to the said Fortifications of Damages done to his said Lands heard and Enquired as well by the Oaths of Witnesses as the Inquest of the Jurors Sworn as aforesaid into the Damages so Done and do Estimate the Damage sustained by the said Thomas Feild to his Lands aforesaid at the Sum of Five Pounds of lawfull Money of Great Britain

[Here follow similar findings as to the damage sustained by adjoining Owners]

All which damages were sustained by means of making and Erecting the said Fortifications.

(Here follow the signatures of twelve Commissioners)

[Crown Office (Chancery) Commissions, Inquisitions, and Decrees relating to the purchase of land &c. for Fortifications No. 4]

GEORGE THE SECOND BY THE GRACE OF GOD of Great Britain France and Ireland King Defender of the Faith and so forth To
(Here follow the names of Commissioners)

Greeting WHEREAS in and by One Act of Parliament lately Passed Entituled AN ACT for taking down and removing the Magazine for Gunpowder and all Buildings thereto belonging Situate near Greenwich in the County of Kent and Erecting instead thereof a New Magazine for Gunpowder at Purfleet near the River Thames in the County of Essex and Applying a Sum of Money Granted in this Session of Parliament towards those Purposes and for Obviating Difficulties arisen upon An Act made in the last Session of Parliament for making Compensation for Lands and Hereditaments Purchased for his Majestys Service at Portsmouth Chatham and Plymouth It was Enacted that it should and might be Lawfull to and for Us by One or more Commission or Commissions by Letters Patent under the Great

Seal of Great Britain to Authorize and Appoint any Number of Persons to be Commissioners for Surveying and Setting out all such Messuages Mills Lands and Tenements and Hereditaments as it will be necessary to Purchase in Order to Build such intended Magazine for Gunpowder and other Buildings at Purfleet aforesaid and for executing the other purposes of the said Act in manner thereafter mentioned and that it should and might be Lawfull for the said Commissioners so to be appointed or any Five or more of them or such Persons as they or any Five or more of them shall appoint to Enter upon make Surveys of and set out and Describe by Lines Stakes or other Marks such Messuages Mills Lands Tenements and Hereditaments at Purfleet aforesaid as they the said Commissioners so to be Appointed or any Five or more of them shall think Proper to be purchased in Order for the Erecting and Building a Magazine for Gunpowder and the Guard House Barracks and other Convenient Buildings there as in and by the said Recited Act of Parliament amongst other things therein contained Relation being thereunto had may more fully and at large appear Now KNOW YE that We Reposing Especial Trust and Confidence in Your Great Abilities Care Fidelity and Circumspection HAVE Nominated Constituted and Appointed and do by these Presents Nominate Constitute and Appoint You

(Here follow names of Commissioners)

or any Five or more of You to be Commissioners for Surveying and Setting out all such Messuages Mills Lands Tenements and Hereditaments as will be necessary to Purchase in Order to Build according to the Directions of the said Act a Magazine for Gunpowder and other Buildings at Purfleet near the River Thames in the County of Essex and for Executing all and every other the Purposes of the said Act as far the same doth relate to the Erecting a New Magazine for Gunpowder at the Place aforesaid AND We do hereby Impower and Authorise You Our said Commissioners or any Five or more of You upon the Complaint of any Owner or Owners Occupyer or Occupyers of any the Messuages Lands and Hereditaments for this Purpose Described and mentioned in the said Act and adjoining to any part of the Lands and Hereditaments by that Act Vested in the Trustees therein mentioned that He She or they have Received any Damage by bringing Loading or Carrying any Materials necessary to Erect or Compleat any the Works therein mentioned or by any other

means whatsoever to Examine into and hear every such Complaint and if the same shall be made out to your Satisfaction then to make such Recompence for such Damages to the Party or Partys Injured out of the Moneys by the said Act Granted as to you Our said Commissioners or any Five or more of You shall from time to time seem Just and Reasonable AND WE do also by these Presents Authorize Impower and Direct You Our said Commissioners or any Five or more of You to do Perform and Execute all and every the Matters and things whatsoever which by the said Act such Commissioners are Authorized and Required to do Perform and Execute HEREBY Willing and Requiring You or any Five or more of You as aforesaid from time to time to Proceed and Act according to the Rules and Directions of the said Act of Parliament and Dilligently to Intend the Execution thereof in all things as becometh AND these Presents or the Inrollment or Exemplification thereof shall be to You and every of You a sufficient Warrant and Discharge in that behalf IN WITNESS whereof We have caused these Our Letters to be made Patent WITNESS Ourself at Westminster the Seventeenth Day of September in the Thirty Fourth Year of Our Reign

YORKE & YORKE

BY WRIT of PRIVY SEAL

Filed 23 Feby 1761

[Endorsement of execution by six Commissioners]

AT A MEETING of the Commissioners appointed by his Majesty's Commission under the Great Seal of Great Britain bearing date at Westminster the Seventeenth Day of September in the thirty fourth Year of his Reign for carrying into execution AN ACT passed in the last Session of Parliament INTITULED An Act for taking down and removing the Magazine for Gunpowder and all Buildings thereto belonging situate near Greenwich in the County of Kent and erecting instead thereof a New Magazine for Gunpowder at Purfleet near the River Thames in the County of Essex and applying a Sum of Mony granted in this Session of Parliament towards those Purposes and for Obviating Difficulties arisen upon an Act made in the last Session of Parliament for making Compensation for Lands and Hereditaments purchased for his Majesty's Service at Portsmouth Chatham and Plymouth on Thursday the twenty third day of October One thousand seven hundred and sixty at the Publick House at Purfleet called the Crown,

PRESENT

(Here follow names of Commissioners present)

The Commission having been read the said Commissioners being more than five in number now here Entred upon made Surveys of and set out and described and caused to be set out and described by Lines Stakes and other Marks the Messuages Mills Lands Tenements and Hereditaments at Purfleet in the County of Essex herein after mentioned which they the said Commissioners think are proper to be purchased in order for the erecting and building a Magazine for Gunpowder and the Guardhouse Barracks and other convenient Buildings there.

And it is hereby agreed by all the said Commissioners now present that the Messuages Mills Lands Tenements and Hereditaments by them set out and described and caused and directed to be set out and described in manner before mentioned are proper and are hereby Ordered to be purchased for the purposes mentioned in an Act passed the last Session of Parliament INTITLED AN ACT for taking down and removing the Magazine for Gunpowder and all Buildings thereto belonging situate near Greenwich in the County of Kent and erecting instead thereof a new Magazine for Gunpowder at Purfleet near the River Thames in the County of Essex and applying a Sum of Mony granted in this Session of Parliament towards those purposes and for obviating Difficulties arisen upon an Act made in the last Session of Parliament for making Compensation for Lands and Hereditaments purchased for his Majesty's Service at Portsmouth Chatham and Plymouth Which said Messuages Mills Lands Tenements and Hereditaments so ordered to be purchased with their several Abuttals and Boundaries are as herein after mentioned that is to say

(Here follows description of messuages)

All which said Messuages Mills Lands and Premisses are situate lying and being in the Parishes of West Thurrock Avely and Wennington some or one of them in the County of Essex and are more fully delineated and described in the Plan hereto annexed

And the said Commissioners do adjourn this Meeting to Thursday the Eleventh day of December next at ten o'clock in the Forenoon to the Angel Inn at Ilford in the County aforesaid.

AT A MEETING of the said Commissioners at the Angel Inn at Ilford in the County of Essex the eleventh of December One thousand seven hundred and sixty.

Present

(Here follow names of Commissioners present)

Some of the Owners and persons interested in the Messuages Mills Lands Tenements and Hereditaments surveyed and set out as proper to be purchased for erecting a Magazine for Gunpowder and a Guardhouse Barracks and other convenient Buildings at Purfleet appear and offer to treat But make so high Demands for their respective Interest in the same that the said Commissioners cannot agree for the Purchase thereof Other of the said Owners and persons interested appear but are unprepared or unable to treat with the said Commissioners and others of the said Owners and persons interested do not appear to treat and agree with them And thereupon the said Commissioners do order and direct That an Offer be made to the Several and respective persons Bodys Politick and Corporate Ecclesiastical or Civil herein after mentioned for their several and respective Interest in the said Messuages Mills Lands Tenements and Hereditaments so surveyed and set out the several and respective Sum and Sums of Money herein after mentioned that is to say.

(Here follow particulars of Claimants and sums offered)

And the said Commissioners do further order and direct that a Jury be impanelled summoned and returned by the Sheriff of the County of Essex on Monday the nineteenth Day of January next at Ten o'clock in the Forenoon at this place before the Commissioners who shall then meet on their Oath to inquire into and ascertain the true and real value of the Messuage Mills Lands Tenements and Hereditaments of such person or persons Bodies Politick or Corporate Ecclesiastical or civil as shall then and there refuse or neglect to treat and agree with the said Commissioners or shall refuse to accept what the said Commissioners think a reasonable Recompence or Satisfaction for their respective Interest therein And of such person or persons as through any Disability by Nonage Coverture or special Limitations in any Settlement or Settlements or by reason of any controversy in Law or Equity or any other Impediment cannot treat and agree with the said Commissioners And that the said Jury do on

Friday the Sixteenth Day of the said Month of January View the said Messuages Mills Lands Tenements and Hereditaments so surveyed and set out and intended to be purchased in order for their better ascertaining the true and real Value thereof

And the said Commissioners do hereby direct a Precept under their Hands and Seals to the Sheriff of the County of Essex to impanel summon and return such Jury in the Words and Figures or to the effect following (that is to say)

(Here follows the form of the Precept)

And the said Commissioners do further Order and direct that Mr. Thomas Stanyford do give Notice and make the said offers respectively to the said respective Owners of the said Messuages Mills Lands Tenements and Hereditaments so intended to be purchased in writing Thirty Days before the said nineteenth Day of the said Month of January and that a Jury will be impanelled summoned and returned and have a View of the said Premises before that time

And the said Commissioners do adjourn this Meeting to Monday the nineteenth Day of January next at this place at ten o'clock in the Forenoon.

AT A MEETING of the said Commissioners
at the Angel Inn at Ilford on Monday the
nineteenth Day of January One thousand seven
hundred and Sixty one

Present

(Here follows names of Commissioners present)

Proclamation is made for all persons owners of or interested in the Messuages Mills Lands Tenements or Hereditaments described and set out by Lines Stakes or other Marks as proper to be purchased for the erecting a Magazine for Gunpowder and a Guard-house Barracks and other convenient Buildings at Purfleet in the County of Essex do appear and make out their Title and Claim and to agree with the said Commissioners now met for their Estate and Interest therein.

And thereupon the said Commissioners agreed with John Pelly Esquire for the compleat and absolute Purchase of his Estate and Interest in the Words and Figures or to the Effect following (that is to say)

BE IT REMEMBERED that on the nineteenth Day of January in

the first Year of the Reign of our Sovereign Lord George the Third by the Grace of God of Great Britain France and Ireland King Defender of the Faith and so forth and in the Year of Our Lord One thousand seven hundred and sixty one between The Reverend Doctor William Parker Sir James Creed Kn^t John Hopkins John Peter Desmaretz Henry More Matthew Dove Joseph Bird and Matthew Bateman Esquires being Eight of the Commissioners nominated and appointed by his late Majesty's Commission under the Great Seal of Great Britain bearing date at Westminster the Seventeenth Day of September in the thirty fourth Year of his said late Majesty's Reign for carrying into Execution An Act passed the last Session of Parliament amongst other things for taking down and removing the Magazine for Gunpowder at Greenwich and erecting instead thereof A new Magazine for Gunpowder at Purfleet in the County of Essex of the one part and John Pelly of Upton in the County of Middlesex Esquire of the other part IT IS WITNESSED that the said Commissioners Have Treated Consented and Agreed And by these Presents Do treat Consent and Agree That the said John Pelly shall be paid the Sum of One hundred and fifty Pounds of lawful Money of Great Britain for the compleat and absolute Purchase of his Interest in and the Freehold and Inheritance of all that piece or parcel of Marsh Land

(Here follows description of the property)

as proper to be purchased in order for the erecting and building a Magazine for Gunpowder and the Guardhouse Barracks and other convenient Buildings there pursuant to the said Act of Parliament And the said John Pelly doth hereby consent and agree to and with the said Commissioners that he the said John Pelly shall and will accept receive and take the said Sum of One hundred and fifty Pounds in full satisfaction for the compleat and absolute Purchase of the said Lands Tenements and Hereditaments hereinbefore mentioned And that after Payment of the said Sum of One hundred and fifty Pounds in manner as in the said Act is mentioned the said Lands Tenements and Hereditaments now vested in the Trustees named in the said Act shall be and remain to and for the use of his Majesty his Heirs and Successors free of and from all Charges and Incumbrances whatsoever made by the said John Pelly or any of his Ancestors In Witness whereof the said Commissioners and the said John Pelly have hereunto set their Hands.

And no other person being prepared to agree with the Commissioners for any other of the said Messuages Lands Tenements or Hereditaments the Sheriff is called upon for a return of his Warrant directed to him in the words and manner herein before mentioned And thereupon he returns the said Warrant with the Panel thereto annexed and thereby certified to the Commissioners in the said Warrant named That by virtue of that Precept to him directed he had caused the Places in question to be viewed by twenty two of the Jurors in the said panel thereto annexed named and that the Residue of the Execution of the said Warrant appears in the said Panel which is in the words and figures following that is to say

Essex to wit The Names of the Jurors
summoned to Inquire upon their Oaths as by
the annexed Precept is directed.

(Here follow names of Jurors)

And after the Owners and other persons interested in the said Messuages Mills Lands and Hereditaments marked out for the purpose aforesaid had been informed that if they or any of them would challenge any or either of the Jury impanelled and returned they should challenge them as they came to the Book before they were sworn.

(Here follow names of Jurors)

... appearing took the oath following

You swear that you will well and indifferently without favour or Affection Hatred or Malice enquire into ascertain and assess the true and real value of such Messuages Mills Lands Tenements and Hereditaments as shall be given to you in charge and are now set out and described by Lines Stakes or other Marks as proper to be purchased in order for the erecting and building a Magazine for Gunpowder and a Guard House Barracks and other convenient Buildings at Purfleet in this County pursuant to an Act passed the last Session of Parliament Intituled An Act for taking down and removing the Magazine for Gunpowder and all Buildings thereto belonging situate near Greenwich in the County of Kent and erecting instead thereof a New Magazine for Gunpowder at Purfleet near the River of Thames in the County of Essex and applying a Sum of Money granted in this Session of Parliament towards those Purposes and for obviating Difficulties arisen upon an Act made in the last Session of Par-

liament for making Compensation for Lands and Hereditaments purchased for his Majesty's Service at Portsmouth Chatham and Plymouth and who are the Owners and Proprietors thereof and of every part and parcel thereof and the true and real value of their each and every of their respective Rights Estates and Interest and a true Verdict give according to the best of your Judgment and Knowledge

So help you God

After the Jury were sworn Caleb Grantham Esq^r by his Council appears and claims to be seized in his Demesne as of Fee of and in the Messuages Lands and Hereditaments herein after next mentioned And Sir Matthew Fetherstonhaugh Baronet by His Council appears and claims to be possessed of part of the said Messuages Lands and Hereditaments by virtue of a Lease to him granted for the Remainder of Sixty one years And Thomas Keene appears and claims part of the said Lands as Tenant to the said S^r Matthew Fetherstonhaugh John Pettit appears by his Agent and claims to be possessed of other part of the said Messuages by virtue of a Lease thereof granted to Henry Woodin for the remainder of a Term of twenty one Years After hearing Council and an Agreement between the said Caleb Grantham and Sir Matthew Fetherstonhaugh being admitted by the Council on each Side that the said Jurors now sworn should in the consideration of their respective Interests ascertain the Rent that should be abated by the said Caleb Grantham to the said Sir Matthew Fetherstonhaugh in respect of such Messuages Lands and Hereditaments now purchased and after examining Witnesses as well on behalf of the said Caleb Grantham as of the said Sir Matthew Fetherstonhaugh The said Jurors upon mature consideration had upon their Oath do present and say

(Here follow findings of Jury)

And thereupon the said Commissioners do adjudge decree and determine that the true and real value of the said Messuages Lands Tenements Hereditaments and Premises last mentioned with the Appurtenances is the Sum of Two thousand two hundred Eighty six Pounds nineteen Shillings and Six Pence of lawful money of Great Britain And that etc. etc.

(here follows the apportionment) |

TUESDAY the twentieth Day of January One thousand seven

hundred and sixty one at a Meeting of the said Commissioners at the Angel Inn at Ilford.

PRESENT

(Here follow names of Commissioners present)

The like Proclamation made as herein before mentioned and the Jury being called over all appear and Sarah Hallett Widow appears and by her Council claims to be seized in her Demesne as of Freehold for the Term of her Life of and in the Messuage or Tenement and Hereditaments herein after mentioned Remainder thereof to Mary Turner an Infant her Granddaughter and her Heirs for ever Subject to the annual reserved Rent of Ten shillings payable to Dame Mary Lake for her life and after her Decease to Sir James Winter Lake Baronet an Infant and subject to a Mortgage thereof, made to Rachael Dickens Widow and her Heirs for securing the Repayment of One hundred pounds and Interest after the rate of Four Pounds per Cent per Annum and the said respective claims not being controverted the Jurors aforesaid upon their Oath aforesaid Do present and say that Sarah Hallett Widow is seized in her Demesne as of Freehold for and during the Term of her natural life of and in

(Here follows description of parcels)

as proper to be purchased in Order for the erecting and building a Magazine for Gunpowder and the Guardhouse Barracks and other convenient Buildings there pursuant to the said Act of Parliament Remainder thereof to her Granddaughter Mary Turner and her heirs for ever Subject to a Rent of Ten Shillings a Year to Dame Mary Lake for her life Remainder to Sir James Winter Lake in Fee and to a Mortgage thereof made by Indentures of Lease and Release bearing Date respectively the twenty fourth and twenty fifth days of October which was in the Year of our Lord One thousand seven hundred and fifty four between the said Sarah Hallett and Spencer Turner and Sarah his wife of the one part and Rachael Dickens of the other part whereby the said Sarah Hallett and Spencer Turner and Sarah his wife grant and convey the said Messuage or Tenements and Premises last mentioned with the Appurtenances by the name and description of etc.

(Description of parcels)

that the true and real Value of the said Messuage Tenement or Dwelling house and Premises last mentioned with the Appur-

tenances is the Sum of Four hundred and sixteen Pounds ten Shillings of lawful Money of Great Britain And that the said Estate and Interest of the said Rachel Dickens of and in the said Messuage or Tenement and Premises last mentioned with the Appurtenances is of the true and real value of One hundred Pounds And the said Estate and Interest of the said Sarah Hallet and Mary Turner is of the true and real Value of Three hundred Pounds And that the said Dame Mary Lake and Sir James Winter Lake's interest therein is of the true and real Value of Sixteen Pounds ten shillings.

And the said Commissioners do Adjudge Decree and Determine that the true and real Value of the said Messuage Tenement or Dwelling house and Premises last mentioned with the Appurtenances is the sum of Four hundred and sixteen Pounds ten shillings of lawful money of Great Britain and that the said Rachael Dickens for her Estate and Interest thereon be paid the Sum of One hundred Pounds part of the said Sum of Four hundred and Sixteen Pounds ten shillings and that the Sum of Three hundred Pounds other part of the said Sum of Four hundred and sixteen Pounds ten shillings be paid to the Deputy of the King's Remembrancer at the Court of Exchequer at Westminster for the Estate and Interest of the said Sarah Hallet and Mary Turner in the same pursuant to the Directions of the said Act of Parliament And that the Sum of Sixteen Pounds ten shillings the Residue of the said Sum of Four hundred and sixteen Pounds ten shillings be paid to the said Deputy of the King's Remembrancer for the Interest of the said Dame Mary Lake and Sir James Winter Lake pursuant to the Directions of the said Act of Parliament.

(Here follow similar proceedings and findings)

AT A MEETING of the said Commissioners on Monday the Sixteenth day of February in the Year of our Lord One thousand seven hundred and Sixty one at the Crown and Anchor Tavern in the Strand in the County of Middlesex.

PRESENT :

(Here follow names of Commissioners present)

WEE whose names are hereunto subscribed met for the further Execution of the said Commission pursuant to the said Act of

Parliament DO HEREBY CERTIFY to the Clerk of the Crown in His Majesty's High Court of Chancery that the said Commissioners have pursuant to the Powers and Authorities to them given by the said Commission proceeded to carry the said Act into execution and have caused their Surveys Agreements Orders Judgments Decrees and Verdicts to be entered in a Book in the Words and Figures above mentioned.

(Signatures follow)

AN EXACT SURVEY of the LANDS necessary to be purchased by the CROWN pursuant to an ACT of PARLIAMENT for ERECTING a POWDER MAGAZINE and other Buildings at PURFLEET in the County of ESSEX.

(Here follow particulars)

APPENDIX D

EXTRACTS FROM THE REPORT BY BRUCE IN 1798 ON THE ARRANGEMENTS FOR THE DEFENCE OF THE KINGDOM AT THE TIME OF THE ARMADA

IN 1586 directions were given to the Lord Lieutenants requiring them to issue orders to the different Captains in their Lieutenancy to meet at appointed places on or before the 20th of March in order to make up their musters of men and of arms to Deputy Lieutenants, to mark out to the Captains the posts which they were to occupy, and to cover these posts by batteries, dig pits, and plant stakes, to stop the progress of the enemy if he landed : to assign stations for the horses and field pieces : to fix on places for the powder magazines : to appoint days for the horses to be trained and to name the places of rendezvous : taking care to have roads and fords repaired, and cross-bars ready, to stop the enemy after landing.

This general instruction was followed up in 1587 by an order for completing the musters of the forces in the different counties, and for having them fully accoutred and in readiness to march on the first notice ; requiring at the same time that returns should be made of the amount of the musters, both of men and arms, to Her Majesty in Council.

But that the Queen's orders, in so far as regarded the maritime counties, might be more fully explained and understood, instruc-

tions applicable to each county were sent on the 10th of February 1587 (that to the county of Devon may be taken as a specimen) requiring—that the number of Deputy Lieutenants should be completed—that, under the warrant of Her Majesty, orders should be issued for putting the men in array and in readiness at their different stations, that convenient places should be assigned to five General Captains (as they were termed) who were made answerable for the effective numbers of 500 each, and to two additional Captains for 250, making in the whole a band of regiment of 3,000 foot, to be reviewed and exercised, and in readiness to go on service on the sea coasts under the orders of the General Commander of the coast, to be afterwards named by Her Majesty ; that the five Captains should likewise muster the bands of horsemen, to be divided into troops of 50, for each cornet, and appoint places of muster for the same ; that the whole may be returned in general muster rolls as ready for service, and exercised at least 25 at a time to qualify them for duty ; that a survey of the places where the enemy may land should be taken, and means provided more speedily to convey under proper leads the forces to resist him, and directions given to raise ramparts not only against his progress in the country ; that a proper number of pioneers should be raised to act on this duty ; that every justice of the peace, being of quorum, should furnish two horsemen, and every other justice one, that the towns within the county should provide the necessary store of ammunition at a reasonable price ; that beacons should be erected on the sea coast and men placed near them to watch the motions of the enemy's ships ; and that ports should be in readiness to carry information of his approach ; that return should be made to the Queen of the due execution of these instructions ; and that each band of 500 footmen should be formed into a regiment and attended by 700 horsemen, besides the horsemen furnished by the justices of the peace ; the whole properly arrayed and in good order to withstand any attempt which the enemy may make to land or to advance.

Notwithstanding these precautions it appears that in some of the counties, though the lower and middling orders were well disposed and had made laudable exertions to fulfil Her Majesty's intention of putting the country in a state of defence, yet that several of the higher orders, under the pretext that the danger was not so immediate, had either refused to furnish the necessary horses and carriages, or postponed their services under the

pretext that they were necessary only after the invasion should actually take place.

These circumstances Lord Sussex, with an honest and loyal indignation, represents as unjustifiable, because the resistance was to be made against an enemy ' whose malice and preparations were great ' ; adding what in every crisis must appear an evidence of a decided loyalty that to discharge his duty with effect he must have, without favour or partiality to any man, the selection of such officers to serve under him as can execute the great duty of defending his country with credit to themselves and to their Commander.

In the counties such as Lincoln where an attack was not so much apprehended as on the coasts more immediately skirting the seas by which the embarkation from Spain must approach, the instruction (in December 1587) directed the Deputy Lieutenants to require the inhabitants in the three divisions of Lindsey, Kesteven, and Holland, to put the coast in a posture of defence lest the Duke of Parma should land his army when accounts should reach him of the arrival of the Armada, expected on the coast of Cornwall and Devon.

The anxiety felt by the Ministers of Elizabeth from the daily accounts which they received of the preparations of the enemy induced the Queen's Council on the 2nd April 1588 to address an Order, in the form of a letter, to the Lord Lieutenants of the different counties requiring them to obtain returns from their Deputies of the state of preparations in the different districts, and to forward the same for the Queen's information that she might have full knowledge of the strength in each county, and be prepared to oppose the attack of the enemy.

Of the same date, and strongly marking the anxiety of the Council at this crisis, were the instructions sent to the Lord Lieutenants of the different counties requiring them to send in lists of the names of the officers of every rank and, in case of proper persons not being found in any one county, to fill these stations, the vacancy or the defect was to be supplied by persons recommended to the Queen as able to discharge this trust.

Not relying, however, on these general instructions, the Queen, on the 6th of April 1588, appointed Sir John Norris, with full powers to direct the arrangements for the internal defence of the maritime counties of Kent, Sussex, Hampshire, Dorset, Essex, Norfolk and Suffolk ; and addressed a letter to the Lieutenants or their deputies of these counties, requiring them

to give every necessary information and aid to this General, and to follow all his orders in putting the coast in a state of defence either to obstruct the landing or progress of the enemy. Sir John Norris was for this end to fix on stations to which the guards of the coast might if overpowered retreat and form an army to harass the enemy's march, or resist his entrance into the interior of the country.

These instructions were accompanied with topographical directions given on 30th of April 1588. Those for the county of Norfolk are so precise and correct that they may be selected as a specimen applicable (allowing for differences in local situation) to the other counties during the existing danger.

These directions set out with describing the points on the east coast where the attack might be expected, viz. Waburne, Hoope, Cleyhaven, Waaham, Winterton and Yarmouth, at each of which for the protection of the shipping as well as of the coasts where the depth of water would admit the enemy's vessels, ramparts were ordered to be erected, defended by trenches reaching from one salt marsh to another. The causeways were to be broken up, parapets to be built, the old Hythe to be entrenched and defences raised at the distance of a mile from Lynn where the channel is narrowest, and defended by a proportion of cannon. On the approach of the enemy the bridges on the Ouse were to be broken down, and the banks cut, to impede his progress. Bodies of horse and foot were to patrol and obstruct his march, galling him at the same time with the ordnance from Winterton and Bromhall.

For the purpose of carrying these measures into execution the shire was to be divided into districts, and the forces placed in such stations as might enable them most easily to concentrate at Yarmouth. The detachments of foot were to consist of 300, one half trained and the other irregulars, accompanied by 73 pioneers and 20 carriages; each carriage was to be conducted by two men, and the whole to be in readiness for forwarding the necessary works.

The directions, further, minutely specify the commanders and the proportion of force under them who were to act at successive times as reliefs to each other, from the 13th of May to the 9th of July inclusive; point out the mode of giving the alarm on the approach of the enemy by beacons on which fires were to be lighted; described the lines in which the trained men under the Deputy Lieutenants were to advance against him, and enjoin

the multitude to avoid assembling or creating confusion or disorder.

In the event, however, of the enemy reaching Waburn such strength as the county can assemble was to be brought up against him, but if unable to retard his progress the foot and horse were to retire for the protection of the important town of Norwich, take station on the height of Montefurroy which commands the city, and defend the town till an army can be marched from the neighbouring counties to the relief of the place. In the event, however, of the enemy debarking between Yarmouth and Bromhall, the forces were to take post at Flegge, defend the bridges, or, if untenable, to break them down; should he take the road by Thetford towards London the forces of Norfolk were to hang on his rear, harass his march and prevent his foraging parties laying waste the country. The magazine was to be at Norwich, and on the approach of the enemy the corn was to be burned down, the cattle drove inland, and bridges and roads broken up to impede his march. In case the attack be made on the side of Lynn, the Governor was to take care that no horses or carriages be left behind to be seized by the enemy.

For all these purposes special commissions were given in the different districts to particular officers to superintend each branch of these diversified services, and strict orders issued for keeping regular guards at the different bridges to stop all suspected persons, particularly in the night time, and to bring them before the justices for examination.

These justices were to be assisted by constables, and post-horses were to be kept in constant readiness to convey intimation of the appearance or approach of the enemy's fleet to the coast.

Another, and perhaps the most important station to be guarded, was the coasts bordering upon the mouths of the Thames as will appear from the accompanying chart. This subject seems early to have attracted the Queen's notice, as the charges for the chains and forts guarding the Medway were made up in the month of January 1588, amounting to 1,470*l*. The defences appear to have had two objects: the protection of the shipping in the river and security against the enemy's approach to the capital.

For these purposes a great chain was fixed to cross the river at the opposite point from Upnore Castle, with a wood-work to cover two large wheels for moving it; and lighters were provided with cables and anchors for buoying it up. St. Mary's

and the other creeks were to be protected by batteries, and Upnore Castle repaired by platform, dykes, &c.

The Queen's exactness in the article of charges appears to have been more particularly explained by an Order of Council dated the 25th August 1588, in which she requires from the different Lord Lieutenants an account of the monies that had been levied in their counties for her service, and the purposes to which the sums had been applied, specifying that exact payments must be made to the soldiery, and prohibiting, under pain of her displeasure, any money to be accepted in lieu of services.

* * * * *

A barrier was to be made at Warham Bridge to obstruct the enemy in case the retreat of the Queen's forces should be necessary, in which case the roads were to be cut and the water let in.

* * * * *

These instructions were followed up in June 1589 with orders to the Lord Lieutenants to direct their Deputies to publish the Lord Lieutenant's Commission in the county, to muster and exercise the men within their districts, and to return lists of all the men able to serve; to appoint to every 50 horse a captain and cornet; to survey the coasts and make the necessary fortifications for defending the places where the enemy might land; to survey the country inland that in case of his advancing forward stations might be fortified where his progress may be checked; to assign to certain bodies of the trained men the duty of repairing to these places; to appoint pioneers to every general band; to provide the necessary carriages; to have at least 300 or 400 horsemen trained to firearms; to require every justice of the Quorum to furnish two petronels on horseback, and every other justice one, who should attend the Lord Lieutenant to see that all suspected persons be disarmed; to administer the oaths of supreme act to the Captains and trained soldiers; to see all farmers enrolled in places adjacent to where the trained hands meet; and to take care that the persons having authority shall have the proportion of powder in store at the Queen's price.

* * * * *

By the 33 Geo. III, cap. 8, provision has been made for the families of militia men; by the 34 of Geo. III, cap. 16, Lord Lieutenants are empowered to accept offers to raise

volunteer companies, and also additional volunteers to regiments ; and by cap. 31 corps of volunteers are authorised to be raised for the defence of counties, towns or coasts, or for the general defence of the kingdom during the present war and, by cap. 47 farther relief is provided for the families of militia men. This was farther explained by the 35 of the King, cap. 81 ; and still farther, by the 36th, cap. 114. By the 37 of the King, cap. 3, the militia were farther augmented, and by cap. 4, a provisional cavalry for the defence of the kingdom was embodied. By cap. 22, His Majesty was empowered to embody the augmented militia in case of necessity for the defence of these kingdoms, and by cap. 23 the provisional cavalry was to be embodied ; and farther augmented, by cap. 139. By the 38 of the King, cap. 17, a proportion of the men in the augmented militia was allowed to enlist in His Majesty's other forces, and to serve only until six months after the conclusion of a general peace ; by cap. 18, His Majesty was authorised to order out a certain proportion of the supplementary militia and to incorporate them with the several companies of militia ; and this was farther explained by cap. 19, and still farther by the Act, more effectually to provide for the defence and security of the realm during the present war, and for indemnifying persons who may suffer in their property by such measures as may be necessary for that purpose.

* * * * *

4. That the Crown by its Lord Lieutenant exercised during the reign of Queen Elizabeth the power of calling on counties, town bodies corporate, beneficed ecclesiastics and others, to furnish, in cases of menaced invasion, quotas of arms, ammunition, military stores, pioneers, artificers, &c., necessary for the army ; and armed vessels, mariners and a proportion of victuals for them to assist in repelling the common enemy ; making the Lord Lieutenant, his Deputies and the Justices judges of such services. That the Crown, by the like power delegated to the Lord Lieutenants, could call on all land holders, farmers, &c., to furnish carriages, posts to convey information of the approach, or actual landing of the enemy, and by himself, or by his Deputies to issue orders for driving away the cattle and horses from the coast inland ; for burning and destroying the corn, or whatever might be of use to the enemy ; for breaking down bridges, cutting up roads, and, in general, for doing everything which might prevent, or might check if he actually landed, his progress

in conquest ; measures which the recited Acts of the Legislature have in part adopted, and in which the general loyalty of the subject in the present crisis has happily co-operated.

* * * * *

APPENDIX, No. II

THE POINTS of the Directions given to the Lord Lieutenants of the Marityme Counties in the beginning of March last 1586

1. The Lieutenants to cause several captaynes to assemble their bandes, at a place appointed, by the 20th of March, and to view them, and to supply dead and lame mens' roomes.

2. To muster their bandes, in places neare the sea coasts, where they are appointed to repair, and to punish or reforme defects.

3. The Lieutenants, or their deputyes, to lead the captaynes to the places of descent, to acquaynt them with the ground.

4. To devise how to cover the soldiers from th' ennemy by nature of the place, sconces, trenches, parapets.

5. To empeach the landing in places of danndger, by making pits and planting stakes.

6. To appoint a place of keeping, for certain field peeces and horses and carriages to draw them.

7. To appoint a place for the store of powder and match.

8. To cause the horse to be viewed and trayned, by a day to be appoynted by the Lieutenant.

9. To appoint places of rendezvous.

10. To appoint gardes to repaire to passages and fords, and to take order for erecting of turnpykes, uppon landing of th'ennemye.

April 10th, 1789.

Exd. J. Bruce.

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APPENDIX No. IV

Instructions for the putting in Strengthe of all Her Ma'ties subjects within the countie of Devon, for Defence of the same countrie, uppon anye invasion to be made uppon the same.

February 10th, 1587.

* * * * *

Itm. The said five persons, or in absense of anie one, the rest shall newlie consider of the places, where an enemy maie

descend to lande to the offence of the countreye ; and consider that impeachment may be devised to withstand theire landinge ; and thereof to make provision, how the same defences maie be put in order and executed. And to consider, alsoe, howe convenient forces maie be spedilie brought to theis landing places, to withstand the enemy, and to expell him. For which purpose, according to the orders, the last yere, directed by the Lieutenant, it would be considered, howe such numbers of pioners maie be in redines, under conductors and leaders, both with weapons and toles, fit for work by ditching, trenching, or levienage of rampiers, to withstand to the accesse or landings of the enemye, or otherwise, in places of straights, after theire landings, to impeach theire coming forward.

Itm. Divers other partes of the said orders shall be presently vewed and prepared in readiness, tending to the impeaching of the landings of the enemye, which being well forseene, and diligently followed then tyme should require, maie serve more to purpose to be done, with few nombres of souldiers trained, and strong pioners, to be spedilie conducted to the place of service, under wise and valiant captains, than after the opportunitie of the tyme omitted, tenne times so manie shall be hable to remedie the danger.

* * * * *

APPENDIX No. V

LETTER from the EARLE OF SUSSEX to the LORDS OF COUNSELL, 30th November 1587

It maie please yo Hono at my retorne, into the countrie, I came by Basinge and there having conference with my Lords Marques, we agreed to viewe the wholl shire o selves ; and he having taken the one parte, and I the other, we are nowe in accomplishinge the same ; and for my own parte, I wolde not for anything, but that I should have done yt, for so farre as I have yett passed, I have found neither armour, weapon, nor shott, nor men, accordinge to my expectacon ; but it falleth owt, as I have often saied, friendshippe, favour, or somewhat else, doth make, that the best able be most favored the welthiest most easilye chardged, and the willinge most pressed and burdened, but at the finishing of this my travelsome jorney, I hope to write unto yo Hono. of some amendment thereof, as by certificate of th'increase, shall then more plainlie appeare.

Yo Hono wolde thinke these speeches to be strange, if you shold heare them, the meaner and poorer sort, to saie, he that wold not sell horse and carte to defend his prince, countrye, familie, and children, it were pittie he had any thinge ; and the higher and next sorte to saie, we are much chardged, manie waies, and when the Enemy comes we will provide for him, but he will not come yett. I am forced to use these kind of perswasions to the poorer and willinge, who yealdeth more than their abilitie ; I promise it shall remayne, but as a thing done of their dewtiful good wills, for this present, considering the malice and preparacon of the enemies, and not to remain, as a continual chardge upon them, and to the better and other sorte, I perswade as they have most to lose, so ought they, besides their dewtie towards their Prince and love to their countrie, so to provide and have in readynes, such store of all thyngs as shall best defende the same, whereby they maie be better thought of, amongst the best, and also the more beloved of neighbours for their good example ; wherein if I shall find them unwilling, as they thereby shall geve me greate and just cawse of mistrust in them so shall they be assured, that in all taxacons, cessments or other imposicons, and taking uppe for services, I will burdem them to the uttermost, which I hope will so take place with them, as there shall be some amendment.

My goode Lorde, I am most hartelye and earnestlye, not onelie to require, but also for the better defence of the realme, as dewty bindest me to chardge your Hono to be a meane, for the present, sending downe of the gonners, without whom I wish the ordinance to the tower again, the platformes to be repaired and that of the round tower to be made new for that it is so owld and rotten, as on the daie of the Q. Ma'ties coronation, I durst not shoote of one peece, which place is the onelie chiefest, for the defence and safe garde of the haven. The corne powder, for the small shott, and all the other necessities, are presently to be sent awaie, if Hir Ma'tie to your Honors do expecte any enemies, but if you thinke all things doe stand secure and saife, you maie perhappes detract tyme, so longe as it maie be to late repented. Goode, my Lorde, beare with my plaine writinge, for what you knowe there, I here not, but I can not lerne here, but that it is most necessarie to be presentlie readie.

It pleased my Lorde Chancell and your Hono and the rest, that I shold confer with the justices of the circuite, towchinge the justices of the peace, and leaving a note of my opinion of

suche, as I thought most fitt, and specially, in this time, I nominated three to be newlie put in, viz., Mr. John Seymour, sonne to Sir Henry Seymour, Mr. William Uvedall, and Mr. John White, of Sowthwicke ; the last of them three is, as I am informed left owt, and yet all kinds of waies most fittest, and by me thought most meetest, for some parte of my own ease, being veries, having no helpe, but Mr. Francis Cotton. The man is, for his good discretion and government, upright dealing, good hospitalitie, and chargeable service, for his prince and countrie inferior to fewe or none, hereabowts, and seing, as I am put to service, I would be gladd to have some in credit, that I might best trust, of whom he is, besides his abilitie, one of the chiefest, and I thinck will best discharg the same.

The earthe works will, by the end of this moneths paie, be very neere finished ; and then must I know her Ma'ties pleasure what shall farthest be done with the men, and how they shall be employed. I thinke it very necessarie and most meet, that the stone wall, from the platforme to the Pointe Gate, be rampared with earth, which maie be done with those labourers and men, which shall be continued for the guarding of the towne, and so bothe to be but one chardge. And so, I must humblye comit your Honor to God.

From Portsmouth, this last of November 1587.

Your Honors Assured,
to his power,
SUSSEX.

April 10th, 1798.

Exd. J. Bruce.

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APPENDIX No. X

Directions lefte by mee, Sr. Thomas Leighton, Knt., for all Martiall Causes, in the Countie of Norfolk, with Sr. Edward Clere and Sr. William Heydon, Knights Deputie Lieutenants of the said Countie, and with Ralph Lane, Esquier, appointed by their Lordships to assist them in the Execution thereof and with Captaine Havers, Captain Helme, and Captn. Pepper.

The Last of April 1588

Firste, for as much as Waburne Hoope and Cley Howen, Waxham, Winterton, and Yarmouthe are the places of greatest danger, within the said countye, by reason there are good roades

for shippinge, and also the sea, upon all those coasts, are shoare deep, so as the enemye may, with greate easse, land his forces, except good order bee taken to impeache hym; I do thinke meete, so followethe :

The sconce at Waburne Hoope to bee enlarged, according to the platte delivered unto you, withe the trenche adjoyninge, alonge the Salt Marsh, till you meete with the mayne channell which comme from the Salthowse.

Also, that the Cawsey, leadinge from Salt howse to the Lodge in Sr. Willm. Heydon's warren, be cut, upon occasion.

A small sconce, to be made at Black Eye, to gard the entrie at Cley Haven.

The clyffes at Sheringham and Cromer to bee cutte sloping and the passage downe the water to be curved up, and parapet made upon the toppe.

The old Hythe to be intrenched, impeache the comynge up of the enemy there.

A skonce to be made at the Crotche, a myle distant from Lynne, where the channell is narrowest, at the charge of the inhabitants of the said towne, and to be furnished with ordinance and munition by them. And for that, the said towne of Lynn, is a place of great importance, for manie respectes yt is verie expediente, that some man, of good experience and sufficiencie, bee appointed to have the care of the directinge the towne and forte, and Bycause Sr. John Peyton is of sufficient skill, and resident in the towne the thynk him fytted to undertake the same charges, yf happelie hee shall not otherwise bee employed by Her Majestis speciall commaundement. And then, the Deputie Lieutenants to make choise of some other, whose sufficientie is answerable thereunto.

Also that the governor of Lynne shall, have care to take speedie order, upon anie offered occasion, for the keepinge of the bridges, upon the river of Ouse, between Brandon and Lynne to hinder the passage of the enemye.

Lykewyse, yf the enemy shall happen to approche neare the same towne, that he geve direction, for the cuttinge of the cawsey at Estgate, and the cuvreinge up of the posturnes, and the cuttinge of the bankes, to let in the sea, to inviron the towne and further to doe whatsoever hee shall hold needful to bee performed, for the defence thereof.

And, as for the coaste from Bromehall to Eckles, Waxam, Winterton, and Yarmouthē, being at the least ten myles distance

and, in all places, easie to make discente, I doe not see anie further meane to fortifie the same, other then, with certaine bandes of footemen and some horsemen, to bee in redines, to repel the enemye, and that the ordnance, at Winterton and Bromhall, be mounted and placed to the beste advantage for the beatinge of the roade.

And for the towne and haven of Yarmouth, that present care be had, for the making suche ravellings and ditches, according to such directions and plattes, as I leave with the Deputie Lieutenants.

And for the better execution and perfectinge these fortifications and strengtheninge the sea coaste, against forraigne attempts, I have thought requisite, that an equall division of the sheire bee made, that the one moytie of the bandes of the souldiers and pioners, of the hundreds adjacent unto Waburne Hoope, may repaire thether, and the other moytie of the countie, convenientlie situated for Yarmouth, may resort thither to be employed as occasion shall require, according to the forme underwritten.

Everie the captaines of the footebandes to have the one haulf of their footebandes, where of one hundredth and fiftie to be of the trained sorte, and the other hundred and fiftie of the untrained, together with 73 pioners, and twenty carriages; and to everie carriage, two able men, with spades, to be at the places and tymes, under written; that the souldiers may bee trained and instructed in matiall discipline, by the officers and to spend some tyme everie day in forwardinge the workes of fortyfication; and the pioners and carters to be only employed in those labours, and dismissed everie Saturday night.

And for that the yt were necessarie, also, the horsement, might bee there attendinge, as well to joyne, within them in resistinge the enemye, as also, to be exercised and made apte for the use of ther weapon; yt is likewise determined, that the captaines of the light horses and petronells, with their particular charges, according to the order underwritten, shall observe the same course.

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APPENDIX No. XI

A NOTE of the Charges for the Chayne Guarding of the
Navye Royall, &c.

Januarye, 1588.

A note of charges susteyned and paid for the guarding of Her Māte navye Royall, with extra menne residente, as well in Her Highness shippes, as also in barques, pinnaces, brigandines and frigats and for the charge of a great chayne to crosse the ryver, over against Upnore Castle, with a pyece of timber worke made on both sides the saide ryver; and for a house, and twoe greate wheeles, made to the sayde chayne, with lighters anchors and cables, allsoe to ryde by for the boyinge upp of the chayne as alsoe for the stopping upp of Saynte Marye Creeke and other creekes there; and for repayer of Upnore Castell, together with the new makinge of platformes, flankers, dyches, &c. requysite for the better defence of the saide navye, viz.—

For the greate chaine of iron, with the workman- shippe and other charges, incidents for the bringing therof from London to Chatham, amounteth to the somme of	£250
For the great pyle and tymberwoorke, sett upp, on both sides the ryver, as well to fasten the saide chaine as also a house, and twoe greate wheeles necessareyllye made, for the windinge toughte of the said chaine and for lighters, anckers, and cables, also to ryde by, for the boying upp of the same; amounteth to the somme of	360
For the stopping uppe of Saynte Marye creeke, and sundrye other creekes there, requisite for the more safety of Her Highnes shippes, amountinge to the somme of	100
For the repayringe of Upnore Castell with tymber, plancke, bricke, lyme, sande, lead workmannship &c. together with the newe makings of platformes, flankers dyches and rampyers, needful for the better defence of the navye amountinge to the somme of	240
For the charges in guardinge of the Navy Royall w th ext ^r ordinarye menne, as well in barques, pinnaces brigandines and frigotts, as alsoe in Hir Highness shippes; and for extraordinarie watche, at	

sundrye beacons, next adjoininge to the saide shippes, on both sides the water : amountinge to	420
For rewards unto captaines and others attendinge the saide servyce, aboard Her Highnes shippes, as allsoe downe the ryver to and fro' withe barques pinnaces frigottes &c. dureing the saide service amountinge to the somme of	100
Summa totall . . .	<u>£1,470</u>

W. WYNTER.

JOHN HAWKINS.

WILLIAM HOLSTOCK.

APPENDIX E

WARRANTS AND LETTERS PATENT RELATING
TO SALTPETRE

(Record Office)

24 January 1588-1589.

CHANCERY WARRANTS, Series II. Jan. 31 Eliz. File 1497.

MEMORANĎ qđ xxviiij die Januār Anno infrascripto istud bñe delibatum fuit Dnō Cancellār Angł apud Westm̃r exequend.

ELIZABETH by the grace of God Queene of England Fraunce and Ireland defender of the fayth &c. To our right trusty and wel-beloved Councillor Sir Christofer Hatton Knight our Chancellor of England greeting We will and commaund you that under our greате seale of England ye cause our letters patentes to be made furth in forme following Elizabeth by the grace of God &c. To all and singular our Justices of peace Maiors Sheriffes Bayliffes Constables Headboroughes and to all other our officers ministers and subiectes to whom these presentes shall come greeting. Know ye that in consideraçon of a greате quantyty of good Corne powder yearely to be made and delivered into our store within the Tower of London and at a meane rate agreed and covenanted by our welbeloved subiectes George Evelyn esquier Richard Hills and John Evelyn gentlemen of our speciall grace certen knowledge and mere motion and of our prerogative royall by these presentes do gyve and graunt full power lycence

and auethorytie unto the said George Evelyn Richard Hills and John Evelyn their deputies factors and assignes and to every or any of them to digge open and worke for salt Peter within our Realmes of England and Ireland and dominions of the same and all other our dominions where the said Salt peter without fraude or coven shalbe thought meete and convenient to be digged for and founde as well within our owne proper lands growndes & possessions, as also within the landes growndes and possessions of any our subiects set lying or being in any parte of these our Realmes aforesaid (except the Cyty of London, and two myles distant rounde about from the walles of the same City of London, and the Countyes of Yorke Northumberland Westmerland Cumberland and the Bishopricke of Durham And the same Salt peter to trye out and make into powder for our provision as aforesaid for and during the terme of eleven yeares next ensuing the date hereof And further our expresse will and pleasure ys that the said George Evelyn Richard Hills and John Evelyn their deputies factors or assignes shall from tyme to tyme during this our graunte erecte make up againe and lay all flowers stables walles or any other place that shalbe by them or any of them stirred digged overthrowen or pulled downe for the use aforesaid in as good perfection and state as they or any of them did finde the same And yf any varience shall happen to arrise betwene the Petermakers and owners of the said growndes for the causes aforesaid then our will and pleasure is that two of our Justices of Peace next adioyning shall have power by this our graunte to here and determyn the same And lykewise our expresse will and pleasure is that presently upon the sealing of these our letters of Comission for the making of Peter or powder aforesaid all former Comissions heretofore made to any person or persons for the making of Peter or powder to be utterly voyde and of none effecte Willing and comaunding you and every of you by these presentes to be ayding and assisting unto the said George Evelyn Richard Hills and John Evelyn their deputies factors or assignes in all things that shalbe fytt and convenient for the making of Peter and Powder aforesaid upon their reasonable charges having and taking cariages after the rate of four pence the myle. IN WITNES whereof &c. Gyven under our pryvy seale at our Mannor of Richmond the foure and twentyth day of January in the one and thirtyth yeare of our reigne.

WILL. PACKER.

CHANCERY WARRANTS. Series II. File 1636. September.
41 Elizabeth.

Mđ qđ septimo die Septembř Anno Regni Eliž Rñe quadragesimo primo (A.D. 1599) istud bře delibăt fuit đno Custod magni Sigilli Anglie apud Westm̃ exequēđ.

ELIZABETH by the grace of God Queene of England Fraunce and Ireland defendo^r of the faith &c. To our right trustie and wel-beloved Counsellor Sir Thomas Egerton Knight keeper of our greate seale of England GREETING We will and comaund you that under our said greate seale being in your custodie ye cause our tres patentes to be made furth in forme followinge Elizabeth by the grace of God &c. To all and singular our justices of peace Maio^{rs} sheriffes bayliffes constables headboroughes and to all other o^r officers ministers subjectes to whom these presentes shall come Greeting Whereas we by our tres patentes bearing date the eight and twentieth daie of January in the one and thirtith yere of our reigne for the consideraçon therin mençoned did geve and graunt full power licence and authoritie unto our welbeloved subjectes George Evelyn Esquior Richard Hill and John Evelyn gent. their deputies facto^{rs} and assignes and to everie or any of them to digge open and worke for saltepeeter wthin our Realmes of England and Ireland and Dominions of the same, and all other o^r dominions where the said saltepeeter wthout fraude or covyn should be thought meete and convenient to be digged for and found as well wthin our proper landes growndes and possessions as also wthin the landes growndes and possessions of any of our subjectes sett lyeing or being in any part of those our realmes aforesaid (except the citie of London and two myles distant round about from the walles of the same citie of London, and the counties of Yorke Northumberland Westmerland Cumberland and the Bishoprick of Duresme) And the same saltepeeter to trie out and make into powder for our provision as aforesaid, for and during the terme of eleven yeres next ensuinge the date thereof, as by the said tres patentes amongst other thinges more at large doth and may appeare And wheras also we by other our tres patentes under the greate seale of England dated the eight daie of January in the two and thirtith yere of our reigne for the consideraçon therin mençoned did geve and graunt unto Thomas Robinson and Robert Robinson or either of them his or their deputies facto^{rs} and assignes or either of them to be allowed from time to time by

the Master of our Ordenaunce or the Lieutenaunt of the same office full power license and authoritie to digge open and worke for making of saltepeeter in convenient places for those purposes w^{thin} our cities of London and Westminster and either of them, and w^{thin} the distance of two myles round about from the walles of the Citie of London or from our olde pallace of Westminster w^{ch} is our citie of Westminster, as well w^{thin} liberties as w^{thout} and as well w^{thin} our owne landes growndes and possessions as also w^{thin} the landes growndes and possessions of any of our loving subjectes whatsoever sett lyeing and being w^{thin} our said cities or either of them or the places or distances aforesaid To have hold exercise and enjoy the same authoritie unto the said Thomas Robinson and Robert Robinson and his or their assignes to be allowed as is before menconed for and during the terme of tenne yeres next ensuing the date therof fully to be compleate and ended as by the said last menconed tres patentees more at large amongst other thinges doth appeare w^{ch} said severall tres patentees and all and ev^{ry} the power and powers licence and licences authoritie and authorities thereby graunted, and all and everie thing in them or either of them conteyned are by due course of lawe by such as had good and full power thereunto surrendered and yealded up unto us in o^r Chauncery to be cancelled w^{ch} surrenders we doe by these presentes allowe and accept And wheras also we by our tres patents under the greatesseale of England bearing date the six and twentieth day of Aprill in the one and thirtieth yere of our reign for the consideracon therin menconed did geve and graunt full power licence and authoritie unto our welbeloved subject George Constable Esquior his deputies facto^{rs} or assignes to digge open and worke for saltepeeter w^{thin} all or any our counties of York the citie of York Nottingham Lancaster Northumberland Westmerland Cumberland and the Bishoprick of Duresme aswell w^{thin} our landes growndes and possessions, as also w^{thin} the landes growndes and possessions of any our loving subjects sett lyeing or being within any the counties aforesaid To have hold exercise and enjoye the same for and during the terme of eleven yeres next ensuing the date thereof fully to be complete and ended, as by our said last menconed tres patentees amongst other thinges more at large it doth and may appeare And wheras our loving subjects John Evelyn Esquior Richard Harding Esquior Robert Evelyn gent. John Wrenham gent. and Symeon Furner gent. have undertaken to deliver yerely into our store w^{thin} our

Tower of London a greater quantitie of good perfect and serviceable corne gonnepowder meete and serviceable for cannon and calyver shotte at a lesser and lower price and rate then before we paid for the like, as by certain indentures bearing the date of these presentes made betwixt us of th'one pte and the said John Evelyn Richard Harding Robert Evelyn John Wrenham and Symeon Furner of the other part, and in our Court of Chauncery inrolled or to be inrolled, wherby we shall not be driven to seek the said proporcion of gonnepowder out of any foraine contries but shall buy the same wthin this our owne kingdome and at a meaner and lower rate and price then we have heretofore paid for the same and have also undertaken to furnish this our realm of England with sufficient store of good perfect and serviceable gonnepowder for the use and provision of our subjectes at and for such reasonable price as in the said indentures is also limited and appointed And wheras our loving subjects are nowe and of long time have been greatly damnified by the excessive waste and spoyle of woodes and are like to be more and more endamaged if the same be not prevented: And wheras also our loving subjects have been excessively charged and encombred wth the carriages of the said woodes and of other carriages about the making of saltepeeter and gonnepowder, the said John Evelyn Richard Harding Robert Evelyn John Wrenham and Symeon Furner or some of them have (as we be informed) [in]vented devised and found out by their owne travell industrie costes and charges a very good and profitable device and invencon, by meanes wherof in making of such quantities of saltepeeter, as heretofore have been made, a greate part as well of such wood and fewell as hath haretofore been wasted and consumed, as also of such carriages as have been heretofore employed in and about the making of saltepeeter and gonnepowder shall and may hereafter be saved to the great comoditie and benefitt of this Realm, and ease of our loving subjects, w^{ch} we principally respect: NOWE KNOEW YE that we of our speciall grace certen knowledge meere mocon and of our prerogative Royall for divers good consideracons us especially moving have given and graunted and by these presents do for us our heires and successor^s give and graunt full power licence libertie and authoritie unto the said John Evelyn Richard Harding Robert Evelyn John Wrenham and Symeon Furner and every of them their and every of their executo^{rs} administrato^{rs} and assignes that they the said John Evelyn Richard

Harding Robert Evelyn John Wrenham and Symeon Furner and every of them their and everie of their executo^{rs} administrato^{rs} and assignes and their and everie of their deputies facto^{rs} workmen and servantes only and noe others shall and may make and worke for wthin our Realms of England and Ireland and either of them and all other our dominions all and all manner of saltepetter and gonnepowder according to the true intent and meaning of these presentes And shall and may have the use and only making and working of all and all manner of saltepetter and gonnepowder wthin our said Realmes and either of them and other our said dominions according to the true intent and meaning of these presentes And also that they the said John Evelyn Richard Harding Robert Evelyn John Wrenham and Symeon Furner their executors administrato^{rs} and assignes and their and every their deputies facto^{rs} workemen and servants and every of them and noe others shall and may according to the true intent and meaning of these presentes enter search digge open and worke for saltepetter in all convenient places and in due and reasonable manner aswell wthin the landes growndes or possessions of us our heires and successo^{rs} that now be or hereafter shalbe in the handes possession or occupa^{ti}on of any the farmers or tenantes of us our heires or successo^{rs} as also wthin the landes growndes or possessions of any the subjects of us our heires or successo^{rs} aswell wthin liberties as wthout wthin any of our realmes or dominions where it shalbe meete and convenient wthout fraude or covyn for working and digging for saltepetter And the same saltepetter to have take and enjoy to their and everie of their owne uses and to the use and behoofe of their and everie of their executors administrato^{rs} and assignes during the terme of tenne whole yeres by these tres patentes men^{ti}oned to be dismissed and graunted To have holde exercise and enjoy the sole and only making of saltepetter and gonnepowder, and the said power licence libertie and authoritie and other the premisses in and throughout o^r said Realmes of England and Ireland and all other our Dominions (Except the countie of Yorke the cite of Yorke the counties of Nottingham Lancaster Northumberland Westmerland Cumberland and the Bishoprick of Duresme) unto the said John Evelyn Richard Harding Robert Evelyn John Wrenham and Symeon Furner and to everie of them their and every of their executo^{rs} administrato^{rs} and assignes from hencefurth for and during the terme of tenne whole yeres from hence next ensuing and fully to be complete and ended

And to have holde exercise and enjoye the sole and only making of salte-peeter and gonnepowder and the said power license libertie and authoritie in the said countie of Yorke citie of Yorke counties of Nottingham Lancaster Northumberland Westmerland Cumberland and the Bishoprick of Duresme unto the said John Evelyn Richard Harding Robert Evelyn John Wrenham and Symeon Furner their and every of their executo^{rs} administrato^{rs} and assignes from the last Day of Aprill next ensuinge the date hereof for and during the residue of the said terme of tenne whole yeres then next following and fully to be complete and ended And our will and pleasure is and we straightlie charge and comãd that the said John Evelyn Richard Harding Robert Evelyn John Wrenham and Symeon Furner their and everie of their executor^{rs} administrato^{rs} and assignes and their and everie of their deputies facto^{rs} workemen servantes and assignes shall from time to time during the said terme of tenne whole yeres at their owne proper costes and charges well and sufficientlie erect make up againe laye and repaire all and everie such place and places thing and thinges as shalbe by them or any of them broken stirred digged or in any sorte decayed hindered or defaced for the use or uses aforesaid in as good sorte as the same convenientlie may be And if any variance strife or debate shall happen to arrise or growe betwene any person or persons hereby authorised or having or pretending to have authoritie by or under these our Ires patentés and any of the owner or owners possessor or possessor^{rs} of the place or places thing or thinges that shalbe or may be digged or used for the occasion aforesaid by vertue of these presentes for or about the same or for or about any other clause or graunt article libertie or authoritie in these our Ires patentés conteyned or mençoned touching or concerning the digging opening or working for saltepeeter or for the erecting making up layeng or repairing of any of the said place or places thing or things, then our expresse will and pleasure is and we doe hereby for us our heires and successor^{rs} geve full power and authority unto two Justices of the Peace dwelling next the place where any such variance shall happen if the same be out of any citie or towne corporate being a countie of it self, and if it be wthin any citie or towne corporate beinge a countie of it self, then to the principall officer or officers of such Citie or towne corporate upon complaynte made unto them to call the parties before them, and to heare and determine the controversies betwene them according as they shall in their

wisedomes and discreçons thinke and judge to be just and fitt, and shalbe according to reason equitie and justice w^{ch} to doe and execute we straightly charge and cõmaund them and everie of them upon such peines and penalties as belonge to such as obstinately contemne our cõmaundement royall And we straightly charge and cõmaund that such orders and determinaçons as shalbe sett down in that behalf shalbe firmly observed and kepte upon the peines and penalties aforesaid : And yet, if noe order shalbe sett downe and taken by them in that behalfe, or if they cannot ende and determine the same, then we hereby for us our heires and successo^{rs} do geve full power and authoritie to the Master of the Ordenaunce for the time being or to his deputie or in their absence to the Lieutenant of the Ordenaunce for the time being to heare and determine the same w^{ch} also we will and cõmaund to be likewise duely and firmly observed and kept as is aforesaid And wheras in regard of the troublesomenes of this age it is necessarie that a great quantitie of saltepeeter and gonne powder should be made for the better furnishing of our store and defence of our realmes and dominions w^{ch} would be to the greate damage of the said John Evelyn Richard Harding Robert Evelyn John Wrenham and Symeon Furner their executo^{rs} administrato^{rs} and assignes if they should be compelled to keepe the same in their handes and not to have any utterance for the same ; We therfore not mynding that the said John Evelyn Richard Harding Robert Evelyn John Wrenham and Symeon Furner their executo^{rs} administrato^{rs} or assignes or any of them should receave any losse or hinderance in that behalf and yet wthall providing for the profit and ease of our loving subjectes of our speciall grace certen knowledge and mere moçon do by these presentes for us o^r heires and successo^{rs} geve and graunt unto the said John Evelyn Richard Harding Robert Evelyn John Wrenham and Symeon Furner and every of them their and everie of their executors administrato^{rs} and assignes full power license libertie and authoritie that the said John Evelyn Richard Harding Robert Evelyn John Wrenham and Symeon Furner their and everie of their executo^{rs} administrato^{rs} and assignes and their and everie of their deputies facto^{rs} servantes and assignes from time to time and at all times for and during the said terme of tenne whole yeres before by these presentes graunted (our owne provision of gonnepowder being duely delivered into our store wthin our Tower of London according to the purporte and

meaning of the said indentures, and excepting so much being good perfect and serviceable corne gonnepowder as together wth the said store for the time being of us our heires or successo^{rs} shalbe sufficient for the defence of these o^r Realmes and Dominions, and over and above the same, as much also as any merchant or merchantes or any other of our loving subjectes or of our heires or successo^{rs} will buy wthin any of our Realmes or Dominions for tenne pence a pownde, as in the said indentures is mençoned, and not above, w^{ch} they and everie of them shall and may buy at their will and pleasure) shall and may (payeng to us our customes subsidies and other duties whatsoever in that behalf) by license of the lord T^rer of England for the time being under his hand and seale in writing, transporte carry and convey out of this our Realm of England or any other our Dominions into any of the partes beyond the seas or other places w^{ch} at the time of such transportaçon carriage and conveyance shalbe in league or amitie wth us our heires or successo^{rs}, only such and so much of the residue and overplus of all such saltepeeter and gonnepowder wherof they shall have such license, as together wth our said store there shalbe sufficient of corne gonnepowder, and that perfect, good and serviceable, for the defence of our Realmes and dominions, and over and above the same, as much also as any merchant or merchantes or any other of our loving subjectes or of our heires or successo^{rs} will buy wthin any of our Realmes and Dominions for or at the rate of tenne pence the pownde, as in the said indentures is mençoned, and not above, w^{ch} they and every of them shall and may buy at their will and pleasure. And to the ende that the said John Evelyn Richard Harding Robert Evelyn John Wrenham and Symeon Furner and every of them their and everie of their executo^{rs} administrato^{rs} and assignes, shall and may have and enjoye the full and whole benefitt of this our license and privilege to them before in these presentes graunted according to the teno^r and true meaning of these our tres patentés We doe hereby for us our heires and successo^{rs} of our speciall grace certain knowledge and meere moçon straightlie charge and co^maund all and every person and persons whatsoever of what estate degree or condiçon soever he or they be (other then the said John Evelyn Richard Harding Robert Evelyn John Wrenham and Symeon Furner their and everie of their executo^{rs} administrato^{rs} deputies facto^{rs} and assignes and everie of them, and other then the said George Constable his deputies facto^{rs}

or assignes, during the residue only of the said terme menconed to be graunted unto him, and that only in the said countie of Yorke citie of Yorke counties of Nottingham Lancaster Northumberland and Westmerland Cumberland and the Bishoprick of Duresme that they or any of them do not at any time hereafter during the said terme of tenne whole yeres presume or attempt either to make any saltepeeter or gunnepowder wthin any of our realmes or dominions, or to transport, bring or send or to cause to be transported brought or sent out of any foraine contrie into any of our said realmes or dominions any saltepeeter or gonnepowder made or to be made wthout our said realmes or dominions upon peine that everie person and persons offending in any of these respects shall incurre our high displeasure and suffer such fyne punishment and imprisonment as by any laws or statutes heretofore made or hereafter to be made wthin our said Realmes of England or Ireland or any of them can or may be imposed or inflicted upon them and every or any of them for their contempt and disobedience in wthstanding our comaundement and p^{er}ogative royall PROVIDED ALWAIES that if at any time hereafter the said John Evelyn Richard Harding Robert Evelyn John Wrenham and Symeon Furner or some of them or their or some of their executo^{rs} administrato^{rs} or assigns or their or some of their deputie or deputies factor or facto^{rs} shall not have so much good perfect and serviceable corne gonnepowder as is hereafter limited expressed menconed and appointed, that is to saie, as much as together wth our store of good perfect and serviceable corne gonnepowder shall be sufficient for the service and defence of our said realmes and dominions and also over and besides the same, as much as any merchant or merchantes or any other of our loving subjectes or of our heires or successo^{rs} wilbe willinge and desirous, and shall require to buy *bona fide*, at the price or rate of tenne pence the pownd and not above, according to the true meaning of the said indentures to be solde bartred exchanged or otherwise disposed wthin any of the realmes or dominions of us our heires or successo^{rs} that then it shall and may be lawfull to and for all and everie subject and subjectes of us our heires and successo^{rs} to transport into any part beyond the seas and to bring in into this realm of England and Ireland or any other of our Dominions from any the partes beyond the seas, and to bargainne sell exchange and barter all and all manner of saltepeeter and gonnepowder aswell wthin our said realmes and dominions as wthout payeng therefore to us our heires and suc-

cesso^{rs} the customes subsidies and other dueties therefore due and accustomed These presentes or any thing therein conteyned to the contrarie not wthstanding And we do hereby will and comaund you our said Justices of Peace Maio^{rs} sheriffes bayliffes constables and headboroughs and all and singular other our officers ministers and subjectes whomsoever that you and everie of you shall from time to time and at all tymes during the continuance of this our graunt be ayding helping and assisting unto the said John Evelyn Richard Harding Robert Evelyn John Wrenham and Symeon Furner and every of them their and every of their executo^{rs} administrato^{rs} and assignes and their and everie of their deputies facto^{rs} servantes and workemen and every of them in the due execucon of the premisses according to the true intent and meaning of these presentes, and for the having and taking of convenient carriages after the rate of fower pence the myle for everie carte or wayneloade after the rate of twentie hundred to the loade, for the carryinge of such thinges as have been heretofore accustomed to be carried in or about the p^remisses or any of them And our further will and pleasure is and we doe by these presents for us our heires and successo^{rs} graunt to the said John Evelyn Richard Harding Robert Evelyn John Wrenham and Symeon Furner their executo^{rs} administrato^{rs} and assignes and every of them, that these our Ires patentees, and the power licence libertie and authoritie hereby graunted, and all and everything and thinges herein conveyned shalbe good and effectuall in lawe to them and every of them their and every of their executo^{rs} administrato^{rs} and assignes according to the true intent and meaning thereof Notwthstanding the misrecitall of the said before recited Ires patentees or of the term or termes of yeres or any thinge therin conteyned And notwthstanding the misrecitall or non-recitall of any Ires patentees or graunt of the premisses or any part thereof at any time heretofore made And notwthstanding expresse mençon be not made of the thinges hereby mençoned to be graunted or of the true or yerely or other value thereof. And notwthstanding any statute acte of parliament order proclamaçon ordenance lawe usage custome or any other matter whatsoever to the contrarie. In witness &c. Gyven under our Privy Seale at our Manno^r of Nonesuch the seconde daie of September in the one and fortieth yere of our reigne.

WILL PACKER.

Evelyn et al: licence.

28 April 1629.

Chancery Warrants
 Series II. 5 Charles 1
 Bundle 2042. No. 33

M^a. qd vicesimo octavo die Aprilis Anno quinto
 Caroli R̄ : ista Billa delibata fuit D^{no} Custodi
 Magni Sigilli Anglie apud Westm̄ exequend.

Charles R.

CHARLES by the grace of God kinge of England Scotland Fraunce and Ireland, defendor of the faith &c. To our right Trustie and right welbeloved Councillor Richard Lord Weston or. high Threr: of England and to our right trustie and right welbeloved Cozens and Councillors Robert Earle of Lindsey our Great Chamberlen of England, William Earle of Pembroke, Lord Steward of or. househould, Edward Earle of Dorsett Lord Chamberlen to or. dearest Consorte the Queene, Dudley, Viscount Dorchester one of our principall Secretaries of State, to or. trustie and right welbeloved Horace, Lord Vere, Master of or. Ordinance, and to or. right trustie and welbeloved Councillor Sir John Coke knight one of or. principall Secretaries of State. And to all and Singuler our Justices of peace, Maiors, Sheriffs Bailiffs, Constables, Headboroughs, and to all other our officers and subjectes to whom it shall appertyne or to whom these presentes shall come, Greeting. WHEREAS at this present time we have more than ordinarie occasion to provide good and sufficient saltpeeter and powder to furnish or. stoares for the defens and safetie of or. Realmes and dominions, And reposing especiall truste and confidence in the understandinge fidelities and care of you the said Lord Threr : Earle of Lindsey Earle of Pembroke, Earle of Dorsett, Viscount Dorchester Lord Vere, and Sir John Coke, Of or. especiall grace certen knowledge meere mocion and of or. Prerogative royall, doe by these presents give and graunte full power licence, libertie and authoritie unto you or anie thrie or more of you, your deputies, factors, workmen and servantes and everie of them, to enter break open and worke for Saltpeter as well within the houses, lands, grounds or possessions of us our heires and successors that nowe be or hereafter shalbe, As also in the houses, lands, grounds or possessions of anie of our subjects within or. kingdome of England and dominion of Wales and in all priviledged places within them or anie of them,

and there to have take and use all such ground, earth, walles and water as shalbe thought good, meete or convenient for the making of good and serviceable saltpeeter, and to make the same saltpeeter into gunpowder for or: onlie and speciall service, without fraud or covin, also to have and take cartes and carriages of any of or. loving subjects for the carrying and transporting of all such thinges as are to be used in or about or. said service at and for the pryse of fower pence the myle for everie myle that everie such carte shall goe laden so long as the Saltpeeter men shall and doe performe their undertakings to us, the myles to be accompted as hath been accustomed from place or place, and the emptie vessell to be recaried gratis as formerlie hath bene used and accustomed And wee doe hereby give full power and authority unto the said Lord Threr. Earle of Lindsey, Earle of Pembroke, Earle of Dorsett, Viscount Dorchester, Lord Vere and Sir John Coke or anie three or more of you and to yor. deputies factors and servants and everie of them to have and take of anie of or. loving subjects Seacoles at and for a reasonable pryse to be given for everie chaldron of coles soe taken, and also to have and take of anie of our subjects Ashes at and for reasonable pryses to be given for the same And also to have and take workhouses for or. said service, and howese and stables outhowses and yards of anie of our subjectes and therein to set up vessels and to bestow their servantes, cattell and other necessarie provisions for the effecting the same or. service paying unto the owners or present possessors of such houses, barnes, stables, yardes and outhouses, reasonable rents and rates for the same for the tyme they shalbe used for or. service, And if it shall happen that the owners or possessors of such houses, outhouses, barnes, stables and yardes shalbe obstinate and unreasonable in their demands for or concerning the same, then our will, pleasure and commaund, is that the Maior or other principall officer of anie Cittie Towne Corporate, or anie other priviledged place where such controversie shall aryse doe view and see the places and upon consideracion had thereof and of the tyme the same shalbe used, to set such reasonable and indifferent pryses as they shall thinke meete to be given in satisfaction, And if it shall happen to be out of anie Cittie or Towne Corporate or privileged place then or. pleasure and command is that the next Justice of peace doe upon like consideracion taken, set reasonable pryses of all such places so desired to be had and used as aforesaid, according to which

pryses so set downe we likewise command that paiement be trulie made by the said Lord Threr. Earle of Lindsey, Earle of Pembroke, Earle of Dorsett, Viscount Dorchester, Lord Vere and Sir John Coke, or anie three or more of them, their deputies, factors or servantes or by some of them, And or. will and pleasure is and wee doe hereby straightlie charge and command the said Lord Threr. Earl of Lindsey, Earle of Pembroke, Earle of Dorsett, Viscount Dorchester, Lord Vere and Sir John Coke or anie three or more of them their deputies, factors, workmen and servantes and everie of them, that they do from time to time with all convenient speed erect, make up againe, lay and repaire all such place and places, thinge or thinges whatsoever as shalbe by them or anie of them open, digged, stirred, hindred or defaced for any of the purposes aforesaid, in as good sort as convenientlie the same may be, And if anie controversie, variance, stryfe or debate shall happen to aryse or grow betwixt anie of the deputies of the said Lord Threr. Earle of Lindsey, Earle of Pembroke, Earle of Dorsett, Viscount Dorchester, Lord Vere and Sir John Coke, or anie three or more of them, or anie the workmen or servantes of the said deputies and anie of or. lovinge subjectes about the digging or working for Saltpeter, or about the having or taking of anie cartes, carriages or other things whatsoever fitt and necessarie and before granted or intended for the better execucion of this service, or about the making up againe, laying or repaying of anie floores, grounds or walls digged, broken or used for the same, if it be in anie cittie, Towne Corporate, or other privileged place. Then or. will, pleasure and command is that the Maior, Sheriff, Bayliff or other principall officer of anie such place, or if it be out of anie such Cittie, Towne, Corporate or other privileged place, that then the next or nearest Justice of the Peace Upon complaint made to them or anie of them, call all such persons before them and doe heare, decyde and determine all and everie such controversies in such sorte as they in their discrecions shall thinke to be agreeable to the true intent and meaninge of these presents And for the furtherance of or. said service we straightlie charge and command all and singular our Justices of Peace, Maiors, Sheriffs, Bayliffs and other principall officers whom according to the true intent and meaning hereof it shall or may concerne, to do and execute the premises with effect as they tender or. royall commandement and the furtherance of this or. so great and waightie service, and what order or orders shalbe by them or anie of them soe made

and sett downe being according to the true intent and meaninge of these presents, We straightlie charge and command to be observed and kept And if no order shalbe by them taken or sett downe, Then wee doe hereby give full power and authority unto the said Lord Threr. Earle of Lindsey, Earle of Pembroke, Earle of Dorsett, Viscount Dorchester, Lord Vere and Sir John Coke and to the rest of the Officers of or. ordinance for the time being or any three or more of them (whereof the Master of the Ordinance, the Lieutenant, Master Surveyor or Clerk of or. said ordinance to be alwaies one) by their warrantes directed and delivered to anie the messengers of or. Chamber to call before them all such person and persons as shalbe nominated unto them to disobey or. authoritie and royall commandement herein, or to deny unto the deputies of the said Lord Threr. Earle of Lindsey, Earle of Pembroke, Earl of Dorsett, Viscount Dorchester, Lord Vere and Sir John Coke, or anie three or more of them as aforesaid or unto the factors workmen or servantes of the said deputies or anie of them, such things as are hereby required to be allowed unto them for the better execucion of this or. Service, or shall delay the doing thereof or be partiall therein and to examine, heare, decyde and determyne all such controversies or causes as shall aryse thereupon and to inflict punishment upon every such offendor and offenders by imprisonment or otherwise as contemnors of or. royal authoritie and command, or otherwise to certifie unto the Lords of or. Privie Councell, such offenders with their offences that such further course may be therein taken as shalbe thought most fitt, And for doing of all and singuler the premises these or. letters patents or the inrollment of them shalbe unto all men whom it shall concerne a sufficient warrant and discharge without any other commission or further warrante to be had procured or obteyned, And or. will and pleasure is that all such orders as shall according to or. pleasure herein declared be made and sett downe shalbe inviolablie kept observed and fulfilled, And or. further will and pleasure is, that all and everie one of the deputies, factors, workmen and servants aforesaid, and everie of them and everie of their horses, cartes and carriages used or employed in about or concerninge this or. service be exempte and freed from all other service or services whatsoever to be done or performed for or to us or. heires or successors and from paying any taxes or towle in anie place or places within this or. kingdome or from being pressed or taken by anie of or. officers for any other service whatsoever. And

whereas wee are given to understand that divers persons doe pave or gravell their dovehouses or use other devises therein whereby the verie generacion of the myne of Saltpeeter is in danger to be destroyed and that few doe take care to preserve and increase the mynes thereof, wee therefore, for the preservation of the said myne which is so usefull and necessarie for the safetie of or. kingdomes, doe by these presentes for us our heires and successors give unto you or anie three of you power to contract with any of your deputies for making of saltpeeter for a certain term under such conditions as yee shall thincke fitt for our service, and doe straightlie charge and command all and everie person and persons whatsoever within or. said Realmes and dominions that they nor anie of them doe at any tyme or tymes hereafter pave or gravell their dovehouses or use anie other meanes whereby the said myne or growth of saltpeeter may be prejudiced but shall permitt and suffer the said Lord Threr. Earle of Lindsey, Earl of Pembroke, Earl of Dorsett, Viscount Dorchester, Lord Vere and Sir John Coke or anie three or more of them their deputies, servants, factors and workmen and everie of them to digg and open the sames in convenient manner and at convenient tymes of the day and to lay the same earth, which they digged and took from out of the said dovehouses, into the said dovehouses againe, after they have wrought the same, to the ende the myne of Saltpeeter may be the sooner renued, upon paine of contempt and of or. high displeasure in that behalfe And wee do hereby further charge and command all Justices of peace, Maiors, Sheriffs Constables and other officers within and thorough or. kingdom of England and dominions of Wales, that they and everie of them doe from tyme to tyme aide and assist or. saltpeeter makers and Gunpowder makers their factors and servants and everie one of them in their doing of this or. service, And in taking of undelayed order concerninge all controversies that shall aryse that or. service may not be hindered or delayed thereby, nor the doers thereof unjustlie vexed or molested in or for the doing thereof, And or. will and pleasure is that this or. commission and all the liberties, priviledges and authorities therein And thereby given and graunted unto the said Lord Threr. Earle of Lindsey, Earle of Pembroke, Earle of Dorsett, Viscount Dorchester, Lord Vere and Sir John Coke, or anie three or more of them, their deputies, factors, workmen and servants shall be effectuall to all intents, efects and purposes, anie law, statute, acte, proclamacion,

restraint or provision to the contrarie hereof made notwithstanding.

In Witness, &c. Witness &c.

Exr. per Ro. Heath.

Maie it please your most excell. Ma^{tie}.

This conteyneth your Ma^{ts} Commission to the Lord Threr. and other the Comm^{rs}. for the Admiraltie and to the Maister of your Ordinance, authorising them or such as they shall appoint to digge and take earth in anie place or places for the making of Saltpeeter and making the same into Gunpowder for yor. M^{ties}. speciall service And is done with the like clauses conteyned in a commission heretofore made to the Duke of Buckingham and Earle of Totnes for the execucion of this Service.

Signified to be yor. Ma^{ties}. pleasure

by Mr. Secretarie Coke,

Ro. Heath.

Receipt 28 April 1629

(Endorsed)

Charles R̃.

Our will and pleasure is

That this Bill pass by imediate warrant.

APPENDIX F

EXTRACTS FROM WAR OFFICE RECORDS

(Record Office)

WAR OFFICE RECORDS

Class 55, Vol. 331

(Entry Books of Warrants and Orders in Council)

At ye Court at Whitehall ye

13th day of Janu^{ry}, 1664 (-65)

Present :

The King's Most Excellent Ma^{tie}.

His R.H. y^e Duke of Yorke

L^d Archbish^{pp}. of Canterbury

Lord Privy Seale

Duke of Buckingham

Duke of Ormond
 Marquesse of Dorchester
 Lord Chamberlaine
 Earle of Bathe
 Earle of Lauderdale
 Earle of Carberry
 Lord B^{PP} of London
 Lord Wentworth
 Lord Berkeley
 Lord Ashley
 M^r Vice Chamberlaine
 M^r Treasurer
 M^r Secretary Bennett
 M^r Secretary Morrice
 M^r Chauncellor of y^e Dutchy

WHEREAS his Ma^{te} by his Warr^t under his Royall Signe Manuell and Privy Signett to us directed hath Co^mmanded us to make contractes wth powder-makers for y^e bringing to his Ma^{te}'s stores good and serviceable powder AND WHEREAS Josias Dewye powder-maker hath made a contract wth us for makeing of gunpowder and bringing y^e same into his Ma^{te}'s stores in y^e Tower soe long as his Ma^{te} findes him Petre, In pursuance of his Ma^{te}'s co^mmande (and y^t his Ma^{te}'s service may noe wayes bee hindred) Wee have thought fitt and doe hereby authorize and appoint you the said Josias Dewye to take into yo^r possession and custody y^e powdr mills and workes now at Chillworth and att Casshalton in y^e county of Surrey or any other place y^t belongs.

Class 47, Vol. 6, Folio 106

(Ordnance Minutes)

(Vol. endorsed.)—‘ A Journall begining the 8th of June 1664 & ending the 21th Februry. 1664[-5].’

‘ At ye Court att Whithall the 2^d of January 1664[-5].’

Present

The Kings most excelent Maj^{tie}
 His R. Highess ye Duke of Yorke.
 Lord Privy Seale.
 Duke of Albemarle.
 Duke of Buckingham.

Lord G^t Chamberlaine.
 Lord Chamberlain.
 Earle of Berkeshire.
 Earle of St. Alban.
 Earl Beath.
 Earl of Launderdaile.
 Lord Bp^p of London.
 Lord Berkeley.
 Lord Ashley.
 Mr. Treasurour.
 Mr. Vice Camberline.
 Mr. Secretary Morrice.
 Mr. Secretary Bennett.
 Mr. Chancellor of y^e Dutchy
 S^r Ed. Nicholas.

His R. Highnes this day representeing to his Ma^{tie} in Counceil
 y^e great want of Mills to be employed for y^e makeing of gunn-
 powder his Ma^{tie} necessarily requireing the same att y^s season
 It was therupon ordered That y^e Comm^{rs} for Ma^r of his Ma^{tie}
 Ordnance and y^e Officers of y^e same are authorized to impreste
 soe many Mills for y^e makeing of gunnpowder for his Ma^{tie}
 Service as they shall think fitt.

* * * * *

7^o January 1664

(Fol. 109.)

* * * * *

Memorand.—Delivered to y^e Lord Berkley 2 Estimates y^e
 one for providing 1500 Ordnance of Iron Shott carriages and
 two C. tonne of Copper Mettle amounteing to The
 other for providing of peetre, building of powd^r Mills and stoneing
 and repaireing of powd^r.

21 July 1664.

Class 47, Vol. 6, Folio 16

(Ordnance Minute)

(Vol. endorsed.)—‘Journall beginning the 8th of June 1664
 & ending the 21st Febr. 1664[–5].’

‘Mr. Clark.’

‘Wee have recd. yors. both, ye one dated 9 ye other 17 July
 1664. Ye former informes us of ye unreasonable demands of
 ye proprietors. of ye Ground at Portsmouth which is intended

to be built upon for his Maties Service. Our desire is yt. you would upon ye receipt of this treat once more wth them and bring them if possible to reasonable Termes wch. if they will not bee perswaded to wee would have you repaire to ye Mayor and Aldermen of ye towne and acquaint them wth. his Ma^{tes}. pleasure of purchaseing yt. ground to build Storehowses upon for his service, and desire them yt. they would appoint a Jury to make a reasonable value thereof betweene ye King and them and to returne this Accompt to us wth. all convenient speede, By ye latter of yors. wee understand Sr. Phillip Honywood is upon cleaning the Dock and that hee offers to furnish ye Clay and soyle if wee can agree for the filling up the Gun wharfe wch. wee intend to build. Wee desire you would treat wth. him and know his lowest Rate yt. hee will afford ye same by ye yard for filling up a Gun wharfe and as for ye timber wch. Sr. Wm. Penn proposed to you wee would have you not to make any further mencion of it till you receive directions from us wch. is all at present from

Yor. loveing freinds '

' Office of the Ordnce.

21st July 1664.'

Class 55, Vol. 332, page 137

(Warrants and Orders of the Privy Council)

At ye Court at Whitehall
the 3^d of April, 1667.

Present :

The King's Most Excellent Ma^{tie}
His Roy^{ll} Highness ye Duke of Yorke '
Lord Arch B^{pp} of Canterbury
Lord Chancellor
Lord Privy Seale
Duke of Albemarle
Marques of Dorchester
Lord Chamberlain
Earle Bridgwater
Earle of Berkshire
Earle of Anglesey
Earle of Bathe
Earle of Carlisle
Earle of Craven

Earle of Lauderdale
 Viscount Fitz Harding
 Lord Arlington
 Lord Berkeley
 Mr Comptroller
 Mr Vice Chamberlaine
 Mr Sec^{ry} Morrice
 Sr. W^m. Coventry

After our hearty Comendations WHEREAS ye King's most Excellent Ma^{tie} by his Warr^t to us directed hath thought fitt to erect and make new Fortes at Harw^{ch} and alsoe to fortifie his Guarrison of Landguard Fort, for ye better carrying on of y^t service, and for ye paying of workemen and likewise for provideing of severall provisions, as Timber, Bricke, Stone, Lime and other Materialls for ye same WEE have thought fitt to imprest unto Mr Francis Nuby, storekeeper for us at Harw^{ch} ye sume of 100^{li}, These are therefore to pray and require you, forthwth to make an allowance unto ye ye [sic] said Francis Nuby by way of imprest and upon accompt of ye s^d sume of 100^{li} for ye use aforesaid, yo^u placeing ye same upon ye Privy Seale now pasing for 20000^{li}. for new fortificacons &c. hee giving an accompt to us whenever required how and w^{ch} way hee shall lay out and pay y^t sume, and for soe doing this shal bee your Warr^t. Soe bidding yo^u heartly farewell Wee rest

Yo^r loving freinds

J. BERKELEY

J. DUNCOMBE.

To our honor^d freiend Collo^{li} Legge
 L^t Gener^{li} of his Ma^{ty} Ordnance &c.

Class 47, Vol. 19, Part 1.
 (Ordnance Minutes—Series I)

‘ 20th March 1668–9

‘ Present

Lord Berkley

S^r John Duncombe

L^t Generall

all ye Officers but

ye Clerke of ye

Deliveries ’

‘ Memd. a signification from ye Rt. hono^{ble} ye Com^{rs} for executing ye Office of Ma^r of His Ma^{ts} Ordnance appointing ye building

2 new Forts att Chatham by Gillingham and Cockham Wood
S^r Bernard De Gome Jonas Moore Esq^r and Major Mathew Baylie
to oversee ye same. Signed—J. Duncombe Tho. Chicheley ’

‘ Tower 20th March 1668–9 ’

‘ To our honored Freind Coll. W^m Legg Lt Gene^{ll} of his Ma^{ts}
Ordnance and to our Loveing Freinds y^e rest of y^e Officers of y^e
same.’

* * * * *

Instructions for S^r Bernard de Gome K^t his Ma^{ts} cheife
Engineer Jonas Moore Esq^r Assistant Surveyor and Major
Mathew Bayley Governour^s of Upnor Castle appointed Com^{rs}
for y^e Manageing and lookeing after y^e Building 2 new Batteryes
or Redouts neere Gillingham for y^e better security and safety
of his Ma^{ts} Navy in y^t Harbour In pursuance of a signification
from y^e R^t Hono^{ble} y^e Com^{rs} for Ma^r of His Ma^{ts} Ordnance
beareing date y^e 20th day of this instant ’

‘ You are forthwith to repair downe to Gillingham and on
y^t side as alsoe at Cockham Woodend (where two new Batteryes
or Redoubts are designed to bee erected and Built y^t is owne at
each place) and there to sett out or stake out at each of y^e
aforesaid places soe much ground as will bee necessary for this
Service w^{ch} Batteryes or Redouts are to be built according to
y^e Demensions and designs of S^r Bernard de Gome exprest and
sett downe in his two severall draughts of y^e same presented to
y^e Com^{rs} at y^e stakeing and setting out of w^{ch} ground two of you
at least are to bee alwaies present whereof Jonas, Moore Esq^r
to bee one ’

‘ You are to Contract for and buy such and soe much parcell
of Ground at each of y^e aforesaid places of y^e Owners and Pro-
prietors thereof as will serve to Build y^e said Batteryes or Redouts
upon, and at y^e cheapest rates yo^w and they can agree for att all
w^{ch} contracts and Bargaines makeing two of you at least are
alwaies to bee present and to sett your hands to all such Contracts
and Bargaines made whereof Jonas Moore Esq^r alwaives to
bee one ’

‘ You are to Contract for and provide all such Timber Bricks
Stone Lyme or any other necessaries as shall be requisite and
fitting for y^e carrying on and performance of y^e said workes
accordingly and to hyer and employ such and soe many Worke-
men as you shall judge requisite and fitting, to bee employed for
y^e more speedy and effectuall dispatch thereof in y^e doeing

and performeing of w^{ch} two of you are alwaies to bee present and signe to all Contracts agreements or bargaines made on this behalfe whereof Jonas Moore Esqr. is alwaies to be one'

' You are two of you at least whereof Jonas Moore Esqr alwaies is to be bee one to signe and Drawe Bills from tyme to tyme upon such persons as y^e R^t hono^{ble} y^e Com^{rs} for Ma^r of his Ma^{ty}s Ordnance and y^e Board shall appoint for ye payment of such moneys as you shall informe y^e Board will bee requisite for carrying on y^e same you causing an Accompt to bee kept how and w^{ch} way y^e said Moneys are disbursed and for what, w^{ch} Accompts yo are to cause to be sent up to y^e Board from tyme to tyme soe often as it shall be required'

* * * * *

' and you are alsoe by vertue of this Press Warrant herewith sent you to take up and imprest such and soe many Vessells, Barkes, Boates, Carts, horses and workemen as there shall bee occasion to bee employed about y^e said Ports untill such tyme as they be finished.

F.N.

E.S.'

' Office of Ordnance

20th March 1668-9'

' To S^r Bernard De Gome K^t his Ma^{ty}s cheife Engineer Jonas Moore Esqr Assistant Surveyor, and Major Bayley Governour of Upnor Castle or two of them, provided Jonas Moore Esqr bee alwaies one

These.'

' Memd. a Press Warr^t for S^r Bernard De Gome Jonas Moore Esqr and Major Mathew Bayley Com^{rs} to presse workemen for ye Fortificacons and Redouts to bee new made at Gillingham and Cockham Wood F.N. E.S.

' To S^r Bernard de Gome Jonas Moore Esqr or Major Mathew Bayley or two of them provided alwaies Jonas Moore Esqr be one.'

1 Sept. 1681

Class 47, Vol. 10, Folio 78

(Ordnance Minutes)

' 1st September 1681 '

' Present

S^r John Chicheley

S^r Christop. Musgrave

L^t Generall

Surveyor
Storekeeper
Clerke of the Deliverys

Ordered

‘ That a State be drawne up, fitt to be presented to Councill by the Comis^{rs} for Ma^r. Generall of his Ma^{ty}s Ordnance of the case represented by Maj^r. Beckman in his Lre. and Certificate from Hull touching the purchase of some ground there for a Fortificacon to be built for the better Strengthening the said Towne to enquire of S^r Bernard De Gome, what measures were taken and what course was used aboute takeing in of the Lands for the new worke at Plymouth, and after what method the owners of those lands were sattisfied and paid for the same ’.

‘ To see what Statutes there are concerneing takeing up of Peoples Lands for building of Fortificacons upon ’

‘ Coppy of Maj^r Beckmans Lre. and Certificate from Hull touching the Demand of the Owners of the Ground for the purchase thereof for a new Fortificacon to be built thereon to be sent to the Lord Mulgrave Governo^r desireing his Lord^{sh} would please to give such effectual Orders for promoteing the dispatch thereof as his Lord^{sh}. should thinck fitt, to prevent the Obstruction of the goeing on therewith ’.

‘ 10 Septemb. 1681 ’

(Folio 81)

‘ Present

S^r Chris. Musgrave

L^t Generall ’.

* * * * *

‘ Ordered

That a Bill and Debentur be forthwith made unto M^r John Suffield for the sume of 22^l 10^s 00^d for his charge and paines in procureing Coppies of the Deedes for the Land taken in at Gosport ’.

Class 47, Vol. 19, Part 1.
(Ordnance Minutes—Series I)

‘ 24th November 1668 ’

‘ Present

Com^r Chicheley

L^t of y^e Ordnance

All y^e Officers

Ordered

That Major Mathew Bayly Governo^r of Upnor Castle pay unto John Norwood the Sume of twenty shillings for a yeares rent for his ground upon w^{ch} Middletons Battery stands w^{ch} yeare ended att Middsummer last and that he likewise pay 30 shillings more to y^e owners of y^e Land whereon James's Sconce stands for a yeares rent ending att y^e same tyme '

Class 47, Vol. 19, Part 1. Minutes—Series I

(Ordnance Minutes)

' 22th December 1668 '

' Present

Com^r ChicheleyAll y^e Officers except y^e Clerke of the Delyveryies

Ordered

That y^e Sume of fourty shillings be allowed and Debenture made to M^r John Burnsted for damage done to his Ground &c. Fence in ye time of y^e proveing the Morter peece nere Bishopp's hall '

30 July 1674

Class 47, Vol. 19, Part 11.—Minutes.—Series I

(Ordnance Minutes)

Present

Mr Gen^l OrdnanceLt. Gen^l

Clarke Ord.

Storekeeper

Treasurer

Ordered

That M^r Perkinns att Portsm^o be writt to, to finde out what convenient Store Roomes are to be hyred there for lodgeings his Ma^{ty}s stores for this Office and y^t he send up word to y^e Office att what Rent per annum y^e same may be had.

Class 46, Vols. I & II.

(Out-letters—Master General, Board and Commander-in-Chief.)

Folio 214d

A.D. 1660 to 1684

CHARLES R.

WHEREAS Wee have thought fitt for the better defence and Securitye of Our Towne of Kingston upon Hull to strengthen the same with a New Fortification (Besides the Blockhouses and

Castle, Which Wee have Ordred likewise to be Repaired against any Hostile Attempts) According to a designe drawne & Presented to us by Major Martin Beckman One of our Engineers and by us well approved of, and Confirmed under our Signe Manuall OUR WILL and PLEASURE is, and Wee do hereby Authorise and require you, that you doe Forthwith take course to beginn, and with what convenient speed may be, To cause y^e said Fortification to be Erected, and Built according to the above mentioned Designe By us already approved of. AND if any Ground which is not our owne shall be found Necessary to be taken in for this Service Wee doe hereby authorise and Impower you to cause the same to be contracted for and bought of the Owners at the cheapest Rates the same may be had AND Wee doe hereby Further Authorise and Impower you (in case you shall Judge it requisite and Necessary for the better and more Effectuall carryeing on of the Said Intended Fortification) to Nominate, Constitute, And appoint Such Comission^{rs} or Officers as you shall thinck Fitt. (Our Governo^r Lieu^t Governo^r or Comander in chiefe for the time being, And Major^r Martin Beckman, or one of them to be alwayes of y^e QUORUM) to See y^e worke duely Performed according to Undertaking and Contract, and to make unto the Officers Such Salaries, Allowances, &. Wages for their Care, Paines and Attendance therein, and incident charges as shall by you be thought reasonable, AND for Soe doing this shall be yo^r Warrant. GIVEN at Our Court at Windsor the Tenth day of August One thousand Six hundred, Eighty & one, And in the Three and Thirtieth yeare of our Reigne.

By his Maj^{ty}s Comand
CONWAY.

TO our Trusty and Wellbeloved Our Comission^{rs} for Executing y^e Office of Our Ordnance, Or to Our Master of y^e Ordnance for y^e time being.

Class 47, Vol. 1.

(Ordnance. Out-letters—Master General, Board and Commander-in-Chief.) Folio 288d

Mr WATKINSON

In pursuance of an Ord^r this day of y^e Board You are hereby desired Forthwth to take Care y^e all his Maj^{ty} Stores Lyeing out in hyred Warehouses or Cell^{rs} for w^{ch} his Maj^{ty} is at charge of payeing rent be Forthwth Remooved and Carried into y^e South Blockhouse according to Former Ord^r and there layd as well as you can for y^e present ; till Such tyme as y^e Said Storehouses

be compleated & Fitted up That you may lay y^e Stores in bettr
Ord^r hereafter, The Dep^{te} Gov^r of Hull hath now ord^{rs} from
y^e Rt Hon^{ble} y^e L^d Mulgrave to make Roome in y^e South Block-
house for y^e S^d Stores accordingly, w^{ch} is all att present From
Yo^r^h & c^a

19^o Septembr 1682.
Att Hull.

Class 47, Vol. 22 (Ordnance Minutes—Series II, page 249)
Sabbati 7^o Die Julii, 1705.

Present :

Clke Ordnance	} Ordered.
Storekeeper	
Clke Delie's	

That upon reading a petiton of Mary Clarke, wife of Patrick Clarke, setting forth that in cons of the great loss her father and self had suffered by having 3 houses, &c., pulled down w^{ch} stood on Tower Wharfe which he had purchased, and that others who had suffered in the like kind, had received a valuable consideration, and her father and she only the liberty of a small shedd built on his ground, That the office of Ordnance having occasion for the same peice of ground to build a Plumbery on for the office service the s^d shedd was pull'd down and another allotted her in compensaçon by the Rt. Honble. the L^d Dartm^o and the then Principal Officers of y^e Ord^{ce} over against where y^e other stood, all w^{ch} allegation being attested by Joseph Hone a gunn^r and John Robins a labourer belonging to the office who had lived for many years upon y^e s^d wharfe, It is ordered that upon y^e af^d cons the s^d M^{rs} Clarke do keep in poßson of y^e s^d shedd by right from y^e office of Ord^{ce}.

Class 47, Vol. 30
(Ordnance Minutes—Series III)
Old Palace Yard Westminster—Martis 20^o die Maii 1717.

Present

Lieut Gen ^l	} Order'd
Surveyr Gen ^l	
Clk of the Ordnance	
Storekeeper	
Clk of the Deliveries	
&	
Chief Engineer	

* * * * *

Coll^o Lilly informed ye Board that Mr. Edgecumb can not grant or convey the ground to build the storehouses upon at Plym^o without an Act of Parliament, whereupon Mr. Ash was desired to speak to him about ye same and to give one Mr. Moyle agent for . . . notice to attend the next board.

* * * * *

Class 47, Volume 32

(Ordnance Minutes—Series III)

Old Pallace Yard Westminster—Martis 10^o Die Februarii 1718–9

Present

Surveyor Generall	}	Ordered
Clerk of the Ordnance		
Storekeeper		
Clerk of the Deliveries		
Chief Engineer		

* * * * *

(A letter) to Mr. Dixon, storekeeper at Plym^o advising him, that just as the Board was concluding an agreem^t with S^r Nicholas Morrice for the ground whereon to build a gunwharfe and storehouse near the Dock, one Mr. Kent demands an exorbitant value for his house and interest of part of that ground let to him upon lease by S^r Nicholas to go to him and immediately offer his right and pretension the sum of £180—which is more than formerly he offered to sell it for and if accepted, to gett Articles of Agreement drawn up to confirm the bargain.

And another to him with private instructions upon that head.

* * * * *

Class 44. Vol. 242

(Ordnance Minutes)

Received this 13th day of April 1758 of the Right Honble and Honble the Principal Officers of his Majesty's Ordnance by the hands of Farmer Thomas Hopkins the sum of Twenty one pounds and eight Pence being for one years Rent and Damage sustained for the enclosed March Land I occupy adjoining Hilsey Common whereon the Line & Batteries are erected near Portsea Lake.

Witness my hand
WILLM. HOPKINS

Class 30, Vol 54 No. 21

GENERAL ROY'S PAPERS

23rd September 1775

DIMENSIONS of Mr. Le Marchant's buildings proposed to Colonel Roy to be rented to Government for barracks, with the conditions of such rent

PARTICULARS OF BUILDING

Mr. Le Marchant's terms are to receive £150 down, to be subject to no alterations or repairs, for one year's rent of the above mentioned buildings and ground, and if kept longer than a year the rent to be reduced to £100 per year, to be advanced every half year, at the beginning of each half year, but if the rent is not advanced, then Mr. Le Marchant's demand is £160 for one year certain, payable £80 after the first six months, and the other £80 at the year's end

And after the first year the rent to be continued by the half a year at £100 a year, payable half yearly

If Government thought proper to allow £20 towards making a pump to the well, as it is so deep, Mr. Le Marchant, for the greater conveniency, would pay the surplus, the pump remaining afterwards his property, the use of the said well or pump in either case to be also preserved, in common with the soldiers, to his people and tenants on the premises

Government to be at liberty to make chimneys, doors, windows, and partitions in any of the premises, and to erect any building on the ground as far as the road, but if necessary the same to be placed at such a distance from the road as not to incommode the persons passing through the same

That as to any fixtures of beds or wooden partitions or floors within the said buildings, that Government shall have a right to take any the same on quitting the premises, but not any doors, windows, masonry work or the rails that may be made to enclose the premises

GUERNSEY the 23rd September 1775

WILL LE MARCHANT

P. EMIL IRVING }
Lieut. Governor } Witness

DORSE :—I accede to these proposals made by Mr. Le Marchant except the pump for the well, which may not be thought necessary

W. ROY D.Q.M.G^l.

ALSO ON DORSE :—Mr. Le Marchant's dimensions of his buildings, and conditions with respect to the hiring of them by Government for temporary barracks

Class 47, Vol. 2565, page 817. (Ordnance. Extracts of Minutes Series II)

From 25th May to 31st December 1798

At Westminster 18th July 1798

Mr. Henry Simmonds having transmitted his Bill for three months hire of Barton Barn for use of the Park of Artillery at Canterbury, and requested that his last Bill amounting to £84 might be paid.

Ordered to be referred to the Surveyor General for allowance according to Agreement and that John Simmonds be acquainted when the last Bill be sent and which he describes will be paid.

Class 47, Vol. 2580, page 2313. (Ordnance. Extracts of Minutes Series II)

(Ordnance Minute)

At Westminster, 20th August 1804

Rt. Smith Esquire Assistant to the Solicitor having by letter of the 18th inst., stated that he had perused General Morse's letter of the 15th Inst., accompanying Brigadier General Eveleigh's letter regarding the Lands at Stamshaw Point near Tipner, and Little Horsea Island near Porchester, that belong's to Captain Farhill and to the trust Estate of the late Mr. Ridge and as the Price demanded by Captain Farhill was very extravagant and there was some legal obstacles to the purchase of Mr. Ridge's Estate he conceived it would be expedient to take Possession of these Lands under the Authority of the defence Act.

Ordered that Mr. Smith be directed to take possession of this Land under the Authority of the defence Act ; and that Brigadier General Eveleigh be acquainted.

Class 44. Bundle 679. Ordnance. In-letters

Minute

(In pencil)

'All has been done that is possible on ye Part of the Mast. Genl. the business is fully before the Board.

Dear Sir,

4th August 1805.

The great demand which will soon be made for Gunpowder to replace what has been expended in the late Actions make

me very anxious for the Ordnance to avail themselves of the Chesshunt Water they have purchased. I therefore beg you will let me know the instant your Solicitor enables the Ordnance to lead the Water in question down to the Royal Powder Mills. I found very short water when I was at Waltham Abbey on Friday last. I am very sorry I had not the pleasure of meeting you thereat. The People at the Mills having told me you was there the day before.

I am, dear Sir,

Faithfully yours,

W. CONGREVE

P.S.—The Ordnance has a
very small stock of
New Gun Powder in
Store at Purfleet W.C.

Comptroller.

Colonel Hadden,
&ca. &ca. &ca.

Powdr.

Minute

Charlton 17 Aug. 1805

(In pencil) Refer to Mr. S.
Report

Recd. 17th.

Rt. Hoñble.

and Hoble. Gentn.

At this Crisis, I beg to suggest if it might not be advisable to apply to His Majesty's Ministers to impower the Ordnance to take possession of the Cheshunt Water for as long a time as the Service may require it, allowing a reasonable compensation to the Proprietors of the Corn Mills at that place and Waltham Abbey.

I have the honor to be

Rt. Hoñble.

&

Hoñble. Gentn.

Your most obedient Servt.

W. CONGREVE

The Rt. Hoñble.

Comptroller.

& Hoñble. The Board of Ordnance.

4th September 1805

Ordered that a Letter be written to L' Colonel Neville, desiring that he will acquaint the Master General that in consequence of the urgent Representations from Major General

Congreve Comptroller of the Royal Laboratory of the necessity of obtaining Possession of the Mills at Chestunt for the Purpose of increasing the Supply of Gunpowder for His Majestys Service, the Board have had a Conference with Mr. Smith, Assistant to the Solicitor, upon the Subject, and finding from Mr. Smith that it is extremely difficult to settle the Interests of all the parties concerned in the Cheshunt Mill Property and that the most advisable Measure will be to have recourse to the Defence Act to obtain possession of the Property. And the Board concurring in Opinion with Major General Congreve that the Exigency of the Public Service renders it indispensable to secure an ample Supply of Water to increase the Stock of Gunpowder, beg leave to recommend to the Master General to authorise the Mills at Chestunt to be taken Possession of under the Defence Act [*remainder in pencil*] which will be attended also with the further Advantage of removing some legal obstacles arising from a Claim of the poor of the Neighbourhood to have their Corn ground at the Mill.

Letter wrote to Col. Neville.

[Minute in ink]

Powder

Recd. 3 May

Right Honourable and Honourable Gentleman.

The business of the Cheshunt Mill came on yesterday before a jury under the Defence Act when after an examination of witnesses on both sides the jury assessed the value of the Lessee's interest at seven thousand five hundred pounds.

This sum carrying interest from yesterday until payment of the money, I shall lose no time in preparing the necessary assignment of the Lease from Messrs Bridgman and Rust and their Mortgagee, Mr. Corrie.

I have the honour to be

With the greatest respect,

Right Honble, and Honble Gentln.

Your most obedient humble servant,

ROBT. SMITH,

Assist. to the Solr.

Basinghall St.

3^d May 1808

Class 47 (Board), Vol. 269

(Ordnance Minutes)

In Pall Mall—Monday 20th January 1812

Present

Lieutenant General
Surveyor General
Clerk of the Ordnance

* * * * *

Mrs. Elizabeth Bayly having by letter dated 18th instant in reply to the Board's reference of the 8th with respect to the land for the Battery at Weymouth and the road leading to it from the Barracks observed that she would [be] willing to grant a lease for the same for twenty one years provided all the buildings and fences which might be erected were at the expiration of the lease left standing

Ordered that Mrs. Bayly be acqu^d the Board cannot accede to the condition that the fences should remain at the expiration of the lease ; but the Board are willing to execute a lease for twenty one years renewable on a fine certain to be agreed upon And that if Mrs. Bayly declines to grant a lease the Board will be under the necessity of taking possession of the land under the Defence Act.

* * * * *

Class 44, Vol. 516
(Ordnance Minutes)

Engr.

Isle of Thanet
Ramsgate,
June 20th 1813
Recd. 21

Sir,

In obedience to the Boards orders of the 8th inst. I have to report upon the claims of Mr. Cowel of Margate, Mr. Tomlin of Northdown and Mr. Bristow of this Island.

About eight years ago when a landing was apprehended on this Coast it was propos'd among the means of defence to stop up the Gateways by which the farmers draw up the Seaweed from the Beach as a manure for their lands, these openings being the only ones for several miles, by which an Enemy could penetrate.

Mr. Pitt assembled the Proprietors at the Townhall of Margate, and proposed the measure, when it was settled, that as the total Stoppage of the Gates would occasion serious loss and inconvenience to the Farmers, a few should be left open at certain intervals to procure the Weed, and the others be fill'd up. This was accordingly done, I believe under the direction of the Royal Staff Corps, and the openings continued shut till the alarm subsided. It appears that some of the Gates were then open'd without application to Government and some with their permission ; but I could not obtain any satisfactory account of this part of the transaction.

It is however perfectly clear to me that the measure was undertaken by order of the Government to the loss and inconvenience of the owners of ground in the neighbourhood ; and as the necessity for keeping them shut no longer exists, it is but just that they should be reopen'd at the expense of the Public, and a fair compensation allowed for the time they have been deprived of their use. The Sketch I now send will shew the Position of these Gates, and the reference list, the Names of the Proprietors, with the expense of opening, compensation &c.

The reopening of Mr. Cowel's Gate No. 1 has been estimated by a man at Margate at £75, but as I think it can be done for much less than this sum, I would propose to send a party under an Officer for this purpose. The loss has been much more considerable to this Proprietor than to the others from the great distance he has been obliged to go for the Weed, and I have therefore put down £10 a year as a moderate sum by way of compensation.

Should the Board determine that the Ordnance discharge this account, the Proprietors will have to receive as follows ; Viz.

Mr. Cowel	. . .	80£ and his gate to be reopen'd at the expense of Government
Mr. Tomlin	. . .	55£
Mr. Bristow	. . .	15£ 15sh

But it is proper to state that the Service was preformed under the direction of another Department, (I presume the Q.M. generals) and therefore it may perhaps be thought right to refer the account for settlement to that Quarter. With this view I collected all the information that two days of examination afforded me, so as to give as little trouble as possible to those

who have to make the compensation, in case they may think proper to act upon my opinion.

I have the honor to be
Sir,
Your very obedt. Servt.
HRY. L. FORD.
Lt. Colonel R. Eng.

R. W. Crew Esq.,
&c., &c., &c.

[In pencil] Collect the applications. Refer to Q.M.G.'s Department, stating our opinion that the expence belongs to them, & asking their resolution on Col. F's Statements

[Endorsed] 25 June 1813. Ordered that a Reference be made to the Quarter Master General's Department and that the Boards Opinion be stated that the Expence belongs to them and that the Quarter Master General be requested to signify his resolution on Lt. Col. Ford's statement

R. W.

Letter wrote to Co. Gordon

[Plan]

LIST OF REFERENCE to accompany the Sketch of the GATEWAYS on the North side of the Isle of Thanet.
June 19th 1813

(Here follow particulars of the several claims and of the compensation awarded in each case)

EARL OF CHATHAM'S PAPERS (deposited at the Public
Record Office)
Bundle 243

Endorsed September 1819 }
Mr. H. Jeffery }

' Mr. Hunt Jeffery has a farm between Sandgate and Hythe nearer to Sandgate, some of the lands adjoin the high road near the sea. The Duke of Richmond, as Master-General of the Ordnance, has applied to Mr. Jeffery to purchase the land near the sea and at the cliff adjoining, for the use of Government, and to erect batteries and to form a camp there, the land he wants of Mr. Jeffery is about one hundred and forty acres, besides the same quantity from adjoining proprietors, who refuse to give it up. Mr. Jeffery is willing to grant a lease of the land for the

benefit of the country during the war, which has been mentioned to his grace, but that his grace declines, as it will be wanted in a future war, and alleges that then it will be an additional expense to Government to renew the works, and therefore expresses himself determined for the benefit of the country; as he alleges, to purchase the land in question, and in case Mr. Jeffery, persisting in the refusal to sell, to bring in a bill in Parliament to empower the Board of Ordnance to purchase the land in question and to have the value ascertained by a jury, as is usual, Mr. Jeffery hopes that it may be sufficient to have the land in question during the war, as probably in future wars it may not be necessary, and submits that if he give the present accommodation it is all that may be wanted. He is ready to give any temporary accommodation, and the fear of being materially injured by the sale of his estate has made him desist from any contribution in support of any volunteer companies, or by personal service, which he is otherwise induced liberally to support.'

APPENDIX G

EXTRACTS FROM ROTULI PARLIAMENTORUM

Rot. Parl., 46 Ed. III (1372)

Vol. II, p. 311, No. vi

ITEM prie la Commune, qe come les Marchantz & Mariners d'Engleterre q̃ xx aunz passez & toutdiz a devant la Navie de dit Roialme estoit en touz Portz & bones Villes sur Mier & sur Ryvers si noble & si pleintinouse, q̃ touz les pays tenoient & appelloient ñre avan dit S^r le Roi de la Mier, & lui & tout son pays dotoient le pluis par mier & p terre par cause de la dite Navie : Et ore il est ensi desencresceez & anientyz par diverses causes, q̃ a poy yl i a demure suffisientis a defendre la dite pays, si grant mestier estoit, encontre Roial Poiar y fuisse a grant perille cōement de tout la Roialme, lesqueux causes serroit trop longe des touz escrivre. Mes une cause est principal, la longe Arrest q̃ sovent ad este fait sur les Niefs en temps de Guerre ; c'est assavoir, par un quarter d'an ou pluis avant q'ils passent hors de lour Portz sanz rien prendre pur les gages de lour Mariners durant cell temps, ou les S^{rs} des Niefs rien prendre de

guerdon pur les Apparailementz de lour ditz Niefs & Custages. Dount ils priont, en eovre de charite, covenable remedie.

Y plect au Roi q̃ la Navie soit meintenue & gardee, a greindre ease & profit q̃ faire se poet.

Rot. Parl., 47 Ed. III (1373)

Vol. II, p. 319, No. xvi

ITEM monstrent les Seigñrs de Niefs par tut Engleterre, qe come ils ont sovent foith' avant ses heures sywes en Parlement par Petition de lour anienticementz de lour avoir & destruction de la Navie, en la Manere q'ensust ; C'est assaver, q̃ come lour Niefs sont arestuz par divers temps a servir ñre Sr le Roi, & demurent sur cel arest, ascun par demy an, & les autres par un quarter de l'an, ou plus, avent q'ils passeront en lour Viages ; issint qe durant cel temps les Seigñrs de Niefs, ne Mariners d'ycels, rienz ne preignent des gages ne lowers, en grant anienticement & empoverisement de lour estates par cause q̃ remedie sur ceo n'est ordeigne. Pur qi ils priont a nostre Sñ le Roi & a son Conseil, en eovere de charite, ordeiner & graunter en cest present Parlement, qe les Seigñrs des Niefs puissent estre paieiz de lour gages del comencement de lour arest des Niefs tan q̃ a fin de lour Viage, en reconfort des Seigñrs de Niefs, & encrees & amendement de tut la Navie.

Areste de Niefs ne serra fait mes quant il busoigne; paiement lour serra fait come ad este use resonablement.

Rot. Parl., 2 Ric. II (1379)

Vol. III, p. 66, No. xxiv

ITEM prie la Cõe, pur ce q̃ en temps passe la Terre d'Engleterre estoit ñn repleine de Navie, auxi ñn des Niefs grosses come des petites, par quel Navie la dõe Terre estoit a celle heure grandement enrichez, & des toutes Terres environ grandement redoutez. Et puis la comencement de la Geurre les ditz Niefs ont este si sovent arestuz pur diverses Viages sur la Meer, p ont les possesseurs du dit Navie ont suffertz si grant damage & perde, si ñn des Niefs & Batelx come des autres attilementz a ce appurtenantz, sanz avoir aucun regard du Roi ou de Roialme : Et auxint leurs Mariners les unes armez, & les autres archiers, ne preignent q̃ IIII d. le jour ; quelle prise leur semble si petite q̃ grande partie des Mariners sont retretz des ditz offices, issint par une voie & par autre les possesseurs des Niefs, & la Navie est ñn pres gaste & destruit. Sur quoy pleise ordeiner, par advys du Conseil, q̃ les possesseurs des Niefs aient regard pur

lour Niefs & les Marineres lours gages oweles as autres archiers, comenceant les dces gages a lour monstre : quelles amendement ferront si grant exploit en temps a venir, q'il tournera a grant profit du Roi & du Roialme.

Soit usez come devant ent ad este usez.

Rot. Parl., 9 Ric. II (1385)

Vol. III, p. 212, No. 28

ITEM priont les Coës en cest present Parlement come autre foitz fuist ordeigne, q̄ les Niefs armez sur la Mere pur la sauvegarde des Marchantz, & en defense du Roialme, duissent prendre pur chescun tun-tyght trois soldz quatre deniers en la quarter, pur l'apparaille del Nief : Vous plese ordeigner, q̄ la dite Ordonance soit tenuz defore en avant pur salvation & sustenance des Niefs avant ditz, pur l'apparail & ornement de les ditz Niefs lesquels demandent grantz costages ; Considerantz q̄ autrement la Navie ne poet autrement en nulle manere endurere.

Eient pur l'apparail' & ornement des Niefs per Chescun tun-tyght II s̄ en le quarter, tan q'al prochein Parlement.

Rot. Parl., 4 Hen. IV (1402)

Vol. III, p. 501, No. 56

A TRES excellent, tres redoubte, & tres graciosus Sr ñre Sr le Roi suppliount voz poverez Communes, q̄ l'Estatut fait l'an primer du regne luy noble Roi E. v̄re aiel, contenant, Qe null soient destreintz d'aler hors de lour Countees sinoun p cause de necessite de sodeigne Venu des estraunges Enemyes en Roialme : & l'Estatut fait l'an xviii de regne du dit aiel, Qe Gentz des Armes, Hobelers, & Archiers, esluz pur aler en le service le Roy hors d'Engleterre, soient as Gages le Roi de jours q'ils deptirent hors des Countes ou ils feurent esluz ; & ensement l'Estatut fait l'an xxv du regnele dit aiel, Qe nul soit arte de trover Gentz d'Armes, Hobellers, ne Archers, autres q̄ ceuz q̄ tieignent p tieux services s'il ne soit p commune assent & graunt fait en Parlement ; soient firment tenuz & gardez en toutz pointz, saunz estre enfreintz en ascun manere. Et q̄ null de voz ditz Communes soit destreint d'aler en Gales, ou aillours hors du Roialme coudre la fourme de les Estatutz avaunt ditz. Et q̄ toutz les Commissions & Briefs faitz a contraire des ditz Estatutz, & toutz les enditementz & acusementz, obligations, & liens faitz par colour des ditz Commissions ou Briefs, ove toutz les dependences & cir-

eumstances d'icell, soient revokez, cancellez, cassez, & adnullez pur toutz jours, come choses faits encountre la Ley, & q̃ ne soient trehez en ensample en temps a venir. Et si aucunes de voz lieges soient emprisonnez p force des ditz enditementz ou acusementz, q'ils soient maintenant deliverez, & les ditz Enditementz tenuz pur nulles.

Le Roy le voet ; p ainsi toutes voies, q̃ par force ou colour de la dite supplication, ne d'ascun Estatut sur ceo a faire, les Seigñrs, n'autres qi ount Terres & Possessions en Pays de Gales, ou en la Marche d'icelle, ne soient en ascun manere excusez de lour Servicez & Devoirs de lour ditz Terres & Possessions duez, ne d'ascuns autres Devoirs ou choses auxquelles ils, ou ascuns de eux, sont a ñre dit S̃r le Roy especialment obligez ; com̃n q̃ yceux Seigñrs & autres aient autres Terres & Possessions deintz le Roialme d'Engleterre ; ne q̃ les Seigñrs ou autres, de quele estate ou condition q'ils soient, qi tiegnent p Escuage ou autres Services duez au Roi ascuns Terres ou Possessions dedeinz le dite Roialme, ne soient ascunement excusez de faire les Services & Devoirs des ditz Terres ou Possessions duez, ne q̃ les Seigñrs, Chivalers, Esquiers, n'autres persones, de quele estate ou condition q'ils soient, q̃ tiegnent & ount de le Graunt ou Confirmation de ñre dit S̃r le Roi Terres, Possessions, Fees, Annuitees, Enpensions, ou autres Profitz annuelx, ne soient, n'ascun de eux soit, excusez de lour service a faire a ñre dit S̃r le Roy, p tiel manere come ils sount tenuz par cause des Terres, Possessions, Fees, Annuitees, Enpensions, ou Profitz suis ditz.

Rot. Parl., 3 Hen. V (1415)

Vol. IV, p. 79, No. viii

ITEM suppliont tres humblement voz poveres Communes, Qe come en le temps des tres nobles Progenitours ñre S̃r le Roy accustume & ordeine estoit, q̃ a quell temps q̃ les Niefs du Roialme fesoient a eux service en lour guerres ou autrement, les Possessours de mesmes Niefs, aueroient lour tonnage de lour ditz Niefs, outre les gages des Mariners de mesmes Niefs ; c'est assavoir, a chescun tonneau de quell portage q la Nief furent 111 s̃. 1111 d̃., pur le quarter d'an, durant le temps q'ils firent service au Roy, en ascune manere come desuis est dit, le quell tonnage ad estee duement & loialment paie, de temps dount memoire ne court tanq̃ a temps de ṽre Pier, q̃ Dieu assoile ; puis quell temps tanq̃ en cea, le dit tonnage ad este detreei &

abatu des Possessours du Naveye de v̄re Roialme, a lour tres graunt anientisment : p̄ quell encheason ascunes des Possessours du dit Naveie sount outrement anientisez, & la greindre partie du dit Naveye destrutz, & lessez desolate, a tres graund damage de Vous, tres souveraine Sr, & anientisment de v̄re Roialme. pur taunt q̄ la dit Naveye est la greindre substance du bn, profit, & prosperitee du v̄re dit Roialme. Pleise a v̄re tres hautisme magnifence Roialme, considerent les premisses, si bn pur le bien & proufit de Vous, tres souveraine S̄r, & de v̄re dit Roialme, come pur l'encrees & renovellure du dit Naveye, ordeiner, enacter, & establir en ycest present Parlement, q̄ des ore en avaunt les Possessours du dit Naveye eient & preignent lour tonnage, pur lour ditz Niefs & Vesselxs, durant le temps q' ils ferrount service a Vous, tres souverain S̄r le Roy, & a voz heirs, en voz guerres ou autrement, come il ad este accustume devaunt ces heures, saunz ent estre forbarrez ou precludez.

Le Roy vorry faire ceo q̄ droit & reson demandent ceste partie.

Rot. Parl., 20 Hen. VI (1442)

Vol. V, p. 59, No. xiii

PRAYEN the Communes, that hit please the Kyng our Soverain Lord, for the sauff kepyng of the See, to ordeyn and auctorise by the auctorite of this Parlement, certains Articles and appoyntmentes, contained in a Cedula to this Bill annexed.

TENOR vero Cedula predicte sequitur in hec verba.

For as muche as it is thought be alle the Communes of this Lande, that it is necessarie the See to be kepte, there moste purviaunce be made for certeine Shippes defensablez in maner and fourme after olowyng.

FIRST, it is thought, that the lest purveaunce that can be made for the worship of the Kyng our Soverain Lord and welfare and defence of this Roialme of England, is for to have upon the See continually, for the sesons of the yere fro Candilmes to Martymesse, viiie Shippes with forstages ; ye whiche Shippes, as it is thought, most have on with an other, eche of hem CL men ; summa, xii men.

ITEM, every grete Shippe most have attendyng opon hym a Barge, and a Balynger ; and every Barge most have in ^{xx}iiii men summa, ^cvi and XL men.

ITEM, the viii Balyngers most have in eche of hem XL men ; summa, CCCXX men.

ITEM, there most be awaytyng and attendaunt upon hem IIII Spynes, in eche Spynes XXV men ; summa, C men. Summa of the men, MM CCLX men. Every man takyng 11 s̄ be the month, amounteth in the month CCXXVI li.

ITEM, XXIIII Maisters, eche of hem overe this in the Month XL d ; summa IIII li.

ITEM, over their reward for the quarter Maisters be the month IIII li. ; summa of the Wages, CCCXXXIIII li.

ITEM, Vetaillyng for a month, drawith atte XIII d. the man in the weke, summa ^cv XXVII li. vi s̄ VIII d. ; summa for the month, in Vitaillyng and Wages, vii ^cLXI li. VI s. VIII d. ; summa for VI moneths for this yere. ^MIIII ^CD LXVIII li. ; summa for VIII monethes yerely folowyng duryng the graunte of Tonage and Poundage, ^MVI ^{XX}IIII X li. XIII s̄. IIII d̄.

ITEM, it is to be remembred where the saide Shippes shulle be hadde ; First, at Bristowe, the Nicholas of the Toure and Katerine of Burtons. Item, atte Dertemouthe, the Spaynyshe ship that was the Lord Pouns. Item, atte Dertemouth, Sir Phelip Courteney grete Ship. Item, in the Porte of London II grete Shippes, one called Trinite, and that other called Thomas. Item, atte Hull, a grete Ship called Taverners, ye name Grace Dieu. Item atte the New Castell, a grete Shippe called the George. Item, VIII Barges to be had ; first, of Herry Ruffell of Weymouth, a Barge. Item of Phelip Courteney Knyght, 1 Barge. Item at Plymouth, the Barge called Mangeleke in the water of Saltasshe. Item, atte Wynchelse, II Barges, one of Morefores called the Marie, and that other pratte Barge called Trinite. Item, of London, a Barge of Beaufitz and Bertyns called Valentyne. Item, of Saltasshe, a Barge called Slugge Barge. Item, of Falmouth, a Barge. Item, VIII Balingers First, atte Newcastle, with the grete Ship there, 1 Balinger. Item, of Sir Phelip Courteney, 1 Balynger. Item, atte Fowy, of Sir William Bonviles, a Balynger called Palmer. Item, atte Dovyr, a Ballynger called Pigfygge, of Wardes and Cooks. Item, atte Sandewych, a Balynger of Haywardes. Item, atte Hampton a Balynger of Clyfdons called Jaket. Item, atte Seynt Ofes, in Essex, a Balynger. Item, of London p Chirch, a Balynger. Item atte Falmouth, a Balynger. Item, there most be hadde IIII Spynes ; First, one of Henry Russell. Item, atte Hastyng a Spynes. Item, atte Dertmouth, II Spynes.

Item, it is thought that there shulde be chosen and nempned, viii of Knyghtes and worthy Swyers of the West, of the South, and of the North, so that no Cuntre shulde be dispesid ; and yerof the Kyng oure Soveraigne Lord chiefe suche on as hym liketh to be a chief Capytayne, and other VII as the Kyng liketh of the saide VIII, for to attende the saide chief Capytayne ; so that every grete Shippe have a Capytayne withynne borde.

ITEM, it is to be remembre, that the Kyng will gyff hem in charge, be his Officers to hem sent, yt all these saide Shippes stuffed and arrayed make their first assemble in the Caumbre, there to obey suche rewle and governaunce, as be their Capitayne and undre Capitayns shall to hem be ordeyned, and there moustre of every Shippe to be sene by suche persones as the Kyng will depute therto be his Commission.

ITEM, there suche Proclamation and Ordenaunce to be made and established amongs and in the saide Navie, that none Shipp or Shippes, harme ne hurt none other Shippe of oure Freendes ; where thorough any trouble or brekyng of pees myght falle betwene the Kyng our Soveraigne Lord, and other of his Freendes.

ITEM, it is thought necessarie, that if any Shippe or Shippes be taken as Ennemyes, whenne the goodes in the saide Shippes be brought into any Port of this Land ; that the godes ne the Shippes be nat disperbled ne devided, into the tyme that it be duly knowen, wheder it be Enemyes goodes, or Freendes godes : Forfene alwey that ye presse be made withinne VI wekes after the landyng or havenyng of the seide Shippe or Shippes and Goodes so taken.

ITEM, it is to be remembred, how in tyme passid awners of divers Shippes, that have, be commaundement of the Kynges Counseill, sent their Shippes to the See, and they nought sette in their Shippes Maisters ne Maryners, for their mesprision on the See were putte in grete trouble and disease. Wherefore be it now ordeyned by authorite of this Parlement, that noone suche awner of any Shippe at this tyme goyng to the See, or here after shall goe to the See, for keypyng therof, be endaungered or disseised, lesse thenne he be in the See with his Shippe in his persone, or ellis be partyner of such goodes mistaken ; and if he so be founden, yan' he to answeere to the partie that the goodes be mystake of, to the value thereof that comes to his hands, and in that caas he to be beleved be his othe, and II or III of his credible neyghbours with hym sworne, and so to be acquitte. Forthermore it is avised, yat if it so be that any of the saide

Shippes in this Ordenaunce appoynted be nat in England, ne in the Portes afore named, or mowe not be had, yt yanne it shall be lefull to the said chief Capytayne, for to chefe be his wisdom, an other Shipp or Shippes like to hem that lakketh of thoo that afore ar named ; and that every under Capitayne, in the absence of the chief Capitayne, have power in the same fourme, and in caas like, for suche Shippes as shall be necessarie.

ITEM, it is thought, that the Goodes and Shippes that mowe happe to be taken by hem, or by any of hem, in the See of our Enemys, shall be departed in the fourme aftre sewyng. That is to say, the Maisters of the Shippes, Quarter Maisters, Shipmen and Soudeours, shul have half the Shippes and Goodes so taken and owere half of the Shippes and Goodes, shall be departed in three, of the whiche the awners of the Shippes, Barges Balingers and Spinaces, shall have II partes, and the chief Capitain and the under Capitayns the third parte ; of the whiche thrid parte,* the chief Capitayne shall have double that oon of the under Capitayns shall have.

ITEM, that the IIII the parte of the half XV me now graunted, after the fourme of exception and deduction in the same Graunt, and after the rate therof according the deduction of suche perte of a XV me by Knyghts of the Shire last made and after the afferaunt of the exceptions in this Graunt, be arrerid by the Collectours therto to be nevend, and by hem payed into the Kings receipt, at the moys of Estre next comyng ; and that somme to be delivered by the Tresourer of England, to the Chief Capitayn and undre Capitayns by the Kyng to be nevend by Endenture bitwene the Kyng and the seid Capitayns yerof to be named, for the seid Governauce and keping of the See, and to noon owere use ; whiche keypyng shal begynne the XVth day of May next comyng and endure to the XVth day of November yan next sewing. And yan, at ye first day of March next aftre the said XVth day of November the keping of the See begin in manere and fourme as is abovesaid, to endure for the term of VIII monethes yan next folwyng ; the paiement therof to be made of the Tonage and Pown dage in this Parlement graunted, by the Tresorer of England for the tyme beyng, to such Capytayne and Capitaynes as by the Kyng shall be nevend, after the rate of the seid VI monethes, by Endenture bitwene the Kyng and the seid Capitayns to be made ; and so forth ye next yere folowyng in slembable wise alwey forsayn, that yf ye seid Capitains or any of theym or any of their meyn undre them, absent himself out of the See any of the monethes or part of hem

aforesaid, that yanne he or they be disalowed so moch of their Wages as the rate comes to for the tyme of her absenc' ; lesse yan the seid Capitain or Capitains or ony man under yeym so absent leve a suffisaunt man, or so many suffisant men in there stede, for the tyme of their absence.

ITEM, that noon of the seid Vesselles, nor noon oyere Vessel to be had in stede of any of hem attending to the same Viage, be arrested for any Viage of oure Sovereign Lord ye Kyng, appoynted or to be appoynted, nor in no oyere use, during the yeres aforeseid.

Soit fait come il est desire, durant le temps de la sauf garde de le Meer deins especifie.

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