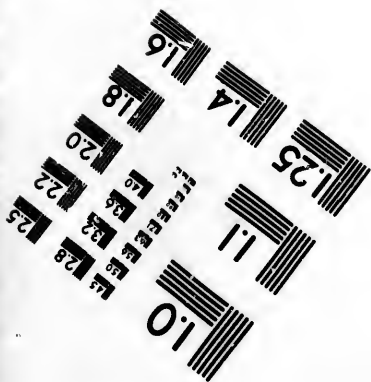
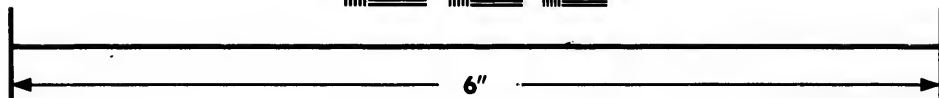
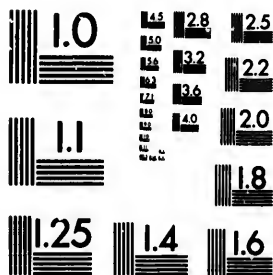


**IMAGE EVALUATION  
TEST TARGET (MT-3)**



**Photographic  
Sciences  
Corporation**

23 WEST MAIN STREET  
WEBSTER, N.Y. 14580  
(716) 472-4503

**CIHM/ICMH  
Microfiche  
Series.**

**CIHM/ICMH  
Collection de  
microfiches.**



**Canadian Institute for Historical Microreproductions / Institut canadien de microreproductions historiques**

**© 1984**

Technical and Bibliographic Notes/Notes techniques et bibliographiques

The Institute has attempted to obtain the best original copy available for filming. Features of this copy which may be bibliographically unique, which may alter any of the images in the reproduction, or which may significantly change the usual method of filming, are checked below.

L'Institut a microfilmé le meilleur exemplaire qu'il lui a été possible de se procurer. Les détails de cet exemplaire qui sont peut-être uniques du point de vue bibliographique, qui peuvent modifier une image reproduite, ou qui peuvent exiger une modification dans la méthode normale de filmage sont indiqués ci-dessous.

- Coloured covers/  
Couverture de couleur
- Covers damaged/  
Couverture endommagée
- Covers restored and/or laminated/  
Couverture restaurée et/ou pelliculée
- Cover title missing/  
Le titre de couverture manque
- Coloured maps/  
Cartes géographiques en couleur
- Coloured ink (i.e. other than blue or black)/  
Encre de couleur (i.e. autre que bleue ou noire)
- Coloured plates and/or illustrations/  
Planches et/ou illustrations en couleur
- Bound with other material/  
Relié avec d'autres documents
- Tight binding may cause shadows or distortion  
along interior margin/  
La reliure serrée peut causer de l'ombre ou de la  
distortion le long de la marge intérieure
- Blank leaves added during restoration may  
appear within the text. Whenever possible, these  
have been omitted from filming/  
Il se peut que certaines pages blanches ajoutées  
lors d'une restauration apparaissent dans le texte,  
mais, lorsque cela était possible, ces pages n'ont  
pas été filmées.
- Additional comments:/  
Commentaires supplémentaires:

- Coloured pages/  
Pages de couleur
- Pages damaged/  
Pages endommagées
- Pages restored and/or laminated/  
Pages restaurées et/ou pelliculées
- Pages discoloured, stained or foxed/  
Pages décolorées, tachetées ou piquées
- Pages detached/  
Pages détachées
- Showthrough/  
Transparence
- Quality of print varies/  
Qualité inégale de l'impression
- Includes supplementary material/  
Comprend du matériel supplémentaire
- Only edition available/  
Seule édition disponible
- Pages wholly or partially obscured by errata  
slips, tissues, etc., have been refilmed to  
ensure the best possible image/  
Les pages totalement ou partiellement  
obscurcies par un feuillet d'errata, une pelure,  
etc., ont été filmées à nouveau de façon à  
obtenir la meilleure image possible.

This item is filmed at the reduction ratio checked below/  
Ce document est filmé au taux de réduction indiqué ci-dessous.

10X	12X	14X	16X	18X	20X	22X	24X	26X	28X	30X	32X
					X						

The copy filmed here has been reproduced thanks to the generosity of:

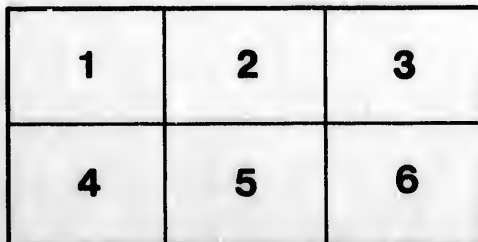
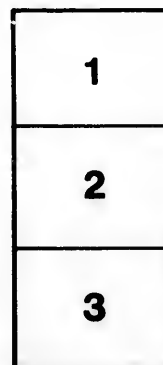
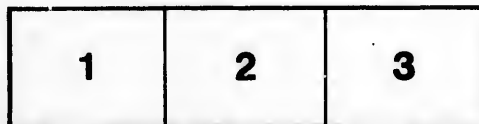
Library of the Public  
Archives of Canada

The images appearing here are the best quality possible considering the condition and legibility of the original copy and in keeping with the filming contract specifications.

Original copies in printed paper covers are filmed beginning with the front cover and ending on the last page with a printed or illustrated impression, or the back cover when appropriate. All other original copies are filmed beginning on the first page with a printed or illustrated impression, and ending on the last page with a printed or illustrated impression.

The last recorded frame on each microfiche shall contain the symbol  $\rightarrow$  (meaning "CONTINUED"), or the symbol  $\nabla$  (meaning "END"), whichever applies.

Maps, plates, charts, etc., may be filmed at different reduction ratios. Those too large to be entirely included in one exposure are filmed beginning in the upper left hand corner, left to right and top to bottom, as many frames as required. The following diagrams illustrate the method:



L'exemplaire filmé fut reproduit grâce à la générosité de:

La bibliothèque des Archives  
publiques du Canada

Les images suivantes ont été reproduites avec le plus grand soin, compte tenu de la condition et de la netteté de l'exemplaire filmé, et en conformité avec les conditions du contrat de filmage.

Les exemplaires originaux dont la couverture en papier est imprimée sont filmés en commençant par le premier plat et en terminant soit par la dernière page qui comporte une empreinte d'impression ou d'illustration, soit par le second plat, selon le cas. Tous les autres exemplaires originaux sont filmés en commençant par la première page qui comporte une empreinte d'impression ou d'illustration et en terminant par la dernière page qui comporte une telle empreinte.

Un des symboles suivants apparaîtra sur la dernière image de chaque microfiche, selon le cas: le symbole  $\rightarrow$  signifie "A SUIVRE", le symbole  $\nabla$  signifie "FIN".

Les cartes, planches, tableaux, etc., peuvent être filmés à des taux de réduction différents. Lorsque le document est trop grand pour être reproduit en un seul cliché, il est filmé à partir de l'angle supérieur gauche, de gauche à droite, et de haut en bas, en prenant le nombre d'images nécessaire. Les diagrammes suivants illustrent la méthode.

ails  
du  
difier  
une  
page

rate  
p  
elure,  
à



**CANDID INVESTIGATION**

**OF THE**

**PRESENT PREVAILING TOPIC.**

---

In this little Pamphlet the Public will find the  
Subject of the Interference in Parliament,  
so much talked of lately, dispassionately  
and fairly considered.

---

**L O N D O N:**

**PRINTED IN THE YEAR 1784.**

170

THE HISTORY OF THE

ROYAL SOCIETY OF LONDON

AND OF THE  
ACADEMY OF SCIENCES  
OF PARIS

LONDON:

PRINTED IN THE YEAR 1704.

## CANDID INVESTIGATION, &c.

---

**T**HE singular events which have already taken place within some few days, and the more alarming consequences which are universally expected, will be a sufficient apology for the humble efforts of an individual, to recall the public attention to the rights, not merely of prerogative, but of every private subject in a government, where Political Liberty is the direct end of the Constitution.

The House of Lords, in a cause of greater importance, and of more fearful expectation, than any which has before occurred in the history of this country, resolved, at one



o'clock in the morning, to adjourn to the next day, for the express purpose of hearing the whole Evidence to be adduced, before they decided on a measure subverting the rights, confiscating the property of a great Company, and deeply affecting the constitution of Government under which we live. In the first place, it is assumed, that *such a resolution* could not originate in *proper or becoming motives*. To give the argument its utmost force, I will admit to be true every thing which rumour affirms; for the gross and indecent declaration imputed to the Sovereign, is now known not to have the smallest foundation in truth. The facts now affirmed, by rumour are these, that while the East India Bill was depending in the House of Lords, a noble Peer, with the knowledge and approbation of a great body of the Nobility, apprehensive that the Influence of the Crown, in the hands of Ministers, might finally prevail to pass the Bill through their House, openly demanded an audience of his Majesty, to express his apprehension of the consequences, and humbly to tender his advice to the Sovereign, not to give the Royal Assent to the Bill. Rumour further adds, that his Majesty appeared

peared to have the same impression of the Bill, but expressed a hope that he should not be compelled to employ his Prerogative. The late Ministers now add, that the Peers who were about the person of his Majesty, understanding the alarm taken, voted against a Bill, which they had before expressed an intention to support.

This state of the case will be admitted to be fair and candid; and on this state of facts, I affirm, that the whole is correctly consistent with our Constitution.

The abuse of power during Lord North's administration, and the fatal effects which followed, have raised a prejudice against Royal Authority, and already transferred the nomination of the Ministers, employed in the Executive Government, to the House of Commons. Let us, however, beware, lest these prejudices lead to an abolition of the Kingly power, as a constituent part of the Government, which must, as happened in the last century, finally destroy our liberties, by an entire subversion of the Constitution.

I will

I will not now discuss the fatal consequence of the change already effected in our Government. Suffice it to observe, that the late Administration were really nominated by a combination of Factions in the House of Commons; the first effect of which was, that all responsibility of Ministers was for ever done away—because this Assembly, whose peculiar office is to accuse and controul Ministers, taking upon themselves the nomination, no accusers remained to the guilty; and, as if it were intended to proclaim a general indemnity in future, the Noble Lord, whose administration at least was questionable, was again raised by this nomination to the Cabinet.—The next effect was, that the whole Executive Government, by our laws vested wisely in the Crown, was by one stroke conveyed to the Nominees of the House of Commons: For the Ministers thus made, named all those employed in the inferior departments of the State. Nothing now remained, but to render this power, thus acquired, perpetual, by establishing in their own party an influence which might render all future attempts to resist them vain. For this purpose, as some contend, a Bill was introduced

produced to invest the Nominees of the Party with the Government and Patronage of India.—I speak not of the violation of private rights and public faith, involved in this measure, because these considerations, however important, are lost in the more alarming danger to the general liberties of the country. Impressed with this danger, a respectable body of the Nobility interpose, and the Ministers not being able to employ the whole Influence of the Crown, and to revive the practice of taking arms by the King's authority against his person, are defeated in the House of Lords,

What is the first measure proposed by the Ministers? To revive in the House of Commons the Bill, with some minute alterations, after the example of the Long Parliament in 1641, in the Bill respecting the Bishops, for the express purpose of compelling the House of Lords and King to pass it: Or, in other words, after the illustrious example of those times, to invest the House of Commons, exclusively of the King and Lords, with the real effective legislative authority. The next measure is, to improve on the example

ample of the Long Parliament in 1641, by securing the *Independence* of the House of Lords, under the *Patronage* and *Protection* of the House of Commons. In the prosecution of these laudable designs, new doctrines are advanced, the errors of which I mean to detect.

The first error in the new doctrine is confounding the Prerogative, which enables the King to reject a Bill, as an independent branch of the Legislature, with those prerogatives which belong to him as the supreme Executive Magistrate of the country. In the latter character, though he personally can do no wrong, i. e. is personally not accountable; because, to subject the King to any tribunal, would destroy an essential constituent part of our Government, and render one or both Houses of Parliament arbitrary; yet, as *Executive Magistrate*, he must act through the intervention of others, who are responsible; because in this character, the Crown is subjected to the *Laws now existing*; and those who act in the name of the Crown, if they violate the Law, must submit their conduct to the *judgment of the Law*.

In

In assenting to, or dissenting from a Law proposed, the King acts in a different character, as an Independent Branch of the Legislature, and ever must be, like the other two Branches, uncontrouled and uncontroullable in the exercise of his peculiar share of the Legislature. The character of Legislator is destroyed the moment Dependence is assumed. Why is the Legislature of this country vested in King, Lords, and Commons? Because it is not probable that all three, having *distinct* and *separate* interests, will concur in a Law dangerous to the *government*, or to the *rights of the Subject*. But the operation of these *distinct* and *separate* interests is destroyed, the moment one of these powers is subjected to the controul of the two, or two to the controul of the third. The President Montesquieu, in his beautiful delineation of our Government, speaking of the present subject, affirms, that “ Were the Executive  
 “ Power not to have a right of putting a stop  
 “ to the incroachments of the Legislative  
 “ Body, the latter would become despotic;  
 “ for as it might arrogate to itself what  
 “ power it pleased, it would soon destroy all  
 “ the other powers.” It might go some-

what farther than in the late India Bill ; and instead of investing their own Nominees with the Executive Power over a part of the dominions of Great Britain, it might confer on them the whole. Possibly this Bill was only a sample of the good care they intended to take of the other parts of the Empire. The blow once struck, had certainly been decisive, and all future resistance vain.

Perhaps it may be conceded to me, that the King, in the exercise of his Legislative character, ought to be, and is Independent. Probably it may likewise be admitted, that he ought to consult others, at least that he is *not bound to act without advice*. But the right to give this advice has been opposed in two forms. It has been said, the King must take the advice of Parliament. What is this, but in different terms to deny the right of the Crown to negative any Law proposed ? For the Bill must have passed the two Houses before it can be presented for the Royal Assent. The Prerogative never can be exercised until the King has the advice of Parliament, to pass the Bill by the very act of presenting it ; and the assent given from the Throne would

be an ufelefs pageant, an idle mockery of Sovereign, if he had not a right to diffe. In truth, as the prefervation of our Conftitution may require the exercife of this power, fo the example of its exertion; in feveral inftances, is to be found in the reign of one of the beft Kings that ever fat on the Englifh Throne, the glorious and immortal Reftorer of our Laws and Liberties. If the occafion has of late years not occurred, for the exercife of this acknowledged right in the Crown, this has not arifen fo much from the concurring wifdom of the diftinct Branches of the Legislature, as from the domineering influence of one over the other two. This Influence is by late laws greatly abridged; and during the laft Adminiftration, the direction of what remains, was actually transferred to a popular Leader in the Houfe of Commons, independently of the choice of the Sovereign. The exceffes on this fide muft be watched with equal vigilance, if we wifh to preferve our Liberties and our Laws.

Clamour is now raifed againft *Secret Influence*, and we are told the King muft advife with his oftensible Minifters alone. This I deny. In his character as Executive Magiftrate,



gistrate, the King must act by his *official* Ser-  
 vants, because each in his several department  
 is punishable, if these acts do not conform to  
 the existing Laws, or the Laws would cease  
 to be the rule of his Government. But in  
 his character as Legislator, giving his con-  
 sent to make *new Laws*, the King may take  
 the advice of all his Subjects; and no man  
 is responsible for his act, because this Prero-  
 gative of refusing his assent to *new Laws*; of  
 putting his Negative upon any *proposed change*  
*in the Government*, is a defensive power given  
 to preserve the Balance of the Constitution,  
 and must exist without restraint, or it cannot  
 exist at all. Suppose, for a moment, the  
 two Houses of Parliament determined to  
 pass a Law, which transferred the whole Ex-  
 ecutive Government of the State from the  
 Crown to persons of their own nomination.  
 If the new doctrines shall prevail, who will  
 advise the King to reject the Bill? One  
 House will impeach, the other will condemn  
 the adviser. Who, under such circumstances,  
 will venture to approach the Throne? Or  
 must the King be left wholly without advice,  
 and liable to be *surprised* into a consent, where  
*error is irreparable*? For a Law once passed,  
 cannot

cannot be annulled without the concurrence of King, Lords, and Commons. Or shall the King be left wholly ignorant of the sentiments of his Subjects, and in a situation therefore to be *terrified* into a compliance? Is this an idle apprehension? The thing has been once already accomplished, partly by surprize and partly by threats, not in a single law, but in several successive laws, by that very Parliament of 1640, whose Creed is become so fashionable of late. Suppose, for the sake of argument, that a Parliament so disposed, should be led by those who had forced themselves into the councils of the Sovereign. These Ministers will not advise the King to defeat their own projects. They will rather endeavour to persuade or alarm him into a compliance. Shall no other Subject approach the Throne, or tender his advice? If he cannot, the act is done, and the mischief irrevocable!—Away with such Libels on our Constitution! Every Subject has an equal right with His Majesty's Ministers, each in his several station, to oppose the enactment of a Law which he disapproves. If a Member of either House of Parliament, in debate and by his vote; if a private Sub-  
ject,

ject; by petition or remonstrance to each and every branch of the Legislature; and in the exercise of this right, the private Subject is no more punishable for the advice given, than a Member of either House of Parliament for the vote which he gives. In the manner of tendering this advice to the King, there has, by immemorial custom, prevailed a distinction between a Peer and a Commoner; but this distinction is merely in form, not in the essential right. A Peer tenders his advice in the more dignified manner of demanding an Audience; the Commoner, in the form of Petition, or, if he be angry, of a Remonstrance. Whenever the private Subject shall be prosecuted for petitioning the King not to assent to a proposed Law, then will some late threats be executed, of impeaching a Peer.

The public Papers have traduced Lord North, by imputing to him an opinion, that the Petitions of the Subject were confined by law to requesting a place, or some personal boon or favour. It is impossible the noble Lord could have advanced such an absurdity in the face of the Bill of Rights,  
and

and the constant unquestionable practice from that hour to the present. The doctrine was indeed advanced by Mr. Justice Allybone, on the trial of the Seven Bishops, but reprobated by the other Judges, though dependant at that time on the Crown; condemned by the verdict of the jury, and execrated by the universal suffrage of the nation. This national triumph was recorded at the Revolution in the Bill of Rights, and remains an important article in that solemn compact and deliberate recognition of our National Rights. It is in truth, a fundamental principle in *every free state*, that *all the subjects* have an *interest* in the Laws and Constitution of their Country.

If the King, or those who advised him, were responsible for his act, as an independent co-ordinate part of the Legislature, their situation would be perfectly singular in this country. Are the Ministers responsible for their own acts? Certainly not. As Members of either House, they are amenable only to the Assembly in which they sit, for the most indecent violence in urging their sentiments. Why? Because to question their  
conduct

conduct before any other tribunal, would destroy the independence of that Assembly of which they form a part. Cannot they, as Members of Parliament, listen to the reasoning of others? Or, is it not rather their duty to obtain every possible information? Is the King the only person in his dominions to whom this liberty shall be refused—on a subject—upon which, by the forms of the Constitution, he is compelled finally to decide? The Supreme Authority is vested in the Three Estates jointly, and it is by positive law criminal to affirm, that one or both Houses of Parliament possess any Legislative Authority without the concurrence of the King. But if this concurrence must depend on the advice of Ministers, and Ministers are responsible to Parliament for this advice, the right of the Crown is gone; because the exercise of it must depend on the pleasure of the two Houses, and the King becomes a mere subordinate instrument in their hands; not an Independent Estate in whom a Legislative Authority resides with the consent of the Lords Spiritual and Temporal, and the Commons of Great Britain, in Parliament assembled, as every statute declares. In short, to  
 affirm

affirm that one of the Three Estates, in whom jointly the Supreme Power resides, is directly or indirectly accountable to the other Estates, is a contradiction in terms; and is, in other words, to affirm, that the Supreme Legislative Power resides in the two Houses of Parliament, exclusive of the Crown:

Perhaps it may be said, all this reasoning is just, but the sentiments of his Majesty ought not to be disclosed while the Bill depends in either House of Parliament, because this may influence the decision. To answer such Utopian purity in argument, may be difficult to a mere theorist: Surely, however, the objection is singular from those, who were not contented with the authority their situation, as Ministers, afforded; who openly endeavoured in both Houses of Parliament to avail themselves of the influence of the Royal Name, by an authoritative contradiction of the report, that his Majesty was averse to the Bill; and who now declare that they, the Ministers of the Crown, possessing the disposal of all subordinate stations, had canvassed *before debate*, and obtained promises of votes sufficient to secure a safe passage to their Bill, even before the parties, thus to be deprived of their rights and property, had been

heard in their defence. Is this constitutional? or does corruption put on incorruption when administered by their hands? The whole of this alarming violation of the Constitution, amounts therefore to this, that the Ministers having, by false pretences, improperly obtained the promise of Peers before debate; and the subsequent debate having discovered these pretences to be false, were deceived in the event. I however affirm, that the only criminal part of the transaction, as here stated, is the suppose promised *required* and *given*. Far be it, however, from me, to impute any other motives to individuals, than that sincere conviction which certainly operated on the House at large. He who fabricates such tales, is the libeller of the Peerage, not he who reasons upon them.

The Lords ought certainly to act as Legislators with perfect independence; and every act of others which violates that independence, is always indecent, often criminal. Yet in a Government where offices of mere emolument are held during pleasure, and where requisitions are daily made by *Ministers*, on the gratitude of those who hold them, some indulgence is due to the Sovereign, who, while

while thus Ministers are busy, might wish himself not to be wholly forgotten. My judgment here dictates a sentiment which in my breast is perfectly sincere. The desire of the Sovereign to avoid an invidious exercise of Prerogative, I think an honourable and laudable motive in the Peers, whom this motive might influence. The Peers undoubtedly are a distinct and independent Estate; their peculiar office, however, is to act as an intermediate power between the Crown and the popular part of our Government, and to moderate the excesses of both. If we now hear so much of the great Majority in the House of Commons; if the rejection of the Bill by the House of Peers has excited so much violence; and if the attempt is now to be renewed for the purpose of compelling the compliance both of the King and Peers, what might be expected, had the King alone rejected the Bill? A conflict might have ensued, which it well became the House of Peers to intervene and prevent,

Let us suppose, for a moment, that the Lords of the Royal Household, voting with the King instead of the Minister, deserve all the epithets which the most violent may



think fit to bestow; another question then occurs—By whom is the independence of the Peers to be vindicated?—In 1641, both Houses concurred in condemning the direct interposition of the Prince, who proposed an amendment to a Bill depending in Parliament. This must certainly be admitted to be a more direct violation of the Freedom of Parliament than the present; and yet, if I remember right, the House to whom the Message was sent, first vindicated their own independence by a Vote, and then desired the concurrence of the other House in an Address, condemning a practice, which might in its example ultimately affect the freedom of both. Even in those violent measures of the Long Parliament, which afterwards deluged this country with blood, the rules of public decorum were for a time observed. It was not then discovered, that the *voluntary, unsought interposition* of one House of Parliament, was the best means of preserving the *independence* of the other—or that *independence* could be consistent with *patronage* and *protection*. Is it not palpable, that the House of Commons are now doing the very thing they condemn in the Crown—encroaching upon the independence of the Peers?

The

The President Montesquieu, who affirms that Liberty appears in our constitution of government as in a mirror, proceeds with a masterly hand to dissect its several parts, and explain the principles from which that Liberty is derived. Among the first he states this: "When the Legislative and Executive Powers are united in the same person, or in the same body of Magistrates, there can be no Liberty; because apprehensions may arise, lest the same Monarch or Senate should enact tyrannical laws, to execute them in a tyrannical manner." He then shews the manner in which the Legislative Power is distributed between the Representatives of the People, a body of Hereditary Nobility, and the Crown: To the two former the *power of resolving*; to the latter the *power of rejecting*. "By the *power of resolving* I mean," says he, "the right of ordaining by their own authority, or of amending what has been ordained by others. By the *power of rejecting*, I would be understood to mean the right of annulling a resolution taken by another."

Demon-

The

Demonstrating the necessity of vesting this latter power, together with the nomination to all offices of Executive Government, in the hands of the Monarch, the great Author of the Spirit of Laws, as if he had foreseen our present situation, adds, “ But  
 “ if there was no Monarch, and the Executive Power was committed to a certain number of persons selected from the  
 “ legislative body, there would be an end  
 “ of liberty; by reason that the two powers  
 “ would be united, as the same persons  
 “ would actually sometimes have, and  
 “ moreover be always able to have a share  
 “ in both.” If therefore the Executive Power of Government be really vested in the persons so selected, self-chosen, independently of the will of the Monarch, we have no King, the Constitution is subverted, and our Liberties are gone. Do not the Leaders of the celebrated Coalition openly boast, that they remain an unbroken body?— That all have resigned as one man? And that an Administration formed in the face of their power, cannot continue three days? Is not the attempt of the King to nominate to the several departments of Executive  
 Government,

Government, made the object of their derision in the House of Commons, the seat of their power? Do they not openly demand, that the King shall not break that power, by dissolving the Parliament? I, an humble individual, who have no personal advantage to hope from the prevalence of any Party, do not hesitate to exclaim, that shall that formidable phalanx henceforward transgress the bounds of their legislative character; shall they attempt indirectly to seize the Executive Government, by rendering it impossible for others to hold it, the King is bound by the duty which he owes to the country, to dissolve the Parliament, and appeal to his People.

F I N I S.

