

A
C A U T I O N
T O T H E
D I R E C T O R S
O F T H E
E A S T - I N D I A C O M P A N Y,

With regard to their making the
Midsummer Dividend of Five per Cent.

W I T H O U T
Due Attention to a late ACT of PARLIAMENT,
and a BY-LAW of their own.

“ Upon the Whole, I will beg Leave to tell what is really
“ my Opinion: It is, that it be repealed absolutely,
“ totally, and immediately.”

A late celebrated Speech.

L O N D O N:
Printed for GEORGE KEARSLY, in Ludgate-Street.

M D C C L X V I I .

UNIVERSITY OF CALIFORNIA
AT LOS ANGELES

A
CAUTION
TO THE
DIRECTORS
OF THE
EAST-INDIA COMPANY,

With regard to their making the

Midsummer Dividend of Five per Cent.

WITHOUT

Due Attention to a late Act of PARLIAMENT,
and a By-Law of their own.

"Upon the whole, I will not leave to tell what is really
"my Opinion: It is, that it be repealed absolutely,
"totally, and immediately."
A late celebrated Oracle.

L O N D O N:
Printed for George Kearsley, in Duke-Street.
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CAUTION

TO THE

DIRECTORS, &c.

GENTLEMEN,

PERHAPS there never was such a necessity, for an address to you upon the subject of *caution*, since the East-India company was established, as at present.---Your great successes in India, have drawn upon you the envy of your own countrymen, as well as the other European powers; the great increase of your dividend, has alarmed the proprietors of other funds for their own property; the differences among yourselves, and your fellow-

B proprietors,

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proprietors, have furnished this envy, and these fears, with the means perhaps of overturning your constitution.

Tho' I will not presume to determine, whence these differences arose, or who have been to blame, that not being part of the present design, you will agree with me they have drawn upon you the notice of the legislature, and have produced an act of parliament, that affords either party but little cause for rejoicing, however grateful it may be to the public. I must suppose you would wish to keep your *golden fleece* to yourselves---union among yourselves would have secured it---but your differences have exasperated the watchful dragon, the *guardian* of this *treasure*, and you now only hold it in *participation*---A strange *participation* too, where the public is to receive four hundred thousand pounds, while you are to receive *nothing*---I say *nothing*---for I shall endeavour to prove you cannot make your dividend of 5 l. *per cent.* due the 5th of last July, nor will you be able, as things now stand, to declare the

dividend

dividend of 5 l. *per cent.* at Christmas next.

I am satisfied that such a consequence as this, will not be admitted without some proof; but I should conceive very little proof necessary, to awaken your *caution*, at the time you are going to pay the 5 l. *per cent.* dividend, if it is but hinted, that it cannot be done without incurring a danger of the censure of parliament. I presume only to recommend *caution*, but I will submit to your better judgments, the reasons which convince me, that while the late act of parliament, for regulating your dividends, remains in force, you cannot divide the 5 l. *per cent.* which you have declared payable the 5th of July last, nor can you declare, or make the like dividend of 5 l. *per cent.* at Christmas next.

I will set down the proper clauses in the several acts of parliament, with a letter of the alphabet before each, for the convenience of referring to them, as occasion may offer.

CAP. 49. A.

“ That no dividend shall be made by
 “ the said company, for, or in respect of
 “ any time, subsequent to the 24th day of
 “ June, 1767, otherwise than in pursu-
 “ ance of a vote, or resolution, passed by
 “ way of balloting, in a general court of
 “ the said company, which shall have been
 “ summoned for the purpose of declaring a
 “ dividend, and of the meeting of which
 “ general court, seven days notice at the
 “ least, shall have been given in writing,
 “ fixed upon the Royal Exchange in Lon-
 “ don.”

IBID.--- B.

“ That it shall not be lawful, for any
 “ general court of the said company, at
 “ any time between the eighth day of May,
 “ 1767, and the beginning of the next
 “ session of parliament, to declare, or re-
 “ solve upon, any encrease of dividend,
 “ beyond

“ beyond the rate of 10l. *per cent. per ann.*
 “ being the rate at which the dividend
 “ for the half year ending the 24th day of
 “ June, 1767, is made payable.”

CAP. 48. C.

“ That, from and after the 10th day
 “ of July, 1767, no declaration of a divi-
 “ dend shall be made, by any general
 “ court, of any of the said company's,
 “ other than one of the half yearly, or
 “ quarterly general courts, at the distance
 “ of five calendar months, at the least,
 “ from the last preceding declaration, of
 “ a dividend, and that no declaration of
 “ more than one half yearly dividend,
 “ shall be made by one general court.”

29. BY-LAW. D.

“ That no *alteration* be made in the di-
 “ vidend, on the capital stock of this
 “ company, without first giving six months
 “ publick notice.”

By clause A, it appears that no dividend can be made, after the 24th of June, without the vote of a general court, (and by clause C, that must be a quarterly court) called for the purpose of declaring the intended dividend, with seven days previous notice thereof, in writing fixed upon the Royal Exchange.—by the resolution, of your court of directors, of the 22d of May last, as well as by your uniform practice in making dividends, the half year's dividend of 5 l. *per cent.* declared in September last, and now in course of payment, was due the 5th of July last, and that day, and not the 24th of June, is the day on which this dividend must be understood to be made, in consequence of the September declaration. Now as this dividend declared to be made on the 5th of July, is made for and in respect of time subsequent to the 24th of June, and is made not in pursuance of a vote, carried by ballot, in a general quarterly court, summoned for the purpose of declaring a dividend, with seven days notice of such a meeting, given in writing and fixed upon the Royal Exchange,

change, it is not warranted by the act, but is, according to the plain and obvious construction of the act, *illegal*.

I have heard two objections, and two only, made to this construction; one, that the legislature was mistaken as to the time, in which the dividends are always made by this company, supposing them payable the 24th of June, instead of the 5th of July, and that they did not intend to prevent your dividing 5l. *per cent.* at Midsummer. The other, that if they were not mistaken, and if they did intend to prevent your dividing the 5l. *per cent.* at Midsummer, the act itself fails in this intention, since it only prevents your dividing for eleven days, being the interval between the 24th of June and the 5th of July, and you are, on this account, left at liberty to pay the 5l. *per cent.* after deducting the proportional part for those eleven days.

As to the first, I think nothing can be more absurd, than to suppose that the wisdom of the legislature, should be capa-

ble of such a blunder. In order to this, we must suppose, that they who, in the same session, made a law with respect to the publick funds, in which the dividends are fixed for payment on the 5th of July, and the 5th of January, could take it for granted that the India dividends were fixed for the 24th of June and the 24th of December; and we must suppose too that they could take this for granted, which is so contrary to the general practice in other funds, without making any enquiry of the directors, who daily attended, and were examined while the bill was passing: for if they did make enquiry, they must have heard that this company observed the same days of payment with the government, and have done so invariably from the original institution; and in such a case, the blunder can hardly be called the effect of oversight, but a wilful blindness.

This absurdity is too gross to pass current, but the clause (C) in cap. 48 of the said act, will shew that the parliament were not ignorant, that the dividends
would

would become due on the 5th of July, but have proceeded on the consideration of it's being due on that day. In this clause, they say, that no *declaration*, &c. shall be after the 10th of July. Now when they had in contemplation the *making* of a dividend, they mentioned the 24th of June, a time preceding the 5th of July, in order to prevent it; when they had in contemplation the *declaring* of a dividend, they say the 10th of July subsequent to the 5th, to distinguish between the terms *making* and *declaring*, which have been so often confounded.

It must appear highly improbable to every impartial mind, that the legislature should enact a law, to regulate the making of dividends, without knowing the time, when they are made payable; or if they were ignorant, that they would not enquire, when the directors attended to answer all enquiries, and were actually examined from day to day, while the bill was framing; and very few will be hardy enough to affirm, that if the parliament were
aware,

aware, that the dividends would be due the 5th of July, such a blunder could creep into the act of parliament. The most natural construction, upon reading the said act, is, that the 24th of June was not inserted by mistake, but by design, and that the legislature plainly intended, in the restraining clauses, that the India company should make no dividend at all from Christmas last, which was before the encrease of the dividend, to the beginning of the next session of parliament; in which time, all your homeward-bound ships would arrive, the Midsummer annual account would be made up, and the ministry would have an opportunity of learning from Lord Clive, what was the real situation of the affairs in India.

I know it is commonly imagined to have been the intention of parliament, to rescind the resolution of the 6th of May about the 6 l. and 1-4th *per cent.* but this imagination is contrary to fact, for that resolution is unrepealed, unrescinded, and unless the parliament, at the next meeting, shall make

some

some law to prevent it, you may divide 6 l. 1-4th *per cent.* at Christmas next---No single word, in either act of parliament, mentions the resolution of the 6th of May, and the act which restrains the dividing between the 8th of May, and the beginning of the next session, manifestly avoided mentioning the 6th of May, and made the interval of restraint commence on the 8th, to shew it did not mean to rescind the resolution of the 6th of May. Had the parliament designed to restrain the dividing according to that resolution at Christmas next, the interval of restraint would have gone beyond the 5th of January---as that clause, which restrains the present dividend, the manifest object of the parliament, stopt short of the 5th of July, and would not have stopt, as it has done, at the beginning of the next session of parliament.

The preamble of the act professes nothing for its object, but “ to secure as well the permanent interest of the company,

“pany, as the state of credit both pri-
 “vate and public, from the mischiefs
 “which must ensue, from an impro-
 “per, and improvident increase of the
 “dividends of the said company.” Thus
 the parliament had in view only im-
 proper and improvident dividends, divi-
 dends made without a due regard to the
 circumstances of the company, whether
 the same should be 12 l. 1-half *per cent.*
 10 l. *per cent.* or 6 l. *per cent.* And I
 may appeal to yourselves, Gentlemen,
 whether you had any objection to the divi-
 dend of 12 l. 1-half taking place at Christ-
 mas, that did not arise from a considera-
 tion of these circumstances, from your
 apprehension that your finances would not
 be such at Christmas, as to enable you to pay
 off the company’s debts, to pay the 200,000 l.
 the first half yearly payment to government,
 and to make a dividend of 6 l. 1-4th to the
 proprietors. And I would ask, Whether
 any other consideration weighed with the
 legislature? You will confess, as the un-
 doubted truth is, that this alone made you
 wish,

wish, that parliament would interpose to prevent the dividing 6 l. 1-4th at Christmas. And I affirm this alone determined the wisdom of the legislature to interpose for that purpose. They have interposed, and what have they done? They have stopped your making any dividend till the meeting of parliament. But they have determined nothing with respect to the 6 l. 1-4th *per cent.* The resolution of the 6th of May stands unrepealed; and if it shall then appear, such an increase will not be improper, and improvident, at Christmas next, if, I say, Gentlemen, after the arrival of the homeward-bound ships, after the examination of the annual account, which has never yet been produced, if after hearing the opinion of Lord Clive, concerning the real situation of your affairs in India, the flourishing state of your trade, the regular payment of your revenue, and the stability of your possessions, you shall think that the 6 l. 1-4th *per cent.* may be paid without giving any cause of complaint to the creditors of the company,

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and

and join with the general court in a representation to the ministry, that such an encrease will not be improper, or improvident, at Christmas, there can be no reason to suppose, that parliament will again interpose, by a new act, to restrain your making such a dividend; and if they do not interpose by a new act, you may divide 6l. 1-4th *per cent.* by a due exercise of your present powers, as will be shewn in another place. But should there, on the contrary, be any room, at the meeting of the parliament, to believe such a dividend at Christmas will be improper and improvident, it is no doubt the intention of parliament to make a new act, the next session, to restrain your dividing 12l. 1-half *per cent.* 10l. *per cent.* 6l. *per cent.* or any *per cent.* at all, if it shall be so necessary, in order to prevent the mischiefs recited in the preamble before mentioned.

The remedy provided by the wisdom of the legislature, is, according to this construction,

struction, adequate to the mischiefs apprehended; as at the time of making the act, the dividend even of five *per cent.* was proved by you, and nothing can be clearer than that you did prove it, to be improper and improvident, they have restrained it till the meeting of parliament, and as it may then be represented by you, that such a dividend will not be improper, or improvident, they have made the time of restriction stop at that period, to give you a future power of dividing that sum, or 6l. 1-4th agreeable to the resolution of the 6th of May, if they see no reason for interposing against it. But if the legislature had not restrained you from making any dividend, between the 24th of June, and the beginning of the next session of parliament, if they had left you to divide the 5l. *per cent.* dividend for the 5th of July, they would have provided no present remedy at all.

It is well known, you opposed the increase of dividend to 10l. *per cent.* in September

tember last, and that you opposed it, upon the principle of it's being improper and improvident, from the state of the account, then produced by you to the general court. You have frequently declared since, you thought this measure of raising the dividend to 10 l. *per cent.* *inexpedient* and unwarrantable, as the company have not discharged their debts-- you opposed the resolution of increasing it to 12 l. 1-half on the 6th of May, in no other manner, but by producing in court the same state of the company's affairs, upon which you opposed the increasing it to 10 l. *per cent.* in the month of September, and declaring the state of affairs was not altered since that time; from whence it was to be understood that there was, in your opinion, no better reason for dividing 6 l. 1-4th in May, than there had been for dividing 5 l. *per cent.* in September. On this principle, and on this principle alone, you called in the aid of the legislature, to assist you in preventing the mischief, that must be produced by such im-
 proper

proper and improvident dividends, and on this principle alone the parliament interposed to support you---you proved to them you could not divide 6 l. 1-4th, you proved too, by the same arguments, that you could not divide 5 l. nay, that you could not divide at all; for I may with confidence affirm, that not a single argument was advanced to prove the dividend of 6 l. 1-4th to be improper and improvident, that did not extend to prove the dividend of 5 l. *per cent.* or any dividend at all, equally so.

I am warranted to go farther. If the company would not, in your opinion, be in a condition at Christmas to divide 6 l. 1-4th, when the homeward-bound ships should have arrived, there was much less reason for suffering you to divide 5 l. *per cent.* at Midsummer, while the ships were still upon the seas, the annual account unsettled, and the state of your affairs in India unknown. And yet, after this it seems, we are to suppose the legislature did not

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intend

intend to prevent you making the 5*l.* *per cent.* dividend declared to be due the 5th of July. We are to suppose, that they did not intend to hinder your dividing after the rate of 10*l.* *per cent.* at Midsummer, when any dividend at all was proved improper and improvident, but that they intended to hinder your making a dividend after the rate of 12*l.* 1-half *per cent.* at Christmas, when future arrivals, and future accounts, might make such a dividend proper and expedient.

We all saw with concern, that the members of both houses were detained in town, to lend the wished-for interposition; had the Christmas dividend been the sole object of their attention, the business might have been postponed till the next session, as that is expected to take place before this dividend can be made; and the rather, as those lights may then be had, which could not be expected, though much wished for, at the end of the last session. But as preventing the dividend of 5*l.* *per cent.* declared

clared for the 5th of July, was the principal object, it was necessary to settle that business before the session was closed; and I believe you are satisfied, Gentlemen, there was sufficient evidence laid by you before both houses, to prove a dividend of 5 l. *per cent.* improper and improvident at that time, whether you agree to determine a dividend with the deputy-chairman upon a cash account, or with the chairman upon a general account. The wisdom of the legislature has stopt your dividing at Midsummer, while your ability is doubtful, and has left it in your power, after the beginning of the next session, to make a dividend of 6 l. 1-4th at Christmas, if your ability is no longer doubtful at that time.

I presume, the first objection is by this time sufficiently answered, that it is clear the legislature made no mistake when they inserted the 24th of June; and that they meant to prevent any dividing between that day and the meeting of parliament.

I shall now proceed to the second objection, *viz.* That whether the legislature meant to prevent the dividend of 5*l.* *per cent.* taking place the 5th of July or not, the act will not have the effect contended for—it is insisted, that the clause (A) which restrains the company from making “any dividend, for, or in respect of, any time subsequent to the 24th of June, 1767,” includes no more than the eleven days, between that day and the 5th of July, and will not affect the rest of the half year, but a proportionable dividend may be made up to the 24th of June.

By a resolution of a general court, held in September last, the company declared, that they would make a dividend on the 5th of July, then next following, of 5*l.* for every hundred, for the half year between the 5th of January and the 5th of July following. The sum to be divided, is 5*l.* for every hundred pounds. The time for which it is declared, is half a year. The day of payment 5 July. If the eleven days are deducted,

deducted, you will divide only 4l. 13s. 10d. halfpenny, and not 5l. for every hundred. The dividend will not be for half a year. Nor will it be due the 5th of July, but the 24th of June.—This, and the September resolution, will be as different as any two propositions can possibly be, in which no single term is common to both. And such a dividend as this, can no more be said to be made by virtue of the resolution of September, than it can be said to be made by virtue of the preceding resolution, for dividing only 3l. *per cent.* or that of the 6th of May for 6l. 1-4th.

The dividends on the India company's property, are different from those on the government stock. The latter are intended by parliament, to continue a certain, or uncertain number of years, and the rate of interest is fixed unalterably, during the continuance of such stock, to be paid half yearly, on the 5th of January and the 5th of July; the India dividends have been declared by the company, when, how, for what time, and for what sum, they

please. They might, before the 29th by-
 law was made, divide monthly, weekly,
 or on a distant day that cannot be called
 either a weekly, monthly, or half yearly
 payment; and before the appointed day,
 they might vary the dividend, might in-
 crease, decrease, or annul it.—Their usual
 practice has been, to declare a certain
 specific sum to be paid on a certain day,
 for the half year between such a day and
 such a day, and not as the government
 does, an annual sum payable half yearly.—
 ✓ They have not declared by the resolution
 of September an annual dividend of 10 l.
per cent. payable half yearly, in which
 case, perhaps, an apportionment might
 be admitted, but they have declared, the
 specific sum of 5 l. for every hundred, to
 be paid on the 5th of July; in like man-
 ner as on the 6th of May, they did not
 declare an annual dividend of 12 l. 1-half
per cent. but the specific sum of 6 l. 5 s.
 to be paid for the half yearly dividend on
 the 5th of January next.

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The general court in September had only in contemplation the apportionment of the dividend to the quantity of stock possessed by each proprietor; the division of time was never under consideration; the time was given, *viz.* half a year between the 5th of January and the 5th of July; had the quantity of stock been given, *viz.* had every proprietor held 100 l. and no more or less, the court would then have declared, that every proprietor should receive 5 l. on the 5th day of July. If the time is altered, the original proposition is changed; the proprietor of 100 l. stock, will not receive the 5 l. *per cent.* that was declared. And what is offered in lieu of it, is not to be found in any part of the resolution, under which it is pre- to be made.

Again, if any case can be supposed to have happened, before the passing of these acts, that might have made it necessary, or prudent, for the India company to make

a dividend for four months, instead of six, would you, Gentlemen, have presumed to make a proportionable dividend for four months, under the resolution, that declared a dividend for six, or would not you rather have called together the proprietors to get this new resolution made by a general court? you undoubtedly would, you certainly must; such a change in the time of making dividends payable, must have been stiled an alteration in your dividend; and the 29th by-law would have made it necessary for you to give six months notice of such an alteration. I would ask, where the difference is, whether the alteration be from six months, to four months, or from 182 days, to 171, which is the present alteration? the one is an alteration of months, the other of days, but they are equally alterations, the alterations equally demand a new declaration, and are equally objects of the 29th by-law. And you can no more divide for 171 days, ending the

24th

24th of June, under a declaration that orders you to divide for 182, ending the 5th of July, than you could make three payments of four months in a year, under a declaration of two half yearly one's.

The legislature, in the act of parliament for the alteration of the stile, has said, that Midsummer-day shall fall on the 24th of June ; because this alteration would have carried it otherwise to the 5th of July ; the stocks however have not been affected by that act, the 5th of July, and the 5th of Jan. have been constantly the days of payment, for the Midsummer, and Christmas dividends, for most of the government as well as the East India stocks. Would any administration alter the days of payment of the government stock, without the sanction of parliament? you will not say, Gentlemen, they would. I will venture to affirm for you too, that you will not make this trifling alteration, of dividing for 171, instead
of

of 182 days, or, at least, that you will first take the opinion of a general court upon it, that your enemies may not have room to say, that you did not care to call a court for this purpose, from a consciousness, that the 29th by-law, and the acts of parliament, would stand in your way, if you submitted this difficulty to a serious discussion. They certainly do stand in your way, the legislature intended they should stand in your way, and so long as that by-law, and these acts of parliament, remain in force, it will be impossible for you to divide the 5l. *per cent.* now in course of payment.

Before I dismiss this part of the argument, I must submit to your consideration two necessary consequences, that must follow from your determining to make the dividend of 4l. 13s. 10d. halfpenny *per cent.* payable the 24th of June, instead of the 5l. *per cent.* that was declared payable the
5th

5th of July. First, a great confusion must arise in the foreign contracts; a Dutchman at Amsterdam sells stock, on the 25th of June, to another of the same place; the dividend is understood by each party to be the property of the purchaser, as no proprietor, foreign or domestic, is ignorant, that the India Midsummer dividend is payable, and has ever been payable, the 5th of July; and yet, according to this determination, the 4l. 13s. and 10d. halfpenny *per cent.* will be the property of the seller. Secondly, it is well known much of the India stock is held in trust, that A. shall enjoy the dividends for his life, and after his death they shall go to B. I am told such a case has happened, in which, A. died the 27th of June last, it is certain the dividend would belong to B, if it is paid the 5th of July; but it will go to the executor of A, to the prejudice of B, if you pay the 4l. 13s. 10d. halfpenny for the dividend due the 24th of June.

These are the reasons which induce me to think, Gentlemen, that the legislature did not mistake the time the dividends become due, that they did not mean the 5th of July, when they inserted the 24th of June, that they intended to restrain the company from making any dividend, before the beginning of the next session of parliament, and that they have effectually restrained you by the clause A.

Yet I will suppose, for the present, you still think that the legislature had no such intention of restraining the present dividend of 10 l. *per cent.* and inserted the 24th of June, instead of the 5th of July, imagining the dividend became payable on the former, instead of the latter of those days; would you, Gentlemen, in such a case, take upon yourselves to divide contrary to the express words of an act of parliament? And would you justify this disobedience to the law, by imputing a blunder to the only
body

body upon earth in which we can allow infallibility? It will not surely give offence, if I presume you may be mistaken in your construction of the act, while you fix the charge, of saying one thing, and meaning another, upon the king, lords, and commons of this realm; and should your judgment not be infallible, and in your construction of this law, the mistake should be on your side, ignorance will be but a poor plea for the breach of an act, which you arraigned upon the same principle. If the law maxim, *ignorantia legis neminem excusat* is ever to be justified upon the principle of humanity, it will be in this case, where it interprets the law, contrary to the express and obvious meaning of it.

If, for the sake of argument, we admit that the legislature may have committed this blunder, do you allow it to be consistent, with the rules of true policy, to let
those

those who are the objects of a law, become the interpreters, much more the correctors of it? Suppose a law should prove hurtful to society; let us suppose, if such a case can be supposed, it would break in upon the security of life, liberty, and property, which it is the sole object of law to support? No power in this kingdom, can alter such a law, but that which made it; and the judges, who are the interpreters of the law, are bound to determine all cases which come under that law, according to the plain and obvious construction of it. They cannot correct; their province is, to tell what the law is, not what it should be. Will you assume a power to yourselves, not granted to the king's judges? Will you, Gentlemen, presume to interpret, that the legislature should have said the 5th of July, instead of the 24th of June; and determine, that the dividend shall be made which stands restrained by the express words of that law?

If

If you will correct the law, why will you not do it with as little violence as possible? Why will you not alter 1767, and say it should be 1768? In that case, the law would not take place this twelve month, there would be no doubt about your dividends, in the mean time, and this will be but the alteration of a single figure, while what you contend for, changes words as well as figures.

You will say, no doubt, that you do not desire the proprietors should divide 6l. 1-4th at Christmas, which they would, if this construction was allowed; they are not in cash, they have not paid their debts, is certainly a good argument, but not insuperable, against dividing; you opposed the dividend of 5l. *per cent.* in September, upon the same principles. That you should not be in cash, that you had not paid your debts,

was

was your only objection at that time; and we now find you straining the law, making an act of parliament say it meant July, when it said June; and intended to insert the figure 5, when it made use of 24, in order that you may now make this dividend, which you opposed when it was declared in September last. You would now make the legislature say, it was not their meaning to rescind this dividend of 5 l. *per cent.* when they have rescinded it in direct terms, because you proved you should not be in cash, and should not have paid your debts at the time it would be payable.

I will venture to affirm too, that you would not be half so inconsistent, in using the same industry, and following the same method of interpretation, to divide after the rate of 12 l. 1-half *per cent.* at Christmas; for the legislature, as we have proved, have not shewn their intention of rescinding

rescinding absolutely, this 12l. 1-half, while the 10l. *per cent.* is restrained as matters stand, beyond all dispute, and can never be made, but in defiance of the power of parliament, and without such a defiance, as, if it is to be justified, will justify the violation of all law, divine and human. A law of England says, you shall *not* divide up to the 5th of July, being after the 24th of June; you substitute the 5th of July in the place of the 24th of June, and then say, you may divide up to the 5th of July. The law of Moses says, Thou shalt *not* steal; you strike out the word *not*, by a less violent alteration, and then theft becomes as little a crime in England, as it was at Sparta.

But I would beg leave to ask, if the mistake contended for should be admitted on all hands, would you take upon yourselves to correct it, or wait till it was rectified by parliament? If when a deed is

D

executed,

executed, a mistake is discovered, it cannot be corrected without the privity, and consent, of all parties; if blunders are made in law pleadings, that are upon record, they cannot be amended without the leave of the court, which has the custody of such records: a trustee in such deed would not pay a sum of money contrary to the express words of the deed, but would wait till the matter was set right; nor would a party in any cause presume upon a mistake in a record, to disobey the orders of a court of justice; and will you, Gentlemen, give less authority to an act of the legislature, than to a private deed, or the record of any petty court of law?

We must suppose the legislature will be as jealous of their resolutions, as the East-India company are of theirs. You cannot have forgot the proceedings of a late general court, upon the subject of dismissing the prosecutions brought against some
of

of your servants abroad.--This business was brought on at that court, on account of the clamours raised without doors, and at the recommendation of a worthy member, to whom you owe the two acts of parliament, that you then so much desired to be made, and now so much wish to break through. It was proposed at that court, that the question for dismissing these prosecutions should be put to a ballot, to convince all the world, that the resolution of the 6th of May, for this dismissal, which was confirmed on the 8th, was not a partial one, but agreeable to the sense of all the proprietors taken at large. I believe there was not a proprietor in the court who did not wish that such a ballot could be taken; but when it came to be considered, that the question then proposed to be submitted to a third decision, had been unanimously voted on the 6th of May, and as unanimously confirmed on the 8th, the great importance of giving weight, and stability,

to their resolutions, determined the wisdom of that court, to put the propriety of such a measure to the test of a previous question, which was proposed, put, and carried, by a great and respectable majority, against a third consideration.

You will after this, Gentlemen, assume with an ill grace, that the parliament are not to support these resolutions; however you may wish to have them reconsidered, or repealed. They certainly will support their resolutions, and I need not remind you that the breach of an act of parliament will be a forfeiture of your charter.---And though a gentle administration might treat your dividing upon such a notion of a mistake with great lenity, what are you not to expect, if the minister should say, you have made the dividend we meant to restrain; we restrained it, because you convinced us it would be improper and improvident; you have since changed your
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mind, and you would alter the law? Here even the lenity of the present ministry cannot avail you; your charter would be forfeited, and the world would not pity, but laugh at your presumption. But to suppose still, that the legislature are mistaken, may we not suppose too a change in the present administration, and that a future minister may embrace this, as a fair opportunity, to seize upon the charter, or at least to squeeze the company, and make them purchase a forgiveness at a very high price? If we plead that we injured nobody, it may be said, we have insulted the dignity of parliament, and a minister, who may be no friend to the company, will have a very plausible pretence to make you part with your millions for the public good.

However heavy you should find the rod of power, the world will not then hearken to your complaints of severity; you have already drawn upon you the cen-
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sure of your fellow subjects, by the resolution of the 6th of May, with regard to your dividends, which they say were made, in defiance of the king's ministers. The previous question upon the affair of dismissing the prosecutions has not retrieved your credit among them. What will they not think, what will they not say, if you divide thus in violation of a recent act of parliament? They see the legislature has determined you shall not divide, because you have proved you cannot divide; will they not say now, that you have determined, in your turn, you will divide, because the legislature has said you shall not divide?

I conjure you therefore, Gentlemen, use the utmost caution at the present crisis, call in the ablest assistance, whilst you are making a construction on these acts of parliament, nor presume too far to trust your own judgments.

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I am the more earnest in this recommendation, as I find you mistake the intention, and operation, of these acts, with respect to a Christmas dividend, as you do with respect to this you are now going to pay. I understand, it is your opinion, that in order to make a dividend of 5 l. *per cent.* at Christmas next, a court may be called in September with the seven days notice, prescribed by the said act, cap. 49, and 5 l. *per cent.* may be then declared, by a vote taken by ballot, to be payable at Christmas. I must remind you, that the vote for 12 l. 1-half, passed on the 6th of May, stands unrepealed by you, or by parliament, and by clause C. you cannot make any declaration of a dividend, but at the distance of five months from the last declaration; which five months, from the 6th of May, will not be expired, till October, when you cannot hold the Michaelmas quarterly court, because your charter, in page 36, expressly says, it must be held
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in the month of September. You cannot therefore declare any dividend till the Christmas court, as by the said clause C. every declaration must be made at a quarterly court; nor can you even then declare a dividend of 5l. *per cent.* as the 29th by-law will stand in your way, which enacts, "that no alteration shall be made in the dividend, on the capital stock of this company, without first giving six months public notice;" and such notice cannot be given of the intended alteration of dividend, from 6l. 1-4th to 5l. *per cent.* You see, therefore, that no dividend can be declared at Christmas next but the 6l. 1-4th, and that may be consistently declared, without infringing any act of parliament, or any of your own by-laws.

Do you ask then, how I would construe the late acts? and what measures I would advise you to take? My design is only to awaken your *caution*. But as a well-wisher

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to you and the company, and interested in it's welfare, I will further offer my sentiments on the conduct necessary to be observed on this occasion.

I consider the intention of the legislature, to be what is professed in the preamble of cap. 49, to prevent improper and improvident dividends: you only proved, when the affair was before parliament, the dividend at Midsummer, to be improper and improvident, because the homeward-bound ships were not arrived, the advices from Lord Clive were not received, and the annual account itself was not yet made up. It was not, nor could it at that time be disclosed to parliament, what dividend at Christmas would be improper, or improvident; the legislature has therefore restrained your Midsummer dividend, and has prevented your declaring any dividend at all, till the next session, which is expected in November; and if they shall

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then see no cause to restrain you further, you will be at liberty to declare and divide your 6l. 1-4th *per cent.* at Christmas; but if they should then find you in no better situation than they left you in the last session, you may expect to be restrained by a fresh law, in that dividend, as you are in this.

Are we then, say you, to lose the present dividend for ever? As things stand at present, I answer, yes. If you divide, you divide in defiance of the legislature, at the risque of your charter, and your own persons; if you call a general court, and, with the sanction of such a court, apply to parliament, by an humble petition, to have your Midsummer dividend restored; there will be no room to believe the legislature will not take off the restriction, if you prove yourselves in a condition to make the dividend you propose, as we may be confident they would be ready to rectify a mistake, in any act, whenever it should

be pointed out to them. I must however add, if the annual account, which the gentlemen would not suffer you to produce, at the last general court, will not bear the light, submit with patience to the present loss; but if you think it will prove the dividend of 5l. *per cent.* at this Midsummer, and 6l. 1-4th *per cent.* at Christmas, will be neither improper or improvident, you will see this restricting clause *repealed absolutely, totally, and immediately.*

I am, &c.