

358. THE TRIAL OF THE SEVEN BISHOPS: being the Trial\* of the Most Reverend Father in God, Dr. WILLIAM SANCROFT, Lord Archbishop of Canterbury, and of the Right Rev. Fathers in God, Dr. WILLIAM LLOYD, Lord Bishop of St. Asaph, Dr. FRANCIS TURNER, Lord Bishop of Ely, Dr. JOHN LAKE, Lord Bishop of Chichester, Dr. THOMAS KENN, Lord Bishop of Bath and Wells, Dr. THOMAS WHITE, Lord Bishop of Peterborough, and Sir JONATHAN TRELAWNEY, bt. Lord Bishop of Bristol, at the King's-Bench, for publishing a Libel: Trin.

4 JAMES II. A. D. 1688.

[The circumstances attending this most interesting Trial, and the characters and conduct of the reverend defendants, have been very copiously treated by Historians and Biographers. See in particular Burnet, the Biographia, and Birch's Life of Tillotson. The following short notices of these bishops are extracted from Granger:

"Dr. Sancroft, who, according to bishop Burnet, made a much more considerable figure in his college, than in the chair of Canterbury, was promoted from the deanery of St. Paul's to that dignity, upon the demise of archbishop Sheldon. He had several good, but seems to have had few or no amiable qualities. His piety did not sit easy on him; and his reservedness made his learning appear to be much less than it was in reality. He was slow, timid, and irresolute; though he acted with firmness in refusing to read the declaration for liberty of conscience, and to take the new oaths enjoined at the revolution. He was placed at the head of the church, because he was like to do no great service to it. It was reasonably supposed, that a man of so reclusive and speculative a turn, was very unlikely to disturb the court in their designs upon the religious liberties of the people. His deprivation was probably a matter of no great mortification to him; as he had raised an estate in the see of Canterbury, which was more than sufficient for one of his retired disposition. Such is the character of this prelate, as drawn by a contemporary writer, who would have considerably softened the harshness of the features, if he had been more like Sancroft, who had a generous and enlarged heart to objects of benevolence. He was highly respected, and great deference was paid to his judgment by the prelates, his fellow-sufferers, in that difficult and dangerous conjuncture for the church, which preceded the revolution: his

\* The Case of the Seven Bishops is reported in 3 Mod. 212.

conduct was indeed judicious and exemplary upon that trying occasion. He gave a thousand pounds towards rebuilding the deanery house of St. Paul's, and was very assiduous in procuring the coal act for rebuilding the cathedral. He bequeathed his valuable library, which he once intended to leave to his successors in the archbishopric, to Emmanuel College in Cambridge, where he received his education, and of which he had been master.\* Some of his pieces will set his character, as a writer in a fair point of light. Such are, 'Modern Policies;' but such more particularly, his 'Familiar Letters to Mr. North; both before, but principally after his deprivation and his retirement to the place of his nativity in Suffolk,' Lond. 1757, an octavo pamphlet. See the Index to the State Letters of Henry, earl of Clarendon, sub voc. Canterbury."

\* "After the archbishop had left Lambeth, and retired to a private house in town, Thomas, earl of Arundel, went thither to make him a visit. The prelate received him at the door of his apartment, which was opened by himself. The earl, struck with this circumstance of humiliation, and the total change of the scene in which he had frequently seen him at his palace, burst into tears. As soon as he recovered the power of speech, he told him how deeply he was affected with what he saw, and of his inability to suppress his grief. 'Oh, my good lord,' replied the venerable confessor, 'rather rejoice with me; for now I live again.' This anecdote was communicated by John Loveday, esq. who had it from the earl himself."

Granger.

"[August 30, 1688. Medals of the bishops have been lately made, with this motto, Wisdom hath built her a house, and chosen her seven Pillars; with the reverse, a church undermining by two Jesuits, with a pick-axe and shovel, and a hand pointing out of a cloud with this motto, The gates of Hell shall not prevail against it." Narcissus Luttrell's MS. Brief Historical Relation, &c.]

“ William Lloyd,\* bishop of St. Asaph, was son of Richard Lloyd, vicar of Summing, and rector of Tilehurst in Berkshire. He was master of as much, and as well digested knowledge, as any clergyman of his time. Whatever he knew, he generally knew better than other men; and was better able to display it to advantage. He was never desultory in his studies, but always mastered one branch of science before he applied himself to another. His memory was prompt, his imagination lively, and his judgment exact. He seemed to be as great a proficient in philology, history, philosophy, and divinity, as if each of these had been the sole object of his application. He was a principal reformer of the language and method of sermons; and was an admirable master of the historic style. It is much to be regretted, that so excellent a pen should have been chiefly employed in subjects of controversy, the most perishable of all writings. He supplied a great part of the materials for Dr. Burnet's ‘History of the Reformation,’ and had a great hand in polishing that excellent work. His ‘Chronologia Universalis,’ in folio, which was the most laborious of all his performances, was partly printed, but never published.† It hath already been remarked, that his Index to bishop Wilkins's ‘Real Character’ is a master-piece in its kind. It should also be observed, that his various studies never broke in upon his parochial or episcopal duties, in which he was remarkably conscientious and exemplary. His prophecies, which were but his dotages, have been the subject of much ridicule. Ob. 30 Aug. 1717.

“ Francis Turner, was son of Dr. Thomas Turner, dean of Canterbury, by Margaret, daughter of sir Francis Windebank, principal

\* Some curious particulars concerning his taking the oaths to king William and queen Mary are related in the Diary of Henry earl of Clarendon. After the Revolution, he became successively bishop of Litchfield and Coventry, and of Worcester. See in this Collection some proceedings against him (when bishop of Worcester) and his son, for interference in a Worcestershire Election, A. D. 1702.

“ There were two bishops of both names, contemporary with this prelate; one was successively bishop of Landaff, Peterborough, and Norwich; and the other of Killala and Achonry, in Ireland.” Granger.

† I shall mention it here, as a fact scarce known, that he was concerned in the magnificent work called by the name of ‘Pitt's Atlas;’ which, according to the proposals, was to be printed in eleven volumes in folio, at forty shillings a volume to the subscribers. I think only four were printed. This laborious and expensive work did not meet with encouragement.

secretary of state to Charles 1. He received his education at New College in Oxford, was some time chaplain to the king, when duke of York, and a residentiary of St. Paul's. In 1670, he was preferred to the mastership of St. John's College in Cambridge; in which preferment he succeeded Dr. Peter Gunning, and was himself succeeded by Dr. Humfrey Gower. He was afterwards preferred to the deanery of Windsor, which he held, together with the bishopric of Rochester. He was deprived for not taking the new oaths, 1 Feb. 1689-90. The next year he was accused of being a conspirator in a plot of nonjurors for restoring king James, for which some of that party were imprisoned; but he thought it prudent to abscond. A proclamation was soon after issued for apprehending him, Graham, and Penn, as traitors.—Dr. Turner was an affected writer, was author of ‘Animadversions on a Pamphlet, entitled, The Naked Truth;’ of several sermons; and ‘Letters to the Clergy of the Diocese of Ely.’ But the most remarkable of his pieces is his ‘Vindication of the late Archbishop Sancroft and his Brethren, the rest of the deprived bishops, from the reflections of Mr. Marshal, in his ‘Defence of our Constitution.’”

“ Thomas Kenn, a man respected in the court of Charles 2, for his unaffected piety, was some time chaplain to that prince, as he had been before to the princess of Orange.\* The openness of his countenance corresponded with the simplicity of his character. His sermons and his other writings had a good effect, as they were well known to be the genuine effusions of his heart. Almost all his works have a tendency to promote practical religion. He lived after his deprivation, with lord Weymouth, at Longleat; where he spent the greatest part of his time in retirement, which he well knew how to enjoy. When he was afflicted with the colic, to which he was very subject, he frequently amused himself with writing verses. Hence some of his pious poems are entitled, ‘Anodynes, or the Alleviation of Pain.’”

\* “ While he was chaplain in the prince of Orange's court, he obliged one of his highness's favourites to perform his contract, by marrying a young lady of the princess's train, whom he had seduced by means of that contract. This gave great offence to the prince. But Charles 2, was not offended at his religious intrepidity, in peremptorily refusing to admit Nell Gwyn into his lodgings, when the court was at Winchester: on the contrary, he soon after made him a bishop. The king's good sense told him, though the prince of Orange's did not, that if a man is really a Christian, his conduct ought to be uniformly consistent with that character; and that principles of conscience are of too stubborn a nature to yield, even in courts, to modes of complaisance.” Granger.

There is a prosaic flatness in his heroic poem called 'Edmund;' but some of his hymns, and other compositions, have more of the spirit of poetry, and give us an idea of that devotion which animated the author. Ob. 19 March, 1710-11."

"Dr. John Lake, who for several years bore arms for Charles I, in the civil war, was educated at St. John's College, in Cambridge.\* He rose, by the usual gradations, to the bishopric of Man; to which he was nominated by William, earl of Derby, in 1682, and consecrated in December, the same year. He had not sat two years in this see, before he was removed to that of Bristol, whence he was translated to Chichester. Though he was imprisoned with the other bishops, for refusing to cause the declaration for liberty of conscience to be read in his diocese, he is said to have entertained very high notions of regal power; and to have 'declared upon his death-bed, 'that he had been educated in, and also 'taught others the great Doctrine of Passive Obedience; which he looked upon as the 'distinguishing character of the Church of 'England; and that he would not have 'taken the oath, though the penalty had 'been loss of life.' Upon this declaration, a person of quality in the North, published 'A Letter concerning Bishop Lake's declaration of his dying in the Doctrine of Passive Obedience.' Ob. 30 August, 1689."

"Jonathan Trelawney was a younger son of sir Jonathan Trelawney, of Pelynt, in Cornwall. But his elder brother dying in 1680, he inherited the title of baronet. He was a man of polite manners, competent learning, and uncommon knowledge of the world. He was a true son and friend of the Church; and exerted himself with courage and alacrity, with magnanimity and address, in defence of her just rights and privileges. He was friendly and open, generous and charitable; was a good companion, and a good man. He was successively bishop of Bristol, Exeter, and Winchester. He had as much personal intrepidity as his predecessor in the last of these sees, and was, in all other respects, much his superior. The masterly dedication before Dr. Atterbury's sermons, is addressed to this prelate. The reader may see in it some traits of his character without the exaggerations which are too often found in compositions of this kind; and which bring the sincerity of authors in question, before we have read the first page of their works. Ob. July 19, 1721."

\* Lake was not the only bishop of this time who had born arms. See in this Collection the Cases of Compton bishop of London, vol. 11, p. 1123, and of Magdalen Colleg<sup>y</sup>, p. 83, of this volume. His portrait is at that College.

White, bishop of Peterborough, on Feb. 1, 1690, was deprived for not taking the oaths to king William and queen Mary. Thus we see that of these seven objects of the persecution of king James, five were deprived for not taking the oaths to his successors. Dalrymple with his usual disregard to exactness, says (Memoirs, Part 2, Book 4, pp. 97, 98, 4to Ed.) that five of the six surviving prelates who had been sent to the Tower by king James, refused to take the oaths to the new government.

Of Compton, Granger gives the following account:

"Henry Compton, youngest son of Spencer Compton, earl of Northampton, who was killed in the civil war, was educated at Queen's College in Oxford. Having staid about three years at the university, he made the usual tour of Europe. After the restoration, he became a cornet in the royal regiment of guards, commanded by Aubrey de Vere, earl of Oxford: but a military life not suiting his disposition, he entered into holy orders, and was in a few years advanced to the bishopric of Oxford, and afterwards to that of London. He strongly expected to be promoted to the see of Canterbury; and was greatly disappointed when it was given to Dr. Sancroft, but more, when Dr. Tillotson was preferred to it. His learning was superficial, but his great diligence in discharging the duties of his function was truly exemplary. He is said to have been 'an humble, modest, generous, and good natured man; but weak, 'wilful, much in the power of others, and 'strangely wedded to a party.' He was emphatically called, The Protestant Bishop, for the noble stand he made in defence of the rights of the Church in this reign, when spirit and resolution were much more necessary than learning. He patronized converts from Popery, and was a generous friend to the French Protestants who fled hither from the persecution of Lewis 14. He appeared in arms at Nottingham, a little before the revolution, and declared his readiness to fight for the prince of Orange. He was a true son and brave champion of the Church, and a most munificent benefactor to it. Whatever imperfections there might be in his character, he was allowed to be much a gentleman, and no less a Christian. Ob. 7 July, 1713, *Æt.* 81."

"In Narcissus Luttrell's MS. Brief Historical Relation, I find the following entry early in December:

"1685. His majesty hath dismissed the bishop of London from the Privy Council, as also his Place of Dean of the Chapel Royal." He was succeeded by Crew.]

Friday, June 15, 1688.

Sir Robert Wright, Lord Chief Justice, Mr. Justice Holloway, Mr. Justice Powell, Mr. Justice Allynbone,\* Judges.

THIS being the first day of the term, his majesty's Attorney General (as soon as the court

\* For characters of these judges, see lord Camden's judgment in Wilkes's Case, A. D. 1763, in this Collection. In the summer of 1688, king James gave the following

INSTRUCTIONS TO THE JUDGES ITINERANT.

"The judges of assizes of the circuits, both in England and Wales, are severally and respectively required by his majesty to take all occasions, both in their public and private discourses, but more especially in their respective charges, by all the pressing arguments that may be to persuade and require, That all his majesty's subjects of what degree, quality or condition soever (especially such as would be esteemed truly loyal and well affected to the government) should give their utmost assistance for the supporting of his majesty's late gracious Declaration for Liberty of Conscience.

"And to let them know, that his majesty intends very speedily to call a parliament, and to use his utmost endeavours that the same may be past into a law; that all his subjects may have that ease and safety, and consequently that plenty, which they now enjoy, continued to them and their posterities.

"The advancement of land, improvement of the trade and manufactures so greatly to the advantage of this kingdom, which are his majesties chiefest arms, being so visibly concerned herein; his majesty cannot doubt but such as desire the common good of this nation will give their utmost assistance to promote these great ends.

"You are to assure such as are of the Church of England, as well as others of his subjects, that his majesty will maintain all his gracious promises in the said Declaration.

"You are to encourage all people, of what persuasion soever, to live friendly together, as becomes good Christians and good subjects, and to dispose them to unite their endeavours to render effectual his majesty's gracious intentions for the common good and advantage of all.

"You are to remove, as much as may be, all fears and jealousies that are endeavoured to be insinuated by persons ill-affected to the government, by representing, that the experience they have now had for three years of the king's government sufficiently shews and ought to satisfy them, how gracious a prince he is, who only designs the universal happiness of his people, that trade may flourish and increase and the honour and reputation of the nation carried to a greater height than ever.

"And you are in order hereunto to contradict the idle and false reports that are industriously spread to distract men's minds, and

of King's bench was sat) moved on the behalf of the king for a Habeas Corpus, returnable immediate, directed to the lieutenant of the Tower, to bring up his grace the lord archbishop of Canterbury, and the bishops of St. Asaph, Ely, Chichester, Bath and Wells, Peterborough, and Bristol; which was granted.

And with great dispatch, about eleven by

to disturb the public peace, as well as the common profit of the kingdom.

"You are to take all proper opportunities to inform such you converse with, That the liberty of conscience, his majesty hath been pleased to grant, has already most apparently increased our trade at home, and that the free exercise of religion has been the chief and principal visible cause of the great riches that some of our nearest neighbours abroad at this day enjoy, and would be a certain means to make these kingdoms populous, and by consequence to be the chiefest place of trade in the Christian world, which occasions so many malicious attempts to prevent it.

"You are to let all persons know, within your several districts: that his majesty is unalterably resolved to place trust and confidence in, and to reward all such of his subjects as shall zealously assist in his present measures, and to look upon all that shall oppose him herein as contemners of his royal will and pleasure, and enemies to the common good of his kingdom."

At the Croydon assizes, this Allynbone gave the following charge:

Justice Allynbone's Charge at the Assizes at Croydon.

"Gentlemen of the jury; It is a duty incumbent upon me upon this occasion, and at this time, to say something in order to your direction: And I am well satisfied with you, for I presume you are all gentlemen of worth, ability, loyalty and fidelity. Therefore, gentlemen, I will not tell you whatever you enjoy is from the good effects of government, and you may now keep up the good government of this county; for you are now to enquire into all misdemeanors heretofore, and past, that offenders may be met with, and justice done to all. I will only give you this to observe, That in Bills, &c. that come before you, your enquiry is not final, because the parties concerned have liberty to make their defence afterwards when they are brought upon their petty-jury, where they see their accusers face to face: And then on the other side, if you find that any thing proceeds from envy, and malice, and not of due prosecution, then you may acquit the person that is so wrongfully prosecuted, and so justice is done betwixt party and party; so an ignoramus jury may not be of use. [As to this see in this Collection, vol. 8. p. 359.]

"Gentlemen, it is the desire of the king, that we may keep in love and unity, and not to be devouring and harassing one another. We

o'clock the same day, the lieutenant returned his writ, and brought the said lord archbishop and bishops into court, where being set down in chairs, set for that purpose, Mr. Attorney General moved the court, viz.

*Att. Gen.* (sir Thomas Powis.) My Lord, I pray that the Writ and Return may be read,

have lived in an age where there is great debates and harassing about religion; I say, that we have been under great disputations about religion; and it is no wonder; for there is in religion as much variety as in mens' countenances; and now then you will not think it strange, because that you and I are not of the same religion, that we should be freed from disturbing and harassing one another. Gentlemen, be not mistaken, nor let no false rumour be spread in any place, that I am for taking off the penal laws and tests, but so as in their places to have good laws for your security. Gentlemen, the king himself desires you to make such laws as you will, only do it so as not to hang one another about religion; let no one be prosecuted for religion. If any one distributes such doctrine, he is a man that doth not know the king's intention, but calumniates him in the ———. The king is willing that every one may be as free in his conscience as in his thoughts: pray, Gentlemen, consider what a blessing this is, what a public interest and good it is of.

"First consider, the flourishing of our neighbours: Gentlemen, they have great trade and traffic, and gather riches: they have the protection of the government, and they are true and firm to that government they have their protection under. In a Christian kingdom it is not any one's interest to prosecute one another; then it is not his majesty's desire. Then gentlemen if we will act like free-born Englishmen, no government ought to be so horrible, and cruel as to prosecute one another for religion. Gentlemen, I'll urge it very little more with this instance: remember to do as you would be done by: this, Gentlemen, mankind and human nature tendeth to: but then if we come so far as to profess ourselves to be Christians, then let us consider what our great lawgiver, our blessed Lord and Saviour Jesus Christ said, 'Learn of me, for I am meek and lowly:' tenderness has no share of persecution: remember, I say, the true mark of Christianity is humility and mildness. Let me ask you from whence they have such a spirit, or what will be the consequence of it to posterity; what can be the meaning that any man shall be in love with sanguinary and bloody laws? I cannot conceive that any man that rightly lays his hand on his heart, I say, I cannot conceive he can give any reason. Gentlemen, no man that is a well grounded Christian can be for the laws of persecuting one another: I must confess that no man can get the reputation of a good Christian by putting sanguinary laws in execution. So, Gentlemen, though those sanguinary laws were enacted, and but some

which my lords the bishops are brought hither.

*L. C. J.* Read the Return.

*Clerk* reads the Return, which in English is as follows:

'I sir Edward Hales, baronet, lieutenant of the Tower of London, named in the writ to this schedule annext, To our most

years since, they never had a general approbation, nor no man of the Church of England for putting them in execution.

"Now, Gentlemen, as concerning the Test; if you consider that you will easily part with it. How many gentlemen of great worth to merit something of their fortune from the crown by their own industry, and are hindered because they cannot believe this, or that; there are 1,000 men brought up that cannot agree concerning Transubstantiation, what it is, or not, and concerning the Sacrament of the Lord's Supper; and because of this must they be hindered? why then because I cannot take the Test, must I be hindered of an employment in the world? this, Gentlemen, pincheth sore with them in liberal education. It is said, 'Upon this rock will I build my church:' was this meant of the Church of England? it was but of yesterday's standing: so, Gentlemen, it is but a flourish. Gentlemen, the end of the Test is not religion, but preferment: if any one therefore should be hindered upon just pretences for religion, then religion is not at the bottom of it. This, gentlemen, is a matter of great importance. It is in the catechism that Christ is really in the Lord's Supper; nor hath it been objected against the church of Rome by the church of England, that he was not really, but by way of presentation, and that is a great reproach; Christ himself told us he was there: now be you not more strict than Christ himself. I am not arguing what my sense is, but I am only shewing that as the church of England would impose, that Christ was by way of presentation, is it not equally difficult, that we shall believe thus and thus? Is not the like liberty to be had and taken of one side, as well as the other? Gentlemen, I only argue this for the incoherence of the thing.

"Gentlemen, there is another thing to be observed: our lawful superiors must be obeyed in all their lawful commands: this the church of England-men have made their business to preach up. The king is to be obeyed in every thing, if it be not against God's command. The Test is not commanded by the word of God, and the taking away not prohibited. Gentlemen, I hope your solid judgments, and great prudence will supply you with better arguments, and discourses than I shall give you; and whoever is not for love and meekness, never let him challenge to himself to be a good subject, that is not for the taking off the penal laws and Test.

"Gentlemen, I have one thing more to commend to your consideration about the late transaction of the bishops, that were tried lately at the King's-bench: I would not have the world

serene lord the king, do most humbly certify,  
That before the coming of the said writ, to  
wit, the eighth day of June, in the fourth  
year of the reign of our lord James the second,

mistaken: it was not for their religion they were tried: they were tried for acting against the government; for publishing a libel that tended to sedition: the king commands them with the advice of his council for to publish his declaration; they would not do it. If the king had been Turk or Jew, it had been all one; for the subject ought to obey. Gentlemen, it may be the method of their proceeding may stick with persons: some will say, may not a subject petition? now, gentlemen, it is not the name of a petition can justify an unlawful act; nay, gentlemen, it may be the worse and deserve a greater reproof. I do believe of all subjects that have lived under the face of the sun none have the like liberty, as we have under our king; for I may be bold to say, that any one may come to the speech of his majesty, or to petition him; but then, gentlemen, consider what a petition it is, and for what it is; about what the king doth in his government? any man may petition in his private affairs to his majesty; but what have we to do to petition about government? for that which is so, it is a libel, and of bad consequence: so I shall say no more; I hope you are dutiful subjects, and gentlemen of great prudence and worth, and have had no ill principles distilled into you, and so the Lord direct you." From Papers in the handwriting of archbishop Sancroft among Tanner's MSS. in the Bodleian Library at Oxford. See Gutch's *Collectanea Curiosa*.

The following passages from the Diary of Henry earl of Clarendon, relate to the origin and progress of the proceedings against the Seven Bishops:

"May 12, 1688, Saturday. I dined at Lambeth; where likewise dined the bishops of London, Ely, and Peterborough, Chester and St. Davids. The two last discomposed the company, nobody caring to speak before them. Quickly after dinner they went away: then the archbishop and the rest took into consideration the reading of the declaration in the churches, according to the order of council and, after full deliberation, it was resolved to do it. Dr. Tennison was present at all the debate. The resolution was, to petition the king in the matter; but first to get as many bishops to town as were within reach: and, in order thereunto, that the bishops of Winchester, Norwich, Gloucester, St. Asaph, Bath and Wells, Bristol and Chichester should be written to, to come to town.

"May 16, Wednesday. The bishop of St. Asaph came to town before noon: he alighted at my house, and dined with me. I sent for the bishop of Ely, who quickly came. In the afternoon they two went to Lambeth; in the evening they came back again: for the bishop

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king of England, &c. William lord archbishop of Canterbury, William lord bishop of St. Asaph, Francis lord bishop of Ely, John lord bishop of Chichester, Thomas lord bishop of

of St. Asaph lay at my house. They told me, most of the city clergy had resolved not to read the declaration. The bishop of Winton sent his excuse to the archbishop, that he could not come to town, being indisposed in his health."

"May 18, Friday. In the evening the bishops, six in number, presented a petition to the king, praying, that his majesty would recall his proclamation for reading the proclamation of indulgence in the churches. It was written with the archbishop's own hand, and signed by himself and the other six. The king took them into the room within the bed-chamber: when he had read the petition, he was angry, and said he did not expect such a petition from them. This the bishop of St. Asaph told me, when he came home.

"May 19, Saturday. In the morning all the judges were sent for to Whitehall: the report was that it was about the bishops' petition.

"May 20, Sunday. I was at St. James's church: in the evening I had an account that the declaration was read only in four churches in the city and liberties. Neither Stillingsfleet nor Tillotson were at their churches; but, as I am told, went yesterday to their country houses. So otherwise are some sort of men."

"May 23. My Lord [Chancellor] told me the king had been informed that was at Lambeth, at the consultation among the bishops."

"May 28. In the afternoon the bishop of Ely was with me: he told me that my lord Sunderland had sent a summons under his hand and seal to the archbishop; requiring him, and the rest of the bishops who had signed the petition, to appear before the king in council on the 8th of June, to answer to such matters of misdemeanours, as shall be then objected against them."

"June 5. In the evening the bishops of Ely, and Bath and Wells were with me: I advised them to consult with the best lawyers, how to behave themselves at the council board; that the time drew near, and that they should not come unprepared to answer any question that might be asked them upon their petition.

"June 6. In the evening the bishops of Ely, Bath and Wells, Peterborough, and St. Asaph, (the last was just come to town) were with me, and desired to borrow some parliament journals, which they thought might be useful to them, and which I lent them.

"June 7. In the evening the bishops were with me, and told me they had taken advice with the best counsel, and hoped they should have good success to morrow. I asked them, if they had well considered what to do or say, in case they should be required to find bail for their further appearance (for such a thing was

' Bath and Wells, Thomas lord bishop of Peterborough, and Jonathan lord bishop of Bristol, mentioned in the aforesaid writ, were committed and delivered to, and are retained

whispered); and I found they had not: whereupon I earnestly pressed them to go this very evening and advise therein with sir Robert Sawyer, who could best instruct them what power the council board now had; and so they left me, resolving to go presently to him.

" June 8. In the afternoon, the archbishop and the rest appeared at council. When they were first called in, the petition was shewed them, and they were asked if they owned that petition? The archbishop answered, that the king very well knew what petition was delivered to him, and that it could not be expected they should accuse themselves: upon which they were ordered to withdraw. After a little debate they were called in, and bid withdraw again twice or thrice. What past at each time, I cannot yet particularly learn: but at last they were required to enter into recognizances to appear in the court of king's bench the first day of next term, which they refused to do, and thereupon were committed to the Tower; and the attorney general was ordered to prefer an information against them.

" June 9. Multitudes of people went to the Tower to the Bishops.

" June 10. I kissed his [the king's] hand, and wished him joy [of the birth of the prince of Wales.] I visited the bishops in the Tower; with whom was a vast concourse of people going in and out.

" June 12. In the afternoon I went to the Tower. They told me lord Halifax had been to see them, and advised them to write every one to three peers to be bail for them, when they came to the King's-bench; which, they said, they did not like, and seemed not inclined to do it. I confess I do not understand his lordship's notions; I am sure when the reading the declaration was under consideration, and the petition, for which the bishops now suffer, he was so very cautious, that he would give no advice at all. I told the bishops, that, in my opinion, the best thing they could do, was without any noise, to send to some of their friends (without regarding whether they were peers or not) to be at Westminster the first day of the term in case there should be occasion for them."

" June 14, 1688. In the morning I went to see my lord chancellor, he discoursed very freely to me concerning the bishops, said he was much troubled at their prosecution, and made many professions of service for them, which he desired me to let them know. He said the king was once resolved to let the business fall and not to have proceeded thus against them, that he was grieved to find he had changed his mind, that he knew not how it came to pass; but said there was no remedy, some men would hurry the king to his destruction. In the afternoon I went to the Tower

' in my custody, by virtue of a certain warrant under the hands and seals of George lord Jeffries, baron of Wem, lord high chancellor of England, Robert earl of Sunderland, lord pre-

and gave the bishops an account of all that my lord chancellor had said to me.

" June 15. The first day of the term at the first sitting of the court of King's-bench, the attorney general moved for a Habeas Corpus, returnable immediately to bring the bishops into court. About half an hour after eleven they came; both the hall and palace yard were extremely crowded. All the way as they came from the bridge where they landed, to the very court, the people made a lane for them and begged their blessings. As I was taking coach in the little palace yard by the House of Lords, I found the bishop of St. Asaph in the midst of the crowd, the people thinking it a blessing to kiss any of those bishops hands or garments. I took him into my coach and carried him home to my house, but was fain to turn up through Tuttle-street, and so to go round by the park to avoid the throng the other way in the streets, which neither the bishop nor I cared to be in.

" June 21. I was told that this morning the chancellor had carried sir Samuel Astry to the king. It was presently suspected to be about the bishops' trial; he being the person that is to strike the jury.

" June 25. In the evening the bishop of St. Asaph, Ely, Bath and Wells, and Peterborough were with me. They told me their jury was settled this afternoon. I was told sir Robert Clarke had been very busy at sir Samuel Astry's in that matter."

" June 27. In the afternoon I was with my lord chancellor. He talked very freely to me, and with great trouble upon the bishops' affair. He seemed very apprehensive that their being brought to a public trial would be of very ill consequence to the king, in all his affairs: but he said it would be found, that he had done the part of an honest man. As for the judges, said he, they are most of them rogues.

" June 28. The bishops told me they had settled every thing with their council for their trial, lord Dartmouth had been with the bishop of Ely to persuade him to make application to the king, which got air, and was like to have been very inconvenient, had not the bishop been very steady.

" June 29. The bishops were brought to their trial, which lasted from nine in the morning till past six in the evening. There were five or six and twenty noblemen all the time in the court. When the jury withdrew, the court adjourned till to morrow morning ten o'clock: the bishop of St. Asaph, sir Thomas Clarges and Dr. Tennison supped with me. Mr. Blaney was in court to take the trial.

" June 30. Westminster-hall was extremely full again. The jury (sir Roger Langley foreman) brought in their verdict, Not Guilty: upon which there was a most wonderful shout, that one would have thought the hall had crack-

‘ sident of the privy council of our lord the  
‘ king, Henry lord Arundel of Warden, keeper  
‘ of the privy seal of our said lord the king,  
‘ William marquess of Powis, John earl of

‘ Mulgrave, lord great chamberlain of England,  
‘ Theophilus earl of Huntingdon, Henry earl  
‘ of Peterborough, William earl of Craven,  
‘ Alexander earl of Murray, Charles earl of

ed; insomuch that the court took notice of it. In the evening multitudes of bonfires were made for the bishops being acquitted.”

“ July 5. In the morning I was with my lord chancellor: he told me, he found the king a little troubled, that the bishops had been brought to their trials; that he seemed to be in a milder temper than he had been, and he hoped he might be persuaded to take moderate counsels. Now, says my lord, honest men both lords and others (though the king had used them hardly) should appear often at court. I am sure, it would do good. He desired I would come sometimes to him, that by me he might have a correspondence with the archbishop; which it was yet too soon for him to have openly.

“ August 13. I was at Bulstrode [the residence of Jefferies.] When I was going away my lord chancellor would needs carry me as far as Dr. Hickman’s living. I went in his calash with him. He talked very freely to me of all affairs; called the judges a thousand fools, and knaves; that chief justice Wright was a beast: he said the king and queen were to dine with him on Thursday next; that he had still great hopes the king would be moderate, when the parliament met. When we came to Dr. Hickman’s, my lord was inclined to be merry; saying he had papists and spies among his own servants, and therefore must be cautious at home.”

This lord Clarendon (see more of him in Crone’s Case, A. D. 1690) appears to have had a lively feeling of religion, and to have been upon the whole a worthy and conscientious man.\* His attachment to the church of Eng-

\* The collation of the following passages in his Diary may perhaps excite a smile:

“ Nov. 15. Just after dinner Mr. Dent came to Lambeth to me from my wife, to let me know that news was come to town, that my son was gone over to the prince of Orange with his own regiment, the earl of Oxford’s regiment of horse, and the duke of St. Alban’s regiment. I presently went over the water to my brother’s, who confirmed this sad news to me. O God, that my son should be a rebel! the Lord in his mercy look upon me, and enable me to support myself under this most grievous calamity. I made haste home; and, as soon as I could recollect myself a little, I wrote to my lord Middleton to obtain leave for me to throw myself at the king’s feet.

“ Nov. 30. Before dinner sir H. Capell was with me. I told him, now the writs were issued for a parliament, and that a proclamation was coming forth to allow all men to go to the countries, I resolved to go to Sarum, and so to the prince of Orange; and that I would begin

land appears to have been strong, and he is not sparing of asperity of expression towards those whom he denominates fanatics. But neither is he on all occasions destitute of indulgent language towards those whose religious opinions differed from his own.

In a letter, written by him (Sept. 4th, 1686,) while lord lieutenant of Ireland, to his brother lord Rochester, he says, “ By my consent any man though a Jew who will bring money and live obediently to the laws shall be welcome, and have all the encouragement and protection the government can give him.” And, on the 9th of the same month, he writes to the king, “ nor have I presumed to recommend any to your majesty’s favour since I came hither but those who have always served you, and I think they have been all Roman Catholics.” Of his unwillingness to suffer James’s Popish inclinations to be offended under his government, he gave early proof in a letter dated March 2d, 1685-6, before he had been in Ireland two months, he informs the king, “ Very lately a young man preaching before me was indeed very impertinent: not so much in relation to your majesty, as in taking notice of the king of France’s proceedings towards the Huguenots: though I know your majesty does not approve of those proceedings, yet what has any preacher to do to inquire into the actions of any prince, though not his own? I therefore sent for him the next morning, and gave him a rebuke. I trouble your majesty with this story, to shew you that no care of mine shall be wanting to hinder all things that I think will displease you; but especially those things, in which I know your mind, as I do in this concerning the preaching. And I beseech your majesty to believe, that no man shall commit these follies twice before me; nor any where else, which I have information of: and though the inferior clergy in most places are unruly, and not so apt to take advice, as to give it; yet I dare undertake to keep ours here, within the bounds of duty and good manners.”

In the preceding extracts from Lord Clarendon we find Jefferies hoping that James might be persuaded to take more moderate counsels; while the friends of James have endeavoured to palliate his guilt by imputing his misconduct to the advice of Jefferies. The same recrimination occurred respecting the cruelties in the

my journey to morrow. He said, he would go with me; and desired me to take him up at Brentford, as I went by. Lord Drogheda, and lord Blessington being with me in the afternoon, I told them of my journey: they both said, they would go with me.

“ Dec. 1. About eight in the morning I set out from Jermain-street.”

' Middleton, John earl of Melfort, Roger earl  
' of Castlemain, Richard viscount Preston,  
' George lord Dartmouth, Sidney lord Godol-  
' phin, Henry lord Dover, sir John Ernle,

' knight, chancellor of the exchequer of our  
' said lord the king, sir Edward Herbert,  
' knight, chief justice of the common bench of  
' our lord the king, and sir Nicholas Butler,

west [See vol. 11, p. 302.] The letter from Price inserted below, and the passages which precede it, are extracted from what Macpherson has thought fit to entitle "The Life of James the Second, written by himself." See vol. 6, pp. 297, et seq.

"The Declaration for liberty of conscience ordered to be reprinted; and to be read in the churches. The bishops address against it; thinking it illegal to dispense with all sorts of laws in cases contrary to the very designs of the law.

"The bishops petition on the 18th of May, against what they were to read on the 20th. The Chancellor advised the king to summon the bishops before the council, on the 9th of June, for a tumultuary petition, liable to a legal prosecution. They, refusing bail, were committed to the Tower. The queen expected to lye-in; and did the next day. The princess Anne contrived to go to Bath, in order to be absent when the queen was brought to-bed. The bishops, perhaps, had some motive in forcing the king to imprison them; for he would not only have taken their recognizance, but even their word, for their appearance. Both were refused; because an imprisonment would inflame the nation, and prevent the archbishop of Canterbury from being at the queen's delivery. The king had earnestly pressed the princess Anne to stay, till the queen should be delivered; but the doctor's opinion pleaded all delays dangerous. The prince was born on the 10th of June. The prince of Orange sent Mr. Keppel to congratulate the king and queen, and prayed for the prince, who had like to have died for want of a wet-nurse to suckle him.

"On the 29th of June, the bishops were tried. The Presbyterians joined with the church party to expose the king.

"In the case of the bishops there is no doubt but the king had done better, in not forcing some wheels, when he found the whole machine stop. But it was his misfortune to give too much ear to the pernicious advice of those who put him upon such dangerous councils with intent to widen the breach between him and his subjects. But his prepossession against the yielding temper, which had proved so dangerous to his brother, and fatal to the king his father, fixed him in a contrary method. He had always preached against the wavering councils of his brother; and seeing that other bishops made not the same difficulty, and since many complied, he thought the rest ought to do the same. The king, therefore, gave more easily into the Chancellor's opinion, who thought that a mere reprimand was not sufficient. It was, however a fatal council: for besides the common reasons against it, nothing ought to have made the king more cautious, in the matter, than the present conjuncture, on

account of the queen's being with child. It was that gave the alarm: and by consequence, required a greater attention, to avoid every cause of complaint."

"Mr. Robert Price,\* to the Duke of Beaufort.  
—An Account of the Trial of the seven Bishops.

"Sir, *Lincoln's Inn, June 30, 1688.*

"Yesterday, being St. Peter's day, the seven Bishops were brought to their trial, upon the information of publishing a libel, about their refusal to read, or to cause to be read, the king's declaration. Their trial held from nine in the morning, till near seven in the evening. The king's evidence to the number of twelve, laboured to prove the Bishops' hands to the petition; which was done obscurely. Lord Sunderland was sent for, to prove the publication of the libel. His evidence was, that, at the request of the Bishops, he brought them to the king, to whom they delivered a paper; but could not say that it was the same for which the information was there exhibited. The council for the Bishops insisted upon their not proving, that the Bishops wrote these hands; next, that not publishing was proved; and if so, that it was no libel. There Pollexfen and Mr. Finch took no small pains to inveigh against the king's dispensing power. Serjeant Pemberton said, that what the Bishops did, was that which became them as peers; and, if the dispensing power was against law, how came they to be criminals, for not doing that which was against law? and said farther, that he could shew several judgments in parliament, and in cases in law, where the dispensing power was denied. The council for the king waived the point, though Mr. Solicitor was fiercely earnest against the Bishops, and took the management upon himself; Mr. Attorney's province being to put in a smooth question now and then. Mr. Justice Powell declared himself very freely, that he could not find the petition to be a libel; for then it must be false, scandalous and malicious. False it was not; because he took the law to be, that the king had not a dispensing power; for, if he had,

\* "Price was afterwards one of the barons of Exchequer. He rendered himself remarkable by a spirited speech in the House of Commons, in the year 1696, against some grants of the demesnes of the prince of Wales, made by king William to his favorite, the earl of Portland. Many of his original letters to the duke of Beaufort are in the hands of the editor." Macpherson.

See in this Collection, A. D. 1717, Mr. Baron Price's Argument concerning the king's prerogative in respect to the education and management of the Royal Family.

‘ knight, lords of his majesty’s most honour-  
‘ able privy council, to me directed : The tenor  
‘ of which warrant follows in these words, viz.’

“ These are, in his majesty’s name, and by  
“ his command, to require you to take into your  
“ custody the persons of William lord arch-  
“ bishop of Canterbury, William lord bishop  
“ of St. Asaph, Francis lord bishop of  
“ Ely, John lord bishop of Chichester, Tho-  
“ mas lord bishop of Bath and Wells, Tho-  
“ mas lord bishop of Peterborough, and Jo-  
“ nathan lord bishop of Bristol, for contriving,  
“ making and publishing a seditious libel in  
“ writing, against his majesty and his govern-  
“ ment, and them safely to keep in your cus-

most-part of the statute books might be dis-  
pensed with, and there would be no need of  
parliaments. Scandalous or malicious it was  
not ; because drawn with all privacy, and pre-  
sented with all humility. Mr. Justice Hollo-  
way had a mind to say somewhat to the pur-  
pose ; but did declare against the dispensing  
power. The chief justice doubted, as to the  
proof of the publishing ; but took the petition  
to be a libel. Justice Allyn believed through-  
out, and doubted nothing. The jury withdrew.  
The hall being full, and the Palace Yard, they  
made three huzzas that were heard at the  
Temple. The jury staid till nine this morning,  
Arnold a brewer till then dissenting, when they  
brought in the Bishops Not Guilty ; which was  
followed with so many shouts in the hall, that  
it was with much difficulty they could be qui-  
eted. This is the result of the long expected  
cause. The court of King’s Bench was yester-  
day and to day very full of the nobility and  
gentry of the best quality. I doubt this day’s  
work will give Justice Powell a remove ; and  
it is thought, Holloway also ; there being can-  
didates enough for the vacancies. Mr. Ser-  
jeant Lehunt had his train carried through  
Westminster Hall, which is not usual ; but  
whether ominous of promotion, I know not.  
It is, however, a plain demonstration of his  
train-bearer’s ignorance.”

Mr. Williams Wynn has permitted me to  
compare this Report of the case of the Seven  
Bishops with a Report in MS. which belonged  
to sir William Williams the Solicitor General  
at the time of their trial. This MS. contains  
many alterations of sir William Williams’s  
speeches (in several instances softening down  
his expressions. Burnet says, ‘ Powis acted  
his part in this Trial as fairly as his post could  
admit of, but Williams took very indecent li-  
berties’); some of which are noted in the Report  
here given, and some are incorporated into it.  
And on the first leaf of the MS. is written by  
sir Wm. Williams the following memorandum :

‘ I am against printing or publishing this  
‘ sort of Narrative of the proceedings in the  
‘ late case of my lord archbishop and bishops  
‘ and do hereby disclaim the printing or pub-  
‘ lishing of it.’

W. WILLIAMS.

Witness James Evans, January 8, 1688.

“ tody until they shall be delivered by due  
“ course of law ; for which this shall be your  
“ sufficient warrant. At the council chamber  
“ in Whitehall, this 8th day of June, 1688.  
“ To the Lieutenant of the Tower  
“ of London.”  
“ And this is the cause of the taking and de-  
“ taining, &c.”

L. C. J. Well, what do you desire, Mr.  
Attorney ?

Mr. *Att. Gen.* We pray for the king, that  
the return may be filed.

L. C. J. Let it be filed.

*Att. Gen.* By this return your lordship ob-  
serves what it is my lords the bishops were  
committed to the Tower for ; it is by warrant  
from the council board, where, when their  
lordships appeared, they were not pleased to  
give their recognizances to appear here, as they  
were required by the king to do : and there-  
upon they were committed to the Tower, and  
now come before the court upon this return  
of the king’s writ of Habeas Corpus ; and by  
the return it does appear, it was for contriving,  
writing, framing, and publishing a seditious  
libel against his majesty and the government.  
My lord, it is our duty, who are the king’s  
counsel, pursuant to our orders, to prosecute  
such kind of offences : and when the proper  
time shall come for us to open the nature of the  
offence, your lordships will then judge what  
reason there is for this prosecution : but in the  
mean time, what we are now to offer to your  
lordship is, The officer of this court has an  
information against his grace the archbishop  
of Canterbury, and the rest of my lords the  
bishops, which we desire may be read to them,  
and pray that they may plead to it, according  
to the course of the court.

Sir *Robert Sawyer*.<sup>\*</sup> If it please your lord-  
ship to spare us a word for my lords the  
bishops.

*Att. Gen.* My lord, we pray for the king  
the information may be read.

Sir *R. Sawyer*. We desire to be heard a  
word first.

*Sol. Gen.* (sir William Williams). We oppose  
your speaking any thing, till the information  
hath been read.

Sir *R. Sawyer*. But what we have to offer is  
proper before it be read.

*Att. Gen.* Your time is not yet come, sir  
Robert.

Sir *R. Sawyer*. Yes, this is our proper time  
for what we have to say, and therefore we  
move it now, before there be any other pro-  
ceedings in this matter.

*Sol. Gen.* It is irregular to move any thing  
yet : pray let the information be read first.

Serj. *Pemberton*. If your lordship please to  
spare us, we will offer nothing but what is fit  
for us to do.

\* See in this Collection some account of him,  
vol. 10, p. 117. See also sir William Williams’s  
Case, *infra*.

Sir R. Sawyer. And now is our proper time for it.

Sol. Gen. Gentlemen, You do know the way of proceeding in such cases better than so: I am sure, as for you, sir Robert Sawyer, you have often opposed any such motion as irregular: and I hope the case is not altered; however you may be, the course of the court is the same.

Sir R. Sawyer. With submission, if your lordship please to spare me a word, that which I would move, is, to discharge my lords the bishops upon this return, and from their commitment upon this warrant.

Att. Gen. Surely these gentlemen think to have a liberty above all other people: Here is an Information, which we pray my lords the bishops may hear read, and plead to.

Sol. Gen. Certainly, sir Robert Sawyer, you would not have done thus half a year ago.

Sir R. Sawyer. What would not I have done? I move regularly (with submission) to discharge my lords the bishops from their commitment; if they are not here legally imprisoned, now they are before your lordships upon this writ, then you will give us leave to move for their discharge, before any thing else be said to them; and that is it we have to say, to demand the judgment of the court upon this return, whether we are legally imprisoned?

Att. Gen. Under favour, my lord, neither the court, nor they, are ripe for any motion of this nature yet.

Serj. Pemberton. If we do not move it now, it will afterwards (I fear) be too late.

Sol. Gen. These gentlemen are very forward, but certainly they mistake their time; this is a Habeas Corpus that is brought by the king, and not by the prisoners; and therefore they are too soon, till they see what the king has to say to them.\*

Att. Gen. Your lordship cannot as yet be moved for your judgment about the legality of this commitment, because this writ was granted upon our motion, who are of counsel for the king, and upon this writ they are brought here: And what is it we desire for the king? Certainly nothing but what is regular. We have here an information for the king against my lords, and we desire they may plead to it.

Serj. Pemberton. Good my lord, will you please to hear us a little to this matter.

L. C. J. Brother Pemberton, we will not refuse to hear you by no means, when you speak in your proper time, but it is not so now; for the king is pleased, by his Attorney and Solicitor, to charge these noble persons, my lords the bishops, with an information; and the

\* In sir William Williams's MS. corrections, this speech is thus given:

"These gentlemen are very forward, but certainly they mistake their time. This is a Habeas Corpus that's brought by the king and not by the prisoners, and therefore they ought to hear what the king shall say to them by his information before they make their objections."

king's counsel call to have that information read, but you will not permit it to be read.

Serj. Pemberton. Pray, my lord, spare us a word: If we are not here as prisoners regularly before your lordship, and are not brought in by the due process of the court, then certainly the king's counsel, or the court, have no power to charge us with an information; therefore we beg that you will hear us to that, in the first place, whether we are legally here before you.

Sol. Gen. These gentlemen will have their proper time for such a motion hereafter.

Mr. Pollexfen.\* No, Mr. Solicitor, this is, without all question, our only time for it; we shall have no time afterwards.

Att. Gen. Yes, you will, for what do we, who are of counsel for the king, now ask of the court, but that this Information may be read? When that is done, if we move to have my lords the bishops plead, then they may move what they will; but before we make that motion, they cannot break in upon us with their motion; and, with submission to your lordship, whether my lords the bishops were duly committed, is not yet a question.

Mr. Finch. But it is, and this is the fittest time for it.

Sol. Gen. Pray will you hear us quietly what we have to say, and then answer us with reason, if you can: I think we are in a proper way, but they are not, my lord; for (as I said) my lords the bishops are brought by the king's writ upon our motion for the king, not upon theirs; and now we have them here before the

\* The following very curious passage respecting Pollexfen occurs in the Diary of Henry earl of Clarendon:

"1688, Dec. 14." [King James had secretly withdrawn from Whitehall on the 11th and had been detained at Feversham.] "My brother gave me an account of the manner of the king's being taken; and that the peers, who met every morning and afternoon in the council chamber at Whitehall, had sent to him, as soon as they heard of it. I sent Mr. Knight, to desire Mr. Pollexfen to come to me tomorrow morning, as early as he could."

"Dec. 15. Saturday. In the morning Mr. Pollexfen was with me. I told him, I had a great desire to confer with him, that I might the better know how to govern myself in this wonderful exigence. He very readily told me, he wondered, the prince of Orange had done no more; that the king by withdrawing himself had left the government; that he had made a cession, and forfeited his right; that his being now at Feversham, though he should come back to London, signified not a rush; that the prince of Orange had nothing to do, but in the head of his army to declare himself king, and presently to issue out writs for the calling a parliament according to Cromwell's model; which he said was a far more equal way of election than the old constitution. Good God bless me! what a man is this? I confess he astonished me; and so we quickly parted."

court, we for the king will charge them with an information; which information, that they and the court may know what it is they are charged with, we pray it may be read to them by the clerk; and when it is read, let these gentlemen say what they will for them, they shall have their time to speak; but certainly they ought not to obstruct the king's proceedings, nor oppose the reading of the information to these noble lords who are brought here in custody into court, to this very purpose, that they may be charged with this information.

Serj. *Pemberton*. But we have somewhat to say before you can come to that, Mr. Solicitor.

*Sol. Gen.* You ought not to be heard as yet.

Serj. *Pemberton*. Under favour, we ought to be heard.

Sir *R. Sawyer*. My lord, Mr. Solicitor has opposed our being heard, but we now desire he would hear our answer to it; and that which we have to say, is this, That my lords the bishops are not here regularly in the court to be charged with an information; and if the law be not with us in that point, as we doubt not to make appear it is, no question but when your lordship has heard what we have to say, you will give a right rule in it. My lord, we say, that by the rules of law, no man ought to be charged with an information or indictment, by the express statute of Edward the 3d, unless he come into the court by legal process: That is a standing rule, and the practice of this and all other courts is pursuant to it. Now in this court you have several processes that go out of this court, and he that comes as taken by virtue of a Capias, or an attachment after a summons, or by Venire in the nature of a Subpœna; I say he that comes in upon these processes, may be charged with an information: but where a person is in prison, committed by another jurisdiction, and another authority than that of this court; when the prisoner is brought here by Habeas Corpus, the first thing the court has to do, is to enquire whether he be legally committed; to that end the return is filed, and the party has leave to make his exceptions to it, as we do in this case, my lords are brought here upon a Habeas Corpus, the return of which has been read, and now the return is filed, we are proper to move, that my lords may be discharged; for you now see what they are committed for; it is for a misdemeanor in making and publishing a libel, that is the matter for which they are committed; and it appears by the return likewise, that they who are thus committed are peers of the realm; for so my lords the bishops all are, and for a misdemeanor they ought not by law to have been committed.

*L. C. J.* You go too far now, sir Robert Sawyer; I would willingly hear you whatsoever you have to say; but then it must be in its due time.

*Att. Gen.* This very discourse (indeed I have heard) has passed up and down the town for law; we see now whence they had it.

*Sol. Gen.* I know it has heretofore been

urged by me, but denied by them who now urge it,\* and I am glad that they now learn of me to tack about.

*L. C. J.* Look you, gentlemen, do not fall upon one another, but keep to the matter before you.

Serj. *Pemberton*. So we would, my lord, if the king's counsel would let us. First, we say, we being brought here upon a return of a Habeas Corpus, there was neither at the time of the commitment cause to imprison us, nor was there by the warrant any cause to detain us in prison; and for that, besides what has been hinted at, we say further, that here it is returned, that we were committed by such and such persons, lords of the privy-council; but the return doth not say, that it was done by them, as lords of the privy-council, which must be in council; for if it be not in council, they have not power to make such a warrant for the commitment of any person; and that we stand upon. Here is a return that is not a good return of a legal commitment, and therefore we pray my lords may be discharged.

*Mr. Pollexfen*. Pray, my lord, spare me a word: that is the thing we humbly offer to your lordships' consideration; and, under favour, I think we are proper both as to the matter, and as to the time: the return is now filed before you; if by this return there appears to have been such a cause to commit these lords to prison, as is legal, then we acknowledge they may in a legal course be brought to answer for their offence; but with submission, it appears not by any thing that is in this return, that my lords the bishops were committed by the order of the privy-council. All that is said, is, that they were committed by my lord chancellor, and those other persons, named lords of the privy-council; which we conceive is not a good return; for they can do nothing as lords of the privy-council, except only as they are in council, and by order made in council; except that do appear, they have no power to commit: then take the case to be so; here is a man committed by one that has no authority to commit him, and he is brought by Habeas Corpus into this court, what shall the court do with him? Shall they charge him with an information? No, it does appear that he was in custody, but under a commitment by those who had no legal power to commit him; and therefore he must be discharged; and that we pray for my lords the bishops. What the king's counsel may have to say to them afterwards, by way of information or otherwise, they must take the regular methods of the law to bring my lords the bishops to answer; but as the case stands here before you, upon this return, it does appear, they had no authority to commit them by whose warrant they were committed; and therefore this court has nothing to do but to discharge them.

\* In sir William Williams's MSS. the remaining words of this speech are cancelled.

Mr. *Finch*. I beg your lordship's leave to say one word farther on the same side: I think, with humble submission, this is the most proper time for us to make this motion; for here is a Habeas Corpus returned; this return is filed, and then the king's counsel move to charge my lords the bishops with an information. That motion of theirs (we say) is too soon, unless my lords are here in court, I mean legally in court; for no man is in court so as to be liable to be charged with an indictment, or information, that is not brought into court by legal process, or as a prisoner upon a legal commitment: then, my lord, with humble submission, we say, that it doth appear by this return, that my lords the bishops are not here legally in court, because this commitment of theirs was not a legal commitment; and two objections we have to it, the one is, that the persons committing had no authority to commit; for the return says, that it was by virtue of a warrant under the hands of such and such, being lords of the council, and they (we say) have no authority to do this. The other objection is, that the fact for which they were committed, they ought not to have been imprisoned for: the fact charged upon them is in the nature of a bare misdemeanour, and for such a fact it is the right of my lords the bishops (as peers of the realm) that they ought to be served with the usual process of Subpœna, and not to be committed to prison. These are the two objections that we have to this return, and this is, under favour, the proper time for us to make this objection, before the king's counsel can charge my lords the bishops with an information.

L. C. J. What say you to it, Mr. Attorney?

*Att. Gen.* With submission, my lord, these gentlemen have, out of course, and preposterously, let themselves into this discourse; and, when all is done, we must recur to that which we moved to your lordship before, to desire that your lordship would order the information to be read; and when we call my lords to plead to the information, then will be their proper time to make this objection; for 'tis a strange thing, certainly, for men to make objections before they know what it is they are charged with! They say, the ground of their motion is, because my lords the bishops are here in court upon the return of an Habeas Corpus; and therefore they come in upon a commitment (as they say) for that which they ought not to be committed for at all, and we cannot charge them, unless they be properly in court. Now for that, it is true, if that commitment of theirs were the only thing that was here before the court, then the court would, if that commitment were illegal, discharge them of that; but when a man is present here in court, brought into court, let him come how he will, he is not to have any longer time than that instant to appear to, and be charged with, the information. 'Tis true, upon a Subpœna, which is in the nature of a summons, there a man hath, as it were, an essoyne, and may

make his excuse, and he shall have time; but when he is present in court, either as a person privileged, as an officer, or as a prisoner, he shall be charged presently; and these gentlemen are not to let themselves into invectives against the commitment, thereby to keep off their being charged with the information. Besides that, it is strange these gentlemen should know the privilege of my lords the bishops as peers, better than all the lords of the council, who are most of them themselves peers; and they that make the objection should have considered, whether these lords that made the commitment, did not think themselves concerned in all the privileges of peerage, as well as these seven noble lords!

Sir R. *Sawyer*. Is this an answer to our objection, Mr. Attorney?

*Att. Gen.* I say, it is a strange objection; and I answer, it is out of due time: for this we say, that my lords the bishops, being now here in court as prisoners upon a commitment, and we desiring to charge them with an information, you are not to examine the matter of their commitment, and therefore I do insist upon it, that the information should be read, and then you will consider, whether they are not bound to plead to it.

Mr. *Finch*. My lord, I hope Mr. Attorney General will not think legal objections to be invectives.

*Att. Gen.* Truly I know not what you call legal objections; I do not think yours are so, nor do I think legal objections are invectives; but I used that expression, as very proper for what you urged against the commitment.

L. C. J. Nay, gentlemen, do not quarrel about words.

Mr. *Finch*. My lord, we would not willingly have words given us to quarrel at.

*Sol. Gen.* My lord, the question is, Whether we are in the right method of practice, as to the course of the court; or they? It may be, these gentlemen think to make us angry, and take advantage of our being in a passion.

Mr. *Finch*. Mr. Solicitor, we desire to have our objections answered.

*Sol. Gen.* Nay, if you begin to be angry, gentlemen, we can be angry too.

L. C. J. I would have neither of you be angry.

*Sol. Gen.* It seems they would have an answer to their objections, but will not suffer us to give it; they would first examine, whether my lords the bishops have been duly committed? That, we say, is not to be done by the court as yet: your lordship sees they are actually in custody, by a commitment of the lords of the council; that appears by the return before your lordship, and for what they were committed. What do we now pray for the king? First, we move for a Habeas Corpus, then that this information may be read, and all is in order to bring this fact, for which they were committed, to a trial. It is said upon the return, they were sent to the Tower, for contriving, writing, and publishing a seditious libel against the king's

person and government, which, I think, is crime enough for a man to deserve to be committed for: they would have you to discharge these lords from this commitment (the return, as they say, being not legal) and that before the information be read: but we think their motion is irregular; for here is a crime charged in the commitment, and upon that commitment they are here now as criminals before your lordship; and Mr. Attorney has exhibited an information for the king, which is in the nature of a declaration at the king's suit; and that in this court, which is the supreme court now in being for the trial of matters of this nature. We will come to that question, whether they were legally committed, when there is a proper time for it. But now we find my lords the bishops in court, upon a commitment for a great crime: I repeat it again; it is for contriving, writing, and publishing a seditious libel against the king's government; and whether the king's counsel shall not have leave to make out this charge by an information, sure, can be no question at all in this court. I hear them mention the statute of Edward the third; but that is not at all to the purpose; that is but what was offered in another case that may be remembered,\* and offered by way of plea, and pressed with a great deal of earnestness, but rejected by the court; and now what could not be received then by way of plea, these gentlemen would, by their importunity, have you receive by parole at the bar. I suppose the design is to entertain this great auditory with an harangue, and to persuade the weak men of the world (for the wise are not to be imposed upon) that they are in the right, and we in the wrong. Under favour, my lord, we are in the right for the king; we desire this information may be read, and let them plead what by law they can to it, according to the course of the court: but that which they now urge, is untimely and out of course.

Sir R. Sawyer. My lord, we offer this to your lordship—

Att. Gen. Why, gentlemen, you have been heard before your time already.

Serj. Pemberton. Pray, my lord, give us leave to answer what the king's counsel have objected.

L. C. J. The king's counsel have answered your objections, and we must not permit vying and re-vying upon one another: if you have no more to say, but only as to the matters that have been urged, you have been heard to it on both sides already.

Serj. Pemberton. I would, if you please, answer what has been objected by the king's counsel, and state the case aright.

Justice Altybone. Brother Pemberton, I do not apprehend that the objection you make against this commitment has any weight in it. The objection (as I take it) is this, that these lords were not legally committed, because they

were committed (says the return) by such and such lords of the council particularly named; and it does not specify them to be united in the privy council: now truly, with me, that seems to have no weight at all; and I will tell you why: If my lord chief justice do commit any person, and set his name to the warrant, he does not use to add to his name lord chief justice, but he is known to be so, without that addition. And would you have a different return from the lieutenant of the Tower to a Habeas Corpus, than the warrant itself will justify? The lords do not use to write themselves privy-counsellors; they are known to be so, as well as a judge, who only writes his name and does not use to make the addition of his office.\*

Sir R. Sawyer. Pray, my lord, give me leave to be heard to this; I think truly it is a weighty objection; for, under favour, we say, it must upon the return here appear, that they were legally committed, before you can charge them with an information. I do not take exceptions to the warrant, because it is subscribed by such lords, and they do not write themselves lords of the council; they need not do that: and the return has averred that they are so; but the return ought to have been, that it was by the order of the privy-council, and so it must be, if they would shew my lords to be legally committed, that they were committed by order of the privy council, and not by such and such particular persons, lords of the privy-council. So in the case put by Mr. Justice Altybone, of a commitment by your lordship or any of the judges, it must be returned to be by such a warrant, by such a one Chief Justice, for that shews the authority of the person committing, and then your lordship's name to it, indeed, is enough, without the addition: but if it does not appear by the return, that there was sufficient authority in the person to commit, your lordship cannot take it to be a legal commitment. But now in this case they could have no authority to commit but in council; and this return seems to make it done by them as particular persons, and that is not a good return, with your lordship's favour, upon which these reverend and noble lords can be detained in prison. But what do they on the other side say to this? Why, we shall be heard to it anon: But, my lord, they very well know; it would be too late for that effect which we desire of our motion, and therefore we lay the objections now before you in its proper time: (say we) you ought not to read any information against us, because we are not legally here before the court; and sure, that which was said by the king's council, that your lordship may charge any one that you find here in court, which way soever he comes in, cannot be legal.

Att. Gen. Who ever said so?

Sir R. Sawyer. I apprehend you said so, Mr. Attorney, or else you said nothing.

\* In Mr. Sidney's Case. See it in this Collection, vol. 9, p. 817.

\* See the Case of Seizure of Papers, A. D. 1765.

*Att. Gen.* Sir Robert Sawyer, you of that side have a way of letting yourselves in to say the same things over again, and of making us to say what you please.

*Sir R. Sawyer.* Truly I did apprehend you laid down that for doctrine, which I thought a very strange one: for we say, with your lordship's favour, he that is in court without legal process, is not in court so as to be charged with an information.

*Serj. Pemberton.* My lord, it is not the body being found here that intitles the court to proceed upon it, but the person accused is to be brought in by legal process: Then if we be not here by legal process, the information cannot be charged upon us; and if we suffer it to be read, it will be too late for us to make this objection.

*L. C. J.* That you have all said over and over, and they have given it an answer.

*Att. Gen.* Pray, Mr. Serjeant, will you make an end? You have repeated your objection over and over, I know not how often, and will never be contented with our answer,

*Just. Allybone.* Sir Robert Sawyer, that which you said in answer to the case I put, methinks does not answer it: for if the return be as good, that it was by a warrant from such an one, lord chief justice, as if my lord chief justice had added the title of his office to his own name, when he subscribed the warrant; then this return, That this was done by such and such lords of the council, must be as good as if they had added that to their own names.

*Sir R. Sawyer.* That is not our objection.

*Att. Gen.* Your objection has been heard, and answered; we pray the information may be read.

*Serj. Pemberton.* No, we are not come to that yet.

*Just. Allybone.* Pray, would you have an averment by the lieutenant of the Tower, in his return to an Habeas Corpus, that it was done by them in the council-chamber?

*Mr. Finch.* My lord, the difference is this, with submission; a commitment by sir Robert Wright, chief justice, is a good commitment, and a return of that nature were a good return, because he is chief justice all over England, and hath authority to commit wherever he is; but a commitment by such an one, or such and such lords of the privy council, cannot be a return of a commitment; because, though they be lords of the council, yet neither single or apart, nor all together, have authority to do such an act, unless they be assembled in the privy council: there their authority is circumscribed; so that that must needs be a great difference between a commitment made by a judge who is always so, and a commitment made by a lord, or so many lords, by the name of lords of the privy council, who carry not their authority about with them, but are limited to their assembly in council.

*Just. Allybone.* Mr. Finch, indeed your objection is worth something, if my lord chief

justice could not act but as under the character of chief justice; for you are now arguing, that these lords could not do this act, but as lords of the council in council: the same (say I) may be said of a commitment by the lord chief justice; he cannot do it but under the formality of his authority, as he is chief justice, unless you will make it impossible for him to do any thing but as chief justice; or unless you make it impossible to separate his person from his authority.

*Mr. Finch.* Sir, the difference lies here; the authority of the one is general and universal, and goeth with him wherever he goes; the other's authority is limited to a particular sphere.

*Just. Allybone.* Why, would you have it averred, that they did it being assembled in council?

*Mr. Finch.* Under favour, they cannot justify any thing that was done by them as lords of the council, but in the privy council.

*Just. Powell.* Truly, my lord, for my part, I think there is no such great necessity of haste in this matter: here are exceptions taken to this return; and the matter transacted now before us, appears to me to be of very great weight; peradventure a greater or weightier has not been agitated in this place in any age: it concerns these noble and reverend lords in point of liberty: it comes suddenly upon us, and therefore my lord, I think it very fit we should consider a little of this matter, and consult the precedents of returns, how they are; for there are multitudes of returns of writs of Habeas Corpus in this court; therefore it were requisite, that we did consult the forms of other returns, and how the precedents, as to this matter, have always been: if they are according as this is, then all is well; but if they be otherwise, it is fit we should keep to the usual forms.

*L. C. J.* What's your opinion of it, brother Allybone?

*Just. Allybone.* I am still of the same mind I was, my lord, That he could make no return but this return he has made; and if his warrant was insufficient upon this account, that these particular persons, lords of the privy-council, did this act without saying, that they did it in privy-council; then it is not his return that could mend it; and truly I do not know that there does need any precedent for this; for every one knows where the lords of the council are; and it is a sufficient averment, this that is in the return.

*Mr. Pollexfen.* They are lords of the council every where; but they do not act as lords of the council any where but in council.

*Just. Allybone.* So my lord chief justice is chief justice every where.

*Mr. Finch.* And he can do judicial acts, as such, every where; but the lords of the council cannot act but in the council.

*Just. Allybone.* Nor is it to be presumed that they do it.

*Mr. Finch.* It is not a presumption that is to make any thing in this case, but the question

ie; whether there be a legal return of a legal commitment?

*Just. Allybone.* Such public persons, in such public acts, can never be presumed to act in their separate private capacities.

*Mr. Finch.* But with submission, your lordships can judge only what is before you in this return, whether it be a good return, and whether here be a good authority asserted in the persons that did commit my lords the bishops?

*L. C. J.* Truly, as to this objection and exception that has been made by them, I have considered of it, and what has been said on all sides, and I think it is the usual way of commitment; I never saw any other; all the warrants that ever I saw, are of this form; if there were any precedents they should be shewn of that side.

*Sir R. Sawyer.* There are multitude of precedents otherwise, and none of this form.

*L. C. J.* I confess it is a case of great weight, and the persons concerned are of great honour and value; and I would be as willing as any body to testify my respects and regards to my lords the bishops, if I could see any thing in it worth considering of.

*Sol. Gen.* There's no colour for it, if they do but look upon the statute of the 16th and 17th of the late king, which arraigns the proceedings of his privy-council: That tells you what things belong to the cognizance of the privy-council, and what not; and there you have all the distinctions about commitments by the king and council, and by the lords of the council: and that act will shew, that this is a commitment according to the usual form. They know very well what the common stile of the orders and commitments of council is, as in other places and other commitments. By such an one, chief justice, that is the stile that is very well known for such warrants: so a commitment by such and such, naming them particularly, lords of the council, that's an order made by the lords in council; and that statute distinguishes between commitments of one, sort and the other; and it does it, because sometimes warrants run in one form, and sometimes in another; but they all come within the direction of that statute. My lord, we are in a plain case; my lords the bishops come regularly before you, upon a commitment by the council; and therefore we pray they may be charged with this information.

*Sir R. Sawyer.* Pray, will your lordship give us leave to have that statute looked into, which Mr. Solicitor speaks of; and then we shall see whether it be to his purpose.

*L. C. J.* Let the statute be read.

*Sol. Gen.* If it be Keeble's book, it is the 16th of Charles the first; if it be the old book, it is the 16th and 17th of Car. towards the end.

*Clerk reads.* 'Provided always, and be it enacted, that this act, and the several clauses therein contained, shall be taken and expounded to extend only to the court of star-chamber; and to the said court holden before

' the president and council in the marches of Wales, and before the president and council in the northern parts.

*Sol. Gen.* It is the paragraph before that.

*Clerk reads.* 'And be it also provided and enacted, that if any person shall hereafter be committed, restrained of his liberty, or suffer imprisonment, by the order and decree of any such court of Star-chamber, or other court aforesaid, now, or at any time hereafter, having, or pretending to have the same, or like jurisdiction, power, or authority to commit, or imprison, as aforesaid; or by the command or warrant of the king's majesty, his heirs or successors, in their own persons; or by the command or warrant of the council board, or of any of the lords, or others of his majesty's privy council, that in every such case, every person so committed, restrained of his liberty, or suffering imprisonment, upon demand—'

*Sol. Gen.* That is all: your lordship sees these several distinctions of the stile of commitment.\*

*Att. Gen.* Now, pray favour us a little. My lord, I think these gentlemen will not deny, but that the lords of the council can commit. I must confess, they ask that which was pretty reasonable, if the case was as they would make it. They would have my lords the bishops discharged, because there is not a return of a good commitment, and that stands upon this presumption, that what is here said to be done by all these lords, at the end of whose names this is added, 'lords of the privy council,' was done by them out of council, which, I suppose, your lordship will not presume, but will take it, that they did this as lords of the council in council; and no man can say, but the lords in council can commit.

*Sol. Gen.* You may as well presume upon a warrant made by my lord chief justice, because it is not said where he did it, and therefore he did it in Scotland.

*Att. Gen.* I say again, unless your lordship will presume that which is not to be presumed, this must needs be a very good return.

*Just. Allybone.* Truly (as Mr. Solicitor says) you may as well desire us to presume that my lord chief justice would commit a man in Ireland or Scotland; I can see no imaginable difference.

*Mr. Finch.* My lord, that which we pray, is, not that your lordship would presume, but that you would not presume, but take the return as it is before you; and then see whether it can be thought to be a commitment by the lords in council?

*Serj. Pemberton.* Pray, my lord, spare us a

\* In sir William Williams's copy it appears to have been at first written as it is printed in the text, and to have been afterwards corrected as follows: "Your lordship hath the several styles of commitments by the council board, mentioned in that statute, wherein you have a commitment in the stile of this commitment."

little in this matter: here has been the clause of a statute read to you, from whence Mr. Solicitor would conclude, that all commitments by several sorts of persons there named, are legal; or else the enumeration of the several sorts of commitments signifies nothing to this purpose. But I pray your lordship would consider this, that the very scope and end of that act of parliament is, to relieve against illegal commitments and oppressions; then the several commitments therein named, can never all be called legal; so that this signifies nothing to our purpose. My lord, they tell us we stand upon presumption: no, we do not so; we say your lordship ought not to presume the one or the other, but to judge upon what is before you: but here is nothing before you but this return of a commitment of these noble persons, my lord the archbishop of Canterbury, and the rest of the bishops, which is said to be by these particular lords. Now if your lordship will please to give us time to look into it (for this is an exception we take at the bar upon hearing the return read,) we would shew the constant way has been quite otherwise than this return makes it; therefore we desire leave to satisfy your lordship concerning the usual form of precedents, and thereby it will appear, that it ought to have been, that they were committed by order of the privy council, and then he should have set forth the warrant itself, which would have shewn the names of the privy counsellors, and he needed not to have put their names in the return, as the particular persons that committed them: but now, my lord, this does not appear to be an order made in council, as it ought to be, and the return is that which is before you, and you are to judge only upon what is before you.

*L. C. J.* So we do.

*Just. Altybanc.* Pray, sir Robert Sawyer, would the saying of a governor of the Tower, in his return to a writ of Habeas Corpus, alter the nature of the commitment?

*Att. Gen.* My lord, we are in your lordship's judgment.

*Just. Altybanc.* I say, brother Pemberton, would any collateral saying of the lieutenant of the Tower alter the nature of the thing, his return in this case is only an inducement to the warrant of commitment, and his saying one way or the other would neither vitiate nor mend the commitment.

*Sol. Gen.* Your lordship cannot take notice of the commitment but from the warrant.

*Mr. Pollexfen.* The return is the fact upon which you are to judge.

*Just. Powell.* Certainly we must judge of the record, and nothing else, and the return is the record now, being filed.

*L. C. J.* The return is as certain, I think, as can be.

*Sol. Gen.* By the return it appears, the bishops were committed by the warrant of such and such lords of the council, and that which is before you now is, whether you will not intend it to be done by them in council?

*Just. Powell.* We can intend nothing, but must take the return as it is.

*L. C. J.* The warrant is good enough, I think truly, and so is the return.

*Mr. Pollexfen.* I think in all the Habeas Corpus's that have been since the king's return, of persons committed by the council, the returns have been quite otherwise than this return is. We do all pretty well agree, (for aught I can perceive) in these two things, we do not deny but the council board has power to commit; they on the other side do not affirm, that the lords of the council cannot commit out of council.

*Att. Gen.* Yes, they may, as justices of the peace.

*Mr. Pollexfen.* This is not pretended to be so here.

*L. C. J.* No, no, that is not the case.

*Mr. Pollexfen.* Then, my lord, with submission, I will compare it to any thing else of this nature. I deny not but that the council may commit, but the question is, whether this return of their commitment be right? suppose there should be a return to a Habeas Corpus, that such a one was committed by sir Robert Wright, and three others by name, justices of this court, for a contempt, without saying, that it was done in court, this would be an ill return: although they had power in court to commit for a contempt, yet it must appear, that it was done in court, or it cannot be a good return. If I had thought or foreseen, that such a return would have been made, I could easily have made out our objection; but we could not foretel what they would return, and therefore we can only make this objection now upon the hearing of it read. In all the debates that have been heretofore in the great case of the Habeas Corpus concerning my lord Hollis\* and those other gentlemen who were in prison upon commitments by the privy council, the returns are, that they were committed by order of the privy council, as near as I can remember. I will not take it upon me to be positive in it, but I believe, if your lordship thought fit to give us a short time to look into it, we should be plainly able to shew you, that all the returns of commitments of this nature, are said to be by order of the council board, and never any of them naming the lords; for that may be true, and yet not a legal commitment.

*L. C. J.* I have seen several precedents of commitments in this form, and if you make no exception to the warrant, you can make no exception to the return, because that only sets forth the warrant.

*Mr. Pollexfen.* The commitment you are to judge of, is upon the return with submission, and supposing the warrant to be right and good, yet the return is not legal.

*Att. Gen.* We say in common understanding, it cannot be but a commitment in council.

*Serj. Pemberton.* But common understand-

\* See vol. 3, p. 294, of this Collection.

ing and legal understanding are two things, and we pray the judgment of the court.

*Sol. Gen.* And so do we, my lord, and pray your rule in it.

*Just. Allybone.* You may by the same reason say, that upon all commitments by warrant from justices of the peace, that the commitment was out of the county, if the party does not alledge in the warrant, or return, that the commitment was in the county. It is an objection that would put us upon presuming what we have no reason to presume.

*L. C. J.* If you would have our opinions, let my brothers declare theirs, I will soon tell you my mind.

*Just. Holloway.* Pray let the return be read again. [Which was done.]

*Att. Gen.* So that the return says, they were committed by virtue of a warrant of such and such by name, lords of the council, and whether this be a warrant of the council is the question; and we think it is plain enough, that it is a good return.

*Just. Powell.* I have given you my thoughts already: I think we ought to consult precedents in a case of this weight and nature; and truly I will not take upon me to say, whether it be a good return or not a good return, without looking into precedents.

*Just. Allybone.* For my own part, it does not stick at all with me, for the reasons I gave before. When any man that has an authority to commit, does commit a person to an inferior officer, and that officer has an Habeas Corpus brought to him, it is enough for him to return his warrant, by which the party was committed, and whatsoever he says by the bye, cannot have any influence, one way or other, to alter the nature of the thing. Now unless you would make every man that is a justice of the peace, to write his name, and stile himself justice of the peace, this must be a good commitment. Every commitment shall be presumed to be pursuant to the power of the person committing; and I am sure, take these lords separately, and they had no power to commit, and consequently such a warrant would be no authority to the lieutenant of the Tower to receive them: but when they send such a warrant as this, we shall presume it to be according to the power they have, and not according to the power they have not. This warrant is returned by the officer, and I cannot but presume that it is all very well.

*Just. Holloway.* My lords, I am very desirous and willing your lordships should have all the right and justice done you that can be, and, by the grace of God, I will endeavour it all I can. I see in this case it is agreed on both sides, that the council have a power to commit, and the commitment is here certified in the words of the warrant, and the lieutenant has made his return, that they were committed by virtue of this warrant. If the lieutenant of the Tower had returned any other commitment, you would have blamed him for a false return; but now you find fault with his return, because

he does not say, the warrant was made by the lords of the council, and in council: that is a thing so notoriously known to all the kingdom, that my lords were sent to the Tower by the council, that nobody doubts it; and being thus sent by this warrant, I do not see but that this is a very good return, and my judgment is, that the information ought to be read.

*L. C. J.* I told you in the beginning, after you had made your objections, that I thought it was as all other returns are; and I am of the same opinion still, I find no fault with the warrant, nor with the return.

*Serj. Pemberton.* There is no objection to the warrant at present upon this question.

*L. C. J.* Neither do I take upon me to say any thing, nor is there any thing now to be spoken of touching the fact for which these noble lords were committed.

*Att. Gen.* We pray, my lord, the information may be read.

*Just. Holloway.* There is no question about the fact; but whether this be a good return which is here made, that they were committed by such and such lords of the council?

*L. C. J.* I would do as much to give my lords the bishops ease, and set them at liberty, as I could possibly by law; but we must not break the rules of law for any one.

*Sol. Gen.* Pray read the information.

*Mr. Finch.* No, my lord, we oppose the reading of it.

*Sol. Gen.* Why! ought you not to be satisfied with the opinion of the court?

*Mr. Finch.* We have another thing to offer, which we must have the opinion of the court in, before this information can be read.

*Att. Gen.* Pray let us hear what it is?

*Mr. Finch.* My lord, we did humbly offer one objection more to your lordship against the reading of the information: the former objection was concerning the persons committing, in that it does not sufficiently appear upon the return, that they were committed by the lords in council; the court have given their opinion in that: but the other objection still remains, whether they ought to have been committed at all; and therefore when they now appear upon this Habeas Corpus, we say they were not legally committed to prison, because a peer ought not to be committed to prison in the first instance for misdemeanor.

*Sol. Gen.* If you please you may speak to that by and by; but that is not proper now for you to offer, or for the court to determine, whether a peer may be committed upon an accusation for a misdemeanor?

*Mr. Finch.* With submission, that is such a difficulty that lies in the way against the reading of the information, that you must get over it, before you can come at the reading of it.

*Att. Gen.* You will have your time for all this matter by and by; but certainly you cannot be admitted to it yet.

*L. C. J.* Truly I think you are too early with that exception.

*Mr. Finch.* With submission, we think this

is the proper time, and I will tell your lordship the reason why.

*L. C. J.* Mr. Finch, certainly every thing in the world that can be said, you will say for clients, and you shall be heard; for we are very willing to deliver these noble lords, if we can by law, and if the exceptions you make be legal.

*Mr. Finch.* My lord, we do not doubt your justice; and therefore we desire to offer what we have to say in this point: the only question (now it seems) is about our time of making our exception. Mr. Attorney (we apprehend) did say one thing which was certainly a little too large; that however any man comes into court, if the court find him here, they may charge with an information.

*Att. Gen.* Who says so? I said no such thing.

*Mr. Finch.* Then I acquit Mr. Attorney of it, he did not say so: then both he and I agree the law to be, that a man does not come into court, if he does not come in by legal process, he is not to be charged with an information; then, since we do agree in that proposition, certainly we must be heard to this point, whether we are here upon legal process, before you can charge us with this information?

*Att. Gen.* You think you have said a fine thing now, and take upon you an authority to make me agree to what you please.

*Mr. Finch.* Certainly the consequence is plain upon your own premises.

*Att. Gen.* Do you undertake to speak for me?

*Mr. Finch.* I am in the judgment of the court, and to them I leave it.

*Att. Gen.* I know you thought you had got an extraordinary advantage, by making me say what you please; but there has been very little said, but what has been grounded upon mistakes all along. This is that I do say, if a man comes in voluntarily upon any recognizance, though he be not in custody; or if he comes in upon any process, if the court find him here, though that process be not for the thing charged in the information, yet the court is so much in possession of the person, that he shall plead to any information; and that I do say, and will stand by.

*Sol. Gen.* My lord, we are here in an extraordinary auditory, and this court is always a very great court, (but here is a greater and more noble assembly than usually we have) and these gentlemen to shew their eloquence and oratory, would, by converting propositions otherwise than they are delivered, put another construction upon them, than they do reasonably bear, and so draw strange inferences from them. But those arts, we are sure, will not prevail in this auditory; we say plainly, and the law is so (let them apprehend as they please) that your lordship cannot exhibit an information against any man that you find accidentally here in court. Then, says Mr. Finch, we are agreed: But withal (say I) take my other

propositions; If a person be brought into court by legal process, or upon any contempt whatsoever, by an attachment or warrant, or upon a Habeas Corpus after a commitment, being thus found in court, your lordship may charge him with an information. When these gentlemen, who are so vehement on the other side did preside here or stood in the places where Mr. Attorney and I now are, I can name them numbers of cases of the like nature with this, when good men and honest subjects have been compelled by them to appear to informations, and plead presently: They are the persons perhaps that made the precedents; they made the law by their authority for aught I know: I am sure I find the court in possession of this as declared law, and therefore I presume to pray the usual course may be followed.

*Mr. Finch.* Pray, my lord, spare us a word in this matter: I do agree with Mr. Attorney in this matter, but I do not agree with Mr. Solicitor.

*Sol. Gen.* You do not agree with yourself.

*Mr. Finch.* I hope I do, and always shall agree with myself; but I do not agree with you, Mr. Solicitor.

*Sol. Gen.* You do not in 1688, agree with what you said and did in 1680.

*Mr. Finch.* Says Mr. Attorney, a man that comes voluntarily in cannot be charged with an information; with him I agree. Says Mr. Solicitor, a man that comes in, and is found in court by any process, may be charged with an information: I say no, if the process be wholly illegal; for he cannot be said to be legally in court. Suppose a peer of the realm be taken upon a Capias, and is committed to the Marshalsea, and is brought up upon a Habeas Corpus, I would fain know, whether you could declare against him?

*Att. Gen.* No, we cannot.

*Mr. Finch.* And why is that, but because the process is illegal, and he is not truly in court: Then is it a proper time now to make this a question, Whether my lords here were legally committed, before you can lay any thing to their charge by way of information? For if the commitment be illegal, it is a void commitment; and if the commitment be void, the process is void, and then my lords are not legally in court.

*L. C. J.* That sure is but returning again to the same question that has been determined already.

*Sol. Gen.* If your lordship will permit them to repeat and reiterate the same things, we shall never have an end.

*Mr. Finch.* My lord, we pray these gentlemen of the king's counsel may be a little cool with us, and then they will find, we do not talk the same things over and over again, nor meddle with that which the court have given their judgment in.

*L. C. J.* Well, go on, Sir.

*Mr. Finch.* My lord, we say it is the privilege of the peers of England, that none of them shall be committed to prison for a misde-

meanor, especially in the first instance, and before judgment. This (we say) is the right of my lords the bishops, and that which they claim as lords of parliament. Now it appears upon this return and the warrant, that the council-table hath committed them (for your lordship and the court hath ruled it, that this commitment must be taken to be by order of the privy council, and we meddle not with that further); but we say that the council-table may commit a man unjustly, that is certain. There has been relief often given in this court against commitments by the council-table: And that they were unjustly committed, depends upon that point of their privilege as peers.

Serj. Pemberton. My lord, we say, that the lords of the council have illegally committed these noble persons, who are peers of the realm, and ought to have the privilege of their peerage, which is not to be committed for a misdemeanor; that the council ought not to have done: For the peers of England ought no more to be committed for a misdemeanor, and to be imprisoned, especially upon the first process, than they may be in a case of debt. It is true, in the case of treason, felony, or the breach of the peace, the peers have not such a privilege; they may be committed: But for a misdemeanor (as this does appear to be in the warrant of commitment) they ought not to be committed. But they were committed by the lords of the council; and we now complain of this to your lordship as illegal, and therefore pray my lords may be discharged.

Sir R. Sawyer. Will your lordship be pleased to favour me a word on the same side, for my lords the bishops. It must be agreed to me, that if a peer be brought into court, as taken by a *Capias*, he cannot be charged with a declaration: and the reason is, because the process is illegal: Then, my lord, with submission, when a peer comes upon a foreign commitment, and is brought in custody upon a *Habeas Corpus*, this is either in the nature of a process, or a final commitment, as a judgment; they will not say, that this is a good commitment, so as to amount to a judgment; for the council board could not give a judgment in the case; besides, the commitment is illegal, because it is not a commitment till they find security to answer an information here, but it is a warrant to keep them for a misdemeanor: Besides, there is another thing we have to say to this warrant (for I am making objections against the validity of this commitment), it does not appear that there was any oath made, and therefore the court must adjudge that there was no oath made, and then no men ought without oath to be committed, much less a peer. But that which we chiefly rely upon is, That my lords ought not to have been committed for this, which is but a misdemeanor at most: And if they use it as process, to bring my lords the bishops to answer an information, we say, by the law no such process can be taken out against the persons of peers for bare misde-

meanors. I do agree, that for felony, treason, or surety of the peace, the persons of peers may be committed; and that which is called surety of the peace in our books, Mr. Solicitor knows very well, in some of the rolls of parliament, is called breach of the peace, but it is all one; and the meaning, in short, is, that it is such a breach of the peace, as for which a man by law may be obliged to find sureties for the peace. If it should mean a breach of the peace by implication, as all trespasses and misdemeanors are said to be *contra Pacem* in the indictment, or information, then it were a simple thing to enumerate the cases wherein privileges did not lie; for there could be no information whatsoever, but must be *contra Pacem*, and so there could be no such thing as privilege at all. And besides, we say, the very course of this court is contrary to what they would have; for in the case of a peer, for a misdemeanor, you go first by summons, and then you do not take out a *Capias* as against a common person, but the next process is a *Distringas*, and so *ad infinitum*. And I do appeal to them on the other side, and challenge them to shew any one precedent, when a peer was brought thus into court, to be charged with an information, without it were in the case of an apparent breach of the peace; for he must be charged in custody, and there must be a *Committitur* to the marshal, to entitle the court to proceed. Your lordship will find but very few precedents of cases of this nature about common persons; for till within these fourteen or fifteen years there was no such thing ever done against a common person: But this was the rule; First there went out a *Subpana*, and then an attachment, and when the party was taken upon the attachment, he is taken to come in upon process, and then the court would charge him presently: but if he did appear upon the summons, they would not charge him, but he had time to take a copy of the information, and an imparlance of course, till the next term, before he could be compelled to plead. But in the case of a peer, there never was any such precedent as the attaching his person, but only a summons and distress: And I would be glad the king's counsel would shew, that ever there was any such process taken out against the person of a peer, for a meer misdemeanor. My lord, it is plain, what breach of the peace means in every information; and I only speak this to acquaint the court how the constant proceedings in all these cases have been. These informations were anciently more frequent in the star chamber; and what was the process there? Not the common process of a *Subpana*, that was not the course there; but the process was a letter from the chancellor; that if the party upon that letter did not appear, in a common case, there went out an attachment; but in a peer's case, never: And so it appears by Crompton's Jurisdiction of Courts, Tit. Star Chamber 55. This appears likewise by the proceedings in chancery against the peers, till the queen's

time. They did not so much as take out an attachment after default upon a *Subpœna*, but they would then, in the queen's time, be so bold as to take out an attachment against a lord for not appearing; but that course was condemned as illegal; so we find in my lord Dyer.

*Att. Gen.* That was at a common person's suit.

*Sir R. Sawyer.* But the proceedings in the star chamber were at the king's suit, and I am sure Mr. Solicitor knows, that the peers privileges reach to informations; but, as I was saying, it was so adjudged as to the chancery in my lord Cromwell's case, 14 Eliz. Dyer, 315.

*L. C. J.* You take a great compass, sir Robert Sawyer; but pray remember what you laid down at first, for the ground of your discourse, That there was never any commitment of a peer for a bare misdemeanor: You must keep to that; that is the point you are to look after.

*Sir R. Sawyer.* My lord, I will so; I do not cite these cases, but for this purpose, to shew, that in all courts the peers have particular privileges; and I am sure they can produce you no precedents for any such proceedings against a peer. In my experience of these matters, I never knew any such; nay, I knew it always to be otherwise, that in informations for misdemeanors, there did never issue out a *capias* against a peer: and Mr. Attorney knows very well, it was so in the late case of my lord Lovelace; for that case of my lord Devonshire,\* that it was an express breach of the peace, though it was debated and disputed then; so that I take it, these noble lords cannot be charged with this information, because they do not come in by legal process; and unless they can shew me any cases, where a peer did ever come in upon such a commitment, and answered to an information upon that commitment, it must certainly be allowed not to be the legal course; though if such a precedent could be shewn, that passed *sub silentio*, without debate or solemn determination, that would not do, nor could bind the rest of the peers. If one man would lose a particular benefit he has, all the whole body must not lose it; and the benefit is not small, of time to make his defence; of imparling, of taking a copy of the indictment, and preparing himself to plead as his case would bear; and indeed a common person has used to have these privileges, though in some cases of late, they have taken the other course; and if a *capias* went out (which we say cannot go against a lord) and the party were brought in, he was to answer immediately. Now, my lord, I take it, that the privileges of peers is in all times the same with the parliamentary privilege in parliament-time, which reacheth to informations, as well as other actions. My lord Coke is express in this point, in the 4 Instit. 25. If that objection should hold good, that every information

being *contra pacem*, that should be a breach of the peace, then (as I said before) privilege will hold in no information, which is contrary to that and all our other books: it is only such a breach of the peace, as for which security of the peace may be required. But further, that this is a privilege enjoyed by the peers, spiritual as well as temporal, I suppose will not be denied; for I think they will not question, but that the bishops and abbots that were lords of parliament were peers; and we find in our books, when the court has been moved for a *capias* against an abbot, if he were a mitred abbot, and sat in the Lords' House, it was always said, that no such process ought to go; and so it is in the case of bishops: but indeed for other noblemen, the difference is this: where it does not appear upon record, that they are lords in parliament, there the courts have put them to bring their writs of privilege; but where it does appear upon record, that they are peers, the court is to allow and take notice of their privilege; and there needs no such writ. Now that the parliament privilege, and the privilege of peers (as to their persons) is the same, appears by the form of the writ in the register, fol. 287, Fitz. Herb. Nat. Brev. 247. The words of the writ are these, That if such a one be sued at the suit of another, the writ commands, that a peer out of parliament-time should have the same privilege with those summoned by the king to the parliament; and I know not any difference that can be put between them; and it cannot be denied, that all informations whatsoever, unless such as are for breaches of the peace, for which surety of the peace may be required, are under the controul of the parliament privilege: so that upon these grounds, I do press that my lords the bishops may be discharged. If there be any information against us, we are ready to enter our appearance, to answer it according to the course of the court: but if the information be for no other thing than what is contained in the warrant of commitment, then their persons ought to be privileged from commitment.

*Mr. Pollexfen.* If your lordship please to take it altogether, you will find it a case very well worth your consideration, it being the case of all the peerage of England.

*Att. Gen.* My lord, these gentlemen have taken a great deal of liberty, and spent much of your time in making long arguments, and after all, truly, I do not know where to have them, nor can understand what they would be at. It seems they agree, that for treason, felony, and breach of the peace, a peer may be committed.

*L. C. J.* That is, say they, such a breach of the peace, as for which surety of the peace may be required.

*Att. Gen.* Then all the learning they have been pleased to favour us with is at an end; for if here be any thing charged upon the bishops, for which sureties of the peace may be required, then this is a good commitment.

\* See vol. 11, p. 1354, of this Collection.

L. C. J. That they must agree upon their own arguments.

Att. Gen. Can then any man in the world say, that a libel does not require sureties of the peace? For we must now take it as it is here upon this return. How my lords the bishops will clear themselves of it, is a question for another time; but the warrant says, they were committed for contriving, framing, and publishing a seditious libel against his majesty and his government: is there a greater misdemeanor? or is there any thing on this side a capital crime that is a greater offence? is there any thing that does so tread upon the heels of a capital offence, and comes so near the greatest of crimes that can be committed against the government? not to enlarge at this time upon what the consequences of such things may be; is there a greater breach of the peace than such seditious practices? no doubt, any man may be committed for it, and may be bound to find sureties for his good behaviour.

Sir R. Sawyer. I say sureties of the peace, not of the good behaviour.

Sol. Gen.\* Pray my lord, would you consi-

\* Of this Argument of sir William Williams (including what follows the interruption by the bishop of Peterborough) in his MS. alterations are made in almost every sentence. The following is its altered state:

Mr. Sol. Gen. Pray, my lord, will you consider where we are, and where we are going; these gentlemen are out of the way and would have us follow them. We are now upon a single question as this case stands before your lordship upon the Habeas Corpus and return. Here is a supposed libel said to be contrived, made, and published against the king and his government by my lords the bishops. This is the accusation; I hope they are innocent and will prove themselves so. But suppose it be true that they have made a seditious libel against the king and government, will any man say that this is not done *vi et armis* in construction of law? And all the informations that were exhibited by sir Robert Sawyer when he was attorney general, and he exhibited a great many for libels against the king and the government, are alleged to be *vi et armis et contra pacem*.

Bp. of Peterborough. Was it so in your own case, Mr. Solicitor?

Mr. Sol. Gen. Yes, it was so in my case; and you are one of them that prosecuted me for aught I know, such kind of prosecution being preached to the people. But so my lord it was in many other cases within time of memory. The counsel for my lords the bishops admit a peer may be imprisoned for treason, felony, or breach of the peace, but that breach of the peace they say is where the law requires sureties of the peace; but is there any certainty where sureties of the peace shall be required, and where not? Then I would put this case: These lords have contrived and published a seditious libel against the king and his

der where we are; we are going towards France, I think, or some farther country: they have set us out to sea, and I do not see after this rate, when we shall come to land. Certainly, these gentlemen are mightily out of the way, and would fain have us so too! we are here upon a single question, as this case stands before your lordship, upon the return. Here is a libel, a seditious libel, said to be contrived,

government, whether this be not such a breach of the peace as will require sureties of the peace? This is the question before the court, and the law plainly appears to be so in sir Baptist Hicks's Case in Hobart, fol. 215. A man writes a private letter, and delivers it closed and sealed up into the hands of sir Baptist Hicks privately, wherein were contained some reproachful reflexions upon sir B. H. although no fighting, this was sentenced a libel and breach of the peace in the Star-chamber, because such letters incite and stir up to fighting, which may occasion bloodshed; and I think there cannot be a greater breach of the peace than for a man to come to the king's face and publish a libel against him; and yet, according to their assertion, this man shall go away, and you shall not take him up but take a subpoena against him, and wait upon the delays of all the ordinary process of the court in common cases; and they tell you another thing, that a Capias does not lie upon an information for misdemeanor against the person of a peer, and that there is no precedent of any such thing; but I would pray them to remember the Case of my lord Lovelace, in the first year of this king's reign, in this court, for breaking a footman's head upon a public affront given him by the footman. His lordship was bound in recognizance to appear in this court the first day of the then next term, and upon his appearance was charged with an information for the misdemeanor without any process; and as to that precedent I think sir Robert Sawyer and Mr. Finch will not contradict me. There was likewise the late earl of Pembroke's Case, who in a disorderly house occasioned the flight of some disorderly persons for fear. Upon a motion in this court in the last king's reign, an attachment was awarded against him for this supposed misdemeanor. My lord, we have gone out of the way too much already, and these gentlemen would lead us further, if the court will endure it, but I hope your lordship will reduce us to the methods of proceedings in this court in matters of this nature. Here is an information which we desire may be read; if they have any thing to plead to it, their time for that will come after it is read. If they think they have been illegally imprisoned, it appears plainly upon the face of this return who they were that did commit them. Here are a great many noble lords to answer an accusation of false imprisonment or otherwise. If my lords the bishops will think fit to question them, these learned gentlemen are very able to advise them what they should do in it.

made and published against the king and his government, by these noble lords the prisoners. This is the accusation; suppose this be true, that is to be proved hereafter; I hope they are innocent, and will prove themselves so: but suppose it to be true, that they have made a seditious libel against the king and his government, will any man say, that this is not done 'vi et armis?' this is a libel with a witness; nay, two or three degrees more will carry it to high treason, and all the informations that were exhibited by sir Robert Sawyer, when he was Attorney General (and he exhibited a great many for libels,) constantly these words were in, 'vi et armis et contra pacem.'

Bishop of Peterborough. Was it so in your own case, Mr. Solicitor?

Sol. Gen. Yes, it was so in my own case, and you were one of them that prosecuted me, for aught I know; or if you did not prosecute me, you preached against me; or if you did not, some of your tribe did: but so, my lord, it was in many other cases, within time of memory. Sir Robert Sawyer has passed a compliment upon me, of my great skill in parliament matters; but truly there needs no great skill in matters where the law is so plain. A peer they agree may be in prison for treason, felony, or breach of the peace; but that breach of the peace, say they, is where the law requires sureties of the peace: but is there any certainty where sureties of the peace shall be required, and where not? then I would put this case; these lords have contrived and published a seditious libel against the king and his government; and whether this be not such a breach of the peace, as will require sureties of the peace, is the question before you.\* And it plainly appears to be so, in sir Baptist Hicks's case, in Hobart, 215. [See, too, Poph. 139, and 1 Keb. 676, 1 P. Wms. 17.] If a man write a private letter provoking another to fight, although there be no fighting, this is a breach of the peace. Now a letter can do no wrong in that kind, but as it incites and stirs up to fighting, which may occasion bloodshed; and I think there cannot be a greater breach of the peace, than for a man to come to the king's face, and publish a libel against him, and yet, according to their doctrine, this man shall go away, and you shall not take him up, but take a *subpœna* against him, and wait for the delay of all the ordinary process; and they tell you another thing, that a *capias* does not lie upon an information against the person of a peer, and that there is no precedent of any such thing; but I would pray them to remember the case of my lord Lovelace, about some three years ago, for breaking a footman's head.† It

\* As to this point, see in this Collection the Case of John Wilkes, esq. A. D. 1763.

† Lord Lovelace had beaten his footman, who obtained a warrant, which lord Lovelace refused to obey: To this alludes the following clause in the prince of Orange's Declaration of October the 10th, 1688; "Those evil counsel-

seems, if a man libels the king in his own presence, that is not so great a matter as a little correction to an insolent footman; but there he was bound in a recognizance to appear there in this court, and accordingly he did appear, and was charged with an information; and as to that precedent, I do believe sir Robert Sawyer and Mr. Finch won't contradict me. This was in the first year of this king. There was likewise my lord of Pembroke's case, who\* went to a disorderly house, and there frightened some people: we moved the court, and had an attachment against him for a misdemeanor, and he was glad to compound the thing, or it had not ended so soon as it did; and yet if a lord comes to the king's person, and affronts him to his very face, will not an attachment lie against him for it? certainly it will. My lord, we have gone out of the way too much already, and these gentlemen will lead us farther; but we hope your lordships will reduce us to the methods of the law. Here is an information which we desire may be read; if they have any thing to plead to it, their time for that will come after it is read: if they think they have been illegally imprisoned, it appears plainly upon this return, who they were that did commit them. Here are a great many noble lords to answer an action of false imprisonment, if these lords think fit, and may have these learned gentlemen, that are very well able to advise them what they should do in it.

Sir R. Sawyer. We pray your lordship's judgment, whether the cases put by Mr. Solicitor are like our case?

Sol. Gen. They are as like, as sir Robert Sawyer is to Mr. Attorney that was.

Sir R. Sawyer. Those cases are of apparent breaches of the peace; so likewise was my lord of Devonshire's Case; but certainly that was not at all like this.

Mr. Finch. With your lordship's favour, I would add but one word, and I would repeat nothing of what has been said: All that I shall say is this; There is a great deal of difference between an actual breach of the peace, and that which in the bare form of an information is a breach of the peace, by construction of law, it being *contra Pacem*. Suppose it be laid that

lords have also treated a peer of the realm as a criminal, only because he said, that the subjects were not bound to obey the orders of a Popish justice of peace; though it is evident, that they being by law rendered incapable of all such trust, no regard is due to their orders: this being the security which the people have by the law for their lives, liberties, honours and estates, that they are not to be subjected to the arbitrary proceedings of Papists, that are, contrary to law, put into any employments civil or military. See 1 Ralph, 1025.

\* Perhaps the same who was tried for murder, in the year 1678. See the Case in this Collection vol. 6, p. 1309. In a note to that Case, mention is made of other outrages committed by lord Pembroke.

a man did *vi et armis* speak words, will that make the words a breach of the peace?

*Sol. Gen.* It must be *vi et armis*, and certainly is a breach of the peace; if the words be alleged to be scandalous against the king's government.

*Mr. Finch.* If a man write a petition, are the pen and ink that he uses the arms?

*Sol. Gen.* My lord, I hope, Mr. Finch remembers what I heard him say in Algernon Sidney's Case, 'scribere est agere.' Were the pen and ink the agents in that case: Mr. Sidney was the patient we know.

*Mr. Finch.* I think it is so, Mr. Solicitor, but every action is not a breach of the peace.

*L. C. J.* Well, let my brothers deliver their opinions, I will give you mine.

*Just. Allyn.* The single question now is, Whether or no that which Mr. Solicitor was pleased to name as the crime, and lay it to the charge of my lords the bishops, that is, a seditious libel, be a breach of the peace? I do confess that there is little of argument to be drawn from forms of indictments; and I shall put no great stress upon the words, *Vi et Armis*, where the fact will not come near it; but if a commitment may ensue (as they seem to agree) where ever surety of the peace may be required, nothing seems more important to me, than that surety of the peace should be required, where there is any thing of sedition in the case; and wherever there is a seditious act, I cannot tell how to make any other construction of it, but that it is an actual breach of the peace; that is my opinion.

*Just. Powell.* I am of the same opinion in this point too, as I was in the other point before: it was a matter of great consequence, I thought, upon the former point, but now it appears to me, to be of far greater consequence than it did at first; for here, all the great, high, and noble Peers of England are concerned in it, as to their privilege. Our predecessors in this court heretofore would not determine the privileges of the peers, but left them to themselves to make what judgment they pleased of them. I think truly it is a thing of that weight, that it may be very fit for the court to take time to consider of it, and I declare, for my own part, I will not take upon me to deliver any opinion in a matter of this consequence, before I have consulted all the books that can give me any light in the case.

*Just. Allyn.* Brother Powell, I am not determining, limiting, or cramping the privilege of peers, but I am only considering whether or no a seditious libel be a breach of the peace. It is agreed to be on all hands a breach of the peace. Is there any thing that will require sureties of the peace to be given upon the doing of it? For there sir Robert Sawyer has laid the foundation of his distinction, and if that shall draw any person under a commitment, then, say I, in my judgment, wherever there is a seditious libel, there is that which is an actual breach of the peace; for I am sure there

is that which is sufficient to require sureties of the peace. I controvert not the right of the peers one way or other, but only declare my opinion, that this is a fact that comes within the rule laid down by them, that what will require sureties of the peace, is a breach of the peace.

*Just. Holloway.* God forbid that in a case of this nature, any one shall take upon him here to say that every misdemeanor were a breach of the peace: I say not so; but certainly there are some such misdemeanors as are breaches of the peace; and if here be such a misdemeanor before us, then it is acknowledged, that even in parliament-time, a privileged person might be committed for it: For in treason, felony, and breach of the peace, privilege does not hold. I will not take upon me, as my brother said, to determine concerning the privilege of the peers, it is not of our cognizance, nor have we any thing to do, either to enlarge or confine privilege, nor do we determine whether this be such a libel as is charged in the information, that will come in question another time; but certainly as this case is, the information ought to be read, and my lords ought to appear and plead to it.

*L. C. J.* Certainly we are all of us here as tender of the privileges of the peers as any in the world can be, and as tender as we would be, and ought to be in trying any man's right: It becomes us to do it with great respect and regard to my lords the bishops; and therefore I would be as careful (if that were the question before me) to consider very well before I give my opinion, as ever I was in my life. But when I see there can come no mischief at all to the privileges of the peers, by what is agreed on all hands, I think I may very justly give my opinion: For here is the question, Whether the fact charged in the warrant be such a misdemeanor as is a breach of the peace? And the words of the warrant (which is now upon the record) being such as have been recited, I cannot but think it is such a misdemeanor as would have required sureties of the peace; and if sureties were not given, a commitment might follow; and therefore I think the information must be read.

*Att. Gen.* We pray the Clerk may read it.

*Clerk* reads. Middlesex, ss. Memorand.  
'That sir Thomas Powis, knight, Attorney  
'General of our lord the king, who for our said  
'lord the king in this behalf sues, comes in his  
'own person here into the court of our said  
'lord the king, before the king himself at  
'Westminster, on Friday next, after the mor-  
'row of the Holy Trinity in this term, and for  
'our said lord the king, gives the court here to  
'understand, and be informed, that our said  
'sovereign lord the king, out of his signal  
'clemency'

*Sol. Gen.* Read it as it is in Latin.

*Bishop of Peterborough.* My lord, we desire it may be read in English, for we don't understand Law Latin.

*Sol. Gen.* No, my lords the bishops are very

learned men, we all know; pray read it in Latin.

Clerk reads. "Memorandum, Quod Thomas Powis, Miles, Attornatus Domini Regis nunc Generalis, qui pro eodem Domino Rege in hac parte sequitur, in propria Persona sua venit hic in Curia dicti Domini Regis coram ipso Rege apud Westmonasterium, Die Veneris proxime post crastinum Sanctæ Trinitatis, isto eodem Termino, et pro eodem Domino Rege, Dat Curie hic intelligi et informari, quod dictus Dominus Rex, nunc ex insigni Clementia et benigna Intentione suis erga Subditos suos Regni sui Angliæ per Regiam suam Prerogativam, quarto die Aprilis, Anno Regni Dicti Domini Regis nunc Tertio, apud Westmonasterium in Comitatu Middlesexiæ, Declarationem suam Intitulatam, his majesty's gracious Declaration to all his loving subjects for liberty of conscience, gerentem Datam eisdem Die et Anno, Magno Sigillo suo Angliæ Sigillatam publicavit; in qua quidem Declaratione continetur."

JAMES R.

'It having pleased Almighty God, not only to bring us to the imperial crowns of these kingdoms through the greatest difficulties, but to preserve us by a more than ordinary providence, upon the throne of our royal ancestors, there is nothing now that we so earnestly desire, as to establish our government on such a foundation as may make our subjects happy, and unite them to us by inclination as well as duty, which we think can be done by no means so effectually, as by granting to them the free exercise of their religion for the time to come, and add that to the perfect enjoyment of their property, which has never been in any case invaded by us since our coming to the crown; which being the two things men value most, shall ever be preserved in these kingdoms during our reign over them, as the truest methods of our peace, and our glory. We cannot but heartily wish, as it will easily be believed, that the people of our dominions were members of the Catholic Church, yet we humbly thank Almighty God, it is, and hath long time been our constant sense and opinion (which upon divers occasions we have declared,) that conscience ought not to be constrained, nor people forced in matters of mere religion. It has ever been directly contrary to our inclination, as we think it is to the interest of government, which it destroys by spoiling trade, depopulating countries, and discouraging strangers; and finally, that it never obtained the end for which it was employed. And in this we are the more confirmed by the reflections we have made upon the conduct of the four last reigns. For after all the frequent and pressing endeavours that were used in each of them, to reduce these kingdoms to an exact conformity in religion, it is visible, the success has not answered the design; and that the difficulty is invincible. We there

fore, out of our princely care and affection unto all our loving subjects, that they may live at ease and quiet, and for the encrease of trade, and encouragement to strangers, have thought fit, by virtue of our royal prerogative to issue forth this our declaration of indulgence, making no doubt of the concurrence of our two houses of parliament, when we shall think it convenient for them to meet. In the first place, we do declare, that we will protect and maintain our archbishops, bishops, and clergy, and all other our subjects of the church of England, in the free exercise of their religion, as by law established, and in the quiet and full enjoyment of all their possessions, without any molestation or disturbance whatsoever. We do likewise declare, that it is our royal will and pleasure, that from henceforth the execution of all and all manner of penal laws in matters ecclesiastical, for not coming to church, or not receiving the sacrament, or for any other nonconformity to the religion established, or for or by the reason of the exercise of religion in any manner whatsoever, be immediately suspended, and the further execution of the said penal laws, and every of them is hereby suspended. And to the end that by the liberty hereby granted, the peace and security of our government, in the practice thereof, may not be endangered, We have thought fit, and do hereby straightly charge and command all our loving subjects, that as we do freely give them leave to meet and serve God after their own way and manner, be it in private houses, or places purposely hired or built for that use, so that they take special care that nothing be preached or taught amongst them which may any ways tend to alienate the hearts of our people from our government, and that their meetings and assemblies be peaceably, openly, and publicly held, and all persons freely admitted to the same; and that they do signify and make known to some one or more of the next justices of the peace, what place or places they set apart for those uses. And that all our subjects may enjoy such their religious assemblies with greater assurance and protection. We have thought it requisite, and do hereby command, that no disturbance of any kind be made or given under them, under pain of our displeasure, and to be further proceeded against with the uttermost severity. And forasmuch as we are desirous to have the benefit of the service of all our loving subjects, which by the law of nature is inseparably annexed to, and inherent in our royal person, and that none of our subjects for the future be under any discouragement or disability (who are otherwise well qualified and fit to serve us) by reason of some oaths or tests that have been usually administered on such occasions, we do hereby further declare, That it is our royal will and pleasure, that the oaths commonly called the oaths of supremacy and allegiance, and also the several tests and declarations mentioned

' in the acts of parliament made in the twenty  
 ' fifth and thirtieth years of the reign of our  
 ' late royal brother king Charles the second,  
 ' shall not at any time hereafter be required to  
 ' be taken, declared, or subscribed by any per-  
 ' son or persons whatsoever, who is, or shall be  
 ' employed in any office or place of trust, either  
 ' civil or military, under us, or in our govern-  
 ' ment. And we do further declare it to be  
 ' our pleasure and intention, from time here-  
 ' after, to grant our loyal dispensations, under  
 ' our great seal, to all our loving subjects so to  
 ' be employed, who shall not take the said  
 ' oaths, or subscribe or declare the said tests  
 ' or declarations in the above-mentioned acts,  
 ' and every of them. And to the end that all  
 ' our loving subjects may receive and enjoy the  
 ' full benefit and advantage of our gracious in-  
 ' dulgence hereby intended; and may be ac-  
 ' quitted and discharged from all pains, penal-  
 ' ties, forfeitures and disabilities by them, or any  
 ' of them incurred or forfeited, or which they  
 ' shall or may at any time hereafter be liable  
 ' to, for or by reason of their nonconformity, or  
 ' the exercise of their religion, and from all  
 ' suits, troubles or disturbances for the same,  
 ' We do hereby give our free and ample par-  
 ' don unto all nonconformists, recusants, and  
 ' other our loving subjects, for all crimes and  
 ' things by them committed, or done contrary  
 ' to the penal laws formerly made relating to  
 ' religion, and the profession or exercise there-  
 ' of; hereby declaring that this our royal par-  
 ' don and indemnity shall be as good and effec-  
 ' tual to all intents and purposes, as if every in-  
 ' dividual person had been therein particularly  
 ' named, or had particular pardons under our  
 ' great seal, which we do likewise declare shall  
 ' from time to time be granted unto any person  
 ' or persons desiring the same, willing and re-  
 ' quiring our judges, justices, and other officers,  
 ' to take notice of, and obey our royal will  
 ' and pleasure herein before declared. And  
 ' although the freedom and assurance we have  
 ' hereby given in relation to religion and pro-  
 ' perty, might be sufficient to remove from the  
 ' minds of our loving subjects all fears and jea-  
 ' lousies in relation to either; yet we have  
 ' thought fit further to declare, that we will  
 ' maintain them in all their properties and pos-  
 ' sessions, as well of church and abby lands, as  
 ' in any other their lands and properties what-  
 ' soever.

" Et idem Attornatus dicti Domini Regis  
 nunc Generalis pro eodem Domino Rege ul-  
 terius dat Cyriæ hic intelligi et informari,  
 quod postea, scilicet, vicesimo septimo die  
 Aprilis Anno Regni dicti Domini Regis nunc,  
 &c. quarto, apud Westmonasteriam prædic-  
 tum in Comitatu Middlesexia prædicto, idem  
 Dominus Rex nunc ex eadem Clementia et  
 benigna intentione suis erga subditos suos  
 Regni sui Angliæ, per Regiam suam Præro-  
 gativam, aliam Regalem suam Declarationem  
 Intitulatam, *his Majesty's gracious Declara-  
 tion*, gerentem datum eisdem die et anno  
 ultimo mentionatis, magno sigillo suo Angliæ

similiter sigillatam, publicavit; in quâ quidem  
 Declaratione continetur.

JAMES R.

' Our conduct has been such in all times, as  
 ' ought to have persuaded the world, that we  
 ' are firm and constant to our resolutions; yet,  
 ' that easy people may not be abused by the  
 ' malice of crafty, wicked men, we think fit to  
 ' declare, that our intentions are not changed  
 ' since the 4th of April, 1687, when we issued  
 ' out our Declaration for liberty of conscience  
 ' in the following terms:—

*His Majesty's gracious Declaration to all his  
 loving subjects for Liberty of Conscience.*

JAMES R.

' It having pleased Almighty God, not only  
 ' to bring us to the imperial crowns of these  
 ' kingdoms through the greatest difficulties,  
 ' but to preserve us by a more than ordinary  
 ' Providence upon the throne of our royal  
 ' ancestors, there is nothing now that we so  
 ' earnestly desire as to establish our govern-  
 ' ment on such a foundation as may make our  
 ' subjects happy, and unite them to us by in-  
 ' clination as well as duty; which we think  
 ' can be done by no means so effectually, as  
 ' by granting to them the free exercise of their  
 ' religion for the time to come, and add, that  
 ' to the perfect enjoyment of their property,  
 ' which has never been in any case invaded by  
 ' us since our coming to the crown; which  
 ' being the two things men value most, shall  
 ' ever be preserved in these kingdoms during  
 ' our reign over them, as the truest methods  
 ' of their peace and our glory. We cannot  
 ' but heartily wish, as it will easily be be-  
 ' lieved, that the people of our dominions were  
 ' members of the Catholic church; yet we  
 ' humbly thank Almighty God, it is, and hath  
 ' long time been our constant sense and opi-  
 ' nion (which upon divers occasions we have  
 ' declared) that conscience ought not to be  
 ' constrained, nor people forced in matters of  
 ' mere religion. It has ever been directly  
 ' contrary to our inclination, as we think it is  
 ' to the interest of government, which it  
 ' destroys by spoiling trade, depopulating coun-  
 ' tries, and discouraging strangers, and finally,  
 ' that it never obtained the end for which it  
 ' was employed. And in this we are the more  
 ' confirmed by the reflections we have made  
 ' upon the conduct of the four last reigns. For  
 ' after all the frequent and pressing endeavours  
 ' that were used in each of them, to reduce  
 ' these kingdoms to an exact conformity in  
 ' religion, it is visible the success has not an-  
 ' swered the design; and that the difficulty is  
 ' invincible. We therefore, out of our princely  
 ' care and affection unto all our loving sub-  
 ' jects, that they may live at ease and quiet,  
 ' and for the increase of trade, and encourage-  
 ' ment to strangers, have thought fit, by  
 ' virtue of our royal prerogative, to issue forth  
 ' this our declaration of indulgence, making no  
 ' doubt of the concurrence of our two houses

of parliament, when we shall think it convenient for them to meet. In the first place we do declare, that we will protect and maintain our archbishops, bishops, and clergy, and all other our subjects of the church of England, in the free exercise of their religion, as by law established, and in the quiet and full enjoyment of all their possessions, without any molestation or disturbance whatsoever. We do likewise declare, that it is our royal will and pleasure, that from henceforth the execution of all and all manner of penal laws in matters ecclesiastical, for not coming to church, or not receiving the sacrament, or for any other non-conformity to the religion established, or for or by reason of the exercise of religion in any manner whatsoever, be immediately suspended, and the further execution of the said penal laws, and every of them is hereby suspended. And to the end that by the liberty hereby granted, the peace and security of our government, in the practice thereof, may not be endangered, we have thought fit, and do hereby straightly charge and command all our loving subjects, that as we do freely give them leave to meet and serve God after their own way and manner; be it in private houses, or places purposely hired or built for that use, so that they take special care that nothing be preached or taught amongst them which may any ways tend to alienate the hearts of our people from us or our government, and that their meetings and assemblies be peaceably, openly and publicly held, and all persons freely admitted to them; and that they do signify and make known to some one or more of the next justices of the peace, what place or places they set apart for those uses. And that all our subjects may enjoy such their religious assemblies with great assurance and protection, we have thought it requisite, and do hereby command, that no disturbance of any kind be made or given to them, under pain of our displeasure, and to be further proceeded against with the utmost severity. And forasmuch as we are desirous to have the benefit of the service of all our loving subjects, which by the law of nature is inseparably annexed to, and inherent in our royal person, and that none of our subjects may for the future be under any discouragement or disability (who are otherwise well inclined and fit to serve us) by reason of some oaths or tests that have been usually administered on such occasions, we do hereby further declare, that it is our royal will and pleasure, that the oaths commonly called the oaths of supremacy and allegiance, and also the several tests and declarations mentioned in the acts of parliament made in the twenty-fifth and thirtieth years of the reign of our late royal brother king Charles the second, shall not at any time hereafter be required to be taken, declared, or subscribed by any person or persons whatsoever, who is or shall be employed in any office or place of trust,

either civil or military, under us, or in our government. And we do further declare it to be our pleasure and intention, from time to time hereafter, to grant our royal dispensations under our great seal, to all our loving subjects so to be employed, who shall not take the said oaths, or subscribe or declare the said tests or declarations in the above-mentioned acts, and every of them. And to the end that all our loving subjects may receive and enjoy the full benefit and advantage of our gracious indulgence hereby intended, and may be acquitted and discharged from all pains, penalties, forfeitures, and disabilities by them or any of them incurred or forfeited, or which they shall or may at any time hereafter be liable to, for or by reason of their nonconformity, or the exercise of their religion; and from all suits, troubles or disturbances for the same; we do hereby give our free and ample pardon unto all non-conformists, recusants, and other our loving subjects for all crimes and things by them committed or done, contrary to the penal laws formerly made relating to religion, and the profession or exercise thereof; hereby declaring, that this our royal pardon and indemnity shall be as good and effectual to all intents and purposes, as if every individual person had been therein particularly named, or had particular pardons under our great seal, which we do likewise declare shall from time to time be granted unto any person or persons desiring the same; willing and requiring our judges, justices, and other officers, to take notice of, and obey our royal will and pleasure herein-before declared. And although the freedom and assurance we have hereby given in relation to religion and property, might be sufficient to remove from the minds of our loving subjects all fears and jealousies in relation to either; yet we have thought fit further to declare, that we will maintain them in all their properties and possessions, as well of church and abbey lands, as in any other their lands and properties whatsoever.

Given at our Court at Whitehall, the 4th day of April, 1687, in the third year of our reign.

Ever since we granted this indulgence, we have made it our principal care to see it preserved without distinction, as we are encouraged to do daily by multitudes of addresses, and many other assurances we received from our subjects of all persuasions, as testimonies of their satisfaction and duty, the effects of which we doubt not but the next parliament will plainly shew; and that it will not be in vain that we have resolved to use our uttermost endeavours to establish liberty of conscience on such just and equal foundations as will render it unalterable, and secure to all people the free exercise of their religion for ever; by which future ages may reap the benefit of what is so undoubtedly for

the general good of the whole kingdom. It is such a security we desire, without the burden and constraint of oaths and tests, which have been unhappily made by some governments, but could never support any. Nor should men be advanced by such means to offices and employments, which ought to be the reward of services, fidelity and merit. We must conclude, that not only good Christians will join in this, but whoever is concerned for the increase of the wealth and power of the nation. It would perhaps prejudice some of our neighbours, who might lose part of those vast advantages they now enjoy, if liberty of conscience were settled in these kingdoms, which are above all others most capable of improvements, and of commanding the trade of the world. In pursuance of this great work, we have been forced to make many changes both of civil and military offices throughout our dominions, not thinking any ought to be employed in our service, who will not contribute towards the establishing the peace and greatness of their country, which we most earnestly desire, as unbiassed men may see by the whole conduct of our government, and by the condition of our fleet, and of our armies; which, with good management, shall be constantly the same; and greater, if the safety or honour of the nation require it. We recommend these considerations to all our subjects, and that they will reflect on their present ease and happiness, how far above three years, that it hath pleased God to permit us to reign over these kingdoms, we have not appeared to be that prince our enemies would have made the world afraid of; our chief aim having been not to be the oppressor, but the father of our people, of which we can give no better evidence than by conjuring them to lay aside all private animosities, as well as groundless jealousies, and to choose such members of parliament as may do their part to finish what we have begun, for the advantage of the monarchy over which Almighty God hath placed us, being resolved to call a parliament, that shall meet in November next at farthest.

“ Quam quidem Regalem Declarationem dicti Domini Regis nunc ultimo mentionatam idem Dominus Rex nunc postea scilicet tricesimo die Aprilis Anno Regni sui quarto supradicto, apud Westmonasterium prædictum in Comitatu Middlesexie prædicto, imprimi et per totam Angliam publicari causavit, et pro magis solemnè demonstratione, notificatione, et manifestatione gratiæ suæ Regiæ benignitatis et benevolentiae suæ ad omnes ligeos suos in eadem Declaratione ultimò mentionata specificatos, postea scilicet quarto die Maii Anno Regni sui quarto, apud Westmonasterium prædictum in Comitatu Middlesexie prædicto idem Dominus Rex debito modo ordinavit prout sequitur.”

At the court at Whitehall, the 4th of May, 1688. It is this day ordered by his majesty

in council, That his majesty's late gracious declaration, bearing date the 27th of April last, be read at the usual time of divine service, upon the 20th and 27th of this month, in all churches and chapels within the cities of London and Westminster, and ten miles thereabout; and upon the 3d and 10th of June next, in all other churches and chapels throughout this kingdom. And it is hereby further ordered, That the right reverend the bishops cause the said declaration to be sent and distributed throughout their several and respective dioceses, to be read accordingly.

“ Et ulterius idem Attornatus dicti Domini Regis nunc Generalis pro eodem Domino Rege dat Curie hic intelligi et informari, quod post Confectionem prædicti ordinis, scilicet, decimo octavo die Maii, Anno Regni dicti Domini Regis nunc quarto supradicto, apud Westmonasterium prædictum in Comitatu Middlesexie prædicto Willielmus Archiepiscopus Cantuariensis de Lambeth in Comitatu Surriae, Willielmus Episcopus Asaphensis de St. Asaph in Comitatu Flintia, Franciscus Episcopus Eliensis de Parochia Sancti Andreae Holborn in Comitatu Middlesexie, Johannes Episcopus Cicestrensis de Cicestria in Comitatu Sussexie, Thomas Episcopus Bathonensis et Wellensis de Civitate Wells in Comitatu Somersetie, Thomas Episcopus Petriburgensis de Parochia sancti Andreae Holborn in Comitatu Middlesexie, et Jonathan Episcopus Bristolensis de Civitate Bristol, inter se consuluerunt et conspiraverunt ad diminuendam Regiam Autoritatem, Regalem Prærogativam et Potestatem, et Regimen ejusdem Domini Regis nunc in præmissis, ac ad eundem Ordinem infringendum et eludendum; ac in prosecutione et executione conspirationis prædictæ, ipsi iidem Willielmus Archiepiscopus Cantuariensis, Willielmus Episcopus Asaphensis, Franciscus Episcopus Eliensis, Johannes Episcopus Cicestrensis, Thomas Episcopus Bathonensis et Wellensis, Thomas Episcopus Petriburgensis, et Jonathan Episcopus Bristolensis dicto decimo octavo die Maii Anno regni dicti Domini Regis nunc quarto supradicto, Vi et Armis, &c. apud Westmonasterium prædictum in Comitatu Middlesexie prædicto, illicitè, malitiosè, seditiosè, et scandalosè, quoddam falsum, fictum, perniciosum, et seditiosum libellum in scriptis, de eodem Domino Rege et Regali Declaratione et Ordine prædictis (prætensa Petitionis) fabricaverunt, composuerunt et scripserunt, et fabricari componi et scribi causaverunt, et eundem falsum, fictum, malitiosum, perniciosum, et seditiosum libellum per ipsos prædictum Willielmum Archiepiscopum Cantuariensem, Willielmum Episcopum Asaphensem, Franciscum Episcopum Eliensem, Johannem Episcopum Cicestrensem, Thomam Episcopum Bathonensem et Wellensem, Thomam Episcopum Petriburgensem, et Jonathanum Episcopum Bristolensem manibus suis propriis respective subscriptum die, et anno, et loco ultimo mentionatis in præsentia dicti Domini Regis nunc Vi et Armis, &c. pub-

heaverunt, et publicari causaverunt; in quo quidem falso, ficto, malitioso, pernicioso et seditioso libello continetur—

‘ The humble Petition of William Archbishop  
‘ of Canterbury, and of divers of the suff-  
‘ ragan bishops of that province (now pre-  
‘ sent with him) in behalf of themselves  
‘ and others of their absent brethren, and  
‘ of the clergy of their respective Dioceses,

‘ Humbly sheweth

‘ That the great averseness they find in  
‘ themselves to the distributing and publishing  
‘ in all their churches, your majesty’s late de-  
‘ claration for liberty of conscience, proceedeth  
‘ neither from any want of duty and obedience  
‘ to your majesty : our holy mother, the church  
‘ of England, being both in her principles, and  
‘ in her constant practice, unquestionably loyal,  
‘ and having, to her great honour, been more  
‘ than once publicly acknowledged to be so by  
‘ your gracious majesty ; nor yet from any  
‘ want of due tenderness to dissenters, in rela-  
‘ tion to whom they are willing to come to such  
‘ a temper as shall be thought fit, when that  
‘ matter shall be considered and settled in par-  
‘ liament and convocation. But among many  
‘ other considerations, from this especially, be-  
‘ cause that declaration is founded upon such a  
‘ dispensing power, as hath been often declared  
‘ illegal in parliament, and particularly in the  
‘ years 1662, and 1672, and the beginning of  
‘ your majesty’s reign ; and is a matter of so  
‘ great moment and consequence to the whole  
‘ nation, both in church and state, that your  
‘ petitioners cannot in prudence, honour, or  
‘ conscience, so far make themselves parties to  
‘ it, as the distribution of it all over the nation,  
‘ and the solemn publication of it once and  
‘ again, even in God’s house, and in the time of  
‘ his divine service, must amount to, in com-  
‘ mon and reasonable construction.\*

“ In contemptum dicti Domini Regis nunc,

\* “ The king,” says Kennet, “ was not contented to have this declaration published in the usual manner, but he was resolved to have it solemnly read in all churches, as the political gospel of his reign. The bishops and clergy were of all others the most averse to the subject-matter of the declaration, as being most sensible of the ill design and ill effects of it ; and therefore the court seemed the more willing to mortify these their enemies, and make them become necessary to their own ruin ; and even to eat their own dung, as father Petres proudly threatened, and therefore this order of council was made and published.”

Hume takes notice that when Charles [the second] dissolved his last parliament he set forth a declaration, giving his reasons for that measure, and this declaration the Clergy have been ordered to read to the people after divine service. These orders, says Hume, were agreeable to their party prejudices and they willingly submitted to them. The contrary was now the case.

et Legum hujus regni Angliæ, manifestum, in malum exemplum omnium aliorum in tali casu delinquentium, ac contra Pacem dicti Domini Regis nunc Coronam et Dignitatem suam, &c. Unde idem Attornatus dicti Domini Regis nunc generalis pro eodem Domino Rege petit advisamentum Curie hic in præmissis et debitum legis processum versus præfatos Willielmum Archiepiscopum Cantuariensem, Willielmum Episcopum Asaphensem, Franciscum Episcopum Eliensem, Johannem Episcopum Cicestrensem, Thomam Episcopum Bathonensem et Wellensum, Thomam Episcopum Petriburgensem, et Jonathanum Episcopum Bristolensem fieri ; ad respondendum dicto Domino Regi de et in præmissis, &c.

“ T. POWIS. W. WILLIAMS.”

*Att. Gen.* My lord, we humbly pray, that according to the rules of the court in such cases, my lord archbishop of Canterbury, and my lords the bishops, may plead to the Information.

*Sol. Gen.* My lords the bishops are here in custody in the court, upon the highest commitment that can be in this kingdom, to wit, that of the king in council ; and we pray, that according to the course of the court, they may plead to the information presently.

*L. C. J.* What does his Grace and my lords the bishops say to it ?

*Serj. Pemberton.* Will your lordship give us leave, who are of counsel for his grace my lord of Canterbury, and the rest of my lords the bishops, to speak a word in this matter ?

*L. C. J.* Ay, brother, go on.

*Serj. Pemberton.* That which we have to desire of your lordship and the court, is this ; we have now heard this information read, and it is plain we could know nothing of this before, the warrant of commitment being only in general for a libel ; and this being a case of the greatest consequence, peradventure, that ever was in Westminster-hall (that I think, I may boldly say, it is a case of the greatest consequence that ever was in this court) and it being a matter of this nature, that those great and noble persons, my lords the bishops are here taxed with ; that is, for making a seditious libel, contained in such a petition (as though it was a libel to petition the king,) we do beg this of your lordship that (it being of this great importance) to the end we may come prepared to say what we have against it, we may have an imparlance till the next term.

*Mr. Finch.* Pray, my lord, favour me with a word on the same side, for my lords the bishops. Your lordship sees now how necessary the trouble we gave you before, in making our objections against the reading of the information was, and what the drift and aim of the king’s counsel was, in the desiring the information to be read first ; for now it is read, what is it that they desire of your lordship ? They desire that my lord archbishop, and my lords the bishops, being in custody, and brought here in custody, they may be

now so charged with this information, as to plead presently. This, my lord, we oppose, and with humble submission we ought to have time to imparle, and a copy of the information, that we may consider what we have to plead to it; for however we come here into court, whether legally or not legally, yet ought we in the one and in the other case, to have time to consider of our defence. And, my lord, till of latter time this practice which the king's counsel now calls the course of the court, was never used, nor was any man required to plead immediately; and, my lord, if the practice of the court has not been antiently so (as I do believe they will scarce shew it to be antienter than a few years last past,) then with humble submission, though the course of the court have been so for some little time past, yet it is not in the power of the court (as we humbly conceive) to make a course in prejudice of all the privileges that the king's subjects are by the antient rules of law intitled to; they cannot make a new law in prejudice of any right or privilege which the subject hath, and call it the course of the court. Now that this which we desire for my lords the bishops, is the right and privilege of the subject, is most manifest; for there might be many defences that a man may have to make to an accusation of this nature, which it is impossible for him to know at the first hearing of an information read, and yet which would be necessary for him to make use of, or at least it would be impossible for him to make use of in such a manner as the law doth allow of and require. It may be the pleas which he has to plead, may be such as that he has not time to put into form; there may be matters upon the hearing the information read, that it would be necessary for him to give answer to, which he knew not of before, and therefore may neither have materials ready, nor be capable of putting them (if he had them ready) into such form as the law requires. They tell you on the other side, that if a man be brought into court by legal process, he may be charged with any information whatsoever; that they are not tied to the fact alledged in the commitment, but finding the party under a legal imprisonment, they can exhibit an information against him for any other offence. Then, my lord, would I fain know which way any man alive can be prepared to make his just and legal defence, for he knows not his accusation; for though he think it may be for that for which he was committed, yet it may prove otherwise, and then he can be no way provided with materials for his defence, but he must lose all advantages which the law gives him for his defence. My lord, if this be the course of latter times, yet you will not take that to be such a law as is binding to all future times; and we are sure the king's counsel cannot shew that this was the antient practice, for that was quite otherwise.

L. C. J. Mr. Finch, you were not here, I suppose, when this question came in debate in this court lately, in the case of a very great

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person: it was urged very earnestly and very learnedly by one that stands by you. We upon that debate asked sir Samuel Astry, what the course of the court was? And he told us, that the course of the court (of his own knowledge for all the time that he had sat as clerk of the crown in this court) was, that when any one was brought in custody, or upon a recognizance, they were to plead presently.

Mr. Finch. Sir Samuel Astry has not been here so very long, as to make the practice of his time the course of the court.

L. C. J. But I will tell you what he said further, if you will hear me: he said, he had enquired of Mr. Waterhouse, whom we all know to have been an old clerk in the Crown-office, and he told him, that that had been the practice all his time.

Serj. Pemberton. My lord, I hope the course of the courts of Westminster-hall shall not depend upon the certificate of such a one as Mr. Waterhouse, who is a man, we all know, superannuated, and very defective in his memory.\*

Just. Powell. Certainly what they desire for the defendants is very reasonable, for I take the point to be only this: Whether a man may be compelled, being in custody, to plead to an information presently?

Just. Allynbone. Pray, brother Powell, spare me a word in this matter. Mr. Finch, I suppose you labour for what the court will not deny you, that you may have time to plead according to the course of the court. We are not making courses for particular facts, that by my consent we will never do; but if you say such a thing is not the course of the court, and the king's counsel affirm it is, how shall this be determined? And from whom can we take our information to determine what is the course? I am sure there is none of us that are here now, can pretend to tell what the ancient course was; for my part, I declare it, I cannot; and I know no reason there should be any novelty introduced into the court upon any ground or reason whatsoever, nor will I consent to any while I sit here: therefore I desire to know what is the ancient course, and how we shall come to the knowledge of that course, if not by the certificate of those who have been ancient officers of the court?

L. C. J. Nay, that is certain, the court will bring in nothing new in any such case as this.

Just. Allynbone. If that hath not been the ancient course without exception, I am against it; I know no reason my lords the bishops should have any thing new put upon them: on the other side, they must not expect to have the ancient course of the court declined in their case.

Mr. Pollexfen. Pray, my lord, hear me a little in this matter: it is not my desire that any law should be altered for any particular case,

\* For what is said of him in the Case of Green, Berry, and Hill, when they were brought up for judgment, see vol. 7, p. 221, of this Collection.

and the course of the court I know is the law of the court; but I humbly crave leave to say, that I take the ancient course of the court to be quite otherwise than what the king's counsel would have it. There may be particular things done now and then, perhaps in particular cases, and upon particular occasions, which will not make what is so done to be the course of the court, nor be a binding rule to you. Now, as to this matter of time or no time, to plead to an information, I remember the time very well, when I and some others that stood at the bar, and wondered when we saw this practice coming in, and thought it a very hard and mischievous thing; for, in truth, the several plots that have been, and the heats of men about those things, have brought in this course: for certain I am, and I dare affirm, there never was any such course here before, neither upon warrant from the chief justice, nor upon recognizance, or any other process, was a man compelled to plead instantly, without having a *Capias* in the regular form, after a contempt for not appearing upon summons. Truly, my lord, we had no interest in the matter one way or other, to make us scruple it any otherwise than as we were concerned that the law and justice of the nation should have its true and ancient current. And this I can assure your lordships, that here was both my lord chief justice Saunders, and Mr. Serjeant Holt, and myself, who taking notice when this was first offered at, to make a man plead immediately, without giving him time to consider what he should plead, could not but say among ourselves, that it was an unreasonable thing; and we were inclined to speak to the court to inform them of the consequence of it, which needs must be very mischievous. Sir Samuel Astry, we know, came to be clerk of the crown in my lord Scroggs's time. We know it is usual and customary for the court to ask what is the course of the court in doubtful cases, and to receive the information from the officers of the court on both sides. If it be on the one side, from Mr. Aston; if on the other side, from sir Samuel Astry, concerning usages of practice; but I did never think that what they reported was final and conclusive to the court: but to make this matter clear, I humbly pray, that you would please to give order for the search of old precedents, how the practice really hath been: every thing that has been done in hot times, is not to be made a standing rule. If there do any such things appear to have been done and practised anciently, truly, my lord, I will submit, and say you are under a mighty mistake; but if this which is now urged for the course of the court, is nothing but what the zeal of the times, and heats of persecutions hath introduced, surely that is not fit to be a constant rule for the court to follow; for every one knows, that the zeal of one time may bring in that by surprize upon another time, when things are cool at another time, will appear to be plain injustice. We have indeed seen strange things of this kind done before, but I hope to

God they are now at an end, and we shall never see any such thing done hereafter; and as for this particular point, I think it is a wonderful thing in the consequence of it, if the law should be as they would have it. Here is a long information just read over to a man (but whether long or short, as to the main point, it is the same) and you say the course of the court is, he must plead to it immediately. Surely matters of crime that require punishment to be inflicted on men, are of as much consequence and concern, as any civil matter whatsoever; and men are to have their rights in those matters preserved, as well as in other matters, which is all I press: for suppose a man has a special matter to plead; as particularly, suppose it be the king's pardon, I cannot give this in evidence upon a trial after not guilty pleaded, then I ought to plead it. But what if I have it not ready? 'Tis not telling the court of it without shewing of it, that will do; and it may be a man that is taken up, and brought hither in custody, cannot have it ready to shew; but yet then, by this rule a man shall lose the benefit of his plea, by being compelled to answer immediately. But they say, the court will do right: I suppose they will; and my lords the bishops in this case, I believe, do not distrust but that the court will do right; but I never thought the law was brought to that pass, that such things as these were left wholly in the discretion of the court. Certainly imparlances, time to plead, and just preparations for a man's defence, are things that the law has settled, and not left in the discretion of the court: and truly to me it seems all one utterly to take away a man's defence, as to hinder him of the means to prepare for it. My lord, here is an information before you against these noble lords, 'tis a matter of great moment, and though I hope in God there is no great cause for it, yet however, since such persons are concerned, and 'tis a matter of such great weight, I hope you will give us such an imparlance, as if we had this day appeared upon the ordinary process, which is an imparlance untill the next term.

*L. C. J.* There is a difference between this and that other case: if my lords the bishops had appeared upon the summons, they would have had an imparlance of course; but when they are brought up hither in custody, that mightily alters the case. But that we may not be too hasty in a thing of this nature, let the clerk of the court be consulted with, that we may know what the true course is.

*Att. Gen.* My lord, we pray sir Samuel Astry may be examined a little about it.

*Just. Albyton.* Mr. Pollexfen, I believe the court is unanimous in their resolutions of making nothing new in this case; but pray give me leave to tell you, this is not the first time that this question has come to be agitated in this court since I came hither. Now from whence can the court take their measures to be rightly informed what the practice of the court is, but from the information of the offi-

cers of the court? who by their constant employment, are most capable of knowing what the course is. Now, if you come to offer any thing that may be matter of doubt to the court, concerning the practice of the court, you having known that this thing was controverted before (for so it has been) should have provided yourself with something that must be a reasonable motive for us to doubt; for this has not been only once, but often moved, and our officers have been consulted with concerning this question, which took its rise from such objections as you have made now. Now for you to tell us, that you desire that we would look into precedents, is, methinks, pretty odd. If you had brought us any precedents, it had been something: and withal I must tell you, that you must not reckon the favour of the court, in any particular case, to be the standing rules for the practice and course of the court; but instead of bringing precedents, you only offer your own thoughts, and those would create no doubt in us but what has been before satisfied upon examination of the officers of the court.

*Mr. Pollexfen.* Pray, sir, will you give me leave to answer one word?

*Mr. Just. Powell.* Truly I have not observed that ever this point was started so as to beget a question since I came hither, but only in the cases of the Quo Warrantos; and truly in that case I thought it hard they should be denied time to plead, especially the consequence being so fatal.

*L. C. J.* Yes, yes, brother, it has been several times.

*Just. Powell.* Truly, my lord, I have not observed it, nor do I remember it.

*Sir R. Sawyer.* My lord, I have always taken the distinction, as to these matters, to be this.

*Just. Powell.* But, my lord, if the ancient course of the court hath been to grant an imparlance, and a copy of the information before they plead, I see no reason why my lords the bishops should not have the benefit of that ancient course; for if a man that is sued at law for a two-penny trespass, shall have that advantage as to receive a declaration, and have time to plead what he can to it, why should not my lords the bishops, in a matter of so great a weight, have the same advantage too? But indeed, if the course of the court had been anciently otherwise, I can say nothing to it; for the course of the court is certainly the law of the court.

*Just. Altybone.* Brother Powell, you say well, if they did produce any one precedent to give us occasion to doubt in the matter.

*Sir R. Sawyer.* Pray, good my lord, will you give me leave—

*Att. Gen.* Why, sir Robert Sawyer, will you never have done?

*Sol. Gen.* No, they are so zealous and eager in this case, that they won't permit either the court, or any body else, to speak a word but themselves.

*Serj. Pemberton.* Good Mr. Solicitor, give us leave to answer the objection that the court hath made to us; we would satisfy your lordship where the distinction really lieth, where there has been an opportunity for the party to come in, as by summons or Subpoena, or the like, and he has slipped that opportunity, and so the king is delayed. In that case they always used to put the party upon pleading presently, when he was taken up upon a Capias, and brought in custody; but when there was never any Subpoena taken out (as the case is here) so that the party never had an opportunity to come in and render himself, and appear to answer it according to the due course of law, an imparlance was never yet denied, nor time to plead; and that is the case here.

*Sir R. Sawyer.* My lord, Mr. Serjeant has given you the true distinction, where process has gone out to summon any one to appear to an information, and he hath failed to appear according to the summons, and the prosecutor for the king makes out a Capias; if he be brought in upon that Capias, the ancient course has been so as they say: but for that other matter, where a man comes in upon a commitment at the first instance, and an information is put in just as this is, the same morning, and not before; if they can shew any one precedent of this kind fifteen years ago, I would be contented to yield that they are in the right; but I am sure they are not able to do it. In sir Matthew Hale's time when this was moved, it was refused; and he was clear of another opinion.

*Att. Gen.* I hope now, my lord, we shall be heard a little for the king; and I cannot forbear observing, in the first place, somewhat that these gentlemen have offered at, who are now inveighing against the heat of the times, when a great part of that heat we know who were the inflamers of: but what is all this to the purpose? The question is barely this, Whether when a man is brought into custody into this court, and charged with an information, he shall not by the course of the court be compelled to plead presently?

*Sir R. Sawyer.* To indictments for treason and felony he shall be compelled to plead presently, but not to an information for misdemeanors.

*Just. Powell.* It seems to me very hard he should.

*Att. Gen.* Sir, there are many things that seem hard in law, but yet when all is done, the judges cannot alter the law. It is a hard case that a man that is tried for his life for treason or felony, cannot have a copy of his indictment, cannot have counsel, cannot have his witnesses sworn; but this has been long practised, and the usage is grown to a law, and from time to time it hath been so taken for law; it cannot be altered without a new law made; as it hath been heretofore, so it must be now, till a greater authority alter it; and so, as to the case here at present, if it were a new case, and it was the

first instance, I must confess, I think I should not press it; but if this be the constant practice of the court, and if these gentlemen that now oppose it, some of them ministerially, some of them judicially, have themselves established this practice, they have no reason to wonder that we follow them in it. We do not blame them for what they do now; for men, when they are of counsel, may be permitted to argue for their client contrary to their former opinions; but if these things, by their procurement, have been done thus heretofore, surely without offence we may pray the like may be done now even in the case of my lords the bishops. It is our duty, on behalf of the king, to desire that he may have right done him, as well as they on behalf of my lords the bishops; and to cite precedents were endless, especially of late times; and these gentlemen know them all very well, for they were some of them parties to them themselves, and we can do no more, nor need we, than to put them in mind of their own doings; whether it was so before their time or not, it concerns them to make out and retract their own errors; but in our observation, if ever this was pressed, or insisted upon on the king's behalf, this course has always been pursued.

*Sir R. Sawyer.* For a precedent, my lord, there is the case of my lord Hollis, where there was given time after time.

*Sol. Gen.* That was time given by the court to argue the plea to the jurisdiction of the court.

*Just. Powell.* Mr. Solicitor, have you ever known it contested, and upon debate so ruled, in an information for a misdemeanor, as this case is?

*Sol. Gen.* If you please to ask sir Samuel Astry, he will inform you how the course has been.

*L. C. J.* What say you, sir Samuel Astry?

*Sir S. Astry.* My lord, when I came into this place, there was an antient gentleman that had been long a clerk in the office.

*L. C. J.* How many years is it since you came into this office?

*Sir S. Astry.* About a dozen years, I think, my lord; and he sat in this place where Mr. Harcourt does now. He was always accounted a loyal, honest and intelligent man, that is Mr. Waterhouse, who is now alive; and when I came into my office, I took my instructions in a great measure from him, and asked him, what the course of the court was, in such cases which I myself did not understand? For though I had been an attorney twenty years, yet it was on the other side, the civil side; and though I knew some things of my own knowledge, yet I did not so well know the whole practice of the court; and particularly I asked him, what was the course of the court in this case, that is now in question? And he told me, that in all his time and experience, if a man appears upon a recognizance, or was a person in custody, or appeared 'in propria persona,' as a person privileged, he ought to plead at the first instance; and according to that practice, when

sir Robert Sawyer was attorney-general, it was the constant practice; and I am sure he knows it is no new thing.

*Sir R. Sawyer.* But upon what information, sir Samuel Astry? Were they informations upon misdemeanors?

*Sir S. Astry.* Yes, several.

*Sir R. Sawyer.* But was there no process taken out first to call the party in?

*Sir S. Astry.* Yes, where process was never taken out.

*Att. Gen.* For how long time is that you speak of your own knowledge, sir Samuel?

*Sir S. Astry.* About a dozen years.

*Serj. Pemberton.* It was never done till very lately, but after the party was in contempt for not appearing.

*Sol. Gen.* I would ask you, sir Samuel Astry, one question: Was the usual process of subpoena first taken out? For Mr. Serjeant Pemberton says it was, do you find any warrant for such a difference as that?

*Serj. Pemberton.* Do you find any such case as this is?

*Sol. Gen.* Nay, pray, Mr. Serjeant, give us your favour, and let us ask our questions according to your own doctrine. How do you find the practice to have been as to that distinction they have made?

*Sir S. Astry.* Sir, I would be very loth to enlarge the precedents of the crown-office further than the truth is; I tell you whence I took my instructions, from Mr. Waterhouse, who was an antient clerk in the office, he has been in that office sixty years, and the instructions I took from him, were, that this was the practice all his time, and it has been asserted all my time. It has been often contested I confess, and Mr. Pollexfen has always opposed it, and moved against it, but it has been always ruled against him: I know it was against his judgment, but the court always over-ruled it.

*Sir R. Sawyer.* Sir Samuel Astry, can you give any one precedent before you came into this office?

*Sir S. Astry.* Sir, I can go no farther than this, that I have told you what information I received from him.

*Sir R. Sawyer.* What is all this but a certificate from Mr. Waterhouse?

*L. C. J.* We can be informed no otherways than by certificate from the old clerks of the office.

*Serj. Pemberton.* Alas, he is a child and not fit to do any thing.

*Mr. Pollexfen.* We all know Mr. Waterhouse very well, he is a very weak man, and always was so, and there is no depending upon any thing that he says.

*Sol. Gen.* Pray, my lord, will you hear us a little for the king.

The bishop of Peterborough whispering with sir Robert Sawyer, Mr. Solicitor said to him, 'My lord, you had better look another way, and look towards the court, for there your business lies.'

L. C. J. Well, Mr. Solicitor, what say you?

*Sol. Gen.* My lord, it appears plainly, that the king is in possession of this privilege, and has been so for these dozen years; for so long the justice of the kingdom towards all the subjects hath run in all the instances of it in this channel; and though it hath been contested as often as Mr. Pollexfen has been of counsel for the defendant, in such cases it has always been ruled against him. He indeed has made his continual claims (sir Samuel Astry says,) he has raised the dust, and made a hue and cry, but it has always gone against him: and I would ask the rest of you, gentlemen, that are of counsel for my lords the bishops (for some, or one of you, I am sure has been concerned in every information that has been exhibited in this court for these nine or ten years last past, I would ask you) whether in any information that you have been concerned in, if the party being brought in upon a commitment, and it was insisted upon by the king's counsel that he should have neither imparlance nor time to plead, that you [he] ever obtained either without the special grace of the court. I know you will not say it ever was; why then should there be more done in this case, than has been done in all other cases these ten years? It is not sufficient to make declamations against the unreasonableness of the practice; for it is but what you have done yourselves, and insisted upon for law; and all those men that upon informations have been compelled to plead, have had injury done them; or else these lords will have no injury by the court's taking the same course. It is true, my lords the bishops are peers, and here are seven of them, and seven lords go a great way; they make a committee, I think, in the house of peers, and a mighty matter is made of it, that this is the case of so many lords! but will you alter the course of the court, because seven of my lords the bishops are concerned in it, and they make a mighty stir about the unreasonableness of the thing? How it can be believed that the law will not give a man time to make his defence. They agree themselves, that if it were in the case of life and death, they must plead presently; and doth not the same reason hold? And may not an argument be drawn *à fortiori*, in the case of a misdemeanor? If I am not to have time when I plead for my life, there is less reason I should have time to answer a trespass: but, my lord, it is not ordinary reason that weighs in the case, it is the course of the court, which is the law of the court that we are contending for: and what is there in this case that should require so much time for my lords the bishops to plead to it? It is charged in the information, that these noble prelates did make a libel which was produced by them, and published in the king's presence; they can easily tell whether they have done this or not done it. What can they plead but the general issue? They talk of special matter to be pleaded, but can they

shew any more that they can say, than what any poor ordinary countryman, if he were here to plead to an information, could say? That is, whether he was guilty or not guilty. These lords can tell whether it be true, that they did publish the paper laid in the information, and then your lordship will acquaint them what will be the consequences of that publication in point of law. We say all this was done at Westminster; there the scene is laid, and it is not an information for an old stale thing done a great while ago, but a thing that was done yesterday, and a thing notorious enough, their contesting with the king about his declaration of indulgence. And as to what Mr. Finch has said, that this is a novel invention and a trick to rob a man of his just defence; sure he forgets who it was that taught us the trick. If it be a trick, we have learnt it from those that tricked before us; and what is it that these lords do desire? They would have an imparlance till Michaelmas term: does, or can your lordship think they ask that which is reasonable? To have six months time to plead not guilty to an information for a libel, and when so many men have been denied it formerly upon the instigation of those very gentlemen that now press so very hard to have it granted, sure they must expect to be denied it too; and all this while these lords lie under this accusation, which is not so trivial a matter as some would make it. I believe my lords the bishops have a desire to be cleared, I suppose it is only their counsel that desire to delay it, upon what ground I know not; I believe they themselves would be glad to remove the imputation, which would be best done by a trial, and the sooner the better: If they have a mind to justify themselves, that is the readiest course for it, and they may do it presently, by pleading not guilty. My lord, I know I am in a great auditory, and abundance of your lordship's time has been taken up already; I press it therefore for the sake of the king, and for the sake of my lords the bishops, we shall else have all these things hang in suspence, and in the air for six months longer; therefore let the matter be put upon a fair issue, so as it may come to a speedy determination. I am sure if the lords be innocent to-day, they will be innocent to-morrow, and if it were my own case, I would desire to have it tried as soon as I could, and therefore I pray they may plead immediately.

*Just. Powell.* Mr. Solicitor, what do you say to the difference that was taken between a person that was brought in in custody at the first instance, where there is no contempt to the process of the court, and one that comes here by *Capias*, upon default of appearing at the summons?

*Mr. Finch.* My lord, if I apprehend them aright they give us more than we did ask, for Mr. Solicitor has laid it down as a rule, that if a man is taken upon a *capias* in a mean process, he shall have no imparlance.

*Sol. Gen.* No, you are greatly mistaken, sir, and I pray don't lay down rules for me.

Mr. Finch. If I am, sir, I beg your pardon, but this I am sure of, if a *Venire Fac* goes out, which is in the nature of a *Subpana*, and the party appear to it, that being the first time he could come into court, you cannot force him to plead to an information, but he has an imparlance of course.

Just. Powell. Methinks it seems very reasonable, that this forcing a man to plead presently should be only a punishment for a contempt of the court, and pray, were my lords the bishops in contempt to the court when they came here to-day? Certainly they were not, for no man is in contempt, but he that, being served with process, disobeys that process; and if my lords the bishops had been served with a *subpana* and had not appeared, then there would have gone out a *capias* to bring them in, and then they would have come in upon a contempt, and then they would have come within the rule.

Sol. Gen. If you have a mind to it, you may ask sir Samuel Astry again.

Att. Gen. If they come in upon bail, they ought to plead presently.

Just. Albybone. Mr. Finch, I'll tell you what sticks with me, truly you could not but be aware that this would be required of you; for this very thing was in debate last term, and you know what rules the officer said was the course of the court, why did you not therefore come prepared with some precedents, to shew us what the course of the court is?

Att. Gen. Truly, my lord, at this rate, we shall keep your lordship here all this afternoon, if these gentlemen will not be satisfied with the rule of the court: and for an answer to what Mr. Justice Powell says, if any riot be committed in the country, and the parties are bound by recognizance to appear here, that is no process of this court, and so consequently there can be no contempt, and yet they must plead presently.

Just. Powell. There is a particular reason for that, because they are bound by recognizance, sir Samuel Astry and others say, that if they come in by recognizance they must plead presently.

Sol. Gen.\* But for the thing itself (that the people that hear us may not imagine that this court puts a hardship upon my lords the bishops, more than is done in other cases) it is best to keep the same rule as in all other cases; for when all is done, when justice goes with an equal current, without any regard to one person or other, then every body is safe, and all persons concerned do their duty: so in this case, here be no precedents produced wherein it has been otherwise; then can no person complain but that things go in this case as they do in all other cases; perhaps such a case (as to the fact of it) never happened before; but for the law of it, that is plain, and the same as in all other cases; for

\* Mr. Attorney General. Sir W. Williams's MS.

that there may be an information against my lords the bishops, as well as other people, if they make libels, sure it is no doubt at all; and if an information lies against them for it, they are under the same rules as others are: but these gentlemen talk of being surprized, and that this is the first time they have heard of this information; but have we told any news in this information? Was not all that is contained in it, notoriously enough known before? Was not the king's first declaration very well known? Was not his second declaration very well known? Was not his order of council for reading of this declaration very well known? Is not your own petition a thing very well known to yourselves and all the world? Then these being the particular facts of which this information is made up, and we only say you did this fact, and we ask you, did you do it, or did you not? Can there be any great surprize in this? My lord, I cannot see any thing that alters this from the common case, but only their being peers; and since this question has been heretofore under contest, these gentlemen have had time enough to have prepared precedents, to differ this from the common rule, if they could; but since they cannot, we desire they may have the same rule that is in all other cases, and then to be sure all will go right.

L. C. J. Sir Samuel Astry, pray will you tell us, whether ever the court used to grant an imparlance where a person comes in in custody? Or did you ever know, when a person comes in upon a commitment, time was given him to plead?

Serj. Pemberton. Have you ever known it disputed and denied?

Sir S. Astry. My lord, I have known that 'tis in the discretion of the court to grant what time they please.

L. C. J. Is it the course of the court to give an imparlance?

Sir S. Astry. No, 'tis the favour of the court, and if the defendants have at any time shewed a reasonable cause, that they have a special matter to plead, or any other cause allowed by the court, the court has sometimes indulged them so far as to give them time.

L. C. J. But how is the ordinary course, sir Samuel Astry?

Just. Albybone. Ay, for as I said before, things done in particular cases in favour are not precedents.

Sir S. Astry. I have told your lordship the course is this, that any person that appears upon a recognizance, or is taken up by your lordship's warrant, or by a warrant from a justice of peace, or any other way in custody, or any officer of the court that is a privileged person, and that must appear *in propria persona*, must plead presently, if the court upon particular reasons do not give him time; and this I received information of, as the practice of the court, from Mr. Waterhouse, who had been a clerk in the office sixty years.

He said so before, but these gentlemen will never be contented, unless they have a new law made for them.

*Mr. Pollexfen.* My lord, I would not unnecessarily trouble your lordship; but truly this is a case of great concern. And first of all; I think we shall all agree, that what has been used for ten or twelve years past will not make the course of the court, and next I perceive they do not bring any one instance for any proceeding of this sort above ten or twelve years old. But then say they on the other side, why do not you bring precedents that it has gone otherwise heretofore? My lord, that cannot be done, for it is a negative on our side, that this which they desire is not the course of the court: but then, as it is impossible to prove a negative, so the proofs should come on the other side, that this has been done: they ought to shew it if there has been any such thing as a standing rule, or else it shall be presumed an innovation, as being contrary to all reason. But, my lord, because they put it upon us, there is this proof on our side, as much as a negative can afford. In those proceedings that were in the great case of the Habeas Corpus, there was an information against Elliot and others;\* they had time given them to plead over and over, so that there is one precedent: and as many of these cases in former times as can be found, will shew that this was always the course. But pray, say they, produce us one instance, that ever there was a man that came in upon a recognizance, that had time to plead. Truly, my lord; I cannot just now tell whether any such instance can be produced, but I verily believe there may be a great many; but I turn it upon them, and that with great reason. With submission to your lordship shew me any man, if you can, above a dozen years ago that had not time allowed him to plead. Ay but, say they, Mr. Waterhouse, an ancient clerk of the crown-office, that has been there these sixty years, hath certified that this hath been the practice of all his time. My lord, he that have been conversant in the business of this court, did all very well know Mr. Waterhouse when he was here, and sat in court in the place of sir Samuel Astry.

*Sir S. Astry.* No, sir, it was in the Harcourt's place.

*Mr. Pollexfen.* Well, he executed a place here, and 'tis no matter whether he were master of the office or no; but I think we all knew him very well, he was a man of a lame in his business as could be; for there are some men that will never do business well, let them be never so long at it; and he was weak in the practice of the court and every thing else, as 'tis possible for one that has been bred in an office to be; and at this time he is grown decrepid and superannuated, that you may as well depend upon the certificate of an old woman, as any thing that he shall say in such a

matter as this: he is now almost fourscore years of age, and has lost that little memory and understanding he had; but if his certificate must be depended upon because of his standing in the office, pray, my lord, let him come hither, and do you ask him what he has to say in this matter.

*Sol. Gen.* Ay, that is very well indeed.\*

*Mr. Pollexfen.* Good Mr. Solicitor, spare us, certainly there needs not such great haste in this matter, we are upon a business of very great weight and concernment; for you are now making a law for the whole kingdom, in point of practice, in cases of this nature. We do say indeed, that by the reason of the heat and zeal of these last ten years, such a usage has been introduced, but sir Samuel Astry tells you it was opposed, and I hope that neither I, nor the thing will be the worse thought of, because I opposed what I thought an unreasonable and new invention. My lord, I know in the Case of the City of London,† we had time to plead a whole vacation after an impanelance, and were not at all hurried on, as the king's counsel would do in this case. My lord, if they can produce any ancient precedent for it, I will say no more; but there is no case in print in any of our books, that ever I read, or can remember, that countenances such an opinion. A man by this means may lose his just defence, and he has no remedy, nor will it ever be in his power to retrieve it, for he may be brought on a sudden into court upon a warrant, and when he is here, he shall be charged with an information, and presently he must plead not guilty, because he has not time to prepare a plea of any other nature, let him have never so much other special matter or occasion for it. If you please to let this matter be examined what the precedents are, and of what age those precedents are, then perhaps your lordship will get some satisfaction; but otherwise, if the bare certificate of the master of the office is to be a guide to the court what is law, and what is not; we shall be in a very uncertain condition, especially when the matter carries in the very face of it a great deal of unreasonableness and injustice. They on the other side will argue, that it is not more unreasonable than the practice in the case of treason and felony, where persons are compelled to plead instantly. But under favour, my lord, there is no comparison between this case and that, though I know it was always thought a hardship and defect in our law; that a person should be denied time to plead in case of life and death, except he can shew some special matter of law that he has to plead, and that he has always time allowed him to put it in form; and I could never think there was any reason to be given for it, but because the common defences of felons would be little shift and arts, which would destroy proceed-

\* This Speech is obliterated in sir Williams's MS.

† See this Case, vol. 8, p. 1039.

\* See this Case, vol. 3, p. 293.

ings, and make them tedious, and that would be an encouragement to people to commit felony; and besides there is a trust which the law reposes in the court in capital cases, to take care that these men should not suffer upon any little tricks in law; but if you come below treason and felony, the law puts no such hardship upon the defendant, nor reposes such a special trust in the court; but a man may plead any thing he has to plead; and can any man plead before he sees what he is to plead to? And shall the law allow him counsel to prepare his plea, and not allow him time to consult with that counsel about it? These are things, my lord, that truly to me seem unreasonable: but as to the practice and course of the court, I pray your lordship to give order that the precedents may be searched, that you may know what the ancient practice was.

Mr. Finch. Whether you will grant an imparlance now or no, yet I hope, however, you will think fit to give my lords the bishops time to plead.

L. C. J. But Mr. Finch, we have had a certificate from sir Samuel Astry, which truly weighs a great deal with me; he tells you the practice has been so ever since he came here, and that Mr. Waterhouse told him that it had been so all his time, which is sixty years.

Mr. Pollexfen. My lord, there are persons here that will upon their oaths declare, that Mr. Waterhouse has often told them the practice was otherwise, even in his time, and afterwards a long time before this new way of proceeding came in.

Mr. Ince. My lord, if I might have liberty to speak, I can say Mr. Waterhouse has told me—

L. C. J. Pray be quiet, Mr. Ince.

Just. Allyn. But pray, Mr. Pollexfen, give me leave to mind you how the evidence stands against you; the objections are, that this has been a practice but for twelve years last past: if that be true, I think it goes a great way, for the practice of twelve years is precedent enough, *prima facie*, that such is the practice: for how shall we come to the knowledge of the practice, but from our officer sir Samuel Astry, who has been here examined? And he tells you, that upon his coming into the office, when it could not be so doubtful, as now it seems it is, he took instructions from Mr. Waterhouse: I allow you it is but his certificate, but that must go a great way with the court.

Sir R. Sawyer. Such a practice as this has been always very rare in informations for misdemeanours; and they bring you nothing of any precedent older than sir Samuel Astry's time.

Mr. Finch. Pray, my lord, give me leave to vary the question; I do not intend to make it a question, whether your lordships should grant my lords the bishops an imparlance: but whether you would think fit to look into the course of the court before that time that sir Samuel Astry speaks of, and take time to consider and search into precedents.

Just. Allyn. Do you, Mr. Finch, give us any one reason or precedent that may make us doubt, whether this be the course of the court or no? And you could not but be aware of this before, and therefore should have come prepared to make out your objection.

Mr. Finch. Mr. Pollexfen and the rest of the practisers in my lord Hale's time will tell you, that the course was otherwise in his time. Sir Samuel Astry indeed tells you it has been so since his time; but this was one of the points it seems, that he was ignorant of, which made him enquire of Mr. Waterhouse, so doubtful was his practice.

Sir S. Astry. I was an attender upon this court before I came into this office, but it was in another place, on the other side of the court; and therefore was not concerned so much to know what was the course on this side, till I came into this office.

Sol. Gen. These gentlemen differ among themselves, one would have an imparlance, the other only time to plead; I believe truly they cannot tell what they would have; I pray the rules of the court may be kept to.

Sir S. Astry. Here are two clerks that sit by me, that have been a long time in the office, Mr. Harcourt my secondary, and the clerk of the rules, I pray they may be asked their knowledge of this matter.

Att. Gen. Certainly these gentlemen think they have a privilege above all other persons, that they must not be subject to the same rules as others are! We on our parts have taken all the methods that we could to make this matter manifest, and what is it that these gentlemen now propose? They pray you to take time to consider, but have they used the right means of creating a jealousy or suspicion in the court, that the course is otherwise? They can give no instance of it, and all they say is, it is a negative that this is not the course of the court, but an imparlance that they beg is in the affirmative, surely that they can find proof of it, if they so. As for my lord Hollis's Case, that is without us, and not against us; let Mr. Pollexfen shew that ever any one of the men, that were brought into court in custody, either had time to plead, or an imparlance.

L. C. J. Sir Samuel Astry says he has given you his opinion, and here are two other clerks of the office that he refers himself to, are you willing that they should be asked?

Mr. Pemberton. Yes, my lord, with all our parts.

L. C. J. Mr. Harcourt, how long have you been a clerk in the Crown-office?

Mr. Harcourt. About 17 or 18 years, my lord.

L. C. J. How long have you known the practice of the court in this matter, and what is it?

Mr. Harcourt. I cannot charge myself so with particulars from the time of my coming into the office, but for these ten or twelve years past (I remember) it has been as the king's counsel pressed, and as sir Samuel Astry has declared.

L. C. J. What say you, Mr. Silyard, how long have you known the Crown-office?

Mr. Silyard. I have been a clerk here about 30 years.

L. C. J. Well, and how has the practice been all your time?

Mr. Silyard. I have not sat here as clerk of the Rules but a little while, but since I have sat here, I have always observed it to be the practice, that one that comes in custody should plead immediately; it was a thing heretofore that did not so often happen as it hath done here of late, therefore I cannot so well speak it; but it hath fallen out frequently within some years last past, and that hath been the constant course.

Sir S. Astry. When you first came to be Attorney-General, sir Robert Sawyer, I am sure it was so.

Att. Gen. Pray let me ask you, Mr. Silyard, you say you have known the office thirty years; when you first came to the office, were informations as frequent as they are now, and have been of late?

Sol. Gen. It was so in the case of Mr. Hampden,\* when you were Attorney-General, sir Robert Sawyer, he was forced to plead immediately to an information for a misdemeanor, for a crime that perhaps you will say was bordering upon treason.

Sir R. Sawyer. Yes, truly, it wanted but one witness, that was all.

Sol. Gen. But yet the indictment was only for a misdemeanor, and there we struggled and debated the matter, but were forced to give it over, because the course of the court and sir Robert Sawyer; and the then king's counsel, were against us, so it has been by the then unquestionable testimony of sir Samuel Astry for these 12 years last past; and in those 12 years we have had many changes in court, perhaps there may have been twelve Chief Justices and more, with other Judges,† al-

\* See this Case, vol. 9, p. 1053.

† Mr. Serjeant Heywood has inserted at the end of his "Vindication of Mr. Fox's Historical Work," Appendix, N<sup>o</sup> I. [See, also, Mr. Rose's Observations on Mr. Fox's Historical Work, p. 35, and the Edinburgh Review, July 1809], a very valuable "Historical Account of the Tenure by which the Judges held their Offices under the House of Stuart, and a List of most of those who were removed for political causes;" from which, with his permission, I here insert the following passage:

"In the reign of Charles the Second.

"1. John Archer was appointed a judge of the court of Common Pleas on the 4th of November, 1663, and was removed in the Christmas vacation in 1672, (24 Car. 2.) being then the senior puisne judge, and was succeeded by sir William Ellis. Sir Thomas Raymond says Archer was removed, 'pro quibusdam causis mihi incognitis,' but having a patent 'quandiu se bene gesserit' he refused to surrender

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tered in that time, they have all affirmed and

it without a Scire Facias. Notwithstanding he was prohibited from sitting in the court or exercising his office elsewhere, he continued to be a justice, and received a share in the profits of the court as to fees and other proceedings, and his name was used in fines, &c. when Rushworth wrote, and until his death. Sir William Ellis sat in court on the first day of Hilary Term, 1672; and on the same day, sir Hugh Windham, who was the puisne baron of the Exchequer, also took his place as senior judge of the Common Pleas, Wild being removed from the Common Pleas into the King's Bench, to fill up the vacancy occasioned by Morton's death. These removals were made at the desire of sir Edward Thurland, who chose rather to be a baron of the Exchequer, than a justice of either of the other courts, and the chancellor in his speech complimented him upon his modesty, 'in that he chose rather to 'be serviceable than rich.' [T. Ray. Rep. p. 217. Sir T. Jones Rep. p. 42. Rushw. iii. p. 1365.]

"2. Sir William Ellis was appointed one of the justices of the court of Common Pleas in 1672, removed in the long vacation in 1676, and succeeded by sir William Scroggs, who was sworn in on the first day of Michaelmas Term. Sir William Ellis was afterwards made one of the justices of the court of King's Bench, with presidency to sir Thomas Jones and sir William Dolben, justices of that court, because they were 'put in after his turning out;' but this was only signified verbally by the king, and not expressed in his patent. He died in that situation on the 3d of December, 1680, aged 71; though upon the duke of York's return from Scotland in that year, the cavaliers were displeas'd that he was not turned out. [Freem. Rep. p. 212. T. Ray. Rep. p. 251. 407. Macph. St. Pap. i. p. 105.]

"3. Sir Thomas Twisden, was appointed a justice of the court of King's Bench in 1660, and in 1678, his attendance was dispensed with on account of his great age. He still continued to be a judge, and, as was said, had a pension of 500*l.* a year. Sir William Dolben was appointed a judge of this court, and sat, instead of Twisden, till his death, which happened in 1682, he died aged 81 years. Sir William continued to be judge of this court after Twisden's death, but only for a short time before he was himself removed. Noble, in his Memoirs of the Protectoral House of Cromwell, says of Twisden, that 'being too virtuous for the place 'he held he received his *quictus*, after sitting 'upon the bench 20 years.' [T. Ray. Rep. p. 475. Mod. Rep. iii. p. 4. Noble, p. 438.]

"4. Sir Robert Atkins, was made a justice of the court of Common Pleas in 1672, [E. 24 Car. 2), and displaced upon the day before Hilary Term in 1679, by writ under the great seal. He was succeeded by sir Thomas Raymond, a baron of the Exchequer. The cause of his removal probably was that he was con-

§

allowed this course; and if I then make it out,

connected with lord Russell and the Whigs, who withdrew from the council board about this time, being displeased with the king and the majority of the council for treating lightly the Popish Plot. In the New Biographical Dictionary it is said, that 'from a foresight of very 'troublesome times, he resigned his office, and 'retired into the country.' At the Revolution he was made chief baron of the Exchequer. [T. Jones. Rep. p. 42. Mod. Rep. iii. p. 4. Comp. Hist. iii. p. 379.]

" 5. Sir William Wild was appointed a justice of the King's Bench in 1672, (24 Car. 2), and sworn in upon the day before Hilary Term began, and removed in 1679. (P. 31 Car. 2). His successor was sir Francis Pemberton. [T. Jones. Rep. p. 43. Show. Rep. ii. p. 23. Keb. Rep. iii. p. 102.]

" 6. Francis Brampton, a baron of the Exchequer, was appointed in the year 1678. (T. 30 Car. 2), and removed in April 1679. And was succeeded by sir Edward Atkyns. [Ray. Rep. p. 244.]

" 7. Sir Francis Pemberton, a justice of the King's-bench, was appointed in April, and sworn in the 5th of May, 1679, was removed in the month of February following; (32 Car. 2.) and succeeded by sir Thomas Raymond. He practised again in all the courts of Westminster hall, but without the bar, as a serjeant. [Raym. Rep. p. 251. Show. ii. p. 33, 94.]

" 8. Sir William Scroggs, chief justice of the King's-bench, was appointed in 1678, (T. 30, Car. 2.) and removed in 1681, in the Easter vacation, (33 Car. 2.) being succeeded by sir Francis Pemberton. In 1680, the House of Commons fell upon the duke of York's friends, and among the rest lord chief justice Scroggs; they resolved that he should be impeached of high treason, and articles were prepared and ordered to be sent to the lords, but the king prorogued the parliament on the 10th of January, and dissolved it on the 20th. And in the Easter term following, Scroggs who had declined to sit in court for several preceding terms, was discharged from his office, in order that Fitzharris might be tried, but was recompensed with a pension. [Vent. 1. p. 329, 354. Show. ii, p. 155. Macph. Stat. Pap. 1, p. 106. Vol. 8, p. 430, of this Collection.]

" 9. Sir Francis Pemberton, chief justice of the King's-bench, was appointed in 1681, for the trial of Fitzharris, and made chief justice of the common pleas on the day before the first day of Hilary term, 1683, (34 Car. 2.) in the room of sir Francis North, who on the death of lord Nottingham about Christmas had been appointed keeper of the Great Seal. Sir Thomas Raymond says, he changed to the court of common pleas at his own desire, "for that it is a place though not so honourable, yet of more ease and plenty, as the lord keeper said in his speech to Saunders." But it is probable that he was compelled to make the change in order that sir Edmund Saunders

that in the time of all judges within our re-

might preside at the decision of the great Quo Warranto case against the city of London, in which he had drawn all the pleadings for the crown. The demurrer in that cause was filed in the same term, on the first day of which he took his seat as his successor, namely (Hilary Term, 34 Car. 2.) 1683; he died in the next Trinity term, 19th of June, 1683; and sir George Jeffries succeeded him, and sat on the bench in Mich. Term, 1683. [Show. ii. p. 232, 311. T. Ray. p. 478. T. Jones, p. 231, 233. Mod. 3. p. 32. V. 3, p. 1086, in this Collection.]

" 10. Sir Francis Pemberton, made chief justice of the common pleas in Hilary term, 1683, (35 Car. 2.) was removed in the long vacation of that year, and sir Thomas Jones a justice of the court of King's-bench succeeded him, and sat in court at the beginning of Michaelmas term, 35 Car. 2. The removal of sir Francis Pemberton has been supposed to be occasioned, by the honourable manner in which he had conducted himself, when presiding at the trial of lord Russel on the 13th of July preceding, or, as Kennet says, by his not "being able to go into all the new measures of the court." His fate is rather singular, he filled three judicial offices, was removed from each, returned twice to practise at the bar, and died at last a puisne serjeant. [T. Jones, p. 254. Compl. Hist. iii. p. 416.]

" 11. Sir William Dolben, a justice of the King's-bench, was appointed in 1677, (29 Car. 2.) and received a supersedeas to his commission on the 20th of April, 1683, (35 Car. 2.) being succeeded by sir Francis Wythens, who was sworn in on the first day of Easter term, the 25th of April, in the same year. After the revolution he was restored to his office. A message was sent from the lords on the 19th of February, 1683, by serjeant Dolben, so possibly he had returned to the bar. [T. Ray. p. 496. Show. ii. p. 283. Mod. iii. p. 253. Lords' Journ. xiv. p. 129.]

" 12. Thomas Street, was made a baron of the Exchequer in 1681, (33 Car. 2.) sworn in the 23d of April, and was discharged in 1684. He was succeeded by sir Robert Wright, but appears to have been a justice of the King's-bench in (T. 4. Jac. 2.) 1688. [T. Ray. p. 431. Mod. iii. p. 220.]

" In the reign of James the Second.

" 1. Sir Creswell Levinz, was made a justice of the Common Pleas in 1680, (Hil. 32 Car. 2.) and being removed in 1685, two days before the end of Hilary term, (1 and 2 Jac. 2) was succeeded by sir Edward Lutwyche, as is said in 2 Shower. The removal was by supersedeas under the Great Seal, and he returned again to the bar where he continued to practise so late, as Trin. 8 Will. 3. and his reports down to that time are published. [Lev. ii. p. 257, 260. Show. ii. p. 471.]

" 2. William Gregory, made a baron of the Exchequer, in 1679, was removed in the be-

membrance, it has gone thus, then there are sufficient precedents in the matter.

Sir R. Sawyer. But, my lord, I desire to

ginning of 1685, (2 Jac. 2.) and on February the 13th his place was supplied by sir Thomas Jenner. At the revolution he was made a justice of the King's-bench. [Comp. Hist. iii. p. 444. Mod. iii. p. 253.]

" 3. Sir Thomas Jones made chief justice of the Common Pleas in 1683, (35 Car. 2.) was discharged the day before Easter term in 1686, (2 Jac. 2.) and succeeded by sir Henry Bedingfield. The cause of his removal was, notwithstanding the application of the king; his positively refusing to support the dispensing power of the crown. [Skin. p. 251. Show. ii. p. 471. Mod. iii. 99. Comp. Hist. iii. p. 451. See also Reresby's Memoirs, p. 233.]

" 4. William Montague, appointed chief baron of the Exchequer in 1676, (28 Car. 2.) was removed in Easter term, 1686, (2 Jac. 2.) and succeeded by sir Edward Atkyns one of the barons of that court. This removal was occasioned by his refusal to support the dispensing power. [Show. ii. p. 471. Mod. iii. p. 99.]

" 5. Sir Job Charlton, was chief justice and one of his majesty's council at Ludlow for the marches of Wales, with which he had a pension because he did not practise at the bar. Sir George Jeffryes being Recorder of London, and desirous to enjoy his place, prevailed upon him, contrary to his inclination, to become one of the justices of the Common Pleas in April, 1680, and then obtained the appointment with the same pension, though he still continued to practise, and to be Recorder of the City of London. This is one of the signal frauds in the public revenue mentioned by lord keeper North. Sir Job Charlton was removed in 1686 for resisting the dispensing power, but upon his petition was replaced in his former situation with a patent of precedency as he had been a judge, and to wear a judge's robe at Chester. He was succeeded according to 2 Shower's Reports by — Powell. [Comp. Hist. iii. p. 391. Show. ii. p. 94. Dalr. Mem. App. to 1. Part ii. p. 103. Mod. iii. p. 99. Show. ii. p. 471.]

" 6. Sir Edward Nevill, was made a baron of the Exchequer in the long vacation 1685, (1 Jac. 2.) and was removed in the Christmas vacation of 1686, for resisting the claim to the dispensing power, and was succeeded by sir Thomas Jenner. At the restoration [revolution] he resumed his seat in that court. Show. ii. p. 434, 436. Skin. p. 237.]

" 7. Sir Edward Herbert, was made chief justice of the King's Bench in the long vacation of 1685, (1 Jac. 2.) and removed into the Common Pleas and made chief justice of the court, on the 21st of April, 1687, (P. 3. Jac. 2 [Show. ii. p. 434. Mod. iii. p. 125. Com' p. 47.] The removal of this judge, and Francis Wythens from the same bench, for one of the most serious charges against James the second. In prosecution of his arbitrary and bigotted desigus, he had deemed it neces-

know, whether that were the ancient course, Mr. Solicitor?

Sol. Gen. They that make the objection

sary to have a well disciplined standing army at his command, and for the purpose of keeping his soldiers in a state of strict subordination to their officers, and enforcing a prompt obedience to his commands, had determined to revive an obsolete statute\*, and a soldier of the name of Beale, (or Dale) was indicted for deserting, tried at Reading, convicted, sentenced to be hanged, and respited. [Inst. iii. p. 86. Rep. vi. p. 27. Mod. Rep. iii. p. 124. Show. Rep. ii. p. 511.] The king was extremely anxious that the sentence should be put in execution at Plymouth, where the troops were in the garrison, to which the prisoner belonged, that his example might make a stronger impression upon the soldiers there, as well as upon the army in general. For this purpose the attorney general, on Saturday the 15th of April in Easter term, 1687, moved in the court of King's Bench, where sir Edward Herbert presided, and Wythens, Powell and Holloway were justices, (all of whom, it is observable, were removed from that bench within little more than a year afterwards) that execution should be awarded against the prisoner, and that he might be executed at Plymouth. The chief justice in some heat refused the motion, as irregular, the prisoner not being before the court. The attorney general then moved for and obtained a Habeas Corpus to bring up the prisoner, and on Tuesday the 18th of April it was moved again. The chief justice and Wythens were of opinion, that the law did not authorize the court to make the order, for the prisoner could be executed only in the proper county where the trial and conviction was, or in Middlesex where the court of King's Bench sat. The order being refused, the prisoner was committed to the prison of the King's Bench. But James was determined to carry his point,† and on the 20th of April, two days afterwards, sir Francis Wythens was removed, and sir Richard Allibone appointed in his room, and on the

\* " The statute is not mentioned in either of the reports of the case, but the prosecution must have been founded upon either the 7 H. 7. c. 1, or the 3 H. 8. c. 5. See Co. Rep. vi. p. 27. 3 Instit. p. 86." Heywood.

† " The extreme anxiety of James about his army may be traced in a case, which occurred previously to that mentioned above. Browne was an attorney, and being employed by one Corbet, had arrested a soldier without leave, and both of them had been committed to the custody of a messenger for so doing. They were brought into the King's Bench by Habeas Corpus in the Michaelmas term, 2 Jac. 2. but the warrant being under the hand of the king, without any seal, or mention of any officer, it was held to be illegal, and they were discharged.—Rose v. Browne, and others, Show. Rep. ii. p. 484." Heywood.

ought to prove it to be otherwise of old ; but I

21st, sir Edward Herbert was obliged to change situations with sir Robert Wright, who had been appointed chief justice of the court of Common Pleas in the preceding term. On that same day, so indecently anxious was the king, sir Robert Wright took his seat, as chief justice, Holloway and Powell justices being also on the bench, but sir Richard Allibone not making his appearance, and the prisoner being again brought up, an order was granted for his execution at Plymouth, which was accordingly carried into effect.

“ 8. Sir Francis Wythens was made a justice of the King’s Bench in 1683 ; removed in 1687, (E. 3 Jac. 2.) on the 26th of April, for the same reason as sir Edward Herbert, and succeeded by sir Richard Allibone. He came on the next day to Westminster-hall, and practised as a serjeant. In the year 1680 he had been expelled the House of Commons for preferring a petition to the king, against the right of the people to petition, and was excepted out of the general act of indemnity after the Revolution. [Show. ii. 512. Comp. Hist. iii. p. 385 468. 557. Wynn. p. 37.]

“ 9. Sir Richard Holloway was appointed a justice of the King’s Bench in the long vacation, 1683, (35 Car. 2.) and removed in Trinity vacation, 1688; (4 Jac. 2.) for his honest conduct in the trial of the seven bishops ; and succeeded by sir Thomas Powell, a baron of the Exchequer. [Skin. p. 122. 486. Mod. iii. p. 239. Comb. p. 95.]

“ 10. Sir John Powell was appointed one of the justices of the King’s Bench in 1687, and removed in Trinity vacation, 1688, for the same reason as sir Richard Holloway ; and was succeeded by sir Robert Baldoek. At the Revolution he was made a justice of the Common Pleas. Comp. Hist. iii. p. 486. Mod. iii. p. 239. Comb. p. 95.]

“ 11. Sir Christopher Milton was a Catholic, and appointed one of the justices of the King’s Bench in April, 1687 ; and in July, 1688, he had a writ of ease, for which the ostensible reason was his great age and infirmities ; but they must have come upon him suddenly, for he was made a baron of the Exchequer only in Easter term, 1 and 2 Jac. 2. He was removed in good company, with Holloway and Powell. Perhaps it might be thought that, however strong his wishes to serve the prerogative and further the royal cause, it might not be prudent to leave him the senior puisne judge. He was succeeded by sir Thomas Jenner, a baron of the Exchequer. [Comp. Hist. iii. p. 468. 486. Skin. p. 521.]

“ 12. Sir Richard Heath was made a serjeant in 1683 ; appointed one of the barons of the Exchequer in April, 1686 ; and removed the 3d of November, 1688. He was succeeded by John Rotherham, whose call to be a serjeant is no where recorded. [Comp. Hist. iii. p. 451. Beatson’s Pol. Ind. Wynne, p. 37. note]

“ 13. Charles Ingleby was a Catholic, and

will name sir Robert Sawyer another case, and

made a baron of the Exchequer in Trinity vacation (4 Jac. 2.) 1688. He was removed November the 3d, in the same year ; and the vacancy does not appear to have been filled up before James abdicated the throne.” Mod. iii. p. 239. Beatson.

With respect to Street, Beatson (who, however, as Mr. Serjeant Heywood observes, is by no means always correct as to such matters) represents his appointment of Baron of the Exchequer to have been made April 21, 1681, and revoked October 28, 1684 ; and that on October 29, 1684, he was made a puisne judge of the Common Pleas. I speak of the first edition of Beatson, which mentions no more of Street. But I have in my custody [August, 1811] a MS. Collection of Reports made by Street himself, which Mr. Hargrave has lent to me : and from the contents of this I infer that Street was a judge of the Common Pleas, Mich. 36 Car. 2. Trin. 1 Jac. 2, and also Trin. 4 Jac. 2.

It appears from the following passage in Narcissus Luttrell’s MS. “ Brief Historical Relation,” &c. that the removal of Jones, Levinz, and Montague was expected within a few days after the accession of king James.

“ Feb. 14, 1685. A proclamation by his majesty hath been published, reciting that whereas the commissioners of the treasury to his late majesty, had, on the 5th instant (but the day before his majesty died) contracted and agreed with three persons for three years for the whole duty of excise, rendering the rent of 550,000*l.* per annum ; and that the said contract is good for that part of the excise which was to determine by his late majesty’s death, notwithstanding the same ; he did command the said persons to collect the same and pay their rent, and all his subjects to pay the same.

“ His majesty (as is said) advised with his judges about it, and four of them were of opinion the contract was not good in law ; they were the lord chief justice Jones, Mr. Justice Levinz, lord chief baron Montague, and Mr. Baron Atkins ; since which, some are apt to think they will have their quietus sent them.”

I find by the Commons’ journals, that on Friday, December 17, 1680, the House having been resolved into a committee of the whole house, Mr. Powle reports from the committee of the whole house, That the committee having taken the matters to them referred into consideration, had agreed upon several resolves ; which he read in his place, and afterwards delivered them in at the clerk’s table, where the same were read ; the second of which is as follows :

Resolved, “ That it is the opinion of this committee, that the house be moved that a bill be brought in, that the Judges may hold their places and salaries *quam diu se bene gesserint.*”

The above resolution being, together with

that is the case of sir Samuel Barnardiston, which was the case of a very light libel too, but received a heavy fine to plead immediately, and it cost him 10,000*l.* fine.

L. C. J. Well, gentlemen, have you done on either side?

Serj. Pemberton. If your lordship will please to give us time till to-morrow morning, we will come hither by rule of court, and bring you some certificates and affidavits, or else some precedents, that we hope will satisfy your lordship in this matter.

L. C. J. No, brother, we cannot do that; the question is, what the course of the court is? We have an account of that from sir Samuel Astry, for twelve years of his own knowledge, and from Mr. Waterhouse by him for sixty years; but for Mr. Waterhouse they except against him, and say he was a person that was always lazy and did not so well understand his business, and now is superannuated: that is

the others, read a second time, and a motion being made, that the words "hereafter to be named and appointed," be inserted after the word "judges," and before the word "may," and that the words "and also to prevent the arbitrary proceedings of the judges," be added at the end; which being agreed to by this house:

Resolved, "That this house doth agree with the committee, That a Bill be brought in, that the Judges, hereafter to be made and appointed, may hold their places and salaries *quam diu se bene gesserint*; and also to prevent the arbitrary proceedings of the Judges."

No such bill, however, was passed into a law, till the statute of 12 and 13 William 3.

Concerning the constitution of the Scots Judges during this period, Mr. Hume, in his Commentaries, after deducing the history of the court of judicatory to the year 1671, says:

"At this period, it was judged proper by his majesty, and certainly not without sufficient reasons, to throw the whole of this department into an entire new and more provident order; such as might be followed with more honour and authority, and a higher security for the qualifications and good department of the Judges, than under those occasional and discretionary nominations of Justices-depute and assessors. With this salutary purpose, on considering a report made to him by certain counsellors, with whom he thought proper to advise concerning the best means of attaining this important object, his majesty, on the 11th of January, 1671, issued a commission of judicatory in a new form, and purporting to be intended as a model of all commissions for the future; and whereof the substance, along with a set of articles proposed to it, for the regulation of criminal process, was therefore immediately transferred into a law,—that part of the statute 1672, c. 1; which has for title, *Concerning the Justice Court*. This act suppresses the office of justice-depute, and

said, but is but *gratis dictum*, perhaps it may be so, perhaps not; and they have offered to examine Mr. Ince about some opinion that he has had from this Mr. Waterhouse: it may be he may have asked him some question that may lead to it, and he may have given him some slight answer; but then here are these two persons, Mr. Harcourt and Mr. Silyard, and the one has been a clerk these sixteen or seventeen years, and the other has known the office thirty years, though there were not heretofore so many informations of this nature and kind as now of late, but still they say, that a person that comes in upon a commitment, or a recognizance, shall never have any imparlance.

Sol. Gen. Can they give any one instance that has any the least shadow to the contrary?

Mr. Pollexfen. My lord, if we had time, we hope we should be able to satisfy you in this matter.

Sol. Gen. You have had time enough to

orders that the criminal court shall consist of five of the lords of session, added to the justice-general and justice-clerk; of which the justice-general, and in his absence, the justice-clerk to be president, and, in default of these, any one of their number, chosen by themselves.

"Whether the new judges were to hold their places for their lives, or during the pleasure only of the king, the statute did not express. The commission of January 1671, which in substance the statute ratifies," [I do not find, in the 'act concerning the Justice Court,' any specific reference to the commission of January 1671, or any mention of it: but from what Mr. Hume says, I conclude, that the provisions of that act, so far as they extend, are in conformity with the commission,] "was, however, to the persons there named, 'pro omnibus eorum vite diebus.' But it was otherwise with the next commission, that of the 19th of July, 1675, which was only to subsist "*durante nostro bene placito*:" and such also was the tenor of the three succeeding commissions; of the 18th November 1678, 20th April, 1685, and 18th July, 1687; which last, moreover, for reasons which sufficiently appear in history, indulged the judges with a dispensation as to the taking of the test oath, or any other but the oath *de fidei*. In pursuance, accordingly, of the prerogative thus claimed by his majesty, several judges were removed and restored at pleasure, in those jealous and arbitrary times. At the revolution, therefore, it was made an article of the claim of right, "that the changing of the nature of the Judges gifts *ad vitam aut culpam* into commissions *durante bene placito*, is contrary to law." In consequence, no such discretion is reserved in the next commission, that of the 27th January, 1690, which is the last of those general commissions."

As to Ireland, see the books referred to in this Collection in the Cases of Price and others, and Cavenagh and others, A. D. 1689.

prepare yourselves for this question, if you had thought you could do any good in it.

*L. C. J.* Would the course of the court be otherwise to-morrow than it is to day? We have taken all the care we can to be satisfied in this matter, and we will take care that the lords the bishops shall have all justice done them, nay they shall have all the favour by my consent that can be shewn them, without doing wrong to my master the king; but truly I cannot depart from the course of the court in this matter, if the king's counsel press it.

*Att. Gen.* My lord, we must pray your judgment in it, and your direction, that they may plead.

*L. C. J.* Truly, I think they must plead to the information.

*Att. Gen.* Sir Samuel Astry, pray ask my lords whether they be Guilty or Not Guilty.

Then his Grace the Lord Archbishop of Canterbury stood up, and offered a Paper to the court.

*L. Arch. of Canterbury.* My lord, I tender here a short plea (a very short one) on behalf of myself and my brethren, the other defendants; and I humbly desire the court will admit of this plea.

*L. C. J.* If it please your grace, it should have been in parchment.

*Sol. Gen.* What is that my lord offers to the court?

*L. C. J.* We will see what it is presently, Mr. Solicitor.

*Bish. of Peterb.* I pray, my lord, that the Plea may be read.

*Sol. Gen.* But not received.

*Att. Gen.* No, we desire to know what it is first.

*Sir R. Sawyer.* Mr. Attorney, if they will plead, the court sure is obliged to receive it.

*L. C. J.* If it is a plea, your grace will stand by it.

*L. Archbish. of Cant.* We will all stand by it, my lord: it is subscribed by our counsel, and we pray it may be admitted by the court.

*Serj. Pemberton.* I hope the court will not deny to receive a special Plea, if we offer one.

*L. C. J.* Brother, let us hear what it is.

*Sol. Gen.* Read it if you please, but not receive it.

Clerk reads the Plea; which in English is thus:

‘THE BISHOPS’ PLEA.

‘And the aforesaid William archbishop of Canterbury, William bishop of St. Asaph, Francis bishop of Ely, John bishop of Chester, Thomas bishop of Bath and Wells, Thomas bishop of Peterborough, and Jonathan bishop of Bristol, being present here in court in their own persons, pray oyer of the information aforesaid; and it is read to them, which being read and heard by them the said archbishops and bishops, the said archbishops and bishops say, that they are peers of this kingdom of England, and lords of parliament, and each of them is one of the

peers of this kingdom of England, and a lord of the parliament, and that they being (as before is manifest) peers of this Kingdom of England, and lords of parliament, ought not to be compelled to answer instantly for the misdemeanour aforesaid, mentioned in the said information exhibited here against them in this court; but they ought to be required to appear by due process in law issuing out of this court here upon the information aforesaid, and upon their appearance to have a copy of the said information exhibited against them, and reasonable time to impart thereupon, and to advise with counsel learned in the law, concerning their defence in that behalf, before they be compelled to answer the said information: whereupon, for that the said archbishop and bishops were imprisoned, and by writ of our lord the king, of Habeas Corpus, directed to the lieutenant of the Tower of London, are now brought here in custody, without any process upon the information aforesaid issued against them, and without having any copy of the said information, or any time given them to impart, or be advised, they pray judgment, and the privilege of peers of this kingdom, in this case to be allowed them; and that they the said archbishop, and bishops, may not be compelled instantly to answer the information aforesaid, &c.

ROBERT SAWYER.

HEN. FINCH.

HEN. POLLEXTEN.’

*Att. Gen.* My lord, with your lordship's favour, this, in an ordinary person's case, would perhaps be thought not fair dealing, or that which (it being in the case of these reverend prelates) I shall not now name; to make all this debate and stir in a point of this nature; to take the judgment of the court after three or four hours arguing, and when the opinion of the court has been delivered, then to put in a plea to the jurisdiction of the court—

*Sir R. Sawyer.* It is no such plea.

*Att. Gen.* It is so in effect: but certainly it is such an irregularity, and such an unfair way of proceeding, as would not be endured in an ordinary case; and I hope you will give so little countenance to it, as to reject it, and make them plead according to the usual course and way of proceedings. Certainly a plea of this nature, after so long an argument, would be reckoned nothing but a trick.

*Serj. Pemberton.* We hope the court and you are not of one mind, Mr. Attorney, in this matter; we desire the court to receive the plea.

*Att. Gen.* With submission, the court is not bound to receive pleas that are put in purely for delay, as this is; for the judgment of the court has been already given in the very matter of this plea; and for rejecting a plea, it is done every day; if a man puts in a meer ruffling dilatory plea, the court may reject it. Does this plea contain any thing in it, but what has been argued and debated pro and con,

and settled by the court already? If they will put in any plea in chief they may, but such a plea as this, I hope shall not have so much countenance as to be received by the court.

*Mr. Pollexfen.* Do you demur to it? if you please, Mr. Attorney, we will join in demurrer with you.

*Att. Gen.* No, there will be no need of that.

*Sol. Gen.* Surely the court will never give so much countenance to it, as to receive it.

*Mr. Finch.* If you will please either to reply or demur, Mr. Solicitor, we are here to maintain the plea.

*Sol. Gen.* If you were here, you would say the same thing that we do. My lord, this plea is, that my lords the bishops are not bound to plead instantly; so that 'tis not a question, whether they ought to answer, or not to answer; but whether they ought to answer immediately. And what do they say more? They would have an imparlance, and time to consult with their counsel what they shall plead, which is all but one and the same thing in writing, which they have discoursed all this day. And what is the reason they give for this? They induce it thus: these, my lords the bishops, are peers of the realm, and so ought not to be compelled to plead immediately: this, if I mistake not, is the sum of their plea. Now pray, my lord, what sort of plea is this? It is not a plea to the jurisdiction of the court, though it do in a sort decline the justice of the court. Is it a plea in abatement? No, it is not; for it is only to gain time to plead. And do they now offer any thing more for themselves, than what was said by their counsel before? They write they are peers of the realm, and that such is the privilege of the peers, that they ought to have an imparlance, and time to plead, and that they ought not to answer presently. My lord, this matter that they write, was said by their counsel, and hath been long agitated in the court already: your lordship, and the court, have given your judgment, and we know your lordship and the court will not admit of tricks\* to delay the king's causes. We all know that the term is a short term; and what I said in the beginning upon this matter, I say again, it is the interest, and for the honour of my lords the bishops (if they understand their own interest, and value their honour) to have this cause tried as soon as may be; but this trifling and tricking† is only for delay and must disparage their cause: for what issue can be taken by the king

\* In sir William Williams's MS. the word 'tricks' is obliterated, and the phrase 'such trivial delays' is substituted.

† In sir William Williams's MS. the words 'and tricking' are obliterated, and the preceding phrase 'it is the interest and for the honour of my lords the bishops, if they understand their own interest and value their honour' is altered so as to stand thus: 'it is the interest, and for the honour of my lords the bishops, and of value to their honour.'

upon this plea thus offered? Certainly none. And if we should demur, what will be the end of that, but only to gain time to slip over the term? If there were any thing worth consideration in this plea, and that had not been already debated and settled, then it might concern us to give some answer to it; but we have spent three hours, by my watch\*, in the dispute, and the matter having been over-ruled already, it is time to have an end of it. Sure the court will never be so treated by these persons that are of counsel for my lords the bishops, for it cannot be thought that this kind of delay proceeds from my lords the bishops themselves; and whether the court will be so served, we submit it to your lordship. Certainly you will not receive such a plea as this, especially it being in paper, you will never countenance such a practice, so far as to give these lords time to trifle with the court.† If any such thing as a plea be tendered to the court, it ought to be in parchment; and if they would have an imparlance, there ought to have been an entry of a 'petit licentiam interloquendi' upon the roll. The entry of this writing and to advise upon it will be a blemish to your roll, for this in effect is no more than a prayer of an imparlance, which when grantable, ought to be entered of course, together with such prayer upon the roll, and you take it of course; but if it be not of course, it cannot come in by way of plea, it must be by suggestion upon the roll, and a 'Conceditur' entered. If this be admitted as a precedent, every man hereafter that comes in upon an information, will take advantage of it, and plead such a plea as this is, and thereby gain time. If you grant an imparlance in this case upon this plea, you must grant an imparlance in every case. Certainly the law is not to be altered; the method of proceeding ought to be the same in every case. And I hope you will not make a particular rule in the case of my lords the bishops, without a special reason for it.

*Serj. Pemberton.* We put in this plea, my lord, and are ready to abide by it; and we say that, according to the course of the court, it ought to be received.

*Att. Gen.* No, but good Mr. Serjeant, 'tis in the discretion of the court whether they will receive it or not; for the matter has been in debate already, and has received a determination; the court has overruled them in this very point already, and there is no more in this plea than was in the argument before, and therefore it ought to be rejected as a frivolous plea.

*Sol. Gen.* Here is a plea offered in writing, and in paper; the court sees what it is, and I hope you will give no countenance to it.

\* In sir William Williams's MS. the phrase 'by my watch' is obliterated, and the word 'already' substituted.

† In sir William Williams's MS. this is altered thus 'to give time to consider of this paper.'

*Mr. Pollexfen.* I do hope, my lord, you will not judge this a frivolous plea; I think our case is such, that you will not do that: if you think fit you may over-rule it, but I hope you will not refuse it.

*Sol. Gen.* The court will certainly reject a frivolous plea, and they may do it, as is usually done by the courts in cases of pleas apparently frivolous as this is.

*Mr. Pollexfen.* But, Mr. Solicitor, I hope the court will consider of it, whether it be a frivolous plea or not. It is true, there has been a debate about the course of the court, and there has been an examination of the clerk of the office, and the court has gone upon his certificate; but yet still perhaps it may remain in doubt, and it being a question of such a consequence as this, it may very well deserve the court's consideration. There never was a judicial settlement of it that I know of yet; nor do I know any way of having it satisfactorily settled, but by the judgment of the court entered upon record. Here we offer a plea that contains the matter in debate, and this plea will appear upon record; and if upon consideration of the plea your lordship shall think fit to over-rule it, and be of opinion against the plea, then will you, by your resolution, in a judicial way, settle the question that has hitherto been in controversy.

*L. C. J.* Mr. Pollexfen, I would ask you, whether the counsel have dealt ingenuously with the court or no in this matter, after four hours debate, and the opinion of the court delivered, to come and sum up all the arguments in such a plea as this, and so put us upon debating it over again?

*Mr. Pollexfen.* My lord, certainly this has been done before, without offence. After we had moved for a thing which was denied upon motion, it is no such great disrespect to the court, with submission, to put the same matter into a plea, for the judicial opinion of the court.

*Sir R. Sawyer.* That, without all question, has been done a great many times.

*Sol. Gen.* How many times have you been accused of playing tricks, sir Robert Sawyer?

*Sir R. Sawyer.* Not so many as you, Mr. Solicitor.

*Sol. Gen.* I don't ask it, as if I questioned it; for I assure you, I don't doubt it of your part at all.

*L. C. J.* Pray, gentlemen, don't fall out with one another at the bar: we have had time enough spent already.

*Mr. Pollexfen.* Truly, my lord, I would not trick with the court in any case, nor on the other side would I be wanting to advise, and do for my client what I am able, and lawfully may. We have laboured all we could to get time for my lords the bishops to imparle to this information; and we have been the more earnest in it, because it concerns us, who attend this bar, to take what care we can that the course of the court may be observed; but as for this matter, we suppose this practice of the court is not in law a good practice. Now what

way in the world has any man to bring this so in question, as to have a judicial resolution of the court about it, but by such a plea? We take it, that it is usual and legal for us to have an imparlance, and a man would imparle, but the court upon motion refused to give him an imparlance. Is it not, think you, very fit for the party to have this judicially entered upon record? where all this matter will appear, and the party may be relieved by Writ of Error, if the judgment of the court should be wrong; but truly I cannot see how the court can refuse the plea; for if so be a plea be pleaded, they have their liberty to answer it on the other side by a replication, or else to demur, and the judgment of the court may be had upon it one way or other; but the court will never go about to hinder any man from pleading where he may plead by law. Here is a plea put in, and the court sure will take no notice what is the matter of the plea, till the other party have either replied or demurred. The same thing may happen in any other plea that is pleaded, and the party will be without remedy upon a Writ of Error, because the plea being rejected, there does nothing appear upon record. Truly for the court to reject and refuse the plea, would be as hard as the refusing the imparlance, and we know no way we have to help ourselves.

*Sol. Gen.* You might have entered your suggestion for an imparlance upon the roll, and then it would have appeared upon record, and if the court had unjustly denied it you, you would have had the benefit of that suggestion elsewhere. Truly, my lord, I think if any thing be tricking, this is, for it is plainly ill pleading.

*Mr. Finch.* Then pray demur to it.

*Sol. Gen.* No, Sir, 'tis fencing with the court, and that the court won't endure. It is only to delay; and if we should demur, then there must be time for arguing; and what is the question after all, but whether you would be of the same opinion to-morrow, that you are to-day?

*Sir R. Sawyer.* I would put Mr. Solicitor in mind of Fitz-Harris's Case,\* which he knows very well: he put in a plea, and we for the king desired it might not be received; but the court gave him time to put it into form, and I was fain to join in demurrer presently, and so may these gentlemen do if they please.

*Sol. Gen.* Yes, sir Robert Sawyer, I do know the case of Fitz-Harris very well; I was assigned of counsel by the court for him; we were four of us, and there was a plea put in, but no such plea as this. There was an indictment of high-treason against him, in which case it is agreed on all hands, that the party must answer presently; but because he suggested here at the bar, and says he, I have matter to plead to the jurisdiction of the court, and shewed what it was. I was impeached before the lords in parliament for High-treason, for the same matter of which I am here ac-

\* See it in vol. 3, p. 223.

cused. The court did give him time to put this into form, and we were assigned his counsel to draw it up for him, and accordingly we did put that matter into a plea, that he was here indicted for one and the same high-treason for which he was impeached in parliament, and that that impeachment was still depending, and so we rested in the judgment of the court, whether we should be put to answer it here. This was a plea that carried something of weight in it, and not such a trifling plea as this is. It is true, sir Robert Sawyer, who was then attorney-general, did press the court to over-rule it immediately; but it being a matter of some importance, the court would not do that, but had it argued solemnly by counsel on both sides, and at last there was the opinion of three judges against one, that the plea was no good plea. But what is that to such a trifling plea as this?

*Att. Gen.* Pray, my lord, favour me a few words about that case of Mr. Fitzbarris. It is true, there was a plea put in, and it is true also, that that which brought that plea to be argued, was the demurrer that was put in by sir Robert Sawyer, who was so zealous and hasty in the matter, that because the court did not presently over-rule the plea, as he desired, he immediately demurred, before the rest of the king's counsel could offer at any thing about it; and thereupon it was put to the judgment of the court, and no doubt must be argued, and spoke to on both sides; but where pleas are really in abuse of the court, the court never gives any countenance to them: nay, truly I have known another course taken; I am unwilling to mention a case that happened much about that time too in this court; because of that regard I have to my lords the bishops, but sir Robert Sawyer remembers it very well, I am sure: it was the case of one Whitaker, who for a thing like this, putting in a trifling plea, not only had his plea rejected, but something else was ordered. I could shew the precedent, but that I am more tender than to press it in this case, because there the court ordered an attachment to go against him; but I will put these gentlemen in mind of another case, and that is the case of a peer too: it is the case of my lord Delamere, which they cannot but remember, it being in the highest case, a case of treason.\* When my lord Delamere was arraigned, and to be tried for High Treason, he put in a plea before my lord chancellor, who was then high steward, and sir Robert Sawyer, who was then attorney-general, prayed the lord steward, and the peers, to reject it, and the court did reject it, (as we hope the court will do this,) and would never so far delay justice as to admit of a plea that carried no colour in it, and there was no demurrer put into the plea, but it was absolutely refused. My lord, in this case we have had the judgment of the court already, and therefore we must now desire that this plea may be rejected.

*Sol. Gen.* My lord, we have now gone out

of the way far enough already: it is time for us to return, and bring the case into its due methods. We pray your lordship to reject this plea.

*Sir R. Sawyer.* My lord, we are in your judgment, whether you will receive this plea or not.

*L. C. J.* You shall have my judgment presently; but my brothers are to speak first.

*Just. Allynbone.* Mr. Pollexfen makes it a question, whether this plea may be rejected, or whether it ought to be received, and the court give their judgment upon it.

*Just. Powell.* Truly I do not know whether the court can reject this as a frivolous plea.

*L. C. J.* Surely we may, and frequently do.

*Att. Gen.* You do it every day, it is a frequent motion: if a frivolous plea be put in, before it be entered upon record, as a plea, the court may refuse it, if they see cause.

*Just. Allynbone.* Truly if it may be, this appears to me a frivolous plea.

*Just. Powell.* I do not know how the court can reject any plea that the party will put in, if he will stand by it, as they say they will here; and I cannot think this a frivolous plea, it concerning the privilege of peers, and lords of parliament.

*Just. Allynbone.* Brother Powell, I would be as tender of the privileges of parliament, and speak with as much respect of the privileges of the peerage as any body else; but for the matter of the plea, truly it appears to me, that the peers are named in it only for fashion sake, and it is frivolous.

*Just. Powell.* The matter of the plea, except only their being said to be peers and lords of parliament, was spoke to before, but it was only *obiter* and by way of motion; but now it may come before us for our judicial determination.

*Just. Allynbone.* Pray let the plea be read again. [Which was done.] This plea is no more but that which has been denied already upon solemn debate; and if it be in the power of the court to reject any plea, surely we ought to reject this. Indeed I know not what power we have to reject a plea; but if we have power, this ought to be rejected.

*Just. Powell.* I declare my opinion; I am for receiving the plea, and considering of it.

*Just. Hollonby.* I think as this case is, this plea ought not to be received, but rejected, because it is no more than what has been denied already. I am not ashamed to say, that I should be very glad and ready to do all things that are consistent with my duty, to shew respect to my lords the bishops, some of whom are my particular friends; but I am upon my oath, and must go according to the course of law.

*L. C. J.* We have asked, and informed ourselves from the bar, whether we may or can reject a plea; and truly what they have said, hath satisfied me that we may, if the plea be frivolous, and this being a plea that contains no more than what has been over-ruled al-

\* See Vol. 11, p. 509.

ready, after hearing what could be said on both sides, the court is not bound to receive the plea, but may reject it, and my lords the bishops must plead over.

*Att. Gen.* We pray they may plead in chief.

*Clerk.* My lord archbishop of Canterbury, is your grace guilty of the matter charged upon you in this information, or not guilty?

Archbishop of *Cant.* Not guilty.

*Clerk.* My lord bishop of St. Asaph, is your lordship guilty of the matter charged upon you in this information, or not guilty?

Bishop of *St. Asaph.* Not guilty.

*Clerk.* My lord bishop of Ely, is your lordship guilty of the matter charged upon you in this information, or not guilty?

Bishop of *Ely.* Not guilty.

*Clerk.* My lord bishop of Chichester, is your lordship guilty of the matter charged upon you in this information, or not guilty?

Bishop of *Chichester.* Not guilty.

*Clerk.* My lord bishop of Bath and Wells, is your lordship guilty of the matter charged upon you in this information, or not guilty?

Bishop of *Bath and Wells.* Not guilty.

*Clerk.* My lord bishop of Peterborough, is your lordship guilty of the matter charged upon you in this information, or not guilty?

Bishop of *Peterborough.* Not guilty.

*Clerk.* My lord bishop of Bristol, is your lordship guilty of the matter charged upon you in this information, or not guilty?

Bishop of *Bristol.* Not guilty.

*Att. Gen.* My lord, I pray the clerk may join issue on the behalf of the king, so that we may come to trial; and we would have these gentlemen take notice, that we intend to try this cause on this day fortnight; and we pray liberty of the court, that we may try it at bar.

*L. C. J.* Are you not too hasty in that motion, Mr. Attorney?

*Att. Gen.* My lord, we should indeed make it the motion of another day; but we do now tell them this *ex abundanti*, because my lords the bishops are now here, and will, I suppose, take notice, that we do intend to move it another day.

*Sol. Gen.* We now give them notice, that we intend to move.

*Sir R. Sawyer.* For that you need not trouble yourselves; we are very desirous it should be tried at bar, and that as soon as you please.

*Att. Gen.* Well then, you take notice it will be tried this day fortnight.

*L. C. J.* Well, what shall we do with my lords the bishops?

*Att. Gen.* They areailable, no question of it, my lord, if they please.

*L. C. J.* Then, my lords, we are ready to bail you, if you please.

*Sir R. Sawyer.* We desire your lordship would be pleased to take their own recognizance.

*L. C. J.* What say you, Mr. Attorney? I think that may do well enough.

*Att. Gen.* My lord, with all my heart; we will do it.

*L. C. J.* In what penalty shall we take it?

*Att. Gen.* One thousand pound I think; my lord, his grace, and five hundred pounds a-piece the rest.

*Sir R. Sawyer.* What necessity is there for so much?

*Att. Gen.* Look you, sir Robert Sawyer, to shew you that we do insist upon nothing that shall look like hardship, what my lords have been pleased to offer concerning taking their own recognizance, we agree to, and what sums the court pleases.

*Sol. Gen.* It is all one to us; we leave it wholly to the court.

*Sir R. Sawyer.* Only I have one thing more to beg of your lordship, on the behalf of my lords the bishops, that you will please to order, that in the return of the jury there may be forty-eight returned.

*Att. Gen.* I tell you what we will do; sir Samuel Astry shall have the Freeholders Book, if you please, and shall return twenty-four.

*Sir R. Sawyer.* Eight and forty has been always the course, when the jury is returned by sir Samuel Astry.

*Sol. Gen.* My lord, I pray the officer may return the jury, according as is usual in cases of this nature.

*Att. Gen.* Do you admit of a trial at bar, gentlemen?

*Sir R. Sawyer.* Yes, and try it when you will.

*L. C. J.* They say it shall be this day fortnight, and let there be a jury according to the usual course.

*Sir R. Sawyer.* We pray it may be in the presence of the Attorneys and Solicitors on both sides.

*L. C. J.* What is the usual course, sir Samuel Astry? Do you use to return twenty-four, or forty-eight, and then strike out twelve a-piece, which I perceive they desire for the defendants?

*Sir S. Astry.* My lord, the course is both ways, and then it may be as your lordship and the court will please to order it.

*L. C. J.* Then take forty eight, that is the fairest.\*

*Att. Gen.* We agree to it; we desire nothing but a fair jury.

*Sir R. Sawyer.* Nor we neither; try it when you will.

*L. C. J.* Take a recognizance of his grace my lord of Canterbury in 200*l.* and the rest of my lords in 100*l.* a-piece.

*Att. Gen.* What your lordship pleases for that, we submit to it.

*Clerk.* My lord of Canterbury, your grace acknowledges to owe unto our sovereign lord the king the sum of 200*l.* upon condition that your grace shall appear in this court on this day fortnight, and so from day to day, till you shall be discharged by the court, and not to depart without leave of the court. Is your grace contented?

\* See the Case of the King v. Horne, A. D. 1776, in this Collection.

Archb. of Canterbury. I do acknowledge it.  
 Clerk. My lord bishop of St. Asaph, you acknowledge to owe unto our sovereign lord the king the sum of 100*l.* upon condition that your lordship shall appear in this court on this day fortnight, and so from day to day, until you shall be discharged by the court, and not to depart without leave of the court. Is your lordship contented?

Bishop of St. Asaph. I do acknowledge it.

The like Recognizances were taken of all the rest of the Bishops, and then the court arose.

Friday, June 29, 1688.

Clerk. Crier, make proclamation thrice.  
 Crier. O yes! O yes! O yes! Our sovereign lord the king streightly charges and commands every one to keep silence, upon pain of imprisonment.

Clerk of the Crown. Call the defendants.

Crier. William lord archbishop of Canterbury.—Archbishop. Here.

Crier. William lord bishop of St. Asaph. Bishop of St. Asaph. Here.

And so the rest of the Bishops were called, and answered severally.

Clerk. Gardez vos challenges. Swear sir Roger Langley.

Crier. Take the book, sir Roger. You shall well and truly try this issue between our sovereign lord the king and William lord archbishop of Canterbury, and others, according to your evidence. So help you God.

The same Oath was administered to all the Jury, whose names follow, viz. Sir Roger Langley, bart. sir William Hill, kn. Roger Jennings, Thomas Harriot, Jeoffery Nightingale, William Withers, William Avery, Thomas Austin, Nicholas Grice; Michael Arnold, Thos. Done, and Richard Shoreditch, esqrs.

Clerk. You gentlemen of the jury who are sworn, hearken to the Record; sir Thomas Powys, kn. his majesty's Attorney General, has exhibited an Information, which does set forth as followeth:

“*vs.* Memorandum, That sir Thos. Powys, kn. Attorney General of our lord the king, who for our said lord the king in this behalf prosecutes, came here in his own person into the court of our said lord the king, before the king himself at Westminster, on Friday next after the morrow of the Holy Trinity in this term; and on the behalf of our said lord the king, out of his signal clemency, and gracious intention towards the subjects of his kingdom of England, by his royal prerogative, on the 4th day of April, in the 3rd year of the reign of our said lord the king, at Westminster in the county of Middlesex, did publish his royal Declaration, intituled, ‘His Majesty's Gracious Declaration to all his loving Subjects for Li-

‘berly of Conscience,’ bearing date the same day and year, sealed with the great seal of England; in which Declaration is contained, ‘James R.’ *prout* in the first Declaration before recited.

“And the said Attorney General of our said lord the king, further giveth the court here to understand and be informed, That afterwards, to wit, on the 27th day of April, in the 4th year of the reign of our said lord the king, at Westminster aforesaid, in the county of Middlesex aforesaid, our said lord the king, out of his like clemency, and gracious intention towards his subjects of his kingdom of England, by his royal prerogative, did publish his other royal Declaration, intituled, ‘His Majesty's Gracious Declaration,’ bearing date the same day and year last mentioned, sealed with his great seal of England; in which Declaration is contained, ‘James R. Our conduct has been such,’ &c. *prout* in the second Declaration before recited.

“Which said royal Declaration of our said lord the king last mentioned, our said lord the king afterwards, to wit, on the 30th day of April, in the 4th year of his reign aforesaid, at Westminster aforesaid, in the county of Middlesex aforesaid, did cause to be printed and published throughout all England; and for the more solemn declaring, notification, and manifestation of his royal grace, favour, and bounty towards all his liege people, specified in the Declaration last mentioned, afterwards, to wit, on the 4th day of May, in the 4th year of his reign, at Westminster aforesaid, in the county of Middlesex aforesaid, our said lord the king in due manner did order as followeth:

‘At the Court at Whitehall, May 4, 1688.

‘By the King's most Excellent Majesty, and the Lords of his Majesty's most Honourable Privy-Council.

‘It is this day ordered by his majesty in council, That his majesty's gracious Declaration, bearing date the 27th of April last, be read at the usual time of divine service, upon the 20th and 27th of this month, in all churches and chapels within the cities of London and Westminster, and ten miles thereabout; and upon the 3rd and 10th of June next, in all other churches and chapels throughout this kingdom. And it is hereby further ordered, That the right reverend the bishops cause the said Declaration to be sent and distributed throughout their several respective dioceses, to be read accordingly.

‘W. BRIDGMAN.’

“And further, the said Attorney General of our said lord the king, on behalf of our said lord the king, giveth the court here to understand and be informed, that after the making of the said order, to wit, on the 18th day of May, in the 4th year of the reign of our said lord the king, at Westminster aforesaid, in the county of Middlesex aforesaid, Wm. archbishop of Cau-

terbury of Lambeth in the county of Surry; Wm. bishop of St. Asaph of St. Asaph, in the county of Flint; Francis bishop of Ely, of the parish of St. Andrew Holborn in the county of Middlesex; John bishop of Chichester, of Chichester in the county of Sussex; Thomas bishop of Bath and Wells, of the city of Wells in the county of Somerset; Thomas bishop of Peterborough, of the parish of St. Andrew Holborn in the county of Middlesex; and Jonathan bishop of Bristol, of the city of Bristol, did consult and conspire among themselves to diminish the regal authority, and royal prerogative, power and government of our said lord the king, in the premises, and to infringe and elude the said order; and in prosecution and execution of the conspiracy aforesaid, they the said William archbishop of Canterbury, William bishop of St. Asaph, Francis bishop of Ely, John bishop of Chichester, Thomas bishop of Bath and Wells, Thomas bishop of Peterborough, and Jonathan bishop of Bristol, on the said 18th day of May, in the 4th year of the reign of our said lord the king aforesaid, with force and arms, &c. at Westminster aforesaid, in the county of Middlesex aforesaid, falsely, unlawfully, maliciously, seditiously, and scandalously did frame, compose and write, and caused to be framed, composed and written, a certain false, feigned, malicious, pernicious and seditious Libel in writing, concerning our said lord the king, and his royal Declaration and Order aforesaid, (under pretence of a Petition), and the same false, feigned, malicious, pernicious and seditious Libel, by them the aforesaid William archbishop of Canterbury, Wm. Bishop of St. Asaph, Francis bishop of Ely, John bishop of Chichester, Thomas bishop of Bath and Wells, Thomas bishop of Peterborough, and Jonathan bishop of Bristol, with their own hands respectively being subscribed, on the day and year, and in the place last mentioned, in the presence of our said lord the king, with force and arms, &c. did publish and cause to be published; in which said false, feigned, malicious, pernicious and seditious libel is contained, 'The humble Petition,' &c. *prout* before in the Petition, and these words 'reasonable construction,' in manifest content of our said lord the king, and of the laws of this kingdom, to the evil example of all others in the like case offending, and against the peace of our said lord the king, his crown and dignity, &c. Whereupon the said Attorney General of our said lord the king, on behalf of our said lord the king, read the address of the court here in the said due process of law to be made our said William archbishop of Canterbury, William bishop of St. Asaph, Francis bishop of Ely, John bishop of Chichester, Thomas bishop of Bath and Wells, Thomas bishop of Peterborough, and Jonathan bishop of Bristol, on this behalf, to answer our said lord the king, and concerning the premises, &c.

" T. POWELL :

" W. WILKINS :

To this Information the Defendants have pleaded not guilty, and for their trial have put themselves upon their country, and his majesty's attorney general likewise, which country you are. Your charge is to enquire whether the defendants, or any of them, are guilty of the matter contained in this information that hath been read unto you, or not guilty. If you find them, or any of them guilty, you are to say so; and if you find them, or any of them, not guilty, you are to say so, and hear your evidence. Crier, make proclamation.

*Crier.* O-yes! If any one will give evidence on behalf of our sovereign lord the king, against the defendants, of the matters whereof they are impeached, let them come forth, and they shall be heard.

*Mr. Wright.* May it please your lordship, and you gentlemen of the jury, this is an information exhibited by his majesty's Attorney General against the most reverend my lord archbishop of Canterbury, and six other honourable and noble bishops in the information mentioned: and the information sets forth, that the king, out of his clemency and benign intention towards his subjects of this kingdom, did put forth his royal Declaration, bearing date the 4th day of April, in the third year of his reign, entitled, 'His majesty's gracious Declaration to all his loving subjects for liberty of conscience;' and that afterwards, the 27th of April, in the 4th year of his reign, he published another Declaration, both which have been read to you; and for the further manifestation and notification of his grace in the said declaration, bearing date the 27th of April last, his majesty did order, that the said declaration should be read on the 20th and 27th of May in the city of London and Westminster, and ten miles round; and on the 3rd and 10th of June throughout the whole kingdom: and that the right reverend the bishops should send the said Declaration to be distributed throughout their respective dioceses, to be read accordingly. But that the said archbishop and bishops the 14th of May, in the said fourth year of his said majesty's reign, having conspired and consulted among themselves to diminish the king's power and prerogative, did falsely, unlawfully, maliciously, and scandalously make, compose, and write a false, scandalous, malicious and seditious libel, under pretence of a petition; which libel they did publish in the presence of the said king; the contents of which libel you have likewise heard read. To this they have pleaded not guilty: you, gentlemen, are judges of the fact; if we prove this fact, you are to find them guilty.

*Att. Gen.* May it please your lordship, and you gentlemen of the jury, you have heard this information read by the clerk, and it has been likewise opened to you at the bar; but before we go to our evidence, perhaps it may not be amiss for us, that are of counsel for the king, now in the beginning of this cause, to settle the question right before you, as well to tell you what my lords the bishops are not

prosecuted for, as what they are. First, I am to tell you, and I believe you cannot yourselves but observe, that my lords are not prosecuted as bishops, nor much less are they prosecuted for any point or matter of religion, but they are prosecuted as subjects of this kingdom, and only for a temporal crime, as those that have injured and affronted the king to his very face; for it is said to be done in his own presence. In the next place, they are not prosecuted for any nonfeasance, or not doing or omitting to do any thing, but as they are actors, for censuring of his majesty and his government, and for giving their opinion in matters wholly relating to law and government: and I cannot omit here to take notice, that there is not any one thing that the law is more jealous of, or does more carefully provide for the prevention and punishment of, than all accusations and arraignments of the government. No man is allowed to accuse even the most inferior magistrate of any misbehaviour in his office, unless it be in a legal course, though the fact is true. No man may say of a justice of peace to his face, that he is unjust in his office. No man may tell a judge, either by word or petition, you have given an unjust, or an ill judgment, and I will not obey it; it is against the rules and law of the kingdom, or the like. No man may say of the great men of the nation, much less of the great officers of the kingdom, that they do act unreasonably or unjustly, or the like; least of all may any man say any such thing of the king; for these matters tend to possess the people, that the government is ill administered; and the consequence of that is, to set them upon desiring a reformation; and what that tends to, and will end in, we have all had a sad and too dear bought experience: the last age will abundantly satisfy us, whither such a thing does tend. Men are to take their proper remedies for redress of any grievances they lie under, and the law has provided sufficiently for that. These things are so very well known to all men of the law, and indeed to all the people of England of any understanding, that I need not, nor will not, stand any longer upon it, but come to the matter that is now before you, gentlemen, to be tried. The fact that we have laid we must prove, rather to keep the formality of a trial, than to pretend to inform you, or tell you what you do not know: it is publicly notorious to the whole world; but because we must go on in the regular methods of law, we shall prove the facts in the order they are laid in the information. First, we take notice, that his majesty, of his great clemency and goodness to his people, and out of his desire that all his subjects might live easily under him, (of which I think never prince gave greater or more plain evidence of his intentions that way) the 4th of April, 1687, he did issue forth his royal declaration for liberty of conscience. This matter, without all question, was welcome to all his people that stood in need of it; and those that did not could not but say, the thing

in the nature of it was very just and gracious; but presently it must be surmised, that the king was not in earnest, and would not, nor could not, make good his promise: but to take away all surmises, his majesty was pleased by his declaration of the 27th of April last, not only to repeat his former declaration, but likewise to renew his former promises, to his people, and to assure them that he still was, and yet is, of the same opinion that he had at first declared himself to be of; nay, we further shew you, that to the end that this thing might be known to all his people, even to the meanest men, who, it may be, were not willing or able to buy the declaration, and that the king himself might be under higher obligations, if it were possible, than his own word, he was desirous it should be repeated in the churches, and read in that sacred place, that all his people might hear what he had promised, and given his own sacred word for; and he himself might be under the solemn tie and obligation to keep his word, by remembering that his promises had, by his own command, been published in the time of divine service, in the house of God; and thereupon was the order of council made, that has been likewise read to you, which does direct, that it should be read in all the churches and chapels in the kingdom; and you have heard, and we shall prove, what a return his majesty has had for this grace and kindness of his: you'll find, when they come to read that which they call a petition, all their thanks his majesty had for his favour and goodness to his people, 'tis only hard words, and a heavy accusation, such as a private person would be little able to bear. I will not aggravate the matter, but only say thus much, that his majesty, who was always a prince of as great clemency as ever this kingdom had, and who was represented for all that as a prince of the greatest cruelty, before his accession to the crown, by his enemies, is now accused by his friends for this effect of his mercy. My lord, and gentlemen of the jury, his majesty resented this ill usage so far, that he has ordered, and thought fit to have a public vindication of his honour in this matter, by this trial; and we shall go on to our proofs, and we do not doubt but you will do his majesty (as you do all other persons) right.

*Sol. Gen.* My lord, we will go on to prove the parts of this information; and we will proceed according to the method which Mr. Attorney has opened, and which is pursuant to the order of the facts laid in the information. Give us the first Declaration under the Great Seal; the Declaration of the 4th of April, 1687.

[The Declaration was delivered into the Court.]

*Sol. Gen.* Read the date of it first.

*Clerk* reads. 'Given at our Court at Whitehall, the 4th day of April, 1687, [and in the third year of our reign.'

*Sol. Gen.* Read the title of it, Sir.

*Clerk.* It is intituled, 'His Majesty's gra-

'cious Declaration to all his loving subjects for  
'liberty of conscience.'

Sir R. Sawyer. Is it under seal? Is the  
Great Seal to it?

Sol. Gen. Give it down to sir Robert Sawyer,  
that he may see it; for I would have every  
thing as clear as possible. Sir Robert Sawyer,  
will you have it read?

Sir R. Sawyer. No, we would save as much  
of the time of the court as may be.

Sol. Gen. Then pray put in the second De-  
claration of the 27th of April last.

Clerk reads. 'Given at our court at White-  
'hall, the 27th day of April, 1688, in the 4th  
'year of our reign; and it is entitled, his Ma-  
'jesty's gracious declaration.'

Sir R. Sawyer. Is that under the great seal  
too?—Clerk. Yes, it is.

Sol. Gen. Deliver that down likewise that  
they may see it.

Sir R. Sawyer. We are satisfied, you need  
not read it.

Sol. Gen. Then where is the order of coun-  
cil for the reading of it?

Att. Gen. Swear sir John Nicholas. There  
he is. [Sir J. Nicholas sworn.]

L. C. J. Come, Mr. Attorney, what do you  
ask sir John Nicholas?

Sol. Gen. Hand the order to sir John Ni-  
cholas. Is that the order of council, sir John?

Sir J. Nicholas. The book, Sir, is not in my  
custody. There is the Register that keeps it,  
he has it here to produce.

Sol. Gen. Swear Mr. Gantlett. [Mr. Gant-  
lett sworn.] Is that the council-book?

Mr. Gantlett. Yes, this is the council-book.

Sol. Gen. Then turn to the order of the 4th  
of May, the king's order of council for the  
reading the Declaration.

Mr. Gantlett. There it is, sir. [The book  
delivered into court.]

Sol. Gen. Read it, I pray.

Clerk reads. 'At the court of Whitehall,  
'the 4th of May, 1688,' and so reads the Order  
of council.

Sol. Gen. My lord, we have one thing that  
is mentioned in the information, that his De-  
claration was printed; if that be denied, we  
will call Henry Hills, his majesty's Printer,  
because we would prove all our information as  
it is laid.

L. C. J. You must do so, Mr. Solicitor; you  
must prove the whole Declaration.

Sol. Gen. Crier, call Henry Hills. [He was  
called, but did not presently appear. Call Mr.  
Bridgman. Though these declarations prove  
themselves, we have them here printed. But  
swear Mr. Bridgman. [Mr. Bridgman sworn.]  
Shew Mr. Bridgman the two Declarations.

L. C. J. What do you ask him?

Sol. Gen. We ask you, Sir, if the two Decla-  
rations were printed?

Mr. Bridgman. What Declarations do you  
mean, Mr. Solicitor?

Sol. Gen. You know what Declarations I  
mean well enough; but we'll ask you particu-  
larly. You know the Declaration that was

made the 4th of April, in the third year of the  
king. Was it printed?

Mr. Bridgman. Yes, it was printed by the  
king's order.

Sol. Gen. Was that of the 27th of April in  
the 4th year of the king, printed?

Mr. Bridgman. Yes, they were both printed  
by the king's order.

Att. Gen. Then the next thing in course is  
the bishops' Paper.

Sir R. Sawyer. Mr. Bridgman, pray let me  
ask you one question; did you ever compare  
the print with that under seal?

Mr. Bridgman. I did not compare them, sir  
Robert Sawyer.

Sol. Gen. He does swear they were printed  
by the king's order.

Sir R. Sawyer. Good Mr. Solicitor, give me  
leave to ask him a question. Can you swear  
then that they are the same?

Mr. Bridgman. I was not asked that ques-  
tion, sir.

Sol. Gen. Come then, Mr. Bridgman; I'll  
ask you. Do you believe they are the same?

Sir R. Sawyer. Is that an answer to my  
question?

Sol. Gen. We must ask him questions as  
well as you, sir Robert. What say you, do you  
believe it to be the same?

L. C. J. You hear Mr. Solicitor's question,  
answer it, Mr. Bridgman.

Mr. Bridgman. Yes, my lord, I do believe it.  
L. C. J. Well, that's enough.

Att. Gen. If there were occasion, we have  
them here compared, and they are the same.

Sir R. Sawyer. With submission, my lord, in  
all these cases, if they will prove any fact that  
is laid in an information, they must prove it by  
those that know it of their own knowledge.  
Do you know it to be the same?

Sol. Gen. That's very well, Sir.

Sir R. Sawyer. Ay, so it is, Mr. Solicitor.  
It is a wonderful thing, my lord, that we can-  
not be permitted to ask a question. Do you  
know it to be the same, Mr. Bridgman, I ask  
you again?

Mr. Bridgman. I have not compared them,  
I tell you, sir Robert Sawyer.

Sir R. Sawyer. Then that is no proof.

L. C. J. Would you have a man swear  
above his belief? He tells you he believes it  
is the same.

Sir R. Sawyer. Is that proof of an informa-  
tion?

L. C. J. Well, you'll have your time to make  
your objections by and by.

Att. Gen. Then swear sir John Nicholas.

Sir J. Nicholas. I am sworn already.

Att. Gen. I see you have a paper in your  
hand, sir John Nicholas; pray who had you  
that paper from?

Sir J. Nicholas. I will give you an account  
of it as well as I can.

Mr. Pollexfen. Before they go to another  
thing, my lord, we think they have failed in  
their proof of their information, about the print-  
ing this Declaration.

*Att. Gen.* Where is Mr. Hills?

*Just. Allynbone.* They have laid that it was printed by the king's order; and it is such a matter, Mr. Solicitor, as you may clear if you will, sure.

*Sol. Gen.* There is Mr. Hills; now I see him.

*L. C. J.* I was going to give order, that you should send to the printing-house for him.

*Just. Allynbone.* They may put this matter out of doubt too, if they will, on the other side; for I see they have a copy in print, and there's the original; they may compare them if they please.

*Sol. Gen.* I am very glad to hear such a strong objection.

*Sir R. Sawyer.* We would clear the way for you, Mr. Solicitor.

*Sol. Gen.* No, you put straws in our way; we shall be able enough to clear it without your help. Swear Mr. Hills, and young Mr. Graham here. [Hills and Graham sworn.]

*Sol. Gen.* Mr. Graham, did you compare any of these printed declarations with the original?

*Graham.* Yes, I did compare some of them, and did make amendments as I went along.

*Sol. Gen.* Shew one that you have compared with the original.

*Att. Gen.* Hills is here himself, we'll ask him. Are you sworn, Sir?

*Crier.* He is sworn.

*Att. Gen.* Pray, were the king's Declarations for Liberty of Conscience printed, both of them?

*Hills.* Ay, an't please you, Sir.

*Att. Gen.* You printed them, I think?

*Hills.* Yes, I did print them.

*Sir R. Sawyer.* Mr. Hills, you say they were printed: upon your oath, after they were printed, did you examine them with the original under seal?

*Hills.* They were examined before they were printed.

*Sir R. Sawyer.* Did you examine them?

*Hills.* I did not; here's one that did.

*Sol. Gen.* Who is that?

*Hills.* It is Mr. Williams here.

*Sol. Gen.* Swear him. [Williams sworn.] Do you hear, Williams? Do you know that the king's Declarations for Liberty of Conscience, two of them, one of the 4th of April, and the other of the 27th of April, were printed?

*Williams.* Yes, my lord.

*Sol. Gen.* Did you examine them after they were printed, by the copy they were printed from?—*Williams.* I did.

*Sol. Gen.* Where had you the copy? Who had you it from?

*Williams.* I had it from Mr. Hills.

*Sir R. Sawyer.* Mr. Williams, did you examine them with the original under the great seal?—*Williams.* The first Declaration I did.

*Sir R. Sawyer.* The second Declaration the main.

*Williams.* The second was composed by the first.

*Sir R. Sawyer.* Why, is there no more in the second Declaration than there was in the first?—*Williams.* Yes, there is, Sir.

*Sir R. Sawyer.* Did you examine that with the original under the great seal?

*Williams.* No, I did not.

*Sol. Gen.* Can any one tell who did examine it under the great seal?

*Mr. Finch.* Pray, what did you examine it by, Mr. Williams?

*Williams.* By a copy that I received from Mr. Hills.

*Att. Gen.* Then we will go on; and we desire sir John Nicholas to give an account where he had that paper that he has in his hand?

*Mr. Finch.* My lord, it does not appear that the copy that was printed is the true copy of the Declaration.

*Att. Gen.* He says he had it from Mr. Hills.

*Mr. Finch.* Pray, Mr. Hills, what did you examine that copy by which you gave to Mr. Williams?

*Hills.* I had the copy from Mr. Bridgman.

*Mr. Finch.* Did you examine it with the original under the great seal?

*Hills.* I did not examine it; I had it from Mr. Bridgman.

*Mr. Finch.* What, was it under seal?

*Mr. Bridgman.* It was the original signed by the king.

*Mr. Finch.* But I ask you, was it under seal?

*Mr. Bridgman.* Not under the great seal it was not, it was the very Declaration the king signed.

*Sir R. Sawyer.* But it ought to be compared with the original, or it is no good proof that it is the same.

*Sol. Gen.* Sir Robert Sawyer, you understand collation better, sure; you should be ashamed of such weak objections as this.

*Williams.* We never bring our proof to the great seal.

*Sir R. Sawyer.* But if you will have it proof at law, you must have it compared with the original.

*Sol. Gen.* Do you think there is any great stress to be laid upon that? We only say it was printed.

*Sir R. Sawyer.* But you have made it part of your information, and therefore you must prove it.

*L. C. J.* I think there's proof enough of that; there needs no such nicety.

*Mr. Pollexfen.* Well, my lord, we must submit, let them go on, we won't stand upon this.

*Att. Gen.* Then pray let me go on. Where had you the paper, sir John Nicholas?

*Sir J. Nicholas.* I had this paper from the king's hand.

*L. C. J.* Put it in.

*Sol. Gen.* Who had you it from, do you say?

*Sir J. Nicholas.* From the king.

*Sol. Gen.* About what time had you it from the king, Sir?

*Sir J. Nicholas.* I had it twice from the king.

*Sol. Gen.* When was the first time, Sir?

Sir J. Nicholas. The first time was in the council, the 8th of this month.

Sol. Gen. What became of it afterwards?

Sir J. Nicholas. The king had it from me the 12th, and the 13th I had it from the king again.

Sol. Gen. Pray, deliver it this way into the court: we will now go on, and prove the bishops hands to it. This is the Paper upon which we bring this Information: gentlemen, it is all the hand-writing of my lord archbishop, and signed by him and the rest of the bishops.

Att. Gen. I suppose my lords the Bishops will not put us to prove it, they will own their hands.

L. C. J. Yes, Mr. Attorney, their counsel will put you to prove it; I perceive your best way is to ask nothing of them.

Att. Gen. My lord, we will desire nothing of them. We will go on to our proofs. Call sir Thomas Exton, sir Richard Raynes, Mr. Brooks, Mr. Recorder, and Mr. William Middleton. [Sir Thomas Exton appeared, and was sworn.]

L. C. J. What do you ask sir T. Exton?

Att. Gen. Pray convey that paper to sir Thomas Exton.

Sol. Gen. Shew that paper to sir Thomas Exton. Sir Thomas, I would ask you one question: Do you know the hand-writing of my lord archbishop of Canterbury?

Sir T. Exton. I'll give your lordship what account I can.

Sol. Gen. Pray, Sir, answer my question; do you know his hand-writing?

Sir T. Exton. I never saw him write five times in my life.

Sol. Gen. But I ask you, upon your oath, do you believe that to be his hand-writing?

Sir T. Exton. I do believe this may be of his hand-writing.

Sol. Gen. Do you believe all the body of it to be of his hand-writing, or only part of it?

Sir T. Exton. I must believe it to be so, for I have seen some of his hand-writing, and this is very like it.

Sol. Gen. What say you to the name? Do you believe it to be his hand-writing?

Sir T. Exton. Yes, yes, I do.

Sol. Gen. Do you know any of the rest of the names that are upon that paper?

Sir T. Exton. No, I do not.

L. C. J. Do you for the defendants ask sir Thomas Exton any question?

Sir R. Sawyer. No, my lord.

Att. Gen. Then call sir Richard Raynes.

Sir T. Exton. My lord, sir Richard Raynes has been sick this month, and has not been at the Commons.

Sol. Gen. We have no need of him. (11 Mr. Brooks. [Mr. Brooks sworn.]

Att. Gen. Pray shew Mr. Brooks that paper.

Sol. Gen. Mr. Brooks, I ask you this question, do you know my lord archbishop's hand-writing?—Mr. Brooks. Yes, my lord.

Att. Gen. Pray look upon that paper; do you take that to be my lord archbishop's and?

Brooks. Yes, my lord, I do believe it to be my lord archbishop's hand.

Att. Gen. What say you to the whole body of the paper?

Brooks. I do believe it to be his hand.

Att. Gen. What do you say to his name there?

Brooks. I do believe this name is his hand-writing.

Sol. Gen. Call Mr. William Middleton.

Att. Gen. Pray, Mr. Brooks, don't go away, but look upon the names of the bishop of St. Asaph, and my lord of Ely.

Sol. Gen. Do you know my lord bishop of St. Asaph's hand-writing?

Brooks. I have seen my lord archbishop of Canterbury, and the bishop of St. Asaph's hand-writing, and I do believe this is his hand.

Sol. Gen. Look you upon the name of my lord Ely; do you know his hand-writing?

Brooks. My lord, I am not so well acquainted with my lord of Ely's writing.

Sol. Gen. But have you seen his writing?

Brooks. Yes, I have.

Sol. Gen. Is that his writing, do you think?

Brooks. It is like it.

Sol. Gen. Do you believe it to be his hand?

Brooks. Truly I do believe it.

Sir George Treby. Did you ever see him write?—Brooks. No, sir.

Sol. Gen. But he has seen his writing.

Sir G. Treby. How do you know that it was his hand-writing that you saw?

Brooks. Because he owned it.

L. C. J. How do you know it, do you say?

Brooks. I know it, I say, because I have seen a letter that he writ to another person, which he afterwards owned.

L. C. J. What did he own, Mr. Brooks?

Brooks. That he wrote a letter to another person, which I saw.

Sir G. Treby. To whom, Sir?

Sir R. Sawyer. Have you the letter here, Sir?

Brooks. No, Sir, the letter was writ to my lord bishop of Oxford.

Sir G. Treby. Can you tell what was in that letter?

Att. Gen. What is that to this question? You ask him how he knows his hand-writing; and, says he, I did not see him write, but I have seen a letter of his to the lord bishop of Oxford.

L. C. J. And he does say, my lord of Ely owned it to be his hand that is there.

Sol. Gen. No, my lord, that's a mistake, he owned a letter that he had writ to the bishop of Oxford to be his hand-writing, and by comparison of this with that, says he, I take this to be his hand-writing.

Brooks. That is my meaning, my lord.

Sol. Gen. Pray, speak out, and tell us what are the reasons that make you say you believe this to be the bishop of Ely's writing.

Brooks. Because it resembles a letter that I have by me of his writing to the bishop of Oxford.

*Sol. Gen.* And you say he owned that letter to be his?

*Brooks.* My lord bishop of Oxford did answer it, and I waited upon the bishop of Ely with the answer, and he did own it.

*Sir G. Treby.* How did he own it, Sir?

*Brooks.* I had some communication with my lord of Ely, about the substance of that letter, and therefore I apprehended he owned it.

*Just. Powell.* That's a strange inference, Mr. Solicitor, to prove a man's hand.

*Att. Gen.* We have more evidence; but let this go as far as it can.

*Serj. Pemberton.* Certainly, my lord, you will never suffer such a witness as this?

*L. C. J.* Brother Pemberton, I suppose they can prove it otherwise, or else this is not evidence.

*Just. Powell.* So they had need, for it is a strange inference of Mr. Solicitor, that this is a proof of my lord of Ely's hand-writing.

*Just. Holl.* The bishop of Oxon was dead before any of this matter came in agitation.

*Sol. Gen.* My lord, we will bring other proofs. Call Mr. Chetwood and Mr. Smith.

[Mr. Chetwood and Mr. Smith sworn.]

*Sol. Gen.* Mr. Chetwood, we would know of you if you know my lord bishop of Ely's hand-writing?

*Chetwood.* I never saw him write.

*Sol. Gen.* That's not an answer to my question: do you know his hand-writing?

*Chetwood.* I do not certainly know it.

*Sol. Gen.* Have you seen any of it?

*Chetwood.* I have seen my lord of Ely's writing, that has been said to be his.

*L. C. J.* But surely you had better take a witness that has seen him write.

*Just. Powell.* I think it is hardly possible for a man to prove his hand, that has not seen him write.

*L. C. J.* I think it is better proof indeed, to bring some that has seen him write.

*Chetwood.* My lord, it is a long time since I saw my lord of Ely's writing.

*L. C. J.* Pray bring some other proof, if you have it.

*Bishop of Peterborough.* My lord, we are here as criminals before your lordship, and we are prosecuted with great zeal: I beg your lordship that you will not be of counsel against us, to direct them what evidence they shall give.

*L. C. J.* My lord of Peterborough, I hope I have not behaved myself any otherwise other than as becomes me: I was saying that (and I think I said it for your lordship's advantage,) that this was not sufficient proof; and I think, if your lordship observed what I said, it was for you, and not against you.

*Bishop of Peterborough.* It was to direct them against us, how they should give evidence.

*Serj. Pemberton.* Pray, my lord of Peterborough, sit down, you'll have more wrong done you.

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*Sir R. Sawyer.* We that are of counsel will take care of that; and pray, my lord, will you please to pass it by?

*L. C. J.* We are not used to be so served, and I will not be used so.

*Sol. Gen.* If your lordship pleases to pass that by; for what your lordship said was in favour of my lords the bishops; but I see they do not take it so.

*Att. Gen.* Pray, Mr. Chetwood, do you look upon the name of my lord of Ely; do you believe that to be his hand-writing?

*Chetwood.* I do believe it is.

*Sir R. Sawyer.* That's very well, when he says he never saw him write.

*Just. Powell.* What is the reason of that belief of his I would fain know?

*Chetwood.* I have formerly seen his hand, I think it was his; but I never saw my lord of Ely write his hand.

*Sir R. Sawyer.* Then the question is, whether this be evidence?

*Mr. Finch.* How do you know that that which you saw formerly was my lord of Ely's hand?

*Chetwood.* I have no such certainty as positively to swear that that was his hand.

*Sol. Gen.* We will go on to other proofs, and if we want better evidence at the end, we will argue with them.

*Chetwood.* I am not certain that what I saw was my lord of Ely's hand-writing, because I never saw him write.

*Sol. Gen.* You do very well to shew your good affection.

*Att. Gen.* Mr. Smith, I would ask you this question, do you know my lord of Ely's hand-writing?

*Mr. Smith.* I have seen it often.

*Att. Gen.* Look upon the name of my lord of Ely in that paper; do you believe it to be my lord's hand-writing or no?

*Smith.* I did not see him write it, Sir; I cannot tell whether it is or no.

*L. C. J.* Did you ever see his name?

*Smith.* Yes, but it was a great while ago, and here are but seven letters, and I cannot judge by that: I was better acquainted with his hand-writing heretofore.

*Sol. Gen.* Pray, Sir, answer me; do you believe it to be his writing, or do you not?

*Smith.* I believe it may; for I did not see him write it.

*Sol. Gen.* But my question is, do you believe it, or do you not?

*Smith.* I say I was better acquainted with it heretofore than I am now.

*Sol. Gen.* But pray answer my question; do you believe that to be my lord of Ely's hand-writing, or do you not?

*Smith.* I believe it may, Sir.

*Sir R. Sawyer.* Why do you believe it?

*Smith.* I have no other reason to believe it, but because I have seen something like it.

*Just. Powell.* How long ago is it since you saw him write?

*Smith.* I have not seen him write, so as to

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take notice of it, for some years, I could better judge of it when he writ his name Turner, than now it is Ely, because there was more letters to judge by. [Mr. Middleton sworn.]

*L. C. J.* Here's Mr. Middleton; what do you call him for?

*Sol. Gen.* To prove many of their hands.

*Att. Gen.* Pray shew him that paper.

*Sol. Gen.* First, Mr. Middleton, do you know my lord archbishop's hand-writing?

*Middleton.* I have seen his grace's hand-writing.

*Sol. Gen.* Do you believe it to be his?

*Middleton.* It is very like it.

*Sol. Gen.* But do you believe it, or do you not?—*Middleton.* I do believe it.

*Sol. Gen.* Do you know my lord bishop of St. Asaph's hand-writing?

*Middleton.* I never saw it as I know of.

*Sol. Gen.* What do you say to my lord of Ely? His name is next.

*Middleton.* It is like his lordship's hand.

*Sol. Gen.* Do you believe it, or do you not?

*Middleton.* It is like it, that's all that I can say.

*Sol. Gen.* Cannot you tell whether you believe it, or not believe it?

*Middleton.* I do believe it is his hand.

*Sol. Gen.* Did you ever see him write? For I would clear this matter beyond exception.

*Middleton.* I have seen his lordship write, but I never stood by him so near as to see him make his letters.

*Sol. Gen.* Is that his hand-writing?

*Middleton.* It is like it, I believe it is his.

*Sol. Gen.* You did not guide his hand, I believe. Do you know my lord of Chichester's hand-writing?

*Middleton.* Sir, I am acquainted with none of their hands, but with my lord of Canterbury's, and my lord of Ely's.

*Sol. Gen.* Do you know my lord of Peterborough's hand-writing?

*Middleton.* I had my lord of Peterborough's writing two years ago for some money, but I cannot say this is his.

*Sol. Gen.* Do you believe it to be his?

*Middleton.* I never took notice of it so much as to say, I believe it to be like it; I never saw it but once.

*Sol. Gen.* Do you know any other of the names there? What say you to the bishop of Bristol's name?

*Middleton.* I saw once my lord of Bristol's hand-writing.

*Sol. Gen.* What say you to that writing there?

*Middleton.* It is like it.

*Sol. Gen.* Do you believe it to be his, or not?

*Middleton.* Truly, that I cannot say, for I never saw it but once.

*L. C. J.* You never saw him write, did you?

*Middleton.* No, my lord, I never did.

*Sol. Gen.* Then we will call sir Thomas Pinfold, and Mr. Clavel. Sir Thomas Pinfold is there, swear him. [Sir Thomas Pinfold sworn.]

*Sol. Gen.* Sir Thomas Pinfold, do you know my lord bishop of Peterborough's hand-writing?

*Sir T. Pinfold.* Truly, not very well; I never saw but one letter from him in my life: shew me his hand, and I will tell you—[Which was done.]

*Sol. Gen.* Well, Sir, what say you to it?

*Sir T. Pinfold.* Then upon my oath, I say, I cannot well tell upon my own knowledge that it is his hand.

*Sol. Gen.* I ask you, do you believe it to be his hand?

*Sir T. Pinfold.* Sir, upon the oath that I have taken I will answer you, that upon this account, that I have heard there was a Paper delivered by my lords the bishops to the king, and this paper that you offer me, I suppose to be the same; upon that score I do believe it, but upon any other score I cannot tell what to say.

*Sol. Gen.* I ask you upon your oath, Sir, do you believe it is his hand-writing or no?

*Sir T. Pinfold.* Sir, I have answered you already, that upon my own knowledge I cannot say it is his hand-writing; but because I have heard of such a Paper, I do believe it may be his.

*L. C. J.* Did you ever see my lord bishop write?

*Sir T. Pinfold.* I have been in his chamber several times when he has been writing, but I had more manners than to look upon what he writ.

*L. C. J.* Did you never see him write his name?

*Sir T. Pinfold.* I do not know that I ever saw him write his name, but I have seen him writing, I say, and so my lord bishop may have seen me writing, but I believe he does not know my hand.

*Sol. Gen.* You have seen him write, you say?

*Sir T. Pinfold.* I tell you, Mr. Solicitor, I have been in his chamber when he has been writing, but I had more manners than to look over him.

*Just. Powell.* Then you did never see any hand-writing?

*Sir T. Pinfold.* I cannot say, I did, my lord.

*Att. Gen.* Pray did you never see any of his hand-writing that letter you speak of?

*Sir T. Pinfold.* No, not that I remember.

*Just. Powell.* Mr. Solicitor, you must call other witnesses, for this does not prove any thing.

*Att. Gen.* We will go on. Swear Mr. Clavel. [Mr. Clavel sworn.]

*Sol. Gen.* Do you know my lord bishop of Peterborough's hand-writing, or no?

*Mr. Clavel.* I have seen it many times.

*Att. Gen.* Do you know it when you see it?

*Clavel.* I believe I do, Sir.

*Sol. Gen.* Pray look upon that Paper, and upon your oath tell us, do you believe that name to be his writing or no?

*Clavel.* I do believe it is, my lord.

*Att. Gen.* Pray look upon the rest of the

hands there, do you know any of the other names?—*Clavel*. No, I do not.

*Att. Gen.* Have you ever seen any of their writing?

*Clavel*. It is probable I may have seen some, but do not now remember it.

*Sol. Gen.* I think you are a bookseller, Mr. *Clavel*?—*Clavel*. Yes, I am so, Sir.

*Sol. Gen.* I suppose you have had some dealings with them in the way of your trade. Did you never see any of their writing?

*Clavel*. I have seen the names of some of them, but is so long since that I cannot remember.

*L. C. J.* Did you ever see my lord of Peterborough write?

*Clavel*. I cannot tell whether I ever saw him write his name or not; but I have had several letters from my lord of Peterborough.

*Sol. Gen.* Is that his hand-writing?

*Clavel*. I cannot say it is, I believe it is.

*Sol. Gen.* You have had letters from him you say?

*Clavel*. Yes, and it seems to be like his hand.

*Mr. Pollexfen*. But you never saw him write his hand, you say?

*Clavel*. I cannot say I ever did.

*Sol. Gen.* These letters that you have received from my lord of Peterborough, did he own them? Do you think they were counterfeit, or of his own hand-writing?

*Clavel*. I suppose he has owned them, Sir.

*Just. Powell*. But you must answer directly, Sir, did he own them?

*Sol. Gen.* What did those letters concern? Were they about books, or what?

*Clavel*. They were sometimes about one business, sometimes about another.

*Sol. Gen.* Was the subject matter of any of these letters about money, and was it paid you? Did you receive, or did you give any account of it?—

*Clavel*. They were about several businesses.

*L. C. J.* Look you, Mr. *Clavel*, you must give us as particular account as you can.

*Sol. Gen.* Pray, Sir, upon those letters were the things done that those letters required?—*Clavel*. Yes, they were.

*Sol. Gen.* Did you do your part?

*Clavel*. Yes, I did.

*Sol. Gen.* Now, I would ask you, do you believe that name of my lord bishop of Peterborough to be the hand-writing of my lord bishop?—*Clavel*. I believe it is.

*Just. Powell*. Do you know that those letters that you say you received from my lord, were of my lord's own hand-writing? Do you swear that?

*Clavel*. My lord, I cannot swear that.

*Mr. Finch*. Do you know whether the letters that you received, as you say, were written by my lord himself, or by his secretary?

*Clavel*. I have received letters from him, and his secretary too.

*Sir George Treby*. But were you present

with him when he writ any letters with his own hand?

*Sol. Gen.* You do not mean a letter to yourself sure, sir George?

*Sir George Treby*. No, Sir, I say any letters.

*Clavel*. I have been present with my lord often, but I cannot say I have seen my lord write.

*L. C. J.* He has here told you, he has had several letters of my lord's own hand, and from his secretary too.

*Just. Powell*. He has said it, but you see he says he never saw him write.

*Sol. Gen.* We have given evidence against my lord archbishop, lord bishop of Ely, St. Asaph, Peterborough, and Bristol.

*Just. Powell*. Certainly, Mr. Solicitor, you mistake. But go on.

*Sol. Gen.* We have given evidence I say against them, Sir, but whether it be sufficient evidence, we shall argue by and bye. Call Mr. Hooper and Mr. Chetwood again. [Mr. Chetwood appeared.]

*Sol. Gen.* Do you know the hand-writing of my lord bishop of Bath and Wells?

*Chetwood*. I have seen it twice or thrice, but it is a considerable time since I did see it.

*Sol. Gen.* Do you believe that is his hand-writing?

*Chetwood*. I never saw him write his name in my life.

*Sol. Gen.* Pray look upon the name, and tell us what you believe of it.

*Chetwood*. I believe it may, but I do not certainly know it to be his hand; I rather believe it is my lord bishop of Bath and Wells his hand, than I believe that other to be my lord of Peterborough's.

*Sir George Treby*. Do you believe that to be my lord of Peterborough's hand, or no?

*Chetwood*. I say, I rather believe that this is the bishop of Bath and Wells his writing, than that which is above it or below it, to be their writing; but truly I do not distinctly know my lord bishop of Bath and Wells his hand.—*Sol. Gen.* Call Mr. Hooper.

*L. C. J.* You are very lame in this matter.

*Sol. Gen.* The witnesses are unwilling, and we must find out the truth as well as we can. [Mr. Hooper did not appear.]

*Sol. Gen.* Call Mr. James and Mr. Powell. [Mr. James appeared and was sworn.]

*Sol. Gen.* Do you know my lord bishop of Bristol's writing, Mr. James?

*James*. Yes, I believe I do, but I am not so certain, because my lord writes several times several hands.

*Sol. Gen.* Shew him the paper: is that my lord of Bristol's hand?

*James*. I cannot say it is or no.

*Sol. Gen.* What do you believe?

*James*. It looks like his hand, and that's all I can say.

*Sol. Gen.* But pray hearken, and answer to what I ask you; you are prepared for one question it may be, and I shall ask you ano-

ther: upon your oath, do you believe it to be the hand-writing of my lord of Bristol?

*James.* Upon my oath, I can only say it looks like it, that's all.

*L. C. J.* Did you ever see him write?

*James.* Yes, my lord, I have seen his hand-writing several times, and it is like his hand-writing, that is all I can say.

*Sol. Gen.* Sir, remember you are upon your oath, and answer my question.

*James.* Upon my oath, I know no more than that, sir William Williams.

*Sol. Gen.* I ask you, sir, whether you believe it to be his hand or not?

*James.* My lord, it looks like his hand, and it may be his hand.

*Att. Gen.* But do you think and believe one way or other: what do you believe?

*James.* It may be his hand for what I know, and it may not.

*Sol. Gen.* It may be your hand.

*James.* No, Sir, it cannot be mine, I am sure.—*Sol. Gen.* What do you believe?

*James.* I believe it may be his hand, or it may not be his hand, that is all I can say.

*L. C. J.* Come, Sir, you must answer fairly. Do you believe it to be his hand, or do you not.—*James.* Yes, I do believe it.

*Att. Gen.* You are very hard to believe, methinks.—*James.* No, I am not.

*Sol. Gen.* You do very well now, Mr. James; when you do well, we'll commend you.

*Att. Gen.* Call Mr. Nathaniel Powell. [Mr. Powell was sworn.]

*Sol. Gen.* Pray, Sir, let's know what's your name?

*Powell.* My name is Nathaniel Powell.

*Sol. Gen.* Pray do you know the hand-writing of my lord bishop of Chichester?

*Powell.* I have not seen the paper, Sir.

*Sol. Gen.* Do you know his hand-writing.

*Powell.* Yes, I believe I do.

*Sol. Gen.* Look upon that name of his.

*Powell.* I did not see my lord write that.

*Sol. Gen.* Who says you did? You were not asked that question; how you answer! Pray, Sir, remember your oath, and answer the question asked you, seriously; do you believe it to be his writing or no?

*Powell.* I believe it is like my lord's hand-writing, but I never did see him write it.

*Sol. Gen.* No man says you did.

*Powell.* Therefore I cannot swear positively it is his hand.

*Sol. Gen.* We do not ask that neither.

*Powell.* I cannot tell whether it be his hand or no.

*L. C. J.* Sir, you must answer the question directly and seriously: do you believe it, or do you not believe it?

*Powell.* I cannot tell what to believe in the case.

*Sol. Gen.* Then I ask you another question, upon your oath, do you believe it is not his hand?—*Powell.* I cannot say that neither.

*Sol. Gen.* Once again, I ask you, upon

your oath, do you believe it to be his hand? I ask you plainly, and let mankind judge of your manner of swearing.

*Powell.* I tell you, Sir, I cannot tell what to believe.

*Sol. Gen.* My lord, if these things be endured, there will be an end of all testimony, if witnesses do not answer fairly to the questions that are asked them.

*Just. Powell.* Truly to me, for a man to swear his belief in such a matter, is an extraordinary thing.

*Sol. Gen.* He is obliged to answer questions when they are fairly put to him; and in proving of hands this is the usual question, and few can answer otherwise than as they believe.

*Mr. Pollexfen.* I think that is a hard question, not to be answered.

*Sol. Gen.* Make your exceptions to the evidence if you please.

*L. C. J.* First he says, he knows his hand; then he says, he has seen him write; and then he says, he did not see him write this; but he shuffles, he won't answer whether he believes it or not.

*Mr. Pollexfen.* The question is, Whether belief in any case be evidence?

*Sol. Gen.* If they have a mind to a bill of exceptions upon that point, let them seal their bill, and we'll argue it with them when they will; in the mean time we'll go on, and that which we now pray, my lord, is, that this paper may be read.

*Att. Gen.* We have given sufficient evidence sure to have it read, therefore we desire it may be read.

*Serj. Levinz.* My lord, before this paper be read, we hope you will let us be heard to it: we think that what they desire (to have this Paper read) ought not to be: for what is all the proof that they have given of this paper? They have a proof by comparison of hands, which in a criminal case ought not to be received: and besides, my lord, what is that comparison of hands that they have offered? Some persons come here and say, they cannot tell whether it be their hands, they believe it may or may not, for aught they know; how shall we convict any man upon such a testimony as this? Can we have our remedy against him for perjury, for saying, he believes it to be our hand? Therefore here is not any evidence to charge us. For first, It is only a comparison of hands; and secondly, that comparison is proved in such an uncertain manner: some of them tell you, they do not know what to believe; another tells you, I believe it is rather such a lord's hand, than the others are such a lord's hand; I believe 'tis rather his hand than that above it, or that below it. What sort of proof is all this? Therefore we pray it may not be read, till they prove it better.

*Serj. Pemberton.* Pray, my lord, spare me a word or two in this matter for evidence sake: there is a great deal of reason we should take exceptions to the evidence that has been given:

for truly, I think I never heard such a sort of evidence given before. It is a case of as great concernment as ever was in Westminster-Hall; and for them to come to prove hands only by those that saw letters, but never saw the persons write, this, I hope, will not amount to so much as a comparison of hands. Your lordship knows, that in every petty cause, where it depends upon the comparison of hands, they use to bring some of the party's hand-writing which may be sworn to, to be the party's own hand, and then it is to be compared in court with what is endeavoured to be proved, and upon comparing them together in court, the jury may look upon it, and see if it be right; and never was there any such a thing as this admitted in any poor petty cause, that is but of the value of forty shillings. And therefore as to this evidence, first, We say comparison of hands ought not to be given at all in the cases of criminals; and I believe it was never heard of that it should. In the next place, if it be admitted to be evidence, yet it is not such an evidence, as that by comparison of hands the jury can take notice of it; for in such manner of proofs by comparison of hands, the usage is that the witness is first asked, concerning the writing he produces, Did you see this writ by the defendant, whose hand they would prove? If he answers, Yes, I did, then should the jury upon comparison of what the witness swears to, with the paper that is to be proved, judge whether those hands be so like as to induce them to believe that the same person writ both; and not that the witness should say, I had a letter from such a person, and that is like the hand of that letter, therefore I believe it to be his hand: my lord, I hope this shall never be admitted for evidence in this court.

*L. C. J.* I do take it, that the witness himself is judge of the comparison; for if he does know the party's hand, and a paper be offered him to prove the party's hand, he is to compare it in his own mind.

*Serj. Pemberton.* It never was admitted to be so, that I know of, my lord, or ever read of.

*Sol. Gen.* You may remember several cases about that, particularly Mr. Algernon Sidney's Case.\* The principal evidence against him to prove him guilty of treason, was by comparison of hands and believing evidence.

*Mr. Pollexfen.* Pray, my lord, I ear me a little as to that: it is a point of very great moment, whether in the case of a misdemeanor, either in an indictment or information, it be good evidence to offer comparison of hands;† and that this court did adjudge quite contrary upon an indictment of forgery against my lady Carr, appears in Syderfin's Reports: they went to prove her letters written by her to Cox; the court rejected it, and gave their judgment here, that it was no evidence; and that for this reason, because of the evil consequences of it: for, said they, it is an easy matter for any man's

hand to be counterfeited; that they sure will agree, for frequent daily experience shews how easily that may be done: is it not easy then to cut any man down in the world, by proving it like his hand? And proving that likeness by comparing it with something that he hath formerly seen? This strikes mighty deep; the honestest man in the world, and the most innocent may be destroyed, and yet no fault to be found in the jury or in the judges; if the law were so, it would be an unreasonable law. Next, my lord, for the case of Sidney, that was a case of treason. Now in the case of treason there is always other evidence brought; and this evidence comes in but as a collateral evidence, to strengthen the other; but in this case it is the single evidence, for aught that appears, for there is nothing more, for aught I can see, in the case, but whether this were their hands, and proved only by what another believes: now shall any be condemned by another's belief without proof? Surely, my lord, that was never evidence yet to convict any one; so that their proof fails in both points; for first, it ought to be considered, whether a comparison of hands be evidence in a case of misdemeanor? And next, if it be evidence, whether you will take it, that the belief of a man that brings nothing to compare with it, or never saw the party write, but has received letters, and says, this is like it, and therefore he believes it to be his hand, be good evidence as a comparison of hands.

*Serj. Pemberton.* My lord, they are pleased to mention—

*Sol. Gen.* Mr. Serjeant, you have been heard already, and you are not to reply upon us; or if you would we must be heard first.

*Serj. Pemberton.* I would only speak to that case of Sidney: My lord, that case differs from this *toto calo*, the writing was found in his possession, in his study; there was the proof that nailed him.

*Sol. Gen.* You shall see how we'll apply it by and bye.

*Att. Gen.* Pray, my lord, favour me a word in this matter: that there is stronger and weaker evidence, no man doubts; but that which these gentlemen say, that in this case there is no evidence, must needs be a mistake. If they mean that it is not so strong an evidence as is possible to be given, I agree with them, it is not: for if we had brought three or four men that had seen them write this very paper, and put their names to it, that had been a stronger evidence than this that we have given; but whether we do not give such a sort of evidence as may induce the jury to believe that this is their paper, and their hands to it, we submit. They say, this is such a method as never was taken; but I admire that that should be said by men of their experience and knowledge in the law; for is there any thing more usual, or any other course taken for the proof of hands, than for a witness to say, He knows the hand of the party very well, for he has often seen his hand-writing, or received letters from him?

\* See this Case, vol. 9 p. 817.

† See in this Collectio, vol. 8, p. 364.

And then you shew him the thing that you would prove to be his hand, and he says, I do believe this to be his hand, for this reason, because I have had other things of his writing; certainly, in the experience of any man that has practised, this is an evidence that is given every day, and allowed for evidence. For the case of Mr. Sidney, which your lordship has heard mentioned, it is certainly very apposite to this purpose; it is insisted upon and pretended, that that was evidence, because it was found in his study: but without all doubt, that would not be the reason: for may not a book of another man's writing be found in my study? And he insisted upon it in his own defence: but the answer was, that it should be left as the question, whether the jury would believe it upon the evidence that was given, of its being his own hand-writing: and so in this case, though it be not so strong evidence as if we had brought those that had seen them write it; yet evidence it is, and whether it be sufficient to satisfy the jury, may be a question, but no question it is good evidence in law.

*Sol. Gen.* It is a wonderful thing, they say, that such evidence should be offered: but truly, my lord, it is a much stranger thing to hear Mr. Serjeant Pemberton say, it was never done before; and then to make that remark to your lordship upon the case of Mr. Sidney, which I'll put to your lordship and the court as a case, and let him contradict me if he can; and then you shall see how far it goes. Mr. Sidney was indicted for high treason; and the high treason insisted upon at his trial in this court was, a writing that was supposed to be his, it being found in his study: the question was, Whether it was his hand-writing or not, there was no positive proof that it was his hand-writing; there was no person produc'd that prov'd it to be his hand-writing; for there was no person that swore he saw him write it; there was nothing proved but the similitude of hands, to make the jury believe it his hand-writing. Ay, but, says Mr. Serjeant Pemberton, it was found in his study. Will Mr. Serjeant Pemberton be content, that all the libels that are found in his study, shall, for that reason, be adjudged to be his libels, to be his hand-writing, and him to be a libeller for them? I think he would make a severe declamation against that sort of evidence, and he would have very good reason for it: certainly, that which is evidence in one man's case, will be evidence in another's. God forbid there should be any such distinction in law; and therefore I conclude, that this is good evidence, unless a lighter evidence will pass in this court to make a man guilty of treason than of misdemeanor.

*Serj. Pemberton.* The court went upon this, that it was found in his study, and compar'd with letters and bills of exchange produc'd in court, which were sworn to be of his hand-writing.\*

\* According to the Report of Sidney's trial in this Collection, Shepherd swore that he was

*Sol. Gen.* My lord, I was by all the time; for I was ordered to attend him in the Tower; for one of his counsels attended too at his trial but was not heard; and therefore I can tell what passed. My lord, they proved no more as to that paper, but by comparison of hands; they had no other proof in that case, but by comparing the hand-writing; and that was insisted upon to be a very fallible thing: that which they would have us do in this case to compare paper with paper, it is true, would make the proof somewhat stronger, if we could, in such a case as this, be able to produce such evidence.\* But I appeal to your lordship, and shall leave it to the jury, to consider which is better evidence; these men that have been produc'd, that have been conversant with my lords the bishops, and acquainted with their hand-writing, and who (as your lordship sees) are no willing men to give evidence against my lords the defendants, they avoid it as much as they can; yet they swear all the writing to be the hand-writing of my lord archbishop of Canterbury, as they believe; which is as far as any man can swear that did not see him write. One says, the whole body of the paper is my lord of Canterbury's hand, and he knows it very well; so that we are not giving evidence upon a single name, but upon the whole paper that contains many lines; and this is as much as can be proved by any one that did not see the thing written. Then, my lord, for the rest of my lords the bishops, the evidence is not so strong against every one of them, as it is against my lord archbishop; but it is strong enough, I suppose, to induce the jury to find this writing to be signed as we allege by my lords the bishops; and pray, my lord, what was the objection in Mr. Sidney's case, but what has been mentioned here? That any man's hand might be counterfeited. I remember in that case, Mr. Wharton,† a person of honour then in the court, upon perusal of the writing, charged to be Mr. Sidney's hand-writing, undertook to the court, that he would imitate the hand-writing produc'd, so that he that was to swear it was Mr. Sidney's, should not know which was the real, and which the counterfeit; which certainly was a stronger case than this; and I see some of the learned gentlemen now standing at the bar, who pressed

acquainted with colonel Sidney's hand; that he became acquainted with his hand by seeing him write the indorsment upon several bills of exchange, and that he believed all the sheets produc'd to be Sidney's hand. See vol. 9, p. 354.

\* In sir W. W.'s MS. the words 'it is true' would make the proof somewhat stronger if 'we could in such a case as this be able to produce such evidence,' are obliterated, and these following are substituted, 'and so prove this paper by another writing of my lords the bishops it is true would perhaps help the evidence, but it is not necessary.'

† See vol. 9, pp. 344. 376.

that evidence by comparison of hands very hard against Mr. Sidney to prove him guilty, and Mr. Sidney lost his life upon that comparison of hands; though Mr. Wharton did testify how easy a matter it was to have a man's hand imitated or counterfeited, and that even in that writing then given in evidence, yet it was not then regarded by the court, and we all know Mr. Wharton was a man of value and quality; so that there is a precedent for Mr. Serjeant Pemberton, that never heard of this law before. They say the proving of the similitude of hands is no evidence, unless you prove the actual writing; what a condition then would England be in, when witnesses to the actual writing are dead? Is it not the most common practice that can be, to produce witnesses to prove such men are dead, whose names are set as witnesses to deeds; and they swear, they believe it to be the hand-writing of those witnesses? Can there be any better evidence in such a case, unless it be the confession of the party himself, whose deed it is? My lord, we are now only upon reading this paper. We have been heard, and they have been heard; now we pray the paper may be read.

*Recorder.* We pray it may be read.

*Serj. Levinz.* If your lordship please—

*Sol. Gen.* We are not to be replied upon, Mr. Serjeant.

*L. C. J.* You have spoke, brother Levinz, and you have spoke, brother Pemberton, and I would willingly hear you what you have to say; but we must not have vying and revying, for then we shall have no end.

*Serj. Levinz.* I would offer your lordship some new matter, which has not been touched upon yet; why it is not to be read.

*L. C. J.* What's that, brother?

*Serj. Levinz.* All the proof that has been given, whatsoever it amounts to, has been only of its being written, but no proof has been given of its being written in the county of Middlesex, where the information is laid, and the matter is local.

*Sol. Gen.* First read it, and then make your objection.

*Recorder.* My lord, as to the evidence that has been given, I would only put your lordship in mind of one case; and that was the case of sir Samuel Barnardiston;\* and the great evidence there, was the proof of its being his hand-writing; and that being proved, was sufficient to convict him of a libel; for they could not believe sir Samuel Barnardiston was guilty of making libels, unless they were proved to be his hand-writing.

*Sir R. Sawyer.* He owned them to be his hand-writing.

*L. C. J.* If you do expect my opinion in it, whether this be good evidence, and whether this paper be proved or no, I am ready to give it.

*Mr. Finch.* My lord, I desire to be heard before the opinion of the court be given.

\* See this Case, vol. 9, p. 1335.

*Sol. Gen.* If there be not proof enough to induce the jury to believe this is their paper, yet sure there is enough to read it.

*Sir R. Sawyer.* My lord, we have not been heard to this yet.

*Sol. Gen.* Why, is this fit to be suffered?

*L. C. J.* Mr. Solicitor, I am always willing to hear Mr. Finch.

*Sol. Gen.* But I hope your lordship and the court, are not to be complimented into an unusual thing!

*Serj. Pemberton.* It is not a compliment, but right and justice.

*Sol. Gen.* Certainly it is right and justice, that there should be some limits put to men's speaking, that we may know when to have an end.

*Sir R. Sawyer.* Mr. Solicitor does mistake the right, my lord, for we desire to be heard to this point, as not having spoke to it yet.

*Sol. Gen.* Pray, Sir, let me make my objection to your being heard: for I believe you and I have been chid several times, for speaking over and over the same thing.

*Sir R. Sawyer.* This that we now offer, is not to the same point that we have spoken to already.

*Sol. Gen.* We are now speaking to the reading of the paper, and you have spoken to it already.

*Sir R. Sawyer.* If the court will please to hear us, we have that to offer against the reading of the paper, which has not been offered yet.

*L. C. J.* Sir Robert Sawyer, I take it, it is in the breast of the court to hear when they will, and as much as they will, and whom they will; for if three or four have been heard of a side to speak what they will, the court may very well depend upon the learning of those three or four, that they say what can be said upon the point, and that's enough; but if six or seven desire to be heard over and over to the same thing, certainly the court may stop at three or four, if they will.

*Sir R. Sawyer.* This is a new objection that none of us have been heard to yet.

*Mr. Finch.* My lord, that which I offer is not contrary to the rules of law, nor contrary to the practice of the court; nor was I going any way to invade that privilege which Mr. Solicitor claims of making objections, and not receiving an answer.

*Sol. Gen.* What a fine declamation you have now made! I never claimed any such right; but I oppose your being heard over and over to the same thing.

*Att. Gen.* Pray, my lord, let's come to some issue in this matter.

*L. C. J.* I will hear you; but I would not have you introduce it with a reflection upon the king's counsel.

*Sol. Gen.* My lord, if you impose that upon him, you stop his mouth; for some men cannot speak without reflection.

*L. C. J.* On the other side, pray, Mr. Solicitor, give us leave to hear fairly what they

have to say; for I perceive he cannot offer to speak, but you presently stop his mouth.

Mr. Finch. My lord, that which I was going to say, is another matter than any thing that has been yet offered: we say, that this paper ought not to be read; for that they are obliged by law to prove their information; and consequently, having laid a particular place where the thing was done in the information, they ought to prove that this was done in that place. The evidence that they have given, is of my lords the bishops writing this paper; and they have laid it to be done in Middlesex. And this, with submission to your lordship, is local; and they must prove it to be written in Middlesex, where they have laid it, or else they fail in their proof. This is another objection, which as yet hath not been spoken to: that if there be a proof of their hand-writing, yet there is no proof where that hand was written; and therefore they are not yet got so far, as to have it read against my lords.

Att. Gen. For that point, my lord, we say, this would have been as properly said after the paper had been read, when they come to make objections against our proof, by way of defence: and, with submission, it had been more proper then, than it is now: for what are we now doing? My lord, we are proving that such a paper was subscribed by my lords the bishops; and sir John Nicholas gives you an account, that he had it from his majesty at the council; and that certainly is in the county of Middlesex; and it will concern you to prove that it was written elsewhere.

Serj. Pemberton. That's very well, Mr. Attorney; sure you do not think as you speak!

Att. Gen. Here is a paper composed and written by you, that sir John Nicholas says he had from his majesty: how he came by it, I suppose you will tell us by and bye. This is your hand writing, that I think we have proved sufficiently; this is found in the county of Middlesex, and you come and tell us, that we must prove that it was written in the county of Middlesex; and it is taken to be written where it was found, unless you prove the contrary.

Serj. Pemberton. That's pretty doctrine indeed, and very new.

Sol. Gen. My lord, here's an objection made too timely: we are now upon the reading of this paper; and the question is, whether it shall be read, or not be read? Surely we have given evidence enough to induce the court to read it; and it is another question that will come time enough afterwards, where it was written?

L. C. J. Truly, I do not think it was proper for you to stand upon the place where it was written as yet.

Serj. Levinz. When we are upon an information of a fact in Middlesex, will you hear them give evidence of a fact in Yorkshire?

Sol. Gen. We are not to be driven by these gentlemen: we are to be directed by the court.

L. C. J. I think truly it is yet too early to make this objection,

Serj. Pemberton. Surely, my lord, this is our time to oppose the reading of it, as not proved.

Just. Powell. Mr. Solicitor, I think you have not sufficiently proved this paper to be subscribed by my lords the bishops.

Sol. Gen. Not to read it, Sir?

Just. Powell. No, not to read it; it is too slender a proof for such a case. I grant you in civil actions a slender proof is sufficient to make out a man's hand, by a letter to a tradesman, or a correspondent, or the like; but in criminal causes, such as this, if such a proof be allowed, where is the safety of your life, or any man's life here?

Sol. Gen. We tell you a case where it was allowed; and that is Mr. Sidney's case; a case of treason, and printed by authority: We tell you nothing but what was done the other day.

L. C. J. I tell you what I say to it; I think truly there is proof enough to have it read, and I am not ashamed, nor afraid to say it; for I know I speak with the law. Say what you will of criminal cases, and the danger of people's lives, there were more danger to the government, if such proof were not allowed to be good.

Just. Powell. I think there is no danger to the government at all, in requiring good proof against offenders.

L. C. J. Here's my lord archbishop and the bishop of St. Asaph, and my lord of Ely, their hands are proved: it is proved to be my lord archbishop's writing by Mr. Brooks, and he proves my lord of Ely's hand by comparison, and so my lord of St. Asaph's. Now, brother Pemberton, there's an answer to your objection, it being proved that it is all my lord archbishop's hand. Then they come and say, We'll prove the hands of the others by comparison; and that they bring you witnesses that say, they have received letters from them, and seen their hand-writing several times; and comparing what they have seen with this very paper, says the witness, I do believe it to be his hand. Can there be a greater evidence, or a fuller?

Serj. Pemberton. Admit it be a full evidence against my lord archbishop, what's that to the rest? There's no evidence against them.

Just. Allyn. Brother Pemberton, as to the objection you make of comparing of hands, it is an objection indeed, I do agree; but then consider the inconvenience which you and Mr. Pollock do so much insist upon: if a man should be accused by comparison of hands, what is he? He is in a lamentable case; for his name may be so counterfeited, that he himself may not be able to distinguish it. But then you do not consider where you are on the other side: There may be an objection in matters of fact that will have very little weight, if compared and set altogether: for on the other side, what shall the government be, if I will make libels, and traduce the government with pride and discretion, and all the secrecy imaginable? I'll write my libel by myself, prove

it as you can; that's a fatal blot to the government; and therefore the case is not the same, nor is your doctrine to pass for current here, because every case depends upon its own fact. If I take upon me to swear I know your hand, the inducements are to myself, how I came to know it, so as to swear it. Knowledge depends on circumstances: I swear that I know you, but yet I may be under a mistake; for I can have my knowledge of you no other way but from the visibility of you, and another man may be so like you, that there is a possibility of my being mistaken; but certainly that is evidence, good evidence. Now here are several gentlemen that swear as to my lord archbishop's hand-writing: I do agree, as to some of the others, that the evidence is not so strong; for that man said, that he did believe it was rather such a lord's hand, than that which went before, or that which came after, it is of no weight at all, and so some of the others; but it is positively proved against my lord archbishop and one or two more; so that that's enough to induce the reading of this writing.

Just. *Holloway*. Good my lord, let me give my opinion.

L. C. J. Ay, with all my heart, brother.

Just. *Holloway*. My lord, I think as this case is, there ought to be a more strong proof; for certainly the proof ought to be stronger and more certain in criminal matters, than in civil matters; in civil matters we do go upon slight proof, such as the comparison of hands, for proving a deed, or a witness's name, and a very small proof will induce us to read it; but in criminal matters we ought to be more strict, and require positive and substantial proof, that is fitting for us to have in such a case; and without better proof, I think it ought not to be read.

L. C. J. You must go on to some other proof, Mr. Solicitor; for the court is divided in their opinions about this proof.\*

\* As to this proof by comparison of hands, see in Vol. 9, the Case of Algernon Sidney as already referred to.

In a late case (*Eagleton and Coventry ver. Kingston*) lord chancellor Eldon treated of this subject with great clearness and instruction as follows:

"When I first came into the profession, the rule as to hand-writing in Westminster-hall in all the courts was this: You called a witness, and asked, whether he had ever seen the party write. If he said he had, whether more or less frequently, if ever, that was enough to introduce the subsequent question, whether he believed the paper to be his hand-writing. If he answered, that he believed it to be so, that was evidence to go to the jury. If he refused to answer to his belief, he was pressed, perhaps too much, to form a belief; but if he would not go the length of belief, his evidence went for nothing. Or you might ask a witness, who had not seen him write for a length of

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*Sol. Gen.* Then, my lord, we will come to the confessions of my lords the bishops; and I hope that will be believed by all mankind.

*Att. Gen.* Truly, my lord, we did forbear

time, if you could not get a witness of a subsequent date. You might call one, who had not seen him write for twenty years; and if he said, he believed, it was the writing of the person, that evidence might go to the jury; but to be affected by all the rest of the evidence, as it is the nature of all evidence to be more or less convincing.

"In *Horne Tooke's Case*, at the Old Bailey, [see it in this Collection, A. D. 1793], his hand was proved only by Woodfall, who had not seen him write for a great length of time. But that went only to the character of the evidence.

"This rule was laid down with so much clearness, that till very lately I never heard of evidence in Westminster-hall of comparison of hand-writing by those, who had never seen the party write; though such evidence had been frequently received in the Ecclesiastical Courts. The whole of this is very well put together in the *King v. Cator*, [4 *Espinasse's Nisi Prius Cases*, 117]; the whole doctrine being contained in the arguments of counsel and the opinion of the judge. An Inspector of Franks at the Post-office was called; who had acquired a habit of determining, whether any thing was written according to the natural manner of writing; and accordingly permitting or not permitting the frank to pass. These persons were called to prove the signature to a bill of exchange upon their skill in hand-writing, merely upon the comparison of hands of a person they had never seen write. That evidence was admitted by lord Kenyon in one case. It was first introduced by Mr. Justice Buller. Looking back to *Sidney's Case*, and a great variety of others, it was held by the common law, that comparison of hands is not evidence. There is a case in point now, [*Brookbard v. Woodley*, *Peake's Nisi Prius Case*, 20], under the great name of Mr. Justice Yates, in which it was rejected, as inadmissible. Distinguishing the cases of terriers and old writings, &c. there is a principle here, that may account for the difference of practice in the Ecclesiastical Courts and the Courts of Common Law. Suppose, some of the jury cannot read; how can they judge of the similitude? In addition to that authority, in *Macfarlane v. Thoyts* [*Peake's Nisi Prius Cases*, p. 20. See also my Note of the Case of *Macfarlane v. Thoyts*, vol. 9, p. 364, of this Collection], it was held no evidence whatsoever.

"In *Cator's Case*, without going through more, it was argued very much; and it was held by baron Hotham, that it could not be evidence; and there was another Case [*Cary v. Pitt*, 37 *Geo. 3. Peake's Law of Evidence*] before lord Kenyon, in which also it was refused. [As to this, the Reporter observes, 'A principal defect of this species of proof is,

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that evidence, and would not have proceeded this way, if we had had fair play on the other side.

Sir R. Sawyer. Mr. Attorney, give us leave to defend our clients all the ways we can: I think we do nothing but what is fair: the court you see is divided, therefore we did not without reason insist upon it.

L. C. J. You must go on as you can, for they will put you upon it.

Att. Gen. Swear Mr. Blathwayt. [Mr. Blathwayt sworn.]

Sol. Gen. Pray hand the writing to him. [The writing shewn to him.]

“ that it gives no positive evidence of the fact, that the party can write; which is, perhaps, the proper object of the question, whether the witness has seen him write. As to that fact, the answer has the true character of evidence: as the foundation of a familiarity with the manner of writing sufficient to enable him to speak to his belief, it can scarcely have effect, without farther enquiry not merely as to the point of time, which is very material, but also upon the frequency and degree of his observation, involving many important circumstances. If the ground of opinion was investigated, it would probably in most instances appear to be drawn rather from correspondence than from actual observation of the art of writing.”

“ These later cases appear to have brought back the law to the state, in which it stood 25 years ago. I doubt the authority of the Case of Garrels v. Alexander, [4 Esp. Nisi Prius, Case 37]; where, if a man will not take upon him to say, he believes it to be the writing of the person, but says, he thinks it like, lord Kenyon is made to say, that is evidence. I doubt that. Formerly that would not have been deemed evidence. The evidence of hand-writing being of this nature, it is evidence in itself, the credit of which must be affected by and depend much upon the circumstances, as they come out in the course of the case. A man may come into court with the firmest belief as to the hand-writing; and in the course of the cause he may be convinced conscientiously, that his belief was founded in error. You cannot therefore avoid having regard to circumstances; and it is not necessary, that there should be evidence both on the part of the plaintiff and the defendant; for if the evidence for the plaintiff does not satisfy the jury, they are at liberty to say, in their conscientious opinion it is a mistake. No contradictory evidence therefore is necessary upon the part of the defendant, if the other evidence leads the jury to disbelieve it. A singular circumstance applicable to this point, happened to me: A deed was tried in Westminster-hall, stated to have been executed under circumstances, throwing a good deal of blot upon the persons who had obtained it. The Solicitor, who was a very respectable man, said, he felt satisfaction, that there were respectable witnesses. One was the town-clerk of Newcastle; and I

Sol. Gen. Have you seen that writing formerly, Sir?—Blathwayt. Yes, Sir.

Sol. Gen. What did you hear my lord archbishop say about that paper?

Att. Gen. And the rest of my lords the bishops?

Sol. Gen. First, we'll ask, as to my lord archbishop; did he own it to be his hand-writing?

Blathwayt. My lord, I believe this to be the paper that my lord archbishop did own to be subscribed by him.

Sol. Gen. When was it owned by him?

was the other. I could undertake to a certainty, that the signature was not mine; having never attested a deed in my life. He looked back to my pleadings; and was sure it was my signature; and, if I had been dead, would have sworn to it conscientiously. Suppose I had been out of the kingdom, and had come into Westminster-hall during the trial, and had positively sworn that I never attested a deed in my life, would it not have been competent to the jury or witness to say, that it was a mistake? That instance proves, that testimony of hand-writing must be open to the consideration of circumstances at common law.

“ It cannot be doubted that it is so in the Ecclesiastical Courts, upon looking into the books.” See 8 Vesey, jun. 473.

1 Fountainhall's Decisions, 196.

“ November 24, 1682. At Criminal Court, one Woodburn is pannelled for being at the rebellion at Bothwel-bridge: Alledged, he had taken the benefit of his majesty's Proclamation of Indemnity and Pardon to all who would subscribe the bond never again to rise in arms against his majesty, which he had *debito tempore* signed, and so was free. Answered, The subscription of his name at that bond, produced as taken by the earl of Carnwath having power there, was not his, but there was a notary who had affixed the names of near one hundred persons to the said bond as if it had been their own subscriptions, and he had put this Woodburn's subscription with the rest; and by this pious fraud he had brought off and saved many of them; though he was not commissioned to sign for them. Woodburn offered to abide at the truth of the subscription as his. The king's advocate offered to improve it as false; so that here *quæstio falsi* became *incidenter prejudicialis*, and behoved to go before the crime of treason libelled *principaliter*. It seemed odd and new to offer to improve that as false which a man abode by as truly subscribed by him; yet a writ may be proven false against one *quoad datum*, where one claims benefit by it. There were pregnant presumptions against Woodburn, for his present subscription differed *toto calo* from that other; yet in a short time a man's hand-writing may alter much.”

See, too, Mackenzie's Criminals ('Probation by Writ') part 2, tit. 25, s. 3, as referred to in a Note, vol. 10, p. 764, of this Collection.

*Blathwayt.* On the council-day the 8th of this month.

*Sol. Gen.* Where was it owned? because we would obviate that objection of the county.

*Blathwayt.* It was at the council-table at Whitehall.

*Sol. Gen.* What say you to the bishop of St. Asaph? Did he own it?

*Blathwayt.* Yes, all my lords the bishops did own it.

*Sol. Gen.* Name them particularly. What say you of the bishop of Ely?

*Blathwayt.* In the same manner, my lord.

*Sol. Gen.* The bishop of Chichester?

*Blathwayt.* In the same manner.

*Sol. Gen.* The bishop of Bath and Wells?

*Blathwayt.* Yes, my lord.

*Sol. Gen.* The bishop of Peterborough?

*Blathwayt.* Yes, my lord.

*Sol. Gen.* And the bishop of Bristol?

*Blathwayt.* Yes, my lord.

*Sol. Gen.* So we have proved they all owned it.

*Just. Holloway.* Could not this have been done at first, and saved all this trouble?

*Sir R. Sawyer.* Have you done with Mr. Blathwayt, Mr. Attorney, that we may ask him some questions?

*Att. Gen.* Ask him what you will.

*Serj. Pemberton.* Pray, Mr. Blathwayt, upon what occasion did they own it? You are sworn to tell the whole truth: pray tell all your knowledge, and the whole confession that they made.

*Blathwayt.* My lord, I am called here by a Subpoena to answer on the behalf of the king; my lord, I am ready to do my duty, and I beg of your lordship that you would please to tell me what is my duty; for whatsoever I shall answer, I shall speak the truth in.

*Serj. Pemberton.* There is nothing desired, but that you would speak the truth.

*Blathwayt.* My lord, I am easily guided by your lordship what I ought to answer to.

*L. C. J.* What is it you ask him, brother Pemberton?

*Serj. Pemberton.* We desire Mr. Blathwayt to tell the whole discourse that passed at the council, when he says my lords the bishops owned this paper.

*Sol. Gen.* That's a very pretty thing indeed!

*L. C. J.* Look you, Mr. Blathwayt, you must answer them what they ask you, unless it be an ensnaring question, and that the court will take care of.

*Blathwayt.* If your lordship please to ask me any question, I shall readily answer it.

*L. C. J.* You must answer them.

*Serj. Pemberton.* We ask you upon what occasion they came to own their hands? what discourse was made to them, and what they answered?

*Blathwayt.* My lord, I beg your lordship's directions.—*L. C. J.* Come, tell it, Sir.

*Blathwayt.* My lord, the occasion was this: this Paper was read in council, and I had the honour to read it before the king; and it having been read before his grace the arch-

bishop, and my lords the bishops, they were asked, whether they did own that paper? And, my lord, they did own it.

*Sir R. Sawyer.* Mr. Blathwayt, was that the first time that my lords the bishops came in?

*Blathwayt.* Sir, I was not asked that question.

*L. C. J.* What would you have, sir Robert Sawyer?

*Sir R. Sawyer.* We would have an account what passed at the council?

*L. C. J.* Would you have all the discourse betwixt the council and my lords the bishops?

*Serj. Pemberton.* All that relates to their accusation, my lord, their whole confession, and what was said to them.

*Att. Gen.* Do you think, Mr. Serjeant, that when we call a witness, you are at liberty to examine him to every impertinent thing?

*Sol. Gen.* My lord, we desire they may only ask reasonable and proper questions.

*Serj. Pemberton.* Mr. Solicitor, he is sworn to answer, and tell the whole truth, and that's all we ask of him.

*Sir R. Sawyer.* Sir, I will ask you a plain question upon your oath; did not my lord archbishop, and the rest of my lords the bishops, at first refuse to own it, or to answer whether it were their hands or not?

*Sol. Gen.* That is not a fair question, sir Robert Sawyer; 'tis a leading question.\*

*Serj. Pemberton.* Then I ask you in short, what did they refuse? I am sure that is a fair question; for God forbid that any should hinder the king's evidence from telling truth.

*Sir R. Sawyer.* And God forbid that half evidence should condemn any man.

*L. C. J.* God forbid the truth should be concealed any way.

*Serj. Pemberton.* Pray, Sir, when they were first asked, whether that was their hands or not, what answer did they give?

*Blathwayt.* Sir, I have begged the favour of my lords the judges to tell me what I am to answer, and what questions are proper for me to answer to?

*L. C. J.* You must answer any questions that are not ensnaring questions.

*Sir R. Sawyer.* Mr. Blathwayt, you are upon your oath to testify the truth.

*Blathwayt.* Sir, I am not acquainted with the methods of law; I desire my lords the judges would instruct me.

*Just. Altybone.* Answer to the question that they ask you.

*L. C. J.* We observe what they ask you; we'll take care that they ask you nothing but what they should.

*Blathwayt.* I desire the question may be repeated.

*Serj. Pemberton.* When they were first asked if it were their hands, what answer did they give the king?

*Blathwayt.* His grace the archbishop and

\* See Peake's Law of Evidence, c. 3, s. 6.

my lords the bishops at first did not immediately answer whether the Paper were theirs or no.—*Serj. Pemberton.* What did they say?

*Blathwayt.* They said, they did humbly hope if they were put to answer, no advantage should be taken against them.

*Serj. Pemberton.* What did they say farther at that time concerning his majesty's pleasure?

*Sol. Gen.* That's a leading question, Mr. Serjeant Pemberton; you cannot leave your way of leading witnesses.

*Serj. Pemberton.* It is a very strange thing; if we ask a question that's general, that's excepted to: if we ask any question in particular, then they find fault with us, that it is a leading question; so that we can never ask a question that will please them. Pray, Mr. Blathwayt, what did they say concerning the king's pleasure, whether they would answer if the king commanded them?

*Serj. Trinder.* How can it be material what they said?

*L. C. J.* It is material that it should be asked, and that it should be answered.

*Serj. Levinz.* You are to tell the whole truth, Sir. Pray tell us what did my lords the bishops say about submitting to the king's pleasure.

*Sol. Gen.* What is that to the purpose?

*Mr. Pollexfen.* Mr. Solicitor, his oath is to tell the truth, and the whole truth, and therefore he must answer my question.

*Serj. Pemberton.* You are mighty loth, Mr. Solicitor, to let us hear the truth: I would not willingly lead him in any thing; and I cannot see that this is any leading question, unless his oath be against law, which says he is to tell the whole truth.

*Att. Gen.* My lord, I do beg your lordship's favour of a word in this thing. It is certain if they ask any thing that shall take off the evidence that was first given, that it is not true, I cannot oppose it; but if they ask questions only to enflame, and to possess people with foolish notions and strange conceits, that is not to the fact that we are now trying—

*Sir R. Sawyer.* 'Tis only to have the truth out that we do it.

*Serj. Pemberton.* There is no body here that will be enflamed, Mr. Attorney; I have asked a fair question, the court has ruled it so.

*Blathwayt.* I shall readily answer any question that the court thinks fit.

*Serj. Pemberton.* Sir, by the oath you have taken, you are to tell the whole truth.

*L. C. J.* Is he to tell you all this was done at the council-board that day?

*Serj. Pemberton.* No, my lord, only of what passed there about my lords the bishops confession; of the whole of that matter.

*Blathwayt.* There has been so much said between the asking of the question and this time, that I desire it may be repeated, that I may know what to answer to.

*Serj. Pemberton.* I ask you in short, Sir, what did my lords the bishops say at the time

of their appearing in council concerning the king's pleasure, whether they should answer or not?

*Blathwayt.* The first time my lords the bishops came into the council, they were asked the question, whether they did own that paper? They did immediately answer, They humbly hoped, as they stood there as criminals, his majesty would not take the advantage against them; but however they would obey his majesty's command.

*Sir R. Sawyer.* Were they commanded to withdraw?

*Blathwayt.* Yes; thereupon they were commanded to withdraw, which they did.

*Serj. Pemberton.* When they came in again, what questions were asked them?

*Blathwayt.* They came in several times more than twice, I have reason to remark this, that they did so: do you mean the second time, Sir?—*Serj. Pemberton.* Yes, Sir.

*Blathwayt.* The second time they seemed unwilling to own the paper.

*Sir R. Sawyer.* And what did they do the third time?

*Serj. Pemberton.* But first let us know what more was done the second time.

*Sir George Treby.* How was that unwillingness of theirs overcome?

*Serj. Pemberton.* When they expressed their unwillingness, what did they say farther?

*Blathwayt.* If I remember right, they said as they did the first time, they humbly hoped his majesty would not take advantage against them.

*Serj. Pemberton.* Then what did they say the third time?

*Sir R. Sawyer.* Pray were they asked whether they published it?

*Blathwayt.* As to the publishing it, it was laid before them, and I think they were asked the question, whether they published it?

*Sir R. Sawyer.* And what answer did they make?

*Blathwayt.* I remember his grace, and my lords the bishops, did not own they had published it, but they denied it.

*Sir G. Treby.* After they discovered their unwillingness the second time, what followed next?

*Blathwayt.* They did withdraw after the second attendance.

*Serj. Levinz.* But what was said to them? Was that all that was said to them the second time?

*Blathwayt.* I have said two things already, that they were unwilling to answer, and that they denied the publishing.

*L. C. J.* This is a strange usage of a witness, to put him to tell every thing that was said.

*Serj. Pemberton.* I would ask you this question, Sir, When they came in the second time, whether they did desire to know if it were his majesty's command that they should own it?

*L. C. J.* That I must not permit you to ask, brother; that is to lead the witness.

Serj. *Pemberton*. My lord, he will not answer general questions; I have asked him all along general questions, and I cannot get an answer from him to them.

*Blathwayt*. I am ready to answer any questions that the court thinks I should answer; I am not backward to answer according to my duty.

*L. C. J.* Let one of you ask a question at a time, and not chop in one upon another.

*Sol. Gen.* In all the trials that ever I have been in, in all the cases of criminals, the king's witnesses used to be treated with respect, and not to be fallen upon in this manner.

*L. C. J.* He shall be sure to have all respect paid him.

*Sol. Gen.* He is in office under the king.

Serj. *Pemberton*. I do not think that Mr. *Blathwayt* does believe I would shew him any disrespect more than he would shew me.

*Att. Gen.* I beg one word, my lord.

*L. C. J.* Mr. Attorney, what do you say?

*Att. Gen.* My lord, I say I do oppose the asking of this question, not but that every man has a right to cross-examine a witness, but if they ask such a question, let them tell us what use they would make of it.

*L. C. J.* Mr. Attorney-General, for that matter—

Serj. *Pemberton*. My lord, if you please, I'll give Mr. Attorney an answer.

*L. C. J.* Brother *Pemberton*, I was speaking to Mr. Attorney, and pray hear me; I will not ask you what use you'll make of the question you ask; but do you ask fair and regular questions, and I'll take care you shall have an answer to them.

Serj. *Pemberton*. I will deal plainly with the court, and tell you what use we intend to make of our question. If they answered under a promise from his majesty, that it should not be given in evidence against them, I hope they shall not take advantage of it.

*Sol. Gen.* I say that is a very unmaunly question; but however it shall be answered.

Serj. *Pemberton*. Why so, Mr. Solicitor?

*Sol. Gen.* My lord, it is to put something upon the king, which I dare hardly name.

*L. C. J.* We do not know what answer will be made to it yet, but it does look like an odd kind of question.

*Sol. Gen.* If men will be so pressing, I, for the king, desire the question may be entered.

Sir *R. Sawyer*. What do you mean Mr. Solicitor?

*Sol. Gen.* I know very well what I mean, Sir; I desire the question may be recorded in court.

Serj. *Pemberton*. Record what you will; I am not afraid of you, Mr. Solicitor.

*Sol. Gen.* Are you afraid of the law?

Serj. *Pemberton*. No, nor of you neither.

*L. C. J.* Pray, be quiet, gentlemen.

*Att. Gen.* Pray, Mr. *Blathwayt*, answer, whether there was any promise made to my lords the bishops from the king?

*Blathwayt*. My lord, I take the question to

be, whether the king was pleased to make my lords the bishops any promise of not taking advantage of what answer they made?

*Att. Gen.* That is the question.

*Blathwayt*. As that question is stated, there was no such made.

*L. C. J.* Look you, he tells you there was no such promise made. There is an answer to your question, brother.

Serj. *Levinz*. We made no such question; but the question I would ask is this:—

*Sol. Gen.* For the satisfaction of the court, repeat what you said just now, Mr. *Blathwayt*.

*Blathwayt*. I take the question to be, whether the king made any promise to my lords the bishops, that no advantage should be taken of what they said? And I said, the king made no such promise.

Serj. *Pemberton*. We did not ask you the question, but we only told you what use we would have made of another question.

Mr. *Pollcassen*. Mr. *Blathwayt*, I see you can very well distinguish what questions are to be answered. I ask you in short upon your oath, when they were first called in, what was said to them, and what was answered by them?

*L. C. J.* Here has been a great deal of wrangling, but this is a fair question, and may reduce us to order again. Tell us over again from the beginning, what passed when my noble lords the bishops came in the first, second, and third time, when they were examined about this paper?

*Blathwayt*. My lord, I shall comply with your lordship's directions. I apprehend I am to answer together concerning the first, second, and third comings of my lords the bishops into the council. The first time, as I said before, the lords the bishops were unwilling to own the paper, and did say, they humbly hoped his majesty would not take advantage against them, but that they were ready to obey his command. The second time they were called in they did repeat it again, that they hoped his majesty would not take advantage against them: after that there was mention made of the paper being published, I remember my lords the bishops said they had not published it.

Sir *R. Sawyer*. Is that all?

*Sol. Gen.* You have no mind to hear all, I think.

*L. C. J.* How do you expect to be answered your questions, if you interrupt them? Go on, Mr. *Blathwayt*.

*Blathwayt*. Sir, I said last, that they having prayed the king that no advantage might be taken against them for what they should say, there was mention made of the paper its being published, and my lords the bishops did say they had not published it; and his grace my lord archbishop said it was written with his own hand, and that he had not made use of his clerk.

Sir *R. Sawyer*. Is that all you can remember that passed at that time?

*Blathwayt*. This is the substance of what I remember,

*L. C. J.* Was this the third time?

*Blathwayt.* No, that was the second time, my lord.

*Mr. Pollexfen.* If there be not some order in this evidence, my lord, we shall not be able to observe any thing upon it.—Pray what was done afterwards?

*Blathwayt.* My lord chancellor, upon their coming in, did require them to answer, whether they did own that paper or not? My lords the bishops did own the paper.

*Mr. Pollexfen.* Do you remember in what words or expressions, as near as you can, they did own it?

*Sol. Gen.* Is that a practice to be endured?

*Mr. Finch.* Why? He may apprehend and take that to be an owning of it, which was not.

*Sol. Gen.* Has not he sworn the manner of it, and almost the very words?

*Serj. Levinz.* We desire nothing of him but that he will tell us what words they said when they owned it.

*Blathwayt.* It was the third time that they came in, that they owned it.

*Serj. Pemberton.* Why? What did they say?

*Blathwayt.* My lord chancellor required them to answer, whether they owned the paper or no.

*Serj. Pemberton.* What did they say then?

*Blathwayt.* As near as I can remember, his grace and the lords the bishops did own the paper.

*Serj. Pemberton.* What words did they own it in? Tell the manner of it.

*Sol. Gen.* What's this to the purpose?

*Mr. Finch.* Mr. Blathwayt, did you take notes of what passed there?

*Blathwayt.* I answer, Sir, I did not take notes, for I attended the king at his elbow, and did not take notes. Mr. Finch, you know the manner of the council in such cases very well.

*Att. Gen.* Then we ask you for the king, because they shall not enflame people by such an expression, in what words did they own it, if you can remember?

*Blathwayt.* Sir, I have declared my memory as well as I can; when the other clerks come to be examined, if they can tell any more, let them.

*Sol. Gen.* But we will have no discourse to enflame the world: did the king promise or declare that no advantage should be taken of their confession?

*L. C. J.* I would ask him that question, What was the manner that my lord chancellor expressed himself in to them, when they came in the third time?

*Blathwayt.* As soon as my lord chancellor had required them to declare whether they owned that paper; [Holding it forth to the court,] as well as I remember, his grace took the paper in his hand, and it was handed over, or shewed to my lords the bishops, and they owned and declared so, just as if they should lay it before the court, just so. I do not re-

collect myself of all the circumstances that passed; I only can tell you the substance.

*Sol. Gen.* He does not remember what they said particularly.

*Att. Gen.* Mr. Solicitor, I know well enough what they mean by the question; I know they would fain possess the world with a belief that there was such a promise made them, and yet they are prosecuted notwithstanding that promise: therefore I do ask you, Mr. Blathwayt, and for the king's honour I must ask it: did the king make any promise or declaration, that no advantage should be taken, or use made of it?

*Blathwayt.* The king did not make any promise or declaration that no advantage should be taken or use made of it.

*Sol. Gen.* He only put them upon it, whether they did own it or not?

*Att. Gen.* I ask you upon your oath, did my lord archbishop own it to be his hand-writing?

*Blathwayt.* Yes, he did, and said he writ it with his own hand, and would not let his clerk write it.

*Att. Gen.* Did he own the whole to be his hand writing, or not?

*Blathwayt.* Yes, he did.

*Att. Gen.* Did every one of the bishops own their names subscribed to it?

*Blathwayt.* Yes.

*Sol. Gen.* Then, my lord, we pray now that it may be read.

*L. C. J.* I suppose now they will be content it should be read.

*Mr. Finch.* If your lordship please to favour me one word, I think it cannot yet be read; and my objection is this.

*L. C. J.* I thought you had made all your objections before, as to the reading of it.

*Mr. Finch.* Pray, my lord, spare us. Here are two parts of this information; the one is for consulting and conspiring to diminish the king's royal prerogative, and for that end they did make and write a seditious Libel; the other part is, that they did publish this seditious libel. We are hitherto upon the first part, the making and writing of it. Both parts are local; until they have proved the making and writing of it to have been in Middlesex, it is not evidence upon this information.

*Sol. Gen.* We have proved it written and published in Middlesex.

*Serj. Pemberton.* The contrivance and writing of a libel is in itself penal, and they may be punished for it, if they be found guilty. Now if they could give an undeniable evidence concerning the publishing of it, that is nothing to this point; but if they should not give such evidence, or any evidence at all of the publication, yet if it be proved that it was written and contrived by them, they would be guilty for so much, if it be a libel; and this we say is local, as well as all the rest: and therefore we insist upon it, that the writing and contriving must as well be proved to be in Middlesex, as the publication, for all is local.

*L. C. J.* There is no publishing yet proved:

Serj. *Levinz.* It is true, my lord, here is nothing of a publication yet, with your lordship's favour; for their answer to his majesty in council was, that they did not publish it: all that is said yet is, that they owned the paper to be their hands. My lord, does the owning of that, own that it was written in the county of Middlesex? or that it was contrived or made there? No surely, upon this evidence the place is clearly at large. My lord, this might have been done in the county of Surry, or Somerset, or any other county: the information is, that they did consult and contrive to diminish the king's prerogative at Westminster in the county of Middlesex, and there they did write, and cause to be written, this libel, and there they did publish it. Suppose it should be granted that it is proved that this is the archbishop's hand-writing, and these are their names to it, is there any one evidence that any thing of this was done in Middlesex? And, my lord, that is the thing they are to prove.

Mr. *Sommers.\** If your lordship please, all matters of crime are so local, that if it be not proved to be done in the county where it is laid, the party accused is as innocent as if he never had done the thing; and, with submission, it is the very point of the information, that it be proved they are guilty of the fact in the place where it is laid to be done.

L. C. J. This is the same thing over and over again; but I am content to hear you, Mr. Sommers, at any time: I have told you my opinion about reading of the Paper already, if you'll have it again you may.

Mr. *Pollexfen.* Pray, good my lord, spare us before it be read.

Just. *Holloway.* Mr. Pollexfen, you have not yet had the directions of the court for the reading of it.

Att. *Gen.* My lord, when this paper is read, which we pray it may be, we will answer their objections, but at present we say they are out of time.

Mr. *Pollexfen.* Good Lord, what a strange thing is this! We object against the reading of it, and you'll answer us after it is read.

Sol. *Gen.* Certainly, my lord, we have done enough to prove that this is a paper owned by them in the county of Middlesex, and we pray it may be read.

L. C. J. Truly I am of the same mind I was before, that it is too soon to make the objection, and that the Paper ought to be read.

Sol. *Gen.* We submit to your rule.

Mr. *Pollexfen.* If it be the will of the court, I have nothing to say.

\* "I have heard one of the bishops declare, that objection was made among themselves against Mr. Sommers, as too young and obscure a man: but old Pollexfen insisted upon him, and would not be himself retained without the other: representing him as the man who would take most pains, and go deepest into all that depended on Precedents and Records." Kenn. Compl. Hist. 513, note, c. 2d. Edn.

Just. *Powell.* My lord, the contrivance and publication are both matters of fact, and upon issue joined, the jurors are judges of the fact, as it is laid in the information; but how can they be judges of a matter of fact done in another county? And it must be presumed, in favour of innocence, not to be done in this county, but in another, except they prove it.

Att. *Gen.* We are not yet ripe for arguing that point.

Sol. *Gen.* We are speaking only to the court now for the reading of this paper, and the jury are not judges of that, whether the paper ought to be read or no; that is merely a matter of law, and under the direction of the court; and therefore I pray, since it is now in your lordship's judgment, whether that Paper should be read, that you would please to order it to be read.

L. C. J. I can only give you my own opinion, let my brothers give theirs.

Just. *Holloway.* There is nobody against the reading of it, my lord. I suppose my brother Powell is not against it's being read.

Just. *Powell.* But they say the king's counsel must make it out first, that the writing of it, and the conspiring about it, was in the county of Middlesex, or there can be no judgment, so much as to read it.

Mr. *Pollexfen.* My lord, if the objection be saved to us, we shall not so much oppose the reading it, only we would not be surprized in point of time.

Just. *Powell.* Nay, if they consent to the reading, we have no reason to hinder it.

L. C. J. Brother, I believe they know well enough what they have to say for their clients; let the paper be read.

Clerk reads. "The humble Petition of William Archbishop of Canterbury"—

Sir R. *Sawyer.* Read the whole Petition; I pray, my lord, that the whole may be read. Read the top first, Sir, to whom it was directed.

L. C. J. Read the whole.—Clerk reads.

"To the KING's most excellent Majesty.

"The humble Petition of William Archbishop of Canterbury, and of divers of the suffragan Bishops of that Province, now present with him, in behalf of themselves and others of their absent brethren, and of the Clergy of their respective Dioceses,

"Humbly sheweth; That the great averseness they find in themselves to the distributing and publishing in all their churches your majesty's late Declaration for Liberty of Conscience, proceedeth neither from any want of duty and obedience to your majesty (our holy mother, the Church of England, being both in her principles and in her constant practice unquestionably loyal; and having, to her great honour, been more than once publicly acknowledged to be so by your gracious majesty), nor yet from any want of due tenderness to Dissenters, in relation to

whom they are willing to come to such a temper as shall be thought fit, when the matter shall be considered and settled in parliament and convocation; but amongst many other considerations, from this especially, because that Declaration is founded upon such a Dispensing power as hath been often declared illegal in parliament, and particularly in the years 1662, and 1672, and in the beginning of your majesty's reign; and is a matter of so great moment and consequence to the whole nation, both in church and state, that your Petitioners cannot in prudence, honour or conscience, so far make themselves parties to it, as the distribution of it all over the nation, and the solemn publication of it once and again, even in God's house, and in the time of his divine service, must amount to, in common and reasonable construction.

Your Petitioners therefore most humbly and earnestly beseech your majesty, that you will be graciously pleased not to insist upon their distributing and reading your majesty's said Declaration:—And your Petitioners (as in duty bound) shall ever pray, &c.\*

*Att. Gen.* My lord, we shall leave our evidence here, and hear what they can object to it.

*Mr. Finch.* Have you no farther evidence, Mr. Attorney?

*Att. Gen.* We leave it here for the present.

*Sol. Gen.* The gentlemen of the jury desire to see the petition.

*L. C. J.* Shew it them.

[The Petition was shewn to the Jury.]

*Mr. Finch.* But will you give no further evidence, Mr. Attorney?

*Att. Gen.* I tell you, we'll leave it here, till we see what you say to it.

*Mr. Finch.* There is nothing that we should say any thing to.

*Att. Gen.* Make your advantage of it; if it be nothing, we can have nothing.

*L. C. J.* What say you for the defendants, gentlemen?

*Mr. Finch.* My lord, in short, we say, that hitherto they have totally failed; for they have not proved any fact done by us in Middlesex, nor have they proved any Publication at all.

\* Signed

W. CANT.	THO. BATH & WELLS
W. ASAPH.	THO. PETRIBURGENS.
FRAN. ELY.	JON. BRISTOL.
JO. CICESTR.	

On two other copies of the above Petition, one of which is in the archbishop's hand, are the following subscriptions:

Approbo H. London, May 23, 1688.  
 May 23, William Norwich.  
 May 21, 88, Robert Gloucester.  
 May 26, Seth Sarum.  
 P. Winchester.  
 Tho. Exon, May 29, 1688.

See Collectanea Curiosa.

*Sir R. Sawyer.* They have given no evidence of any thing.

*L. C. J.* Pray gentlemen, speak offe at once, and then we shall understand the better what we hear.

*Sir R. Sawyer.* My lord, we say they have given no evidence of the conspiring, writing, or publishing in Middlesex: nay, as to the publication, there is none at all proved.

*Mr. Finch.* Here is no proof of any publication, nor of the writing or making in Middlesex; so that there is no proof at all against my lords the bishops.

*L. C. J.* You heard what Mr. Blathwayt said; they owned it in Middlesex.

*Mr. Finch.* That is not a publication sure, or any evidence where it was done.

*Serj. Levinz.* Suppose, my lord, that I own in Middlesex, that I robbed a man in Yorkshire, will that make me guilty in Middlesex?

*Att. Gen.* But if you had stole a horse in Yorkshire, and had that horse in Middlesex, and owned it, I doubt it would go hard with you in Middlesex.

*Sol. Gen.* Mr. Serjeant thinks he has put a very home comparison; but we shall shew how little significant it is by and bye.

*Serj. Levinz.* My lord, in the first place, we insist upon it, here is no proof in this case at all, as to the doing of any fact at all in the county of Middlesex: In the next place, this information and petition do not agree; for they have brought an information, and set forth, that my lords the bishops, under pretence of a petition, did make a libel, and they have set forth no petition at all; all the petitionary part is omitted. If I will take part of a man's words, and not the whole, and make a libel of that part, certainly that is very disingenuous and injurious: for that part that I omit may alter the sense of the whole. They here ought to set forth the petition, with the direction to the king, and the prayer at the end, whereby it will appear what the whole is, and what was desired by their petition. But, my lord, to make this matter a little more clear, whatsoever they say of its being my lord archbishop's hand, we shall prove that if it were so, it could not be done in Middlesex; for we shall prove that my lord of Canterbury hath not been in Middlesex for three or four months before.

*Sir R. Sawyer.* Pray let the information be read, then you will see the variance.

*Att. Gen.* There is not the latter part, we acknowledge, in the information.

*Sol. Gen.* There may be, and is, a *sic continetur*, and there is no objection in that at all.

*L. C. J.* It is *sic continetur*, and that's—

*Sir R. Sawyer.* The truth of it is, this information hath made a very deformed thing of it, has left neither head nor tail; they stile it a petition, but it is without any direction to any body, and without any prayer for any thing; and without those two it cannot be told what it is.

*Just. Alibone.* Sir Robert Sawyer, if I mis-

take not, it is said only under pretence of a Petition.

Sir R. Sawyer. There may be more in the Paper than the Information; and if all were in, one part might explain another.

Sol. Gen. So there may be more; and I wonder to hear that objection from sir Robert Sawyer, who has exhibited so many informations for libels upon sentences, parts and pieces taken out of books without connection or reference to the other parts of books and prints.

Recorder. All that we alledge in the information is contained in the paper, and that's enough for our purpose; we are not bound to recite the whole.

L. C. J. Indeed I think it is no material objection at all.

Serj. Pemberton. Truly I think it is very material in this case: here's a Petition that is preferred to his majesty; take the whole petition together, and, say they, it is a reasonable petition; chop off the direction and the prayer, and then here's nothing but the body of a petition, without beginning or ending; or if a man will say any thing concerning the king, and do it by way of petition to himself, that will alter the case mightily from a paper spread about, that should contain only the body of the petition, and nothing else.

Sir R. Sawyer. Pray read that part of the information.

Mr. Pollexfen. If so be there be an information, and that information charges a man with a pretended Petition; and the evidence comes and proves a Petition both top and bottom, that is not the petition in the information: for that lacking the proper parts of a petition, is called a pretended Petition, but that which is proved, is proved a real one.

Serj. Baldock. My lord, there is nothing in this objection, as this record hath it.

Att. Gen. Pray, my lord, give us leave to state it on our side, as they have done on theirs, and it will be the better understood upon the reading: I hope it is not come to that pass that they would have it. Sure these gentlemen have not forgot altogether the practice that has been so frequent in this court: if there be an information for a libel, is there any thing more frequent, than only to recite the material part? Sure they may say, in such a libel is contained so and so, without setting forth the whole book.

Sol. Gen. How many trials have we had here, wherein there has been only a clause taken out of a book? as particularly in the information against Mr. Baxter\* and Mr. Johnson's book†, and all by virtue of a *sic continetur*.

Mr. Finch. That comes not up to our objection here.

Just. Powell. Let us hear the record read, and then we can judge of it.

Sir R. Sawyer. We pray, Sir, the information may be read.

Att. Gen. We are here upon all occasions

chopped in upon, and I do not know how they come to take this liberty; I am sure other people had it not in former times, when these gentlemen stood where we do: as soon as ever we offer to speak, presently there are two or three upon us.

L. C. J. Let me hear them, Mr. Attorney, make their objection, and let the record be read, and that will answer that objection.

Att. Gen. My lord, as for that other thing, they come and tell us, we have set forth a petition; we say no such thing; in the information we say, you composed a certain libel *pretensu Petitionis*, in which are contained such and such things; and now I pray let it be read.

Sol. Gen. Pray, my lord, hear me a little first. I take the information as we have laid it, and I believe there are twenty such precedents that I could instance of late days practice: so was the information against Mr. Baxter; so was the information against Mr. Johnson; so was the information against Dr. Eades; and so was the information against sir Samuel Barnardiston and many more. They are all in this form, by a *sic continetur*; so that as for that matter, we are well enough. But here's another thing, say they, you do not set out the petition; we call it a libel, and it is not the name we rely on, says the information, there is such a libel; and calls it so. If it be not a libel, then my lords the bishops are very innocent, and will be found so; and whether it be so or no, is now in judgment before your lordship, and in trial before the jury; but if it be as the information says, then it is not the speaking of ill things in the body of a petition, and then giving it the good title of a petition, and concluding it with a good prayer. 'Tis not, I say, any of these that will sweeten this crime, or will alter or alleviate it; if there be that which is seditious and libellous in the body of the writing, call the paper what you will, and smoothing it with a specious preamble, or conclusion, that will make it any thing less a libel; these things are plain and manifest. There is such a thing done, says the information, *pretensu petitionis*, this was done: do you call it what you will. The information calls these things a libel upon the king and the government: we have proved our case, we have proved there was such a paper under their hands; we have proved it was owned in Middlesex, and then we are in your judgment, whether this be not evidence sufficient to convict the defendants?

L. C. J. But they do make an objection about the writing and contriving of it, that it is not proved to be in Middlesex.

Serj. Trinder. My lord, our information does not go with a continued clause, that they framed a libel, 'ut sequitur in hæc verba,' but we only say, they made a libel 'pretensu petitionis,' and then we say, 'In quo quidem libello continetur' so and so; we do not tie ourselves up to a particular recital of all that's in the paper.

L. C. J. Read the record.

Clerk. Reads.

Y

\* See Vol. 11, p. 495.

† See Vol. 11, p. 1339.

‘ Ipsi iidem Willielmus Archiepiscopus Cantuariensis (and the rest) dicto decimo octavo die Maii, Anno Regni Dicti Domini Regis nunc quarto supradicto, vi et armis, &c. apud Westmonasterium prædictum in Comitatu Middlesexiæ prædicto illicitè malitiose seditiose et scandalose quoddam falsum fictum perniciosum et seditiosum libellum in scriptis de eodem Domino Rege et Regali Declaratione et ordine prædictis pretensu Petitionis fabricaverunt composuerunt et scripserunt et fabricari componi et scribi causaverunt, et eundem falsum fictum malitiosum perniciosum et seditiosum Libellum per ipsos prædictos Willielmum Archiepiscopum Cantuariensem (and the rest) manibus suis propriis respective subscriptum die anno et loco ultimo mentionatis in præsentia dicti Domini Regis nunc vi et armis, &c. publicaverunt et publicari causarunt; in quo quidem falso ficto malitioso pernicioso et seditioso Libello continetur.’ The humble Petition of, &c.

Serj. Levinz. It is quite another thing; that which is produced, from that which is in the information, by this leaving out a part; for here is the prayer omitted, and the direction.

Sol. Gen. Then, my lord, I think there is nothing in the case, but this mighty objection of the county; and, says Mr. Serjeant Levinz, if my countryman confesses in this county, that he stole a horse in Yorkshire, you shall not try him in Middlesex, but in Yorkshire, because, by his own confession, the fact is in another county.

Serj. Levinz. I did not put the case so.

Sol. Gen. But take the fact of the case as it is here: my lords the bishops in Middlesex own this paper; my lord archbishop owns it to be his writing, and the rest of my lords the bishops in Middlesex own their hands: and do not say it was written or signed in any other county. If they had done as Mr. Serjeant’s Yorkshire man did, and said, we own we did this, but it was in the county of York, then it would have been like the case that these gentlemen put; but here we are in a plain case of another nature: my lord archbishop comes here in Middlesex, and owns that he writ the paper, and the other bishops own they signed it, without mentioning where this was done. Now it does lie certainly in their knowledge where this was done, and they should have declared it then; but they have owned it to be their paper, and the signing and writing of it, which is enough for us, to turn the proof this was done by them in another county [upon them] who are actors in it, and best know where it was done.

Mr. Finch. I own this to be my paper, therefore I writ it in the county of Middlesex: is that a consequence? I am very glad they are no better at their inferences.

Sol. Gen. They have owned the thing in Middlesex, that we insist upon, and they have not owned it with any such qualification that it was done out of the county of Middlesex. If they had said so, or that it was done in another

county, then you must have taken it to be as they said it; then if they do not distinguish the place of the fact, your lordship can only take it to be where they owned it; it will be supposed to be done in that place till they disprove it; for when they owned the fact, it will be supposed, if they do not say or prove where it was done, that it was done where they owned it, because the king can’t tell where it was done; but the evidence comes out of their own mouths, they may give satisfaction where it was done, for they know it; and till that be done, all reasonable supposition is against them, that it was done in the place where they owned it; and this is a case wherein they speak of their own fact. If I publish the writing of another person which is libellous, I am to answer only for the publishing and not for the writing, which is not my own fact; but if these lords publish a libel that they make themselves, it is in their own knowledge, and in their own power to tell where it was done, because the making and publishing is their own act. If my lords had published a paper that was contrived by some of their counsel, it had been some excuse for them, and they must only have answered that publication in the place where it was done; but they are here for writing this they have owned in this county, and therefore it lies upon them to prove it was done elsewhere. There is another objection, my lord, made, that here is no evidence of a publication. My lord, I take it to be a publication in itself for a man to write a libel, to set his name to it and part with it, and it comes into the hands of the king, who is libelled by it, is not this a publication of the libel, and to be supposed by the writer unless the contrary appear? Will saying, I did not publish it, excuse him, when the fact is proved? for can there be a greater evidence of publication in itself than this, when some of the men have written it, others set their hands to it, and all owned their names? What makes the fact in this case? If a deed be denied to be *factum* of such a one, what is the proof of it, but proving the hand and seal of the party without proof of the delivery of the deed, yet hand and seal without delivery doth not make a sufficient deed? Their owning the paper, and setting their hands is a publication in itself in reasonable construction and understanding, and therefore they cannot make any such objection. My lord, if there were occasion, we have authorities to this purpose, and we will give them scope enough if they will argue this matter; and if they have any evidence, we desire to hear what they can say to it.

Att. Gen. As for this matter of fact, my lord, if I take it right, they do not controvert the publishing, but, say they, pray make it out where it was written or composed. I confess, this would be a business worth the while, for all persons that act in this manner, and are concerned in making of libels, to understand for their advantage. No man doubts in the matter of treason, but it is local: then put the

case, a man is found in Middlesex with a treasonable paper in his pocket; I do not make a comparison, as if this was such a paper, I hope I am not so understood; but I only put it as a case, and that the law is so, is beyond all controversy; then the man is indicted here in Middlesex, for framing and composing such a treasonable libel, and he comes to be tried, and, says he, pray prove where I made and composed it; for though you found it in my pocket in the county of Middlesex, yet I might do it in the county of York; and, upon my word, this had been a very good defence for Mr. Sidney, who was indicted, convicted, and attainted, for making a treasonable paper which was found in his study; might not he have put the same objection? Might not Mr. Sidney have said (it was great pity he did not understand it) pray prove where I did it, for I did it elsewhere than in this county—

*Sol. Gen.* He did say it, I remember.

*Att. Gen.* Truly, my lord, I would not hear any answer given to this, for it would make the king in a very woful case: here is a paper that is found in the county of Middlesex, and this is there owned by you to be written and subscribed by you; pray do you prove it, that it was written elsewhere.

*Serj. Pemberton.* My lord, we will do it, we will be governed by Mr. Attorney for once.

*Serj. Levinz.* We will prove that my lord archbishop was not in Middlesex in seven months before; and truly I think Mr. Attorney's case of a paper found about a man, or in his custody, will not come up to our case; for was this paper found about us? Surely that is not pretended.

*Serj. Pemberton.* Your lordship sees by the very frame of the petition, that this petition, which they call a libel, was made after the king's order concerning reading this declaration. Now we shall prove that my lord archbishop, whose hand-writing they prove this to be, was not out from Lambeth-house in two months before, nor till he was before the council.

*Sir R. Sawyer.* Which was long after that time when it was made.

*Serj. Pemberton.* So that this cannot be written in the county of Middlesex.

Call F. Nicholls. [Mr. Nicholls was sworn.]

*Sir R. Sawyer.* Do you remember the 18th of May last?—*Mr. Nicholls.* Yes, Sir.

*Sir R. Sawyer.* Pray how was it with my lord archbishop of Canterbury at that time; and before that, did he go abroad?

*Mr. Nicholls.* My lord, I am very sure that my lord his grace of Canterbury, whom I have served in his bed-chamber these seven years, never stirred out of the gate of Lambeth-house since Michaelmas last.

*Sir R. Sawyer.* Till when, Mr. Nicholl?

*Nicholls.* Not till the time he was summoned before the council.

*Serj. Pemberton.* Now I hope we have given them a full proof that it could not be in Middlesex.

Call Thomas Smith. [Mr. Smith was not examined.]

*Mr. Finch.* Truly, my lord, I think what we have proved, or what proof we further offer of my lord of Canterbury's not being in Middlesex for so long a time, is *ex abundanti*, and we need it not; for with humble submission in point of law, it is incumbent upon them that are to prove the charge in the information, to prove where it was done; because the locality of it is part of the thing, they ought to prove it. In its nature it is local, there is a place assigned in the information, and unless they prove it was done in the place that they have laid, they have not proved the charge in the information. Now, my lord, they have not made proof of that, and for proof of publication, I think they have offered none to your lordship; they never did call it so yet, and truly I never did hear or know that the owning of their hands at the council-table was a publication of a libel: it is owning the writing, but it is not an owning where the writing was made; but where it was written, and where it was made is of necessity to be proved. Before the charge upon a record, in a court of justice, can be said to be made out, it is a local charge, and in justice, the locality must be proved, or the information fails. My lord, they have offered no proof to it, and they have not yet gone to the second part of the information; for as to the publication of it, there is not a tittle of proof offered, but only the owning of their hands upon their examination at the council, and no man did ever think that the answering a question and owning a paper at the council-table, upon a question put by the king himself, was a publication of a libel.

*Serj. Baldock.* Pray, my lord, hear me a word to that: though the thing be never so local yet there must be some place where a thing that was done, was done. Then if nothing else appears but what was done in Westminster, in the county of Middlesex, unless they shew the contrary, that must be the very place where it was done.

*Sol. Gen.* Here is a great deal of prevarication in this matter, and I would observe to your lordship how they do use the court ill in it: pray, my lord, what is it we are upon? We are proving that these seven lords, the bishops, signed this paper; and I think we have proved it sufficiently out of their own mouths: but, say they, it was not signed in the county of Middlesex, but in the county of Surrey. All this is but imagination, and they would have the court to imagine it too: For how do they prove it? They would have your lordship and the jury believe, that it was signed elsewhere, because my lord archbishop has not been out of his house in some months before: It is all but inference, and argument, and imagination. But still, gentlemen, do you answer what I objected to you? Does it not lie in their power to shew where it was signed? Here are six more, besides the archbishop, where was it signed by them? Here are six of the bishops that signed it besides my lord archbishop, it

does not appear where they signed it; but they confess at Whitehall, in Middlesex, that they did set their hands and sign it, and do not say in what place.

Serj. *Levinz.* Ay, they did so, and what then?

*Sol. Gen.* Ay, and ay too; if they did so, the presumption and common intendment upon such evidence is, that it was done in the place where it was owned; and the rather for that reason that I offered before, that it lies in their knowledge; and therefore it is incumbent upon them to prove, that it was not in the county of Middlesex, else the presumption is against them: so that this objection I take rather to be an invention of the counsel than the truth of the fact, because they that can make this out, do it not. And as to what they say of my lord archbishop, that he has not been out of his doors in Lambeth for so long a time, who can prove such a thing? Certainly my lord was able to come abroad for any thing that appears; he has been here twice, and he was able to come and come to the council-board: but when all is done, my lord archbishop is certainly able to put this matter out of doubt; for he may easily prove it, if the fact was done in Surrey; and that will satisfy the court and every person that hears this cause, that it was signed by him at Lambeth, in Surrey, if he designs to deal sincerely with your lordship and the court, and the jury; but certainly it is not to be proved by a circumstance, such a fallible one as this is, but he ought to give your lordship and the jury satisfaction about this fact: he ought to say, it is true, I did sign it, but it was at Lambeth house; that indeed would be a down-right stroke to this cause: but to go upon a supposition, that because my lord archbishop was not out of his house for so long together, therefore they are all not guilty, is a very hard and foreign inference. My lord, there's another matter that they insist upon; and that is about the publication; that is as plain as any thing can be, that here is a full proof of a publication; for if the paper be libellous, whether that paper is, that is a publishing; wherever a paper travels, how far soever it goes, it is a publication of it by these persons that signed it. I believe nobody thinks that this should fly into the king's hand, but somebody brought it to him; and certainly, my lord, if your opinion shall be, that this paper is libellous, when wherever it is, it is a publishing, which is an offence; wherever it is found, it is a publication; for there is the mistake of these gentlemen, they fancy, that unless there was a public delivery of this paper abroad, nothing can be a publication; but I rely upon it, that setting their names to it, made it their paper; and wherever it was afterwards found, they did follow the paper wherever it went, and was a publication of it, was in their power, it being their own contrivance; it was made and framed by themselves, and nobody will believe, that it was in their own hands that they put to it, that any body else could have any power over it:

For aught appears no body else was at work about it, and when there were so many learned prelates that had such a paper, no one can believe they would let it go out of their hands, without their own consent or privity; and it could not reasonably go out of their hands but by their consent, privity or direction. Is not this an evidence of the publishing? Do they give your lordships any evidence that they had stifled this paper, or secreted, [secured] it, or kept it in the dark or endeavoured to stifle it? If they had so done, they had said something; but will any body believe all this was done in vain by my lords the seven bishops? Can any body assign a reason why so solemn a thing as this should be done to no end and purpose? Why a paper should be framed that rails at the king's two declarations? Why a paper that gives reasons why they could not read it in their churches, and signed with such solemnity by all these lords and learned prelates; we submit this to your judgment in point of law; and the law is plain, that if this paper be libellous, and it is found in the county of Middlesex, this is a publication of that libel in the county of Middlesex, *prima facie*. I shall mention to your lordship that case of Williams, which is reported in the second part of Roll's Reports, † fol. 83. Mr. Finch made use of it in the case of Mr. Sidney; it was the great case then relied upon for their purpose, and that guided and governed that case (as I apprehend) from the verdict and judgment that was given in it. This case was in judgment 17 Jacobi. ‡

\* In sir William Williams's MS. the words 'rails at' are obliterated and 'argues against' substituted.

† Ante, vol. 2, p. 1086. See also Pine's Case, ante, vol. 3, p. 359.

‡ The remainder of this Argument, after many obliterations and interlineations, stands thus in sir W. Williams's MS. copy:

"It seems Williams was a barrister of the Middle Temple, and being a high Romish Catholic he was expelled the House, and being so expelled and a sort of zealot, he wrote two books, the one called Balaam's Ass, the other Speculum Regale, and there he makes use of the prophecy of Daniel where the prophet speaks of time and times, &c. he makes application of it to the present time by a parallel of the then present times to the time described by the prophet, and concludes according to his own particular fancy, that the world was near its end, and he said those ill days were come mentioned in that prophecy, and because of the impurity of prince, priest and people, and other things that happened, they were the worst of days, and therefore the last. When he had writ this book in this rapture, he pretends he did not write these books as proceeding from any malicious or disloyal heart against the king, but it proceeded from his affection to him to astonish him, whereby he might avoid the mischiefs which were like to happen to him, for he concluded most of his prophecies with

It seems Williams was a barrister of the Inner Temple, and it seems, being an high catholic for opinion and judgment, he was expelled the House; and he being so expelled (being a sort of a Virtuoso) wrote a book called Balaam's Ass; and therein he makes use of the prophet Daniel, and he makes application of it according to his own particular fancy. He writes there that this world was near at an end; and he said, those ill days were come that that prophecy spoke of; and because of the impurity of prince, and priest, and people, and other things that happened, those were the worst of days, and therefore the last; and that certainly we had the worst prince that ever was in the world: when he wrote this book, what does he do? He was a little more close than my lords the bishops, and pins it up, or seals it up, and it was brought to the king; and what is this more than the case before your lordship? They indeed say, I do this by way of advice to the king; so said he, I do this by way of advice to the king, for God forbid that any of this should happen to the king; and so what he does, was by way of advice, and he prayed God to avert it from him. Here was as good a prayer as there is in this paper, and there was a good design; he made use of the prophet Daniel, and applied his words. Well, what was done upon it? This was never published; for the question was before the court, whether this sealing of it up, and not delivering it to any other body, were a publication? The court.

God avert or God save the king; he was a little more close than my lords the bishops in the manner of conveying these books to the king, by sealing them up in a box and conveying them to the king, and what is this more than the case before your lordship as to the manner of publishing. They indeed say we do this by way of advice to the king, so doth Williams with his God forbid that any of this prophecy should happen to the king, and prayed God would avert it from him. Here was as good a prayer, as there is in this paper, and there was a good design he made use of the prophecy of the prophet Daniel and applied his words; this was never published by him but conveyed secretly sealed in a box to the king: the question was before the court, whether this writing and sealing of it up without delivering it to any other person, then thus secretly conveyed to the king, was publication? The court was of opinion that the very writing of it was a publication by construction of law, they did not regard the delivery of it to the prince, but it was proved he writ it and that made it treason, and so resolved in that case, and that opinion prevailed in Mr. Sidney's case. My lord, we have cases in my lord Hobart of such publication received in criminal matters, sir Baptist Hicks's Case, and my lady Hatton's Case, there was an abusive letter sealed up and secretly delivered to the party abused without any other publication, this sentenced to be a libel and sufficiently published, and so punished."

was of opinion, that the very writing of it was a publication; they did not value the delivery of it to the prince, but it was proved he writ it, and that made it treason. My lord, we have cases enough in my lord Hobart for this matter; sir Baptist Hicks's Case, and my lady Hatton's Case; there was only a letter sealed up and delivered to the party.

*L. C. J.* You need not trouble yourself about that, Mr. Solicitor.

*Sol. Gen.* If the case then be thus, I take it, it will turn upon this fact; they have given your lordship no proof where this paper was signed by them: Here are seven persons that had a hand in it, and here is only one person whom they have insisted upon to be infirm, and kept his house for a great while together. We say the publishing follows the libel wherever it goes; the libel is in the county of Middlesex, they have confessed it in the county of Middlesex, and they did not distinguish when it was done. Then if they will not distinguish upon the evidence, no man ought to distinguish, but ought to presume it was done in that place where they owned it, and the law doth so presume.

*Att. Gen.* I did not apprehend we were got so far, that they opposed us in the publication.

*Sir R. Sawyer.* Yes, we did, for you have given no evidence of it.

*Att. Gen.* Surely, my lord, for that we have given a sufficient evidence, and they have given some proof of it, as to my lord archbishop; that because he had not been from Lambeth, therefore he did not publish, nor could cause it to be published; for your lordship sees by this information, they are not only to answer the *Publicavit*, but also the *Publicari causavit*; for do you doubt, gentlemen of the law, in this case, that if I compose a libel in Surrey, for example, and send a person over into Middlesex, I am not guilty of the publishing?

*Sir R. Sawyer.* That is not your case, Mr. Attorney.

*Mr. Finch.* That were clear if it were so, but it is not so.

*Att. Gen.* My lord archbishop's case signifies nothing, if we shew it was published in Middlesex, and you give no evidence to the contrary but it might be there; and I am sure as to the rest of my lords the bishops, there is no evidence at all given. Here is a petition that we say is a libel; they, it may be, will make that a question: This is delivered to the king's own hand in the county of Middlesex, and there are as many cases as any one man can name, that this amounts to a publication by the party; for if I send a letter by the post sealed, that nobody can see but the party himself, and he that writ it, it is adjudged over and over again it is a libel.

*Just. Powell.* That you need not labour, Mr. Attorney, for that's the case of Williams of Essex; but how do you apply it to the case now before us?

*Att. Gen.* That's an answer to their objection as to the publication.

Just. *Powell*. But what say you to the first part? You have not proved that it was written in Middlesex.

*Att. Gen.* There is the case of Barrow and Lewellin in Hobart, and likewise the case of sir Baptist Hicks, which is reported both in Hobart and in Popham; and in Popham, towards the end of the case, there is a remarkable passage. Says that case, if it should not be punishable at the suit of the king, there would be no remedy; for the party cannot bring an action, because he can be no witness for himself, and it is only known betwixt them two; but a witness for the king he may be, to prove his own receipt of the letter, and the party's hand.

Just. *Powell*. You need not labour that point, I'll tell you, Mr. Attorney; for the law is very clear in that point, I think, if you bring it home to your case.

*Att. Gen.* Then here's the case in short, my lord; that my lords the bishops have caused to be made and written this petition, they are made parties to it by setting their names, and this is a continued act: whatsoever is written there is my lord archbishop's writing, wherever it goes, as I'll put a case that's very well known. If I take away goods from a man in the county of Cumberland, and I am found with them in the county of Middlesex, it is a continued act, and makes all but one felony, and I shall be tried here in Middlesex for it. If a man write a thing in one county, and it is sent and dispersed in another county, that still continues to be his fact, though it may be the first part was not in the same county with the other: but suppose all this while that part should not affect my lord of Canterbury, the causing it to be published does.

Just. *Powell*. Do you think, Mr. Attorney, that writing in one county is such a continued act, that he may be said to write it in another county?

*Att. Gen.* Sir, I take it, where there is a complicated crime of writing and publishing a libel; and the beginning of it is in one county, and the carrying it on is in another, that is a continued act, and may be tried in either county.

*L. C. J.* It is all one act of libelling, as they say.

Just. *Holloway*. In cases of felony it is so; taking in one county, and being found with the goods in another, it is felony in either county.

Just. *Powell*. But in that case they are two felonies; for it is robbery in the one county, and but bare felony in the other.

*Sol. Gen.* Suppose that my lords the bishops signed this paper in another county, and my lord archbishop consents to have it sent into Middlesex, is not this a causing it to be published in another county?

Just. *Powell*. Yes, it may be, if you prove his consent.

*Sol. Gen.* Then suppose further, which will very well consist with my lord archbishop's

evidence of his not being out of Lambeth in so long a time the rest of the bishops might sign it in Middlesex, or it may be in Lambeth; and then they carry it from Lambeth by my lord archbishop's consent over hither into this county: is not this a causing it to be published in this county? The delivery with his consent certainly is a proof or an evidence of this, for our information goes two ways; for making, contriving, writing, and publishing, that's one way; and then for causing it to be made, contrived and published, that's the other way. And if I prove that he caused it to be published, he may be found guilty as to that part, and not guilty as to the other: for the information is not so entire, but that the king has his choice. If my lord archbishop had not signed it, or written it, but had caused it to be published, he may be found guilty of so much and not guilty of the rest. But if he be guilty of any one of these things, it is enough to have a verdict for so much; though he be guilty of none of the other things laid in the information, yet if he be guilty of causing this paper to be published, that ought to be found for the king, and I conceive his consenting that the rest of the bishops should publish or present this to the king in Middlesex is an evidence that will be enough to maintain this information. Then, my lord, is there any evidence brought against what we have proved, that he did not consent or dissent to this?

Just. *Powell*. But where was this consent of his given, Mr. Solicitor?

*Sol. Gen.* Pray, good Sir, give me your favour, I think I am in a plain case that this consent was in the place where he wrote and signed this paper, and delivered the paper to be presented.

*Serj. Pemberton*. So you are truly.

*Sol. Gen.* Why, good Sir, you ought to make out the locality, if you'll take advantage of it. The presumption, in common and reasonable understanding, is with us.

*Serj. Pemberton*. That's very well, indeed! This is the first time I ever heard that doctrine.

*Sol. Gen.* I cannot help that, but certainly the law is plain: we have proved the fact of writing and signing was done by my lords the bishops, and they do not go about to prove that it was done elsewhere than in Middlesex, where we have laid it; for if they did, then the truth would more manifestly appear, their witnesses being cross-examined by us; and then the truth of the matter would appear to the satisfaction of mankind. The archbishop might be at Lambeth, and yet guilty of causing this paper to be published in Middlesex, by his concurrence with what was done in Middlesex by the other lords the bishops: and I say, my lord, this is natural, upon the evidence that has been given, to be supposed, and ought to be believed; because when they were interrogated at the council-board, and confessed the paper to be theirs, they made no such explanation of their confession, as to any place that they signed it at out of Middlesex, of which

they can take any advantage in their defence. Here has been no person produced that proves any thing to be done out of Middlesex; so that still if they be guilty of the fact proved, they must be guilty in Middlesex, for aught yet appearing.

*Serj. Baldock.* And it does not appear, in this case, but that my lord archbishop might write the same thing in Middlesex, though he was at Lambeth so long as the witness speaks of.

*Just. Powell.* How do you make out that, brother?

*Serj. Baldock.* He might do it when he came over to the council.

*Sir R. Sawyer.* He must do it after it was presented.

*Serj. Baldock.* Might he not be so long here on this side the water, as to make such a short thing as this, before it was delivered? Half of a quarter of an hour would have done it.

*L. C. J.* That's a thing not to be presumed, brother, especially since he is proved not to have been in Middlesex so long together.

*Sir R. Sawyer.* Mr. Serjeant is mightily mistaken, for it is not pretended, that it was delivered at the time when the archbishop, and my lords the bishops, were before the council.

*Recorder.* (Sir Bartholomew Shower.) Either the making and contriving, or the publishing of this libel will do upon this information; for they shall be taken to be one continued complicated act, and then the party may be tried in either of the counties, as the king will; as in the case of treason, it has been over and over again adjudged, that if a man does one act of treason in one county, and afterwards goes into another county, and does another act of treason, the jury of either of the counties may enquire of the fact done in the other. If they then should take those two as several acts, they were several offences, and they may be found guilty of the one and acquitted of the other; but if they are taken as one continued act, they are but one offence, and the jury of either county may try it. If then, in this case, the jury of this county may take notice of the publication which was here, as certainly they may, if they will agree, as the law certainly is, that the writing of a letter will be a sufficient publication, if the matter be libellous. And there are multitudes of precedents for that; and that the bare setting of a man's hand has been adjudged to be a publication: then give me leave, my lord, to bring it to a similar case: suppose a man write a scandalous letter from London, to a judge or magistrate in Exeter, and sends it by the post, and the letter is received from the post at Exeter, and there opened; would any man make a question whether the gentleman that sent the letter may not be indicted and prosecuted for a libel at Exeter, where the libel was received?

*Just. Powell.* There's no question of that, Mr. Recorder; that comes not home to the fact in our case: undoubtedly in the case that

you put, the law is as you said, but it is far different from this case.

*L. C. J.* There's nobody opposes the publication, but the framing of it, where it was made.

*Recorder.* Supposing then the party were at Exeter, and he were interrogated before the magistrate, whether it were his hand or no, and he should own it to be his hand, can any body doubt whether his owning that to be his hand, would be a sufficient evidence to prove a publication?

*Just. Powell.* But is that any evidence where it was written? Or if it be not proved that it was received at Exeter, would that be a proof of a publication at Exeter?

*L. C. J.* They do not deny the publication.

*Sir R. Sawyer.* We do deny that there was any publication; and they have proved no place where it was made.

*Sol. Gen.* My lord, we are not for turning my lords the bishops out of the way of proof that is usual in such cases; let them take it if they will, that this was contrived and made in Surry. Can they publish it in Middlesex, without committing an offence; and is not that offence sufficiently charged in this information? that is it we stand upon: we are not for laying a greater load upon my lords the bishops than our proof will bear.

*Sir R. Sawyer.* We thank you for your compliment, Mr. Solicitor.

*Sol. Gen.* Is this a fair way, gentlemen, of interrupting us when we are speaking? Durst any one have served you so when you were in the king's service? We would do our duty for the king, and yet make it as easy as we can to my lords the bishops, and it may be easier than other men would have made it, in our places. But, my lord, let it be a doubtful case, that we cannot tell in which county this was made and contrived, if it were made and contrived in another county than Middlesex, yet when they brought it into Middlesex, there was a publication in Middlesex; and if my lord of Canterbury consented to it, he is also guilty in Middlesex for so much, for causing it to be published: how can any body ever get him off from that causing of it to be published? Here is a paper that must be supposed to be my lord archbishop's paper: now all the world must look upon it to be an imposture put upon my lords the bishops, or a real paper made by them. If it were an imposture and an affront put upon my lords the bishops, they ought to make it out for their own vindication, and to prove themselves innocent: if they do that, they do well, and they ought to have satisfaction made them by those that have so highly injured them; and the king cannot be better pleased, I am sure, than to find them so: but if men will look one way and act another, they must expect to be dealt with accordingly. Will any man that has heard this evidence, and sees that these gentlemen will not go the right way to work to prove their own innocence, believe them to be not guilty? 'Tis plain they

contrived it and signed it; for can any one imagine that they set their hands to a paper that was not formed and contrived by themselves? Then let it go, that this was done in another county, and we cannot punish the writing of it in this county; yet still they are guilty of causing it to be published in this county, and for that we may punish them here: we will be content with having that found that we have proved, which certainly is an offence.

*Sir R. Sawyer.* We oppose that, Sir.

*Sol. Gen.* You oppose it! We know you'll oppose common sense; we don't speak to you, we speak to the court. We are content with what is plain, and do not desire to insist upon any strained construction: we say this is natural evidence for us; if this thing be a libel, as we conceive it is, then the causing it to be published is an offence. The publication, we say, was here in Middlesex, and of that there is clear evidence, because it was found and owned here in Middlesex by the defendants here, and came to the king's hand, to whom it was directed; and it could not come out of their hands who signed it, without their knowledge; it was their own child, the issue of their own brain, and it could not in reasonable speaking come to the king's hands out of their custody, without their consent. This, we say, is a clear evidence of a causing it to be published, let the rest go as it will, because we will take the easiest part of the case, and not go upon strains in a case of this nature and expectation.

*Serj. Trinder.* The greatest question is, I think, now come to the publishing—

*L. C. J.* The court is of opinion, that its coming to the king is a publishing.

*Just. Powell.* Ay, my lord, if it be proved to be done by them.

*Serj. Pemberton.* Before the court deliver their opinion, we desire to be heard.

*L. C. J.* Brother, you shall be heard in good time, but let them make an end on the other side, and when the king's counsel have done, we'll hear you.

*Serj. Trinder.* My lord, upon the question of publishing; it has been insisted upon, and the court seems to be very much of the same opinion, that the writing of it is a publishing: that it is without controversy, if the writing of it fell out to be in Middlesex, where the information is laid; but that they would not have to be so by argument, because the archbishop had kept in at Lambeth so long. But, suppose that it were so as they would have it, that is only as to the archbishop, he being the writer of it; but yet, notwithstanding that, the other six might subscribe it in Middlesex, taking it, that there is such a face in their argument as they would have it.

*Sol. Gen.* We will lay no greater load on the other six than we do upon my lord archbishop, and we say, they are all guilty of the publication in Middlesex.

*Serj. Trinder.* Pray, Sir, spare me. This paper was in the archbishop's custody, and

power, he taking of it himself; and regularly it could not have come out of his custody, in common supposition, but it must come with his consent. It was afterwards in the power of the other six, they had it to subscribe; whereas the subscription was *non constat*; they, it may be, can prove it themselves, but I will only deduce this argument; That if it after comes into Middlesex, it must be taken by presumption to be subscribed by them there, and published; it must be taken by presumption so to be.

*L. C. J.* No, brother, we ought not to do any thing by presumption here.

*Just. Powell.* No, no, by no means, we must not go upon presumptions but proofs.

*L. C. J.* I will not presume it to be made in Middlesex.

*Serj. Trinder.* But it is proved to be published in Middlesex.

*Sir R. Sawyer.* My lord, with submission, there is no evidence of the publication.

*Att. Gen.* That the court is to judge of.

*Sir R. Sawyer.* Pray, good my lord, what instance of a publication have they given?

*Sol. Gen.* The court has heard the evidence, we leave it there.

*Sir R. Sawyer.* Was it their owning and acknowledging it was their hands, when the king asked them the question at the council-table? Surely the king's counsel won't pretend that was a publication, when it was done at the king's command! It was certainly the king that published it then, and not my lords the bishops.

*Att. Gen.* Well said.

*Sir R. Sawyer.* Don't you remember that, when Mr. Blathwayt said the king gave it to be read, and it was shewed to the bishops?

*L. C. J.* I remember what evidence Mr. Blathwayt gave of the passages at the council-board very well, and I know what Mr. Attorney did press about the king's promising to take no advantage.

*Att. Gen.* My lord, Mr. Attorney is on the other side, he did not press it.

*L. C. J.* Sir Robert Sawyer, I mean; I beg both your pardons, gentlemen, I think I have done injury to you both.

*Sir R. Sawyer.* My lord, we say there is no evidence at all, that ever this was sent to the king by the archbishop, or any of my lords the bishops: and as for the cases that they have put, they might have put five hundred cases, and all nothing to the purpose.

*Sol. Gen.* So they might, and done just as others had done before them.

*Sir R. Sawyer.* And so are these; for here is the question, We are in a case where the publication is that which makes it a crime: now I would have them, if they can, put me any such case, and then apply it to this. In Williams's case, the question is quite otherwise, and so in any case of treason it must be: wherever there is an overt-act proved, it is the treasonable intention, and the ill mind of the traitor, that is the crime; and the treason (the

overt-act) is only to be the evidence of it. In that case of Williams, with submission, my lord, the publication was not at all necessary, but the very secretest act that could be done by him (if it were an act) is an evidence of the mind; and so the sending of the book to the king himself, though nobody else did see it, was an evidence of the crime of treason, yet it could not be called a publication. But in the other case of sir Baptist Hicks, which was in the Star-Chamber, about sending a letter of challenge, it was plainly resolved that it was no publication of the letter, and that was not the ground of the judgment given against him there, that it was the publication of a libel, but the very fact was a particular offence: for, said the court there, if you will send a letter to a private man, and that is a letter that will provoke him to break the peace, that is an offence punishable in the Star-Chamber; but that is not the reason which is alledged, because no action will lie for want of proof, but quite the contrary; because they may produce the porter or party that brought it, and prove it that it came from this man's hands; and I do not question but that in the King's-Bench at this day, if a man will write a letter privately, to provoke another man to fight, there will lie an information, but not for a libel; for there it will be necessary for to make an offence, that there may be a publication; for that is the very form of the crime, and upon that ground were all those judgments against libels in the Star-Chamber. My lord, I agree to write a letter to the king of another person, or to make a petition to the king concerning another person, as of my lord chancellor, or the judges, or the like, to complain to the king of their scandalously, with a provoking and reviling language, that is a publication; and so if I write a letter to one man of another; if there be scandal in a letter, that is a publication of a libel; and that is the difference that has been always taken, where it is essential to make it a libel, that there be a publication, such a publication must be proved; and the delivery of a letter to a man that concerns himself, is no publication; but in this case they have not so much as proved that it was delivered to the king.

Serj. Pemberton. My lord, with your lordship's leave, I take it, that they have given no manner of evidence of a publication; to say, the writing and subscribing of their names to a paper, is a publication of that paper, is such a doctrine truly as I never heard before: Supposing this paper had lain in my study, subscribed by me, but never went further; would this have been a publication? They never said any such thing. As to Algernon Sidney's case, there was no colour for it, that it should be a publication; but it was an overt-act of treason to compose such a book. They have proved by our confession here, that we have subscribed this paper; they would take it now, that therefore it must be presumed we sent this to the king, and so surmise us into an information for

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making and publishing a libel, which we sent to the king; but they do not prove it all. My lord, there are a thousand ways that it might come into Middlesex, and perhaps come to the king's hands too, without our knowledge of delivery; and sure you will not presume these noble persons, without evidence, to be guilty of such an offence as this is suggested to be! So that, my lord, and gentlemen of the jury, 'tis impossible for you to find this a publication in Middlesex; and for the other thing (the writing this paper) they that would make it an offence, must prove where it was done.

Serj. Levinz. My lord, the answer that I shall give to what has been said on the other side, is very short; the cases that have been cited are all law, but not one title to this purpose. In sir Baptist Hick's case, and Williams's case, it was proved they all sent them to the places whither they were directed; but is there a tittle of proof that these bishops sent it here? In all those cases they must send it either by a porter or a carrier, and they send it as their own act; and when it comes there, by their sending, that is sufficient proof of their act in the place whither it is sent: and for Sidney's case, there was treason in the very libel and book that he made; and he was not indicted for publishing, but for treason, in the place where it was found, because it was found in his possession: but was this ever in my lord archbishop's possession in Middlesex, or the rest of the bishops, and were they publishing of it? If it had, then it had been their act clearly: but that is the thing wherein they are defective, that they do not prove that my lords the bishops sent or brought it here; but upon the question asked them by the king, they acknowledged it to be their hands: so that, my lord, there is no proof of any fact done here, but an acknowledgment of a fact done, nobody knows where, upon the king's question here in Middlesex: is that any proof of this information?

Mr. Finch. Pray, my lord, spare me a word on the same side; let us see what the evidence is. The evidence is this, That the king brought the paper to the council-table, and the bishops owned their hands to it: this is the effect of the evidence, and all that is to prove the forming and making a libel in Middlesex, and the publication of that libel. And what is therefore inferred from thence? Why, having proved that the king brought the paper to the council-table and the bishops owned their hands; therefore, first, the bishops made this libel in Middlesex. Secondly, they brought it to the council-table, and published it at the council-table, or else there is no proof at all: for here is nothing of evidence given of any fact, but because they acknowledged it, therefore they made it, therefore they gave it to the king in Middlesex: this were good evidence if they had had the help of a supposition to make it good; but they want that, nor must any such thing be admitted; but I think they are such gross, false consequences, that I doubt not I shall be of opinion, here's no proof of a publi-

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ation in Middlesex, and then there is no proof at all against my lords the bishops.

*Mr. Pollock.* I must confess, I hear them say, two acts prove a publication in this case; the one is, the writing of the libel, and the subscribing. If so, then I think, upon the evidence that has been given, the court must needs be satisfied, that the writing of it was in Surrey: The next is their owning their hands: for there is no act done that appears or any evidence against them of any act done from the time of the writing, to the time that they were asked, is this your hand? Surely no man would ever think this to be a publication, where one is asked by authority, whether such a paper be his hand, and he acknowledges it in answer to that question! To turn this to be a crime, I think it can never be done, nor never was before. Then there is nothing in the case, that they can hold to for evidence, and proof against my lords the bishops, but the writing; and that is apparent to have been in Surrey, or otherwise they must hold that the answer to the king's question, This is my hand, is a publication. But truly, my lord, I think neither of these will do: but, my lord, to me this is a great evidence in itself against the proof of a publication, the care and wariness that has been used, that there should be nothing at all of this matter known, from the time that it was written, to the time that they came to be examined and summoned to appear as offenders. My lord, the nature of libels is to publish and proclaim scandal and defamation, or else it loses its end, and consequently its name. This as it stands upon their evidence, is a monstrous proof for my lords the bishops, against the king's counsel; for it seems 'tis a very private matter, so cautiously and warily carried, that there is not any evidence of the fact, but only the names of the persons that writ it, till they come to be examined by the greatest authority, Is this your hand? And then they own it so to be. How can this be taken to be a publication? And it will be a thing of wonderful consequence, if an answer to a question put by authority, should amount to a crime, as it would in this case: that would be, as if authority, that should be employed to do right, would be turned to do the greatest wrong; for it is the duty of all men to answer when examined by a lawful authority, and it would never be offered at, sure, in any other case. If a man comes before a magistrate, and confesses any thing, that indeed is evidence, but is not a crime; for there is a great deal of difference between evidence and the crime; but that this should be both an evidence and a crime too, is, I think, a very strange construction; and for the other part (the writing of it) I suppose the court is satisfied that it was in another county.

*Sir George Treby.* I desire your lordship to spare me a word, which I think has not been observed by the counsel that have spoke before. The question that remains, is, Whether my lords the bishops did publish this paper? This is a matter of fact that lies upon the prosecutors

to prove. Now I think they are so far from being proved that the bishops did publish it, that, on the contrary, they have proved that their lordships did not publish it. The evidence they have offered for this matter is a confession. This confession is testified by Mr. Blathwayt, and he says the bishops were asked at the council whether they did subscribe and publish this paper, and that their answer was, that they did subscribe, but not publish it. Now a confession must be taken together, and must be admitted to be entirely true by them that produce it; they shall never be allowed to take out and use one piece, and wave the rest. Why then by this evidence of confession, taken as it ought, it appears that the bishops, though they did subscribe, did not publish the paper: so that, I say, the king's counsel have hereby plainly proved, that the bishops did not publish this paper, and yet this is the only evidence upon which they would infer that they did publish it.

*Att. Gen.* Look you, it does lie upon you, gentlemen, to prove it was done elsewhere than in Middlesex.

*Mr. Finch.* Sure Mr. Attorney is in jest!

*Att. Gen.* No, I am in good earnest; all the proof that we have given has been in Middlesex, and you can best tell whether you did it in Middlesex or no.

*Mr. Finch.* My lord, we have done as to this objection; for we say they have not proved their case.

*L. C. J.* Mr. Finch, you may observe (and I am sure you do observe as well as any body in all cases), but I say, you may observe that they are off of every thing but causing it to be published; now that does lie upon the king's counsel to prove, that my lords the bishops did cause it to be published; for their owning their hands does not amount to publication.

*Serj. Pemberton.* My lord, we are upon this point with you, whether here be any evidence of a publication at all?

*Just. Powell.* Pray let us clear this first; for if there be no publication, there can be no causing of it to be published.

*Att. Gen.* My lord, if you think fit, we shall go on, and reserve this point till afterwards.

*Sol. Gen.* They may make objections, if they think fit.

*L. C. J.* If they may, and they say if these objections be with us, we need go no farther.

*Serj. Pemberton.* But, my lord, if they be not with us, we have a reserve to give a farther answer to it, and to offer evidence against the evidence they have offered.

*Sol. Gen.* With all our hearts, give in evidence what you can.

*Att. Gen.* Then pray, my lord, let us go on to answer this objection.

*L. C. J.* Pray do, Mr. Attorney.

*Att. Gen.* My lord and gentlemen of the jury, I would first observe how far we have come. That there was such a paper written is beyond all question, and written by my

lord archbishop of Canterbury, and that it was signed by the rest of the bishops, but not in the county of Middlesex, and that this paper was published, is agreed on all hands.

*Just. Hol.* No, they do not agree to that.

*Att. Gen.* Do I say it was published by them? But there was such a paper published.

*Serj. Pemberton.* No, we say it was never published at all.

*L. C. J.* Pray, brother Pemberton, be quiet; if Mr. Attorney in opening does say any thing that he ought not to say, I will correct him, as I would do any body that does not open things right as they are proved; but pray don't you that are at the bar interrupt one another, it is unbecoming men of your profession to be chopping in and snapping at one another.—Go on, Mr. Attorney.

*Att. Gen.* I say, that the paper is proved to be written and signed by my lords the bishops; that I take for granted; and that the paper so signed and written is now published to the world, is also evident; but the question is, Who it was done by, or who caused it to be done? We are reduced to that question. Now, first, it is agreed on all hands, that if I send a letter to a private man containing scandalous things in it, though there is no proof more, but that it was sent sealed, and received by the party; in that case it was a fault punishable in the Star-Chamber, as a crime: but now that this was received by the king, and written by them, there is no room for doubt; for you hear it was produced by the king at the council board, and they asked upon it, If it were their hands? That the king did receive it, there is no room for question, or that they did write it; but the question is, from whom the king had it? I am sure they must shew that somebody else did it; and unless they do shew that, I hope there is no manner of question but it came from them, and they did it; though no man living knew any thing of this matter, but whom they thought fit to communicate it to; yet still they putting the king upon the necessity of shewing this power, in order to his obtaining satisfaction for it, or else he must remain under the indignity without reparation, it ought to be put upon them to clear the fact; for if he does not produce it, then must the king put up the highest injury and affront that perhaps a man can give the king to his face, by delivering a libel into his own hands; and if he does produce it, then say they, That is not our publication. We prove it to be your writing and signing, and we prove it to come from the hand of the king against whom it was composed; for we say it is a libel against his majesty, his government and prerogative: if then all those cases that have been cited be law, then sure there never was a stronger case in the world than this; and I hope the law goes a little farther in the case of the king, than it does in the case of a private man. No man must think by policy to give private wounds to the government, and disparage the administration of it, and then, when he is called in question about

it, says he, Pray prove that I published it, or else you shall not punish me for it. We prove you framed it, and writ it, and signed it, and we prove it came to the king's hand, of whom it was composed. Must we produce two witnesses of the delivery of it to the king? Surely there will be no need of any thing of that.

*Sol. Gen.* My lord, we have reduced it now to a very narrow question; for, as Mr. Attorney has said, my lord, there is no doubt but that my lords the bishops are the authors of this paper; there is no doubt but they signed it, and there is no doubt but that their signing of it, though it were at Lambeth, as they say, is a publishing of it: but, however, this is plain and manifest, that this paper was published; and that this was published in Middlesex, this is as plain too: now then there is nothing left but this question, whether my lords the bishops, who formed the paper, who wrote the paper, who signed the paper, were not the occasion or the cause of its publication, or privy or consenting to it in the county of Middlesex. My lord, I will reduce it to a very plain point; for we are upon a rational question, before a rational court, and a rational jury, whether these lords did all of them, in the county of Surry, consent to the publishing of this paper in Middlesex? For it is published in Middlesex (that we see); and if they are guilty of consenting to its being published in Middlesex, then they are guilty of that part of the information of causing it to be published in the county of Middlesex, now what do they say to it? Say they, it is agreed, that it is published in Middlesex, but it is not proved to be published by us.

*L. C. J.* No, they do not say so; they agree it was in Middlesex, but not published.

*Just. Powell.* Mr. Solicitor, they do agree it was in Middlesex, but not published to be sure, nor by them.

*L. C. J.* Mr. Solicitor, I'll tell you what they stand upon; they say you ought to prove it to be delivered to the king by the bishops, or somebody employed by them; for upon that went the resolution that was in Williams's case that he sent it to the king; but here is nobody that proves that it was delivered to the king in this case, so that how it came to the king *non constat*.

*Sol. Gen.* There will be the question between us, whether this be not a publication in Middlesex upon all that is said by us without repetition of things over and over.

*Sir R. Sawyer.* Pray, Mr. Solicitor, prove your case before you argue it.

*L. C. J.* First settle what the case is, before you argue it.

*Sol. Gen.* My lord, I'll put you the case. Here does appear in Middlesex a paper that is a libel in itself, and this libel is proved to be written and formed by these persons; this libel coming into Middlesex, the question is, whether they are privy to it? I say in point of presumption it must come from them,

*L. C. J.* I cannot suppose it; I cannot presume any thing.

*Sol. Gen.* My lord, I speak of that which is a common presumption, a natural presumption, what we commonly call a violent presumption, which is a legal presumption, and has always been allowed for evidence.\* Now whether there be not such a presumption, in our case, as to induce your lordship and the jury to believe that it cannot be otherwise; or at least to put the labour upon them, to shew how it came out of their studies, and how it came to the king's hands; for it is in their power to shew the truth of this matter, how it was; if they do not, the presumption will lie upon them. That the paper came to the king, that is plain enough; and its coming to the king's hands, is a plain proof of a publication in Middlesex; and who should bring it to the king, but these persons in whose power it was? There is no man undertakes to say, he lost it, then what else is to be believed, but that it came from them? I speak of common supposition and belief; they may very well shew it, if it were not so. All that we can say in it is, here is a paper in Middlesex, this you agreed was once your paper and in your power, pray shew what became of it, or how came it out of your hands or power, it lies upon you to clear this doubt.

*Recorder.* My lord, there is but this question in the case; the question is not, whether the owning it be a publication, but whether here be any evidence that they did deliver it to favour, I would ask my lord president a question the king, now if they did deliver it to the king, that will be agreed to me to be a publication.

*Just. Holloway.* No doubt of it, if you can prove it.

*Recorder.* Pray, Sir, spare me: That they did it, you have this evidence: first, that they were the authors of this paper by their own confession, that this was in the county of Middlesex, and that when they were asked concerning it, they owned it to be their handwriting. Now whether you can in the least question, after all this, their delivering of it to the king, or that it came to the king's hands without their knowledge or consent, is that which lies before your lordship for your judgment.

*L. C. J.* I will ask my brothers their opinion; but I must deal truly with you, I think it is not evidence against my lords the bishops.

*Just. Holloway.* Truly I think you have failed in your information; you have not proved any thing against my lords the bishops in the county of Middlesex, and therefore the jury must find them not guilty.

*Att. Gen.* I'll put you but one case, my lord: a man has an opportunity secretly to deliver a libel into the king's hands, when nobody is by, and so there can be no proof of the delivery.

*Just. Powell.* It is a dangerous thing, Mr.

Attorney, on the other side, to convict people of crimes without proof.

*Att. Gen.* But shall a man be permitted thus to affront the king, and there be no way to punish it?

*L. C. J.* Yes, there will sure, but it will be a very strange thing if we should go and presume that these lords did it, when there is no sort of evidence of it; it is that which I do assure you I cannot do: we must proceed according to evidence, and forms and methods of law; they may think what they will of me, but I always declare my mind according to my conscience.

*Serj. Trinder.* But as to that other point, whether their owning of it be a publication, has not been particularly spoke to.

*L. C. J.* Mr. Attorney, and Mr. Solicitor, if there were enough to raise doubt in the court, so as to leave it to the jury, I would sum up the evidence.

*Sol. Gen.* My lord, we know it is with the court, my lords the bishops insisted upon it, that it was a great while in their hands; but it seems as far as our evidence has gone hitherto, their confession went no farther than that it was their paper, and we must not extend their confession further than it was; but I think we shall offer a fair evidence that they did deliver it in the county of Middlesex.

*L. C. J.* Indeed, indeed, you ought to have gone to this, Mr. Solicitor, before the court gave their opinions.

*Sol. Gen.* Pray call Mr. Blathwayt again. [Mr. Blathwayt called.]

*L. C. J.* Mr. Solicitor, unless you are sure that Mr. Blathwayt is a witness to the publication, it is but spending the court's time to no purpose to call him.

*Sol. Gen.* We are sure of nothing, my lord; but we must make use of our witnesses, according to our instructions in our briefs. [Then Mr. Blathwayt appeared.]

*Att. Gen.* Mr. Blathwayt, you were sworn before?—*Blathwayt.* Yes, Sir.

*Att. Gen.* You were present when this Paper or Petition was delivered by the king, at the council-board?

*Blathwayt.* Yes, I was so, Sir.

*Att. Gen.* Do you remember any thing of the bishops acknowledging their delivery of it to the king?

*Sol. Gen.* Mr. Blathwayt, I would ask you, was there any mention in discourse with my lords the bishops, how that paper came into the king's hands? Was there any mention of what it was done for, upon the account of religion, or how?

*Blathwayt.* I don't remember any thing of that, Mr. Solicitor [at which there was a great laughter.]

*L. C. J.* Pray let us have no laughing, it is not decent; can't all this be done quietly without noise? Pray, Mr. Blathwayt, let me ask you, do you remember there was any discourse how that writing came into the king's hands?

*Blathwayt.* I received it from the king's

\* See Lord C. J. De Gray's Argument in Dom. Proc.

hands, and I know it was presented to him by my lords the bishops.

*L. C. J.* How do you know it was presented to the king?

*Blathwayt.* I heard the king say so several times.

*Sol. Gen.* Pray mind my question, Sir: First, I ask you who produced the paper at the council-table?—*Blathwayt.* The king.

*Sol. Gen.* What said the bishops when that Paper was shewed them?

*Blathwayt.* Then, as I remember, they were asked, whether that was the Paper that they delivered to the king?

*Sol. Gen.* Then what said the bishops?

*Blathwayt.* They at first scrupled to answer, and they said it might be made use of to their prejudice if they owned it.

*Att. Gen.* Pray, Mr. Blathwayt, consider again; was that the question put to my lords the bishops, whether that was the Paper that was presented by them to the king?

*Blathwayt.* I do think, to the best of my remembrance, that my lord chancellor did ask them to that purpose, I cannot speak to the very words.

*Sol. Gen.* And upon this, what answer did they make?

*Blathwayt.* My lords the bishops scrupled to answer the first and second time, as I told you before, but they did own it was the Petition that they presented to the king, to the best of my remembrance.

*Sol. Gen.* Did my lord archbishop do or say any thing to own it?

*Blathwayt.* Yes, both my lord archbishop of Canterbury and the rest of the bishops did own all the same thing.

*Sol. Gen.* Was this done at Whitehall?

*Blathwayt.* Yes, at the council-table.

*L. C. J.* Pray recollect yourself, and consider what you say: did they own that that was the paper they delivered to the king?

*Serj. Pemberton.* Pray, my lord, give us leave to ask a question to clear this matter; was the question put to them, whether it was the paper that they delivered, or whether it were their hands that were to it?

*Blathwayt.* My lord, I do not exactly recollect the words.

*L. C. J.* But pray tell us, if you can, what the question was?

*Blathwayt.* My lord, I do not remember the very words; but I think if Mr. Serjeant Pemberton be pleased to repeat his question, I shall give him a satisfactory answer, as well as I can.

*Serj. Pemberton.* Sir, that which I ask you is this, whether the question that was put to my lords the bishops at that time was, Whether this was the paper that they delivered to the king, or whether those were their hands that were to it?

*Blathwayt.* My lord, I did always think that it was a plain case, that that was the paper that they delivered to the king; and my lords the bishops did never deny but that they

gave it to the king, and I had it from the king's hands.

*L. C. J.* But we must know from you (if you can tell us) what the question was that was put to my lords the bishops; were they asked, Whether those were their hands that were to that paper? or was it, Whether they delivered that paper to the king?

*Blathwayt.* As to the first part, that they owned 'twas their hands, that I am sure of; but as to the other, I do not remember what the words were.

[At which there was a great shout.]

*Att. Gen.* Pray, Mr. Blathwayt, recollect yourself, you say the king produced it.

*Blathwayt.* Yes, Sir.

*Att. Gen.* Do you remember that the king asked them any question upon the producing of it?

*Blathwayt.* My lord chancellor asked them, if those were not their hands to the petition?

*Sol. Gen.* Was there any other matter in discourse, whether that was the paper that was delivered by them to the king?

*Blathwayt.* I cannot so positively say what were the words that my lord chancellor used.

*Serj. Levinz.* Pray do not twist a man so, Mr. Solicitor.

*Sol. Gen.* And you are not to untwist a man neither, Mr. Serjeant.

*Att. Gen.* Do you remember that the king said any thing of the paper being delivered to him?

*Blathwayt.* The king has said it several times; I believe I have heard him say it ten times at least.

*Att. Gen.* Did he say it at that time?

*Blathwayt.* I cannot positively say that he did, Sir.

*Serj. Pemberton.* He cannot answer it; why will you press it?

*Blathwayt.* My lord, here is the clerk of the council that was then in waiting, he took minutes, and perhaps can remember more than I.

*Sol. Gen.* Here they cry he cannot answer it, as if they could tell what he can answer better than himself. Pray, Mr. Bridgman, was there any question to this purpose, either from my lord chancellor, or from the king, whether that was the paper that was presented by my lords the bishops, or delivered to the king? For I see you are very nice as to words, and you do very well; but was there not a question to that purpose?

*Bridgman.* Sir, I do not remember; for I speak to the best of my remembrance in all this matter. I say, I do not remember that that question was asked in those very words, but I do remember something was said to that purpose, but by whom I cannot particularly say.

*Sir R. Sawyer.* To what purpose?

*Sol. Gen.* It is very strange that they won't let the witness speak, but are continually interrupting him.

*Sir R. Sawyer.* Mr. Solicitor, nobody interrupts him.

*L. C. J.* Why, do not I behave myself between you all as I ought to do? Pray, sir Robert Sawyer sit down, you cannot be contented when the man does you no harm.

*Sol. Gen.* Pray consider, did my lords the bishops say any thing, or was there any discourse concerning the paper, whether it was delivered to the king or no?

*Bridgman.* Mr. Solicitor, I have told you as near as I can what I do remember. I know not by whom it was said, but that question, or to that purpose, was asked, whether that was the petition they delivered? but I do not remember whether the question was directly asked, or answered; there was something about it, and several passages there were; but whether spoken by my lord chancellor, or who, I cannot remember.

*Sol. Gen.* You say there was that which sufficiently denoted a question to that purpose, and they said nothing against it.

*Bridgman.* No, there was no denial of it.

*Sol. Gen.* I see you do not remember the particular, nor do we desire it of you.

*Bridgman.* They did not deny it, nor confess it.

*Sol. Gen.* Then, in your apprehension, did they own that they delivered that paper to the king?

*L. C. J.* You must not ask that, Mr. Solicitor, it is not a fair question to ask him what he apprehended.

*Sol. Gen.* He said it before.

*L. C. J.* But his apprehensions are no evidence, and it is a sort of a leading question which we must not allow of.

*Sol. Gen.* Then if your lordship do not like it, I will not ask it; but I will ask him another question.

*L. C. J.* Ay, ten, if you will, so they be fair ones.

*Sol. Gen.* Was it upon the first or second time of their being examined?

*Bridgman.* I cannot tell, it was not the first time, all of it, I believe; for at the first time my lords the bishops made some scruple of answering or owning any thing; and whatsoever they owned, they said, they hoped it should not be made use of to their prejudice. I remember no reply that was made, nor any thing farther, only my lord chancellor said, they were not to capitulate with their prince; but they were required to answer the questions that were asked them.

*Sol. Gen.* What were those questions?

*Bridgman.* I have told you already, as well as I can remember.

*Sol. Gen.* But did you take it upon the main that they owned the delivery of that paper to the king?

*Just. Powell.* Mr. Solicitor, you have been told you are to ask no such questions.

*Sir R. Sawyer.* Nor never was there such wire-drawing of a witness in this world before.

*L. C. J.* Pray sit still, sir Robert Sawyer, you are not to teach us what we are to do; Mr. Solicitor must ask questions that are pro-

per for him, and not such as these; but the court must correct him, and not you.

*Sol. Gen.* Mr. Bridgman is very cautious, and he is to be commended for it; but we would get the truth out of him if we could. Pray, Sir, if you can remember, recollect yourself, whether by any question to that purpose, it was believed that they did own the delivery of the paper to the king.

*Bridgman.* I told you, Mr. Solicitor, as to that at first, that I do not remember the very words of the question; but I believe there was nobody doubted that that was not the paper.

*Sol. Gen.* You speak well in your way; but these gentlemen are very unwilling you should tell your opinion.

*L. C. J.* His opinion is no evidence, therefore you must not ask any such questions, Mr. Solicitor.

*Bridgman.* As soon as the petition was delivered, within a few hours after I saw it, the king shewed it to several people, and he said, it was the petition the bishops had delivered; he took it into his own custody, and afterwards commanded me to write a copy of it, and there was no copy made of it but that one; but notwithstanding that, I do remember I did see a copy of the petition, within a day or two after it was presented about the town.

*Sol. Gen.* Pray how many days was this before the discourse in council upon their examination?

*Bridgman.* How many days was what, Sir?

*Sol. Gen.* When the king gave the paper to be copied?

*Bridgman.* It was upon the Sunday.

*Sol. Gen.* But you say, as you believe, it was in a few hours after the paper was delivered to the king that you did see it?

*Just. Powell.* But what makes him say, that this was delivered to the king, but only hearsay?

*L. C. J.* Pray, Mr. Solicitor, will you produce that which is evidence, and not spend our time in that which is not?

*Sol. Gen.* My lord, I would make no more of it than it is.

*Serj. Levinz.* It is a shameful thing to offer such things in a court of justice.

*Serj. Pemberton.* It is a practice that ought not to be endured.

*L. C. J.* Pray, brothers, be quiet, or I'll turn him loose upon you again, if you'll not be quiet: What is the matter? Cannot you let us alone? We shall do every body right. Come, to shorten this matter, I ask you but this one question, and that may satisfy any one that has common honesty about him: do you remember whether or no they were asked, if that was the petition that they delivered to the king?

*Bridgman.* My lord, I have answered that question as directly as I can; I do not positively remember that that was the question.

*L. C. J.* Mr. Solicitor-General, you must be satisfied when proper questions are fairly answered, and therefore, pray, be quiet.

*All. Gen.* However, we pray we may ask

the clerks of the council; it may be they may remember more—Sir John Nicholas, you were at the council-table that day my lords the bishops were examined about this paper?

Sir J. Nicholas. Yes, Sir, I was.

Att. Gen. Pray did you observe that the king produced the petition?

Sir J. Nicholas. No, indeed, I did not see it.

Att. Gen. Did you observe any thing that passed there in discourse?

Sol. Gen. Did you observe any questions that were asked the bishops, either by the king or by my lord chancellor?

Sir J. Nicholas. I think my lord chancellor did ask them, if that was their hands to the petition, and they owned it.

Sol. Gen. Do you remember whether they owned, that they delivered that paper to the king?

L. C. J. I'll ask you, sir John Nicholas, did my lord chancellor ask them this question, is this the petition you delivered to the king?

Sir J. Nicholas. I do not remember that. [Then there was a great shout.]

Sol. Gen. Here's wonderful great rejoicing that truth cannot prevail.

Serj. Pemberton. No, Mr. Solicitor, truth does prevail.

Sol. Gen. You are all very glad that truth is stifled, Mr. Serjeant.

Serj. Trinder. Pray, sir John Nicholas, let me ask you one question; was there any discourse about delivering that petition to the king?

Sir J. Nicholas. Indeed I do not remember it.

Sol. Gen. There's Mr. Pepys, we'll examine him. [Mr. Pepys sworn.]

L. C. J. Come, I'll ask the questions; were you at the council-board when my lords the bishops were committed?

Mr. Pepys. Yes, I was.

L. C. J. What were the questions that were asked, either by the king, or by my lord chancellor?

Mr. Pepys. My lord, I would remember as well as I could; the very words, and the very words of the question, were, I think, My lords, do you own this paper? I do not remember any thing was spoken about the delivering; but I believe it was understood by every body at the table, that that was the paper that they had delivered.

L. C. J. Well, have you done now? But to satisfy you, I'll ask this question; Was this question asked, My lords, was this the paper you delivered to the king?

Mr. Pepys. No, my lord.

Att. Gen. Pray, Sir, do you remember whether the king himself asked the question?

Mr. Pepys. You mean, I suppose, Mr. Attorney, that these were the words, or something that imported the delivering it to the king.—Att. Gen. Yes, Sir.

Mr. Pepys. Truly, I remember nothing of that.

Sol. Gen. Did you observe any discourse concerning their delivery of it to the king?

Mr. Pepys. Indeed, Mr. Solicitor, I do not. Att. Gen. Swear Mr. Musgrave. [Mr. Musgrave sworn.]

L. C. J. You hear the question, Sir, what say you to it?

Mr. Musgrave. My lord, I will give as short an account of it as I can: The first time after his majesty had produced the petition, and it was read at the board, his grace the lord archbishop of Canterbury, and the other six reverend lords the bishops, were called in, and it was asked of them, if they owned that, or if it was their hands? My lord archbishop, in the name of the rest, did decline answering, upon the account that they were there as criminals and were not obliged to say any thing to their own prejudice, or that might hurt them hereafter; but if his majesty would command them, and if he would promise that no advantage should be made of whatsoever they confessed, then they would answer the question: his majesty made no answer to that, but only said he would do nothing but what was according to law; whereupon the bishops were ordered to withdraw, and being called in a second time, the petition was shewn to them, and they were asked if they did own it, or if it was their hands? And I think my lord archbishop did then say, we will rely upon your majesty, and some such general thing was said, and then they did all own that it was their hands: I cannot say the petition was read to them.

Just. Powell. Mr. Blathwayt, as I remember, said it was the third time.

Mr. Musgrave. It was the second time, to the best of my remembrance.

L. C. J. Pray, Sir, was there any question to this purpose; Is this the paper you delivered to the king?

Mr. Musgrave. I do not remember that ever any such direct question was asked.

Just. Altybone. But, as my brother Pemberton did very well before distinguish, there is a great deal of difference between the owning the subscription of a paper, and between the owning of that paper. Mr. Pepys did say that they did own the paper, and upon my word that will look very much like a publication.

Mr. Musgrave. I remember, my lord, there was at the same time a question asked, because several copies had gone about the town, whether they had published it? And my lord archbishop did say, he had been so cautious, that he had not admitted his own secretary, but writ it all himself; and the rest of the bishops did say, they did not publish it, nor ever gave any copies of it.

Att. Gen. My lord, I confess, now it is to be left to the jury upon this point, whether tho' there were not a positive witness that was by when the thing was done, yet upon this evidence the jury can find any otherwise than that the thing was done; truly, I think, we must leave it as a strong case for the king: I could have wished, indeed, for the satisfaction of every body, that the proof would have come up to that; but we must make it as strong for

the king, upon the evidence given, as it will bear. Now, my lord, take all this whole matter together, here is a paper composed, framed, and written by seven learned men, and this must be written by such persons, sure for some purpose. It is directed as a petition to the king, and this petition did come to the hands of the king (for the king produces it in council) and my lord archbishop, and the rest of the bishops, owned their hands to it. Then the question is, my lord, whether or no there be any room for any body living to doubt in this case, that this was not delivered by my lords the bishops to the king, though it be not a conclusive evidence of a positive fact; yet unless they shew something on the other side, that may give way for a supposition to the contrary, that it came out of their hands by surprize, or that any body else delivered it to the king, without their knowledge or consent, here must needs be a very violent presumption that they did do it; and when nothing of that is said on their side, can any jury upon their consciences say, that it was not published by them? And it being found in Middlesex, though it might be written and composed in Surrey, yet surely we have given a convincing evidence, that either they published it, or caused it to be published in Middlesex. [Pray call Mr. Graham.]

*Crier.* He is gone out of the hall.

*Sol. Gen.* My lord, there is in law a presumption that is evidence, though there be no positive proof.

*Sir R. Sawyer.* But not in an information for a libel.

*Sol. Gen.* This is a mere question of fact; there is no such distinction in the law; for it is plain, if these lords, or any of them, did consent and agree to the publishing of this paper in Middlesex, they are guilty of this information; and whether they are guilty or not guilty, we do rely upon the circumstances proved, which are violent: First, that they were the men that contrived, and set their hands to it, and so were the authors of it, is undeniable; for they have owned it: men of their learning and parts never did any such thing in vain: and then that they were concerned in the publishing of it in Middlesex, we offer for proof that which was said by Mr. Bridgman and Mr. Blathwayt, who, though they do not come directly and expressly to the formal words of such a question, yet they tell you, especially Mr. Blathwayt, that they did apprehend it, and it was the collection of all their thoughts, and they took it for granted, as a thing that every body was satisfied in, that they did deliver that paper to the king. I must confess, and agree, there is no proof of the delivery of it by my lords the bishops to the king; but we know very well, that it is no wonder, when a paper is libellous, that men should use all the skill they can to publish it with impunity: and this is a thing that was done after some time of premeditation and serious consultation; for it was some days after the order for reading the declaration was published, that this was framed

and delivered; and it concerned them to be wary (as it seems they have been); but take this altogether, my lord, the paper being found in the king's hands, it is in these persons power, and it lies upon them to make it out plain, what became of this paper, or how it came out of their hands, which once lay in their own hands and custody? They can give an account of it, they can give light unto it. If they do not, I shall submit to the jury, whether this is not sufficient evidence to convict them; especially when, being examined, they did not make that their excuse. They never said, this paper indeed we signed, but we did not intend to publish it, we intended to stifle it; that had been some excuse: but for them to say now, they did not present it to the king, I must submit to the jury, whether they will believe it or not upon this evidence, that my lords, the bishops, did present it, or cause it to be presented to the king; then they are guilty of so much of this matter charged in the information. And I leave it to them, and their consciences, what they will think upon the whole.

*Recorder.* My lord, if your lordship please—

*L. C. J.* What, again? Weil, go on sir Bartholomew Shower, if we must have a speech—

*Recorder.* Nay, my lord, I would not trespass upon your lordship.

*L. C. J.* Gentlemen of the Jury, here is an information against my lords the bishops: I think I need not trouble myself to open all of it, because I see you are men of understanding, men of great diligence, and have taken notes yourselves, some of you; therefore I shall say only something of the proof that is required in such a case, and of the manner of the proof that has been given in this case, and then tell you my opinion in point of law. Here is an information brought by Mr. Attorney General, on behalf of the king, against these reverend fathers of the church, the archbishop and the rest; and it is for publishing a seditious libel, under the pretence of a petition, in which are contained the words that are seen. Gentlemen, the information is long; it tells you, that the king, out of his gracious clemency to all his loving subjects, and for other considerations, had thought fit to publish a declaration of indulgence, that all his loving subjects might have liberty of conscience, upon the 4th of April, in the third year of his reign, and that this was set forth by the king; and that the king, of his farther grace, about the 27th of April then next following—

*Mr. Finch.* I humbly beg your lordship's favour.

*L. C. J.* What say you, Mr. Finch?

*Mr. Finch.* I ask your pardon for breaking in upon you when you are directing the jury. I know I should not do it, but I hope you will not be angry with me for it.

*L. C. J.* If I thought you did any service to your client, I should willingly hearken to you.

*Mr. Finch.* That which I humbly offer to

your lordship, is only to remember your lordship where we were.

*L. C. J.* Go on, Sir.

*Mr. Finch.* I would only say this, my lord, the question is, whether this be evidence or no?

*L. C. J.* I am sorry, Mr. Finch, you have that opinion of me, as to think I should not leave it fairly to the jury.

*Mr. Finch.* I only speak it, my lord, because if it be evidence, we have other matters to offer in answer to that evidence, and in our own defence.

*L. C. J.* If you have more to offer, why did you conclude here, and let me begin to direct the jury? But since you say you have other matter to offer, we will hear it.

*Serj. Pemberton.* My lord, we submit to your lordship's direction.

*L. C. J.* No, no, you do not; you say you have further matter to offer.

*Mr. Pollexfen.* My lord, we shall rest it here.

*L. C. J.* No, no, I will hear Mr. Finch. Go on, my lords the bishops shall not say of me, I would not hear their counsel; I have been already told of being counsel against them, and they shall never say that I would not hear their counsel for them.

*Serj. Levins.* My lord, we beseech your lordship, go on with your directions; for all that Mr. Finch said, was only that this was not sufficient evidence.

*L. C. J.* No, brother, he says you have a great deal more to offer, and I will not refuse to hear him. The court will think there was something more than ordinary, therefore I will hear him; such a learned man as he shall not be refused to be heard by me, I will assure you. Why don't you go on, Mr. Finch?

*Mr. Finch.* My lord, I beg your pardon for interrupting you; but all that I was going to say would have amounted to no more than this, that there being no evidence against us, we must of course be acquitted.

*Just. Hall.* My lord did intend to have said as much as that, I dare say.

*L. C. J.* Well, gentlemen of the jury, we have had interruption enough—

*Sol. Gen.* My lord, I must beg your pardon for interrupting you now; and I am very glad these gentlemen have given us this occasion, because we shall now be able to clear this point. There is a fatality in some causes, my lord, and so there is in this; we must beg your patience for a very little while, for we have notice that a person of a very great quality is coming,\* that will make it appear, that my lords the bishops made their addresses to him, to be introduced that they might deliver the paper to the king.

*L. C. J.* Well—you see what comes of the interruption, gentlemen, now we must stay—

\* "Such sort of witnesses were no doubt always at hand when wanted." Speech of Mr. Erskine in support of a motion for a new trial in the dean of St. Asaph's case, A. D. 1783; in this Collection.

[Then there was a pause for near half an hour.]

*Att. Gen.* Pray, my lord, put the case that a man writes a libel in one county, and it is found in another, is not he answerable, unless he can shew something that he may satisfy the jury how it came there?

*Sol. Gen.* Ought he not to give an account what became of it?

*L. C. J.* No: look you, Mr. Attorney, you must look to your information, and then you will find the case that you put does not come up to it: it is for writing, composing, and publishing, and causing to be published, and all this is laid in Middlesex: now you have proved none of all these things to be done in the county.

*Att. Gen.* They did in Middlesex confess it was theirs.

*L. C. J.* Ay, but the owning their hands is not a publication in Middlesex, and so I should have told the jury.

*Mr. Finch.* I beg your lordship's pardon for interrupting you.

*Att. Gen.* But, my lord, does it not put the proof upon them, to prove how it came out of their hands into the king's hands?

*L. C. J.* No, the proof lies on your part.

*Mr. Pollexfen.* Pray, my lord, give us your favour to dismiss us and the jury.

*Sol. Gen.* My lord, our witnesses will be here presently.

*Att. Gen.* Sure, my lord, the presumption is on our side.

*Just. Powell.* No, the presumption is against you; for my lord archbishop lived in Surrey, and it is proved was not out of Lambeth-house since Michaelmas, till he came before the council.

*Serj. Pemberton.* Pray, good my lord, we stand mightily uneasy here, and so do the jury, pray dismiss us.

*L. C. J.* I cannot help it, it is your own fault.—[Then there was another great pause.]

*L. C. J.* Sir Bartholomew Shower, now we have time to hear your speech, if you will.

*Mr. Pollexfen.* My lord, there is nobody come, nor I believe will come.

*Sol. Gen.* Yes, he will come presently; we have had a messenger from him. [Call Mr. Graham.]

*Crier.* He is gone, and said he would come presently.

*Sol. Gen.* My lord, he will bring our witnesses with him—[Then there was another pause.]

*Serj. Pemberton.* My lord, this is very unusual to stay thus for evidence.

*L. C. J.* It is so; but I am sure you ought not to have any favour—Mr. Solicitor, are you assured that you shall have this witness that you speak of?

*Sol. Gen.* Yes, my lord, he will be here presently.

*L. C. J.* We have staid a great while already, and therefore is fit that we should have some oath made that he is coming.

*Sol. Gen.* The crier tells you, that Mr. Graham did acquaint him, that he would return presently.

*L. C. J.* Give him the book.

*Sol. Gen.* Let your left-hand give your right-hand the oath. [The Crier sworn.]

*L. C. J.* By the oath that you have taken, did Mr. Graham tell you, there was any further witness coming in this case?

*Crier.* Yes, my lord, he did; he went out of the hall, and returned when your lordship was directing the jury, and he asked me what the court were upon; and I told him you were directing the jury, and then he said, my lord Sunderland was a coming, but he would go and prevent him; and afterwards he returned, and finding your lordship did not go on to direct the jury, he said, he would go again for my lord Sunderland, whom he had sent away, and he is now gone for him, and he said he would bring him with him presently.

*L. C. J.* Well then, we must stay till the evidence for the king comes, for now there is oath made that he is coming—[And after a considerable pause the Lord President came.]

*Att. Gen.* My lord, we must pray that my lord president may be sworn in this case, on behalf of the king. [The Lord President sworn.]

*Att. Gen.* My lord, with your lordship's favour, I would ask my lord president a question: your lordship remembers where we left this cause; we have brought it to this point, that this petition came to the king's hands: that it is a petition written by my lord archbishop and subscribed by the rest of my lords the bishops; but there is a difficulty made, whether this petition thus prepared and written was by them delivered to the king, and whether my lords the bishops were concerned in the doing of it, and were privy, or parties to the delivery? Now that which I would ask your lordship, my lord president, is, whether they did make their application to your lordship to speak to the king?

*Sol. Gen.* Did they make their application to your lordship upon any account whatsoever?

*Lord President.* My lord, my lord bishop of St. Asaph, and my lord bishop of Chichester came to my office, and told me they came in the names of my lord archbishop of Canterbury, and four others of their brethren, and themselves, with a petition, which they desired to deliver to his majesty, and they did come to me to know which was the best way of doing it, and whether the king would give them leave to do it or not? They would have had me read their petition, but I refused it, and said, I thought it did not at all belong to me, but I would let the king know their desire, and bring them an answer immediately, what his pleasure was in it; which I did. I acquainted the king, and he commanded me to let my lords the bishops know, they might come when they pleased, and I went back and told them so; upon which they went and fetched the rest of the bishops, and

when they came, immediately they went into the bed-chamber, and into another room, where the king was. This is that I know of the matter.

*Sol. Gen.* About what time was this, pray my lord?

*Lord President.* I believe there could not be much time between my coming from the king, and their fetching their brethren, and going in to the king.

*Sol. Gen.* They were with the king that day?—*Lord President.* Yes, they were.

*Sol. Gen.* Was this before they appeared in council?

*Lord President.* Yes, it was several days before.

*Sol. Gen.* Then I think now, my lord, the matter is very plain.

*Just. Allyn.* Did they acquaint your lordship that their business was to deliver a petition to the king?

*Lord President.* Yes, they did.

*Sol. Gen.* And they would have had my lord read it, he says.

*Att. Gen.* And this was the same day that they did go in to the king?

*Lord President.* The very same day, and I think the same hour; for it could not be much longer.

*L. C. J.* Now it is upon you truly; it will be presumed to be the same, unless that you prove that you delivered another.—Pray, my lord, did you look into the petition?

*Lord President.* No, I refused it; I thought it did not concern me.

*Just. Powell.* Did you see them deliver it to the king, my lord?

*Lord President.* I was not in the room when it was delivered.

*Just. Powell.* They did open their petition to your lordship, did they?

*Lord President.* They offered me to read it, but I did refuse.

*L. C. J.* Will you ask my lord president any question, you that are for the defendants?

*Sir R. Sawyer.* No, my lord.

*Sol. Gen.* Then, my lord, we must beg one thing for the sake of the jury, if your lordship can turn yourself a little this way, and deliver the evidence you have given over again, that they may hear it.

*Lord President.* My lord, I will repeat as near as I can; I think I shall not vary the sense. The bishops of St. Asaph and Chichester came to my office, I do not know just the day when, but it was to let me know, that they came in the names of the archbishop, and four others of their brethren—Is it necessary I should name them?

*L. C. J.* Do it, my lord, if you can.

*Lord President.* They were the bishops of Ely, Bath and Wells, Bristol, and Peterborough; they came to let me know, in the name of the archbishop, those four, and themselves, that they had a petition to deliver to the king, if he would give them leave, and desired to know of me which was the best way to do it.

I told them I would know the king's pleasure, and bring them word again: they offered me their petition to read, but I did not think it fit for me to do it, and therefore I refused, and would not read it: but I went immediately to the king, and acquainted his majesty with it, and he commanded me to let them know they might come when they would; which I immediately did: they said they would go and speak with some of their brethren that were not far off: in the mean time I gave order that they should be admitted when they came, and they did in a little time return, and went first into the bed-chamber, and then into the room where the king was.

*Sol. Gen.* And this was before they came and appeared at the council?

*Lord President.* Yes, it was.

*Mr. Pollexfen.* Your lordship did not read any thing of the petition?

*Lord Presid.* No, Sir, I did not, I refused it.

*Mr. Pollexfen.* Nor does your lordship know what petition was delivered to the king?

*Lord President.* I did not know any thing of it from them then.

*L. C. J.* Now you may make your observations upon this two hours hence: now we shall hear what Mr. Finch had further to offer, I suppose.

[Then my Lord President went away.]

*Sol. Gen.* I think now it is very plain.

*L. C. J.* Truly, I must needs tell you, there was a great presumption before, but there is a greater now; and I think I shall leave it with some effect to the jury. I cannot see but here is enough to put the proof upon you. They came to the lord president, and asked him how they might deliver a petition to the king: he told them he would go see what the king said to it. They would have had him read their petition, but he refused it: he comes and tells them the king said they might come when they would: then those two that came to my lord president went and gathered up the other four (the archbishop indeed was not there) but they six came, and my lord president gave direction they should be let in, and they did go into the room where the king was. Now this, with the king's producing the paper, and their owning it at the council, is such a proof to me, as I think will be evidence to the jury of the publication.

*Mr. Pollexfen.* Then, my lord, thus far they only can go; the archbishop was not there, and so there is no evidence against him.

*Sol. Gen.* As to the writing, we have given proof against him, for it is all his hand.

*Mr. Pollexfen.* That still is in another country, and there is nothing proved to be done by my lord archbishop in Middlesex; and next, for the other six lords, my lord president does not say that this is the petition that they said they had to deliver to the king; nor did he see them deliver any thing to the king; but that is still left doubtful, and under your judgment, so that it stands upon presumption, not upon

proof, that this is the same, and left under consideration.

*Att. Gen.* Then we will leave it fairly to the jury upon this fact.

*Mr. Pollexfen.* If so, then we desire to be heard in our defence.

*Sir R. Sawyer.* May it please your lordship, and you gentlemen of the jury, you have heard this charge which Mr. Attorney has been pleased to make against my lords the bishops, and that is this, that they did conspire to diminish the royal authority, and regal prerogative, power, and government of the king, and to avoid the order of council; and in prosecution of this, they did falsely, maliciously, and seditiously make a libel against the king, under pretence of a petition, and did publish the same in the king's presence.

This, gentlemen, is a very heinous and heavy charge; but you see how short their evidence is: the evidence they bring forth is only, that my lords the bishops presented the paper to the king in the most private and humble manner they could: that which they have been so many hours a proving, and which they cry up to be as strong an evidence as ever was given, proves it to be the farthest from sedition in the doing of it that can be: and you see what it is, it was a petition to be relieved against an order of council, which they conceive they were aggrieved by. They indeed do not deal fairly with the court nor with us, in that they do not set it forth that it was a petition.

*L. C. J.* That was over-ruled before.

*Sir R. Sawyer.* I do not insist upon it now so much an exception to the information, as I do the evidence. They set this forth to be a scandalous matter, but it only contains their reasons; whereby they would satisfy his majesty why they cannot comply in a concurrence with his majesty's pleasure; and therefore they humbly beseech the king, and beg and request him (as the words of it are) that his majesty would be pleased not to insist upon their distributing and reading of this declaration: so the petitioners, on behalf of themselves and the whole clergy of England, beg of the king that he would please not to insist upon it.

Gentlemen, you may observe it, that there is nothing in this petition that contains any thing of sedition in it; and it would be strange this petition should be *felo de se*, and by one part of it destroy the other. It is laid indeed in the information, that it was with intent and purpose to diminish the king's royal authority; but I appeal to your lordship, the court, and the jury, whether there be any one word in it, that any way touches the king's prerogative, or any tittle of evidence that has been given to make good the charge. It is an excuse barely for their non-compliance with the king's order, and a begging of the king with all humility and submission, that he would be pleased not to insist upon the reading of his majesty's declaration upon these grounds, because the dispensing power upon which it was founded, had

been several times in parliament declared to be against law, and because it was a case of that consequence that they could not in prudence, honour, or conscience concur in it.

My lord, Mr. Attorney has been pleased to charge in this information, that this is a false, malicious, and seditious libel: both the falsity of it, and that it was malicious and seditious, are all matters of fact, which, with submission, they have offered to the jury no proof of, and I make no question but easily to demonstrate the quite contrary.

For, my lord, I think it can be no question, but that any subject that is commanded by the king to do a thing which he conceives to be against law, and against his conscience, may humbly apply himself to the king, and tell him the reason why he does not that thing he is commanded to do, why he cannot concur with his majesty in such a command.

My lord, that which Mr. Attorney did insist upon in the beginning of this day (and he pretended to cite some cases for it) was, that in this case, my lords the bishops were not, sued as bishops, nor prosecuted for their religion. Truly, my lord, I do not know what they are sued for else: the information is against them as bishops, it is for an act they did as bishops, and no otherwise; and for an act they did, and do conceive they lawfully might do with relation to their ecclesiastical polity, and the government of their people as bishops.

The next thing that Mr. Attorney offered was, That it was not for a non-feasance, but for a feasance. It is true, my lord, it is for a feasance in making of the petition, but it was to excuse a non-feasance, the not reading according to the order; and this sure was lawful for all the bishops as subjects to do; and I shall shew it was certainly the duty of my lords the bishops, or any peer of this realm, to do the same in a like case. It was likewise said, they were prosecuted here for affronting the government, and intermeddling with matters of state; but I beg your lordship and the jury to consider, whether there is one tittle of this mentioned in the petition, or any evidence given of it. The petition does not meddle with any thing of any matter of state, but refers to an ecclesiastical matter, to be executed by the clergy, and to a matter that has relation to ecclesiastical causes; so that they were not busybodies, or such as meddled in matters that did not relate to them, but that which was properly within their sphere and jurisdiction.

But after all, there is no evidence, nor any sort of evidence that is given by Mr. Attorney, that will maintain the least tittle of this charge; and how he comes to leave it upon this sort of evidence I cannot tell; all that it amounts to is, That my lords the bishops being grieved in this manner, made this petition to the king in the most private and respectful manner; and for him to load it with such horrid black epithets, that it was done libellously, maliciously, and scandalously, and to oppose the king and government, 'tis very hard; 'tis a case of a very

extraordinary nature, and I believe my lords the bishops cannot but conceive a great deal of trouble, that they should lie under so heavy a charge, and that Mr. Attorney should draw so severe an information against them, when he has so little proof to make it out.

My lord, by what we have to say to it, we hope we shall give your lordship and the jury satisfaction, that we have done but our duties, supposing here has been a sufficient evidence of the fact given, which we leave to your lordship and the jury.

My lord, we say in short, That this petition is no more than what any man, if he be commanded to do any thing, might humbly do it, and not be guilty of any crime: and, my lord, as to the matter of our defence, it will consist of these heads:

First, We shall consider the matter of this Petition.

Secondly, The manner of delivering it, according as they have given evidence here; and,

Thirdly, The persons that have delivered this petition. And we hope to make it appear, beyond all question, that the matter contained in this petition, is neither false nor contrary to law, but agreeable to all the laws of the land in all times. We shall likewise shew you (though that appear sufficiently to you already) that the manner of delivering it was so far from being seditious, that it was in the most secret and private manner, and with the greatest humility and duty imaginable. And then as to the persons, we will shew you that they are not such as Mr. Attorney says, who meddle with matters of state, that are out of their sphere; but they are persons concerned, and concerned in interest in the case, to make this humble application to the king. And when we have proved all this matter, you will see how strangely we are blackened with titles and epithets which we no ways deserve, and of which, God be thanked, there is no proof.

For, my lord, for the matter of the petition, we shall consider two things.

The first is, the prayer, which is this; They humbly beg and desire of the king, on behalf of themselves and the rest of the clergy, that he would not insist upon the reading and publishing of this declaration.

Surely, my lord, there is nothing of falsity in this, nor any thing that is contrary to law, or unlawful for any man that is pressed to any thing, especially by an order of council; and this is nothing but a petition against an order of council; and if there be an order that commands my lords the bishops to do a thing that seems grievous to them, surely they may beg of the king that he would not insist upon it.

As for this matter, they were so well satisfied about it, and so far from thinking that it was any part of a libel, that they left it out of the information, and so have made a deformed and absurd story of it, without head or tail, a petition directed to nobody, and for nothing, it being without both title and prayer; so that this is plain, it was lawful to petition.

Then, my lord, the next thing is, the reasons which my lords the bishops come to acquaint the king with; why in honour and conscience they cannot comply with, and give obedience to this order; and the reasons, my lord, are two.

The first reason that is assigned, is, the several declarations that have been in parliament (several of which are mentioned) that such a power to dispense with the law, is against law, and that it could not be done but by an act of parliament; for that is the meaning of the word illegal, that has no other signification but unlawful; the same word in point of signification with the word *illicite*, which they have used in their information, a thing that cannot be done by law; and this they are pleased to tell the king, not as declaring their own judgments, but what has been declared in parliament; though if they had done the former, they being peers of the realm, and bishops of the church, are bound to understand the laws, especially when (as I shall come to shew you) they are made guardians of these laws; and if any thing go amiss, and contrary to these laws, they ought to inform the king of it.

My lord, the next thing is, Because it is a thing of so great moment, and the consequence that will arise from their publishing of this declaration, and that too, my lord (for the latter I shall begin first with) there can be no question about, or any pretence that this is libellous or false; for certainly it is a case of the greatest consequence to the whole nation that ever was, therefore it cannot be false or libellous to say so.

My lord, I would not mention this, for I am loth to touch upon things of this nature, had not the information itself made it the very gist of the charge; for the information (if there be any thing in it) says, that it was to diminish the king's prerogative and regal power in publishing that declaration.

Now, my lord, what the consequence of this would be, and what my lords the bishops meant, by saying it was a cause of great moment, will appear, by considering that which is the main clause in the Declaration, at which my lords the bishops scrupled, which is the main stumbling-block to my lords, and has been to many honest men besides, and that is this:

'We do likewise declare, it is our royal will and pleasure, that from henceforth the execution of all and all manner of penal laws, in matters ecclesiastical, for not coming to church, or not receiving the sacrament or for any other non-conformity to the religion established; or for or by reason of the exercise of religion in any manner whatsoever, be immediately suspended; and the further execution of the said penal laws, and every of them, is hereby suspended.\*'

\* Here the Lord Chief Justice speaking aside, said,

L. C. J. I must not suffer this; they in-

Now, my lord, this clause either is of some legal effect and signification, or it is not. If Mr. Attorney, or the king's counsel, do say it is of no effect in law, then there is no harm done; then this petition does no ways impeach the king's prerogative, in saying, it has been declared in parliament, according as the king's counsel do agree the law to be.

But, my lord, if it have any effect in law, and these laws are suspended by virtue of this clause in the declaration; then certainly, my lord, it is of the most dismal consequence that can be thought of, and it behoved my lords, who are the fathers of the church, humbly to represent it to the king.

For, my lord, by this declaration, and particularly by that clause in it, not only the laws of our Reformation, but all the laws for the preservation of the Christian religion in general are suspended, and become of no force; if there be such an effect in law wrought by this declaration as is pretended; that is, that the obligation of obedience to them ceaseth; the reason of it is plain, the words cannot admit of such a quibble as to pretend, that the suspending the execution of the law, is not a suspending of the law; for we all know the end of every law, in its primary intent, is obedience to it; that of the penalty comes in by the way of punishment and recompence for their disobedience.

Now, my lord, if this declaration does discharge the king's subjects from their obedience to, and the obligation from those laws; then pray, my lord, where are we? Then all the laws of the Reformation are suspended, and the laws of Christianity itself, by those latter words, [or for or by reason of religion in any manner whatsoever] so that it is not confined to the Christian religion, but all other religions are permitted under this clause; and thus all our laws for keeping the Sabbath, and which distinguish us from heathens, will be suspended too.

My lord, this is such an inconvenience as, I think, I need name no more; and it is a very natural consequence from that clause of the declaration; it discharges at once all ministers

tend to dispute the king's power of suspending laws.

Just. Powell. My lord, they must necessarily fall upon the point; for if the king hath no such power (as clearly he hath not in my judgment), the natural consequence will be, that this petition is no diminution of the king's regal power, and so not seditious or libellous.

L. C. J. Brother, I know you are full of that doctrine; but however, my lords the bishops shall have no occasion to say, that I deny to hear their counsel. Brother, you shall have your will for once, I will hear them, let them talk till they are weary.

Just. Powell. I desire no greater liberty to be granted them, than what in justice the court ought to grant, that is, to hear them in defence of their clients.

and clergymen from performing their duty in reading the service of the church; it discharges their hearers from attending upon that service.

When a law is suspended, the obligation thereof is taken away; and those that before thought themselves bound to obey, now conclude they are not so obliged; and what a mischief that will be to the church, which is under the care of my lords the bishops, your lordship will easily apprehend.

These things, my lord, I only mention, to shew the great and evil consequences that apparently follow upon such a declaration, which made my lords the bishops decline obeying the order, and put them under a necessity of applying thus to the king, to acquaint him with the reasons why they could not comply with his commands to read this declaration to the people, because the consequences thereof were so great, it tending naturally to lead the people into so great an error, as to believe those laws were not in force, when in truth and reality they are still in force, and continue to oblige them.

And that being the second reason in this petition, I come next to consider it, to wit, that the parliament had often declared this pretended power to be illegal; and for that we shall read the several records in parliament mentioned in their petition, and produce several ancient records of former parliaments that prove this point; and particularly in the time of Richard the second, concerning the statute of provisors, where there were particular dispensations for that statute, the king was enabled to do it by act of parliament, and could not do it without.

*L. C. J. Pray*, sir Robert Sawyer, go to your proofs, and reserve your arguments till afterwards.

*Sir R. Sawyer*. My lord, I do but shortly mention these things; so that, my lord, as to the matter of this petition, we shall shew you, that it is true and agreeable to the laws of the land.

Then, my lord, as to the manner of delivering it, I need say no more, but that it is plain from their evidence, that it was in the most private and humble manner. And, as the lord president said, leave was asked of the king for them to be admitted to present it: leave was given, and accordingly they did it.

We come then, my lord, to the third thing, the persons, these noble lords; and we shall shew they are not busy-bodies, but in this matter have done their duty, and meddled with their own affairs. That, my lord, will appear,

First, by the general care that is reposed in them by the law of the land: they are frequently in our books called the king's spiritual judges; they are entrusted with the care of souls, and the superintendency over all the clergy is their principal care.

But, besides this, my lord, there is another special care put upon them by the express words of an act of parliament; for over and

above the general care of the church, by virtue of their offices as bishops, the act of 1 Eliz. cap. 2. makes them special guardians of the law of uniformity, and of that other law in his late majesty's reign; where all the clauses of that statute of 1 Eliz. are revived and made applicable to the present state of the church of England. Now in that statute of 1 Eliz. there is this clause:

‘And for the due execution hereof, the queen's most excellent majesty, the lords spiritual and temporal, and all the commons in this present parliament assembled, do, in God's name, earnestly require all the archbishops, and bishops, and other ordinaries, that they do endeavour themselves, to the utmost of their knowledges, that the due and true execution hereof may be had throughout their dioceses and charges, as they will answer before God, for such evils and plagues where-with Almighty God may justly punish his people, for neglecting this good and wholesome law.’

This is the charge that lies upon the bishops, to take care of the execution of that law; and I shall pray by and bye, that it may be read to the jury.

*Sol. Gen.* This is very well, indeed! To what purpose?

*Sir R. Sawyer*. So that, my lord, by this law it is plain, that my lords the bishops, upon pain of bringing upon themselves the imprecation of this act of parliament, are obliged to see it executed; and then, my lord, when any thing comes under their knowledge, especially if they are to be actors in it, that hath such a tendency to destroy the very foundation of the church, as the suspension of all the laws that related to the church must do, it concerns them that have no other remedy, to address the king, by petition, about it.

For that Mr. Attorney, my lord, has agreed, that if a proper remedy be pursued in a proper court, for a grievance complained of, though there may be many hard words that else would be scandalous, yet being in a regular course; they are no scandal: and it is said Lake's case; in my lord Hobart.

My lord, we must appeal to the king, or we can appeal to nobody, to be relieved against an order of council with which we are aggrieved; and it is our duty so to do, according to the care that the law hath placed in us.

Besides, my lord, the bishops were commanded by this order to do an act relating to their ecclesiastical function, to distribute it to be read by their clergy: and how could they in conscience do it, when they thought part of the declaration was not according to law?

Pray, my lord, what has been the reason of his majesty's consulting of his judges? And if his majesty, or any the great officers, by his command, are about to do any thing that is contrary to law, was it ever yet an offence to tell the king so? I always looked upon it as the duty of an officer or magistrate to tell the king what is law, and what is not law.

Cavendish's case, in the queen's time, there was an office granted of the return of the writs of supersedeas in the court of Common-Pleas; and he comes to the court, and desires to be put into the possession of the office: the court told him, they could do nothing in it, but he must bring his assize. He applies to the queen, and she sends under the privy-seal, a command to sequester the profits, and to take security to answer the profits, as the judgment of the law should go: but the judges there return an answer, that it was against law, and they could not do it. Then there comes a second letter, reciting the former, and commanding their obedience: the judges returned for answer, they were upon their oaths, and were sworn to keep the laws, and would not do it.

My lord, the like was done in the time of my lord Hobart: we have it reported in Anderson, in a case where a prohibition had gone: there came a message from court, that a consultation should be granted; and that was a matter wherein there were various opinions, whether it was *ex necessitate*, or discretionary; but there they returned, that it was against law for any such message to be sent.

Now here, my lord, is a case full as strong: my lords the bishops were commanded to do an act, which they conceived to be against law, and they declined it, and tell the king the reason; and they have done it in the most humble manner that could be, by way of petition. If they had done (as the civil law terms it) *Rescribere* generally, that had been lawful; but here they have done it in a more respectful manner by an humble petition. If they had said the law was otherwise, that sure had been no fault; but they do not so much as that, but they only say, it was so declared in parliament: and they declare it with all humility and dutifulness. So that, my lord, if we consider the persons of the defendants, they have not acted as busy-bodies; and therefore, as this case is, when we have given our evidence, here will be an answer to all the implications of law that are contained in this information: for they would have this petition work by implication of law, to make a libel of it; but by what I have said, it will appear, there was nothing of sedition, nothing of malice, nothing of scandal in it, nothing of the salt, and vinegar, and pepper that they have put into the case. We shall prove the matters that I have opened for our defence, and then, I dare say, your lordship and the jury will be of opinion, we have done nothing but our duty.

Mr. Finch. May it please your lordship, and you, gentlemen of the jury, this information sets forth (as you may observe upon opening it) that the king having, by his royal prerogative, set forth his declarations that we have read, and made an order of council for the reading the said declarations in the churches, and that the archbishops and bishops should severally send them into their dioceses, to be read; my lords the bishops, that are the de-

endants, did consult and conspire together to diminish the kingly authority, and royal prerogative of the king, and his power and government in his royal prerogative, in setting forth his declaration; and that, in prosecution of that conspiracy, they did contrive (as it was laid in the information) a malicious, seditious, false, and feigned libel, under pretence of a petition, and so set forth the petition; and that they published the petition in the presence of the king.

To this charge in the information, not guilty being pleaded, the evidence that hath been given for the king, I know, hath been observed by the court and jury, and I know will be taken into consideration, how far it does come up to the proof of the delivery of this petition by my lords the bishops; for all that was said till my lord president was pleased to come, was no evidence of any delivery at all; and my lord president's evidence is, that they were going to deliver a petition; but whether they did deliver it, or did it not, or what they did deliver, he does not know. This is all the evidence that has been given for the king.

But supposing now, my lord, that there were room to presume that they had delivered this Petition set forth in the information, let us consider what the question is between the king and my lords the bishops: the question is, whether they are guilty of contriving to diminish the king's regal authority and royal prerogative, in his power and government, in setting forth this declaration? Whether they are guilty of the making and presenting a malicious, seditious, and scandalous libel; and whether they have published it, as it is said in the information, in the king's presence?

So that the question is not now reduced to this, Whether this paper, that is set forth in the information, was delivered to the king by my lords the bishops; but whether they have made a malicious and scandalous libel, with an intent to diminish the king's royal prerogative, and kingly authority? and then, if you, gentlemen, should think that there is evidence given sufficient to prove that my lords the bishops have delivered to the king that paper which is set forth in the information; yet, unless they have delivered a false, malicious, seditious, and scandalous libel; unless they have published it, to stir up sedition in the kingdom; and unless they have contrived this by conspiracy, to diminish the king's royal prerogative and authority, and that power that is said to be in the king, my lords the bishops are not guilty of this accusation.

There are in this declaration several clauses, which, upon reading of the information, I am sure, cannot but have been observed by you, gentlemen of the jury; and one special cause hath been by the counsel already opened to you, and I shall not enlarge upon it.

My lord, this petition that is thus delivered to the king, if it be a libel, a scandalous and seditious libel (as the information calls it) it must be so, either for the matter of the petition,

or for the persons that delivered the petition, or for the manner of their presenting and delivering it; but neither for the matter, nor for the persons, nor for the manner of presenting it, is there any endeavour to diminish the king's royal prerogative, nor to stir up sedition, nor reflection upon the king's royal and kingly authority.

The petition does humbly set forth to his majesty, that there having been such a declaration, and such an order of council; they did humbly represent to his majesty, that they were not averse to any thing commanded them in that order, in respect to the just and due obedience that they owed to the king, nor in respect of their want of a due tenderness to those persons to whom the king had been pleased to shew his tenderness; but the declaration being founded upon a power of dispensing, which had been declared illegal in parliament several times, and particularly in the years 1662, 72, and 85, they did humbly beseech his majesty (they not being able to comply with his command in that matter) that he would not insist upon it.

Now, my lord, Where is the contrivance to diminish the king's regal authority, and royal prerogative?

This is a declaration founded upon a power of dispensing, which undertakes to suspend all laws ecclesiastical whatsoever; for not coming to church, or not receiving the sacrament, or any other non-conformity to the religion established, or for, or by reason of the exercise of religion in any manner whatsoever; ordering that the execution of all those laws be immediately suspended, and they are thereby declared to be suspended; as if the king had a power to suspend all the laws relating to his established religion, and all the laws that were made for the security of our reformation. These are all suspended by his majesty's declaration (as it is said) in the information, by virtue of his royal prerogative, and power so to do.

Now, my lord, I have always taken it, with submission, that a power to abrogate laws, is as much a part of the legislature, as a power to make laws: a power to lay laws asleep, and to suspend laws, is equal to a power of abrogating them; for they are no longer in being, as laws, while they are so laid asleep, or suspended: and to abrogate all at once, or to do it time after time, is the same thing; and both are equally parts of the legislature.

My lord, in all the education that I have had, in all the small knowledge of the laws that I could attain to, I could never yet hear of, or learn, that the constitution of the government in England was otherwise than thus, that the whole legislative power is in the king, Lords, and Commons; the king and his two houses of parliament. But then, if this declaration be founded upon a part of the legislature, which must be by all men acknowledged not to reside in the king alone, but in the king, Lords, and Commons, it cannot be a legal and true power, or prerogative.

This, my lord, has been attempted but in the last king's time; it never was pretended till then; and in that first attempt, it was so far from being acknowledged, that it was taken notice of in parliament, and declared against: so it was in the years 1662, 1672.

In the year 1662, where there was but the least umbrage of such a dispensing power; although the king had declared, in his Speech to the parliament, that he wished he had such a power, which his Declaration before seemed to assume; the parliament was so jealous of this, that they immediately made their application to his majesty, by an address against the Declaration; and they give reasons against it, in their address: one in particular was, 'That the king could not dispense with those laws without an act of parliament.'

There was another attempt in 1672, and then, after his majesty had, in his speech mentioned his declaration to them, the parliament there again, particularly the House of Commons, did humbly address to his majesty; setting forth, that this could not be done by law, without an act of parliament: and your lordship, by and bye, upon reading the record, will be satisfied what was the event of all this. His majesty himself was so far pleased to concur with them in that opinion, that he cancelled his Declaration, tore off the seal, and caused it to be made known to the House of Lords, by the lord chancellor, who, by his majesty's command, satisfied the House of it, that his majesty had broken the seal, and cancelled the Declaration; with this further declaration, which is entered in the records of the House, 'That it should never be drawn into example, or consequence.'

My lord, the matter standing thus, in respect to the king's prerogative, and the declarations that had been made in parliament; consider next, I beseech you, how far my lords the bishops were concerned in this question, humbly to make their application to the king.

My lords the bishops lying under a command to publish this declaration, it was their duty, as peers of the realm, and bishops of the Church of England, humbly to apply themselves to his majesty, to make known their reason why they could not obey that command; and they do it with all submission, and all humility, representing to his majesty what had been declared in parliament; and it having been so declared, they could not comply with his order, as apprehending that this declaration was founded upon that which the parliament declared to be illegal; and so his majesty's command to publish this declaration would not warrant them so to do. This they did as peers; and this they had a right to do as bishops, humbly to advise the king.

For, suppose, my lord (which is not to be supposed in every case, nor do I suppose it in this.) But suppose that there might be a king of England that should be misled. I do not suppose that to be the case now, I say, but I

know it hath been the case formerly), that the king should be environed with counsellors that had given him evil advice; it hath been objected as a crime against such evil counsellors, that they would not permit and suffer the great men of the kingdom to offer the king their advice. How often do we say in Westminster-hall, that the king is deceived in his grant: there is scarce a day in the term, but it is said in one court or other; but it was never yet thought an offence to say so: and what more is there in this case?

My lord, if the king was misinformed, or under a misapprehension of the law, my lords, as they are peers, and as they are bishops, are concerned in it; and if they humbly apply themselves to the king, and offer him their advice, where is the crime?

My lord, these noble lords, the defendants, had more than an ordinary call to this; for besides the duty of their office, and the care of the church, that was incumbent on them as bishops, they were here to become actors; for they were, by that order of council, commanded themselves to publish it, and to distribute it to the several ministers in their several dioceses, with their commands to read it: therefore they had more than ordinary reason to concern themselves in the matter.

Next, we are to consider, my lord, in what manner this was done: they make their application to the king by an humble petition, with all the decency and respect that could be shewn; asking leave, first, to approach his person; and having leave, they offered my lord president the matter of their petition, that nothing might seem hard or disrespectful, or as if they intended any thing that was unfit to be avowed. When they had taken all this care in their approach, and begging leave for it, they come secretly to the king in private, when he was all alone, and they humbly presented this petition to his majesty. Now, how this can be called the publication of a malicious and seditious libel, when it was but the presenting of a petition to the king alone; and how it can be said to be with an intent to stir up sedition in the people against his majesty, and to alienate the hearts of his people from him, when it was in this private manner delivered to him himself only, truly I cannot apprehend.

My lord, I hope nothing of this can be thought an offence: if the jury should think that there has been evidence sufficient given to prove that my lords the bishops did deliver this paper to the king; yet that is not enough to make them guilty of this information, unless this paper be likewise found to be in diminution of the king's royal prerogative and regal authority in dispensing with, and suspending of, all laws, without act of parliament: unless it be found to be a libel against the king: to tell him, that in parliament it was so and so declared. And unless the presenting this by way of petition (which is the right of all people that apprehend themselves aggrieved, to approach his

majesty by petition) be a libelling of the king; and unless this humble petition, in this manner presented to the king in private, may be said to be a malicious and seditious libel, with an intent to stir up the people to sedition; unless all this can be found, there is no man living can ever find my lords the bishops guilty upon this information. Therefore, my lord, we will go on, and make out this matter that we have opened to your lordship, if Mr. Attorney and Mr. Solicitor think fit to argue the points that we have opened.

Mr. *Pollexfen*. Pray, my lord, spare me a word on the same side. For the first point, it is a point of law, whether the matter contained in this petition be a libel. The king's counsel pretend it is so, because it says, the declaration is founded upon a power the parliament has declared to be illegal. But we say, that whatsoever the king is pleased to say in any declaration of his, it is not the king's saying of it that makes it to be law. Now, we say, this declaration under the great seal, is not agreeable to the laws of the land; and that for this reason, because it does, at one blow, set aside all the law we have in England.

My lord, if this be denied, we must a little debate this matter; for they are almost all penal laws; not only those before the reformation, but since; upon which the whole government, both in church and state, does in a great measure depend.

Especially, my lord, in matters of religion, they are all penal laws: for, by the Act of Uniformity, which my lords the bishops are sworn to observe, and adjured by an express clause in the act, no man is to preach unless he be episcopally ordained; no man is to preach without a licence. If all this be set aside, I confess then, it will go very far into the whole ecclesiastical government. If this be denied, we are ready to argue that too.

L. C. J. They are to do so still.

Mr. *Pollexfen*. My lord, I am sure the consequence is otherwise, if this declaration signify any thing. And if it be the will of the king, my lord, the will of the king is what the law is. If so be the king's will be not consonant to the law, it is not obliging.

My lord, the cases that we have had of dispensations, are all so many strong authorities against a general or particular abrogation. My lord, that is a matter of law, which if it fall out to be any way doubtful, it will be fit to have it debated and settled.

If they will say, that the penal laws in matters ecclesiastical can be abrogated or nulled, or made void *pro tempore*, or for life, without the meeting of the king and people in parliament, I must confess, they say a great thing, as it is a point of great concern; but I think that will not be said: and all that has been ever said in any case, touching dispensations, proves quite the contrary, and asserts what I affirm. For why should any man go about to argue, that the king may dispense with this or that particular law, if at once he can dispense

with all the law, by an undoubted prerogative? This is a point of law which we insist upon, and are ready to argue with them; but we will go on with the rest of those things that we have offered: and first, we will read the Act of Uniformity, made 1 Eliz. that clause of it where they are so strictly charged to see the execution of that law.

This act, my lord, by the Act of Uniformity, made in the beginning of the late king's reign, is revived, with all the clauses in it relating to this matter. If then this be a duty incumbent upon them, and their oaths require it of them; and if they find that the pleasure of the king, in his declaration, is that which is not consonant to this law, what can they do?

Can any thing be more humble, or done with a more Christian mind, than by way of petition, to inform the king in the matter? For I never thought it, nor hath it ever, sure, been thought by any body else, to be a crime to petition the king: for the king may be mistaken in the law, so our books say; and we, every day, in Westminster-hall, argue against the king's grants, and say, he is deceived in his grants. It is the great benefit and liberty which the king gives to his subjects, to argue the legality or illegality of his grants.

My lord, when all this is done, to make this to be a libel, by putting in the words malicious, seditious, scandalous, and with an intent to raise sedition, would be pretty hard. My lord, we pray that clause of the statute may be read.

*Sol. Gen.* What for?

*Mr. Pollexfen.* It is a general law, and therefore the court will take notice of it; and we pray the jury may hear it read.

*Sol. Gen.* I agree it to be as Mr. Pollexfen has opened; and I agree it to be as sir Robert Sawyer has opened it.

*Serj. Penberton.* My lord, we shall put it upon a short point. My lords the bishops are here accused of a crime of a very heinous nature as can be; they are here branded and stigmatized by this information, as if they were seditious libellers; when, my lord, it will in truth fall out, that they have done no more than their duty; their duty to God, their duty to the king, and their duty to the church.

For in this case, that which we humbly offer to your lordship (and insist upon it, as very very plain) is this; That the kings of England have no power to suspend or dispense with the laws and statutes of the kingdom, that establish religion: that is it which we stand upon for our defence. And we say, that such a dispensing power with laws and statutes, is a thing that strikes at the very foundation of all the rights, liberties, and properties of the king's subjects whatsoever. If the king may suspend the laws of the land which concern our religion, I am sure there is no other law but he may suspend: and if the king may suspend all the laws of the kingdom, what a condition are all the subjects in, for their lives, liberties, and properties? All at mercy.

My lord, the king's legal prerogatives are as

much for the advantage of his subjects as of himself; and no man goes about to speak against them: but, under pretence of legal prerogatives, to extend the power of the king to support a prerogative that tends to the destruction of all his subjects, their religion and liberties; in that, I think, they do the king no service, who go about to do it.

But now we say, with your lordship's favour, that these laws are the great bulwark of the reformed religion; they are, in truth, that which fence the religion and church of England, and we have no other human fence besides. They were made upon a foresight of the mischief that had, and might come, by false religions in this kingdom; and they were intended to defend the nation against them, and to keep them out; particularly to keep out the Romish religion, which is the very worst of all religions, from prevailing among us; and that is the very design of the act for the tests, which is intituled, 'An Act to prevent dangers that may happen from Popish Recusants.'

My lord, if this declaration should take effect, what would be the end of it? All religions are let in, let them be what they will; Ranters, Quakers, and the like; nay, even the Roman Catholic religion, as they call it, which was intended, by these acts of parliament, and by the Act of Uniformity, and several other acts, to be kept out of this nation, as a religion no way tolerable, nor to be endured here.

If this declaration takes effect, that religion will stand upon the same terms with the Protestant religion. Suspend those laws, and that Romish religion, that was intended to be prohibited, and so much care was taken, and so many statutes made to prohibit it, will come in; and all this care, and all those statutes go for nothing. This one declaration sets them all out of doors; and then that religion stands upon equal terms with the established religion.

My lord, we say this farther, that my lords the bishops have the care of the church, by their very function and offices; and are bound to take care to keep out all those false religions that are prohibited, and designed to be kept out by the law. My lords the bishops finding this declaration founded upon a mere pretended power, that had been continually opposed and rejected in parliament, could not comply with the king's command to read it.

My lord, such a power to dispense with or suspend the laws of a nation, cannot with any shadow of reason be. It is not long since, that such a power was ever pretended to by any, but such as have the legislative too; for it is plain, that such a power must at least be equal to the power that made the laws. To dispense with a law must argue a power greater, or at least as great as that which made the law.

My lord, it has been often said in our books, That where the king's subjects are concerned in interest, the king cannot suspend or dispense with a particular law. But, my lord, how can the king's subjects be more concerned in interest, than when their religion lies at stake?

It has been resolved, upon the statute of Simony, that where the statute has disabled the party to take, there the king could not enable him against that act of parliament: and shall it be said, that by his dispensation he shall enable one to hold an office who is disabled by the Test Act?

My lord, we say, the course of our law allows no such dispensation as the declaration pretends to: and he that is but meanly read in our law, must needs understand this, That the kings of England cannot suspend our laws; for that would be to set aside the law of the kingdom; and then we might be clearly without any laws, if the king should please to suspend them.

'Tis true, we say, the last king Charles was prevailed upon, by misinformation, to make a dispensation somewhat of the nature of this, though not so full an one; for that dispensed only with some few ceremonies, and things of that nature: but the House of Commons (this taking air) in 1662, represent this to the king by a petition. And what is it that they do represent? That he, by his dispensation, has undertaken to do that which nothing but an act of parliament can do; that is, the dispensing with penal laws, which is only to be done by act of parliament. And thereupon it was thought fit, upon the king's account, to bring in an act for it in some cases.

My lord, the king did then, in his Speech to the parliament, (which we use as a great argument against this dispensing power) say this, "That considering the circumstances of the nation, he could wish with all his heart, that he had such a power to dispense with some laws, in some particulars." And thereupon there was a bill, in order to an act of parliament, brought in, giving the king a power to dispense; but, my lord, with a great many qualifications: which shews plainly, that it was taken by the parliament, that he had no power to dispense with the laws of himself.

My lord, afterwards in 1672, the king was prevailed upon again to grant another dispensation somewhat larger——

*L. C. J.* Brother Pemberton, I would not interrupt you, but we have heard of this over and over again already.

*Serj. Pemberton.* Then since your lordship is satisfied of all these things, as I presume you are, else I should have gone on, I have done, my lord.

*Serj. Levinz.* But, my lord, we shall go a little higher than that, and shew that it has been taken all along as the antient law of England, that such dispensations ought to be by the king and the parliament, and not by the king alone.

*Sol. Gen.* My lord, if you will admit every one of the counsel to speech it before they give their evidence, when shall we come to an end of this cause? We shall be here till midnight.

*L. C. J.* They have no mind to have an end of the cause, for they have kept it three hours longer than they need to have done.

*Serj. Pemberton.* My lord, this case does require a great deal of patience.

*L. C. J.* It does so, brother; and the court has had a great deal of patience: but we must not sit here only to hear speeches.

*Att. Gen.* Now after all their speeches of two hours long, let them read any thing, if they have it.

*Sir R. Sawyer.* We will begin with the Record of Richard the 2nd—Call William Fisher.

*Wm. Fisher,* Clerk to Mr. Ince, sworn.

*L. C. J.* What do you ask him?

*Sir R. Sawyer.* Shew him that copy of the Record.—[The Record was then shewn him.]

*L. C. J.* Where had you those, Sir?

*Mr. Fisher.* Among the Records in the Tower.

*L. C. J.* Are they true copies?

*Fisher.* Yes, my lord.

*L. C. J.* Did you examine them by the Record?—*Fisher.* Yes, my lord.

*Sir R. Sawyer.* Then, hand them in; put them in.

*Clerk reads:* 'Ex Rotulo Parlamenti de Anno Regni Regis Richardi Secundi 15 N. 1.'—My lord, it is written in French, and I shall make but a bad reading of it.

*Sir S. Astry.* Where is the man that examined it?—Do you understand French?

*Fisher.* Yes, my lord.

*Sir R. Sawyer.* The Record is in another hand than this; they may easily read it.

*Sol. Gen.* Who copied this paper?

*Fisher.* I did examine it.

*Sol. Gen.* What did you examine it with?

*Fisher.* I looked upon that copy, and Mr. Halstead read the record.

*L. C. J.* Young man, read out.

*Fisher reads:* 'Vendredi Lendemain del Almes qu'estoit le premier jour.'—

*Sol. Gen.* Pray tell us what it is you would have read?

*Serj. Levinz.* I'll tell you what it is, Mr. Solicitor: it is the dispensation with the statute of provisors: and the act of parliament does give the king a power to dispense till such a time.

*Sol. Gen.* Don't you think the king's prerogative is affirmed by many acts of parliament?

*Serj. Levinz.* If the king could dispense without an act of parliament, what need was there for the making of it?

*Sol. Gen.* Mr. Serjeant, we are not to argue with you about that yet.

*L. C. J.* Read it in English for the jury to understand it.

*Fisher.* My lord, I cannot undertake to read it so readily in English.

*Just. Powell.* Why don't you produce the Records that are mentioned in the petition, those in king Charles the 2nd's time?

*Serj. Levinz.* We will produce our records in order of time, as they are.

*Sir Samuel Astry.* There is the clerk of the Records of the Tower, Mr. Halstead, will read it very well in French or English.

[Then Mr. Halstead was sworn to interpret the Record into English, according to the best of his skill and knowledge; but not reading very readily—a true copy of the Record in English follows, out of the rolls of parliament, in the 15th year of king Richard the second, No. 1.]

‘Friday, the morrow of All-Souls, which was the first day of this parliament, holden at Westminster, in the 15th year of the reign of our lord king Richard the 2nd, after the conquest, the reverend father in God the archbishop of York, primate and chancellor of England, by the king’s commandment, being present in parliament, pronounced and declared very nobly and wisely, the cause of the summons of this parliament, and said, first, That the king would, that holy church principally, and afterwards the lords spiritual and temporal, and also the cities and boroughs, should have and enjoy their liberties and franchises as well as they had them, and enjoyed them, in the time of his noble progenitors, kings of England; and also in his own time. And afterwards said, the summons of this parliament was principally for three occasions. The first occasion was, to ordain how the peace and quiet of the land, which have heretofore been greatly blemished and disturbed, as well by detraction and maintenance as otherwise, might be better holden and kept, and the laws better executed, and the king’s commands better obeyed. The second occasion was, to ordain and see how the price of wools, which is beyond measure lessened and impaired, might be better amended and enhanced. And also, that in case the war should begin again, at the end of the present truce, to wit, at the assumption of our lady next coming, to ordain and see, how and whereby the said war may be maintained at the least charge of the people. And the third occasion was, touching the statutes of provisors, to ordain and see how our holy father might have that which to him belongs, and the king that which belongs to him, and his crown; according unto that, Render unto Cæsar the things that are Cæsar’s, and unto God the things which are God’s.’

[Then the other Record of Richard the 2nd was read as follows, out of the rolls of parliament, the 15th year of king Richard the 2d, No. 8.]

‘Be it remembered, touching the statute of provisors, that the Commons, for the great confidence which they have in the person of our lord the king, and in his most excellent knowledge, and in the great tenderness which he hath for his crown, and the rights thereof; and also, in the noble and high discretions of the lords, have assented, in full parliament, that our said lord the king, by advice and assent of the said lords, may make such sufferance, touching the said statute, as shall seem to him reasonable and profitable, until the next

parliament, so as the said statute be not repealed in no article thereof; and that all those who have any benefices by force of the said statute, before this present parliament; and also, that all those to whom any aid, tranquillity, or advantage is accrued, by virtue of the said statute of the benefices of holy church (of which they were heretofore in possession) as well by presentation, or collation of our lord the king, as of the ordinaries, or religious persons whatsoever, or by any other manner or way whatsoever, may freely have and enjoy them, and peaceably continue their possession thereof, without being ousted thereof, or any ways challenged, hindered, molested, disquieted, or grieved hereafter, by any provisors or others against the form and effect of the statute aforesaid, by reason of the said sufferance in any time to come. And moreover, that the said Commons may disagree at the next parliament to this sufferance, and fully resort to the said statute, if it shall seem good to them to do it: with protestation, that this assent, which is a novelty, and has not been done before this time, be not drawn into example or consequence for time to come. And they prayed our lord the king, that the protestation might be entered of record in the roll of the parliament; and the king granted, and commanded to do it.’

Serj. *Levinz*. Now, my lord, we will go on—This was in Richard the second’s time: and a power is given by the Commons to the king, with the assent of the Lords, to dispense; but only to the next parliament, with a power reserved to the Commons; and to disagree to it, and retract that consent of theirs the next parliament.

Sir *George Treby*. The statute of provisors was and is a penal law, and concerning ecclesiastical matters too; viz. The collating and presenting to archbishopricks, bishopricks, benefices, and dignities of the church: and in this record now read, the parliament give the king a limited power, and for the short time, to dispense with that statute. But, to obviate all pretence of such a power’s being inherent in the crown, as a prerogative, they declare, (1.) That it was a novelty; that is as much as to say, that the king had no such power before. (2.) That it should not be drawn into example; that is to say, that he should have no such power for the future.

Serj. *Levinz*. Now we will go on to the records mentioned in the petition; those in the last king’s time, in 1662, and 1672; and that in this king’s time, in 1685.—Where is the Journal of the House of Lords?

Mr. *Walker* sworn.

*L. C. J.* Is that the book of the House of Lords?

Mr. *Walker*. It is the Journal of the House of Lords.

*L. C. J.* Is it kept by you?

Mr. *Walker*. Yes, my lord.

*L. C. J.* Where is it kept?

Mr. Walker. In the usual place, here in Westminster.

Sol. Gen. What is that?

Serj. Levinz. It is the Journal of the House of Lords.—But, my lord, there is one thing that is mentioned in the last record that was read, which is worth your lordship's and the jury's observation; that it is declared a novelty, and a protestation, that it should not be drawn into precedent for the future.

L. C. J. That has been observed, brother: let us hear your record read.

Clerk reads.—Die Mercurii, 18 die Februarii, 1662.

His majesty was present this day, sitting in the regal crown and robes, the peers being likewise in their robes: the king gave order to the gentleman usher of the Black Rod, to signify to the House of Commons his pleasure, that they presently come up, and attend his majesty, with their speaker; who being present, his majesty made this speech following.

My Lords and Gentlemen;

I am very glad to meet you here again, having thought the time long since we parted, and often wished you had been together, to help me in some occasions which have fallen out: I need not repeat them unto you, you have all had the noise of them in your several countries; and, God be thanked, they were but noise, without any worse effects.

To cure the distempers, and compose the differing minds that are yet amongst us, I set forth my declaration of the 26th of December. In which you may see, I am willing to set bounds to the hopes of some, and to the fears of others; of which when you shall have examined well the grounds, I doubt not but I shall have your concurrence therein. The truth is, I am in my nature an enemy to all severity for religion and conscience, how mistaken soever it be, when it extends to capital and sanguinary punishments; which I am told, were began in popish times. Therefore, when I say this, I hope I shall not need to warn any here, not to infer from thence that I mean to favour popery. I must confess to you, there are many of that profession, who, having served my father and myself very well, may fairly hope for some part in that indulgence I would willingly afford to others who dissent from us. But let me explain myself, lest some mistake me herein, as I heard they did in my declaration. I am far from meaning by this a toleration, or qualifying them thereby to hold any offices or places of trust in the government. Nay, further, I desire some laws may be made to hinder the growth and progress of their doctrine.

I hope you have all so good an opinion of my zeal for the Protestant religion, as I need not tell you, I will not yield to any therein, not to the bishops themselves, nor in my liking the uniformity of it, as it is now established;

which being the standard of our religion must be kept pure and uncorrupted, free from all other mixtures. And yet, if the dissenters will demean themselves peaceably and modestly under the government, I could heartily wish I had such a power of indulgence to use upon occasion.

Sir George Treby. Pray, Sir, read that distinctly.

Clerk reads.—I could heartily wish I had such a power of indulgence to use upon occasion, as might not needlessly force them out of the kingdom; or, staying here, give the cause to conspire against the peace of it.

My Lords and Gentlemen;

It would look like flattering in me, to tell you in what degree I am confident of your wisdom and affection in all things that relate to the greatness and prosperity of the kingdom. If you consider well what is best for us all, I dare say we shall not disagree. I have no more to say to you at present, but once again, to bid you heartily welcome.

Mr. Finch. The next thing we shall shew you is, that after the king had made this speech, and wished he had such a power of indulgence to use upon occasion, there was a Bill in the House of Lords brought in, to enable the king to dispense with several laws: I shall shew you the Journal, where it was read and committed; but further than that it we not.

L. C. J. What use do you make of this, Mr Finch?

Sir Robert Sawyer. You may easily apprehend the use we shall make of it. (The king in his speech, says, 'He wished he had such a power'); the House of Lords thought it had not; and therefore they ordered a Bill to be brought in, to enable him.—Read the Journal of the Lords of the 13th of March 1662.

Clerk reads. Die Veneris, 13 die Martii 1662.

After some debate, whether the House should be put into a grand committee, for the further debate of the Bill concerning his majesty's power in ecclesiastical affairs, it was put to the question; viz.

As many of your lordships as would have this House adjourned, and put into a committee to consider of the said Bill, say, Content; others, Not Content.

Passed in the affirmative.

And then the lord chamberlain of the household was directed to take the chair, as formerly; which he did accordingly.

And after debate, the House was resumed after the grand committee had appointed a sub-committee, touching the said Bill.

Sir Robert Sawyer. This is all in the Journal of the House of Lords about this matter.—We will now shew you the Bill itself.

Clerk reads. An Act concerning his majesty's power in ecclesiastical affairs.

Whereas divers of his majesty's subject

' through error of judgment, and misguided  
 ' consciences (whereunto the licentiousness of  
 ' these late unhappy times have much con-  
 ' tributed) do not conform themselves to the  
 ' order of divine worship and service esta-  
 ' blished by law; and though his majesty and  
 ' both houses of parliament are fully satisfied,  
 ' that those scruples of conscience, from  
 ' whence this non-conformity ariseth, are ill  
 ' grounded; and that the government of the  
 ' church, with the service thereof, (as now  
 ' established) is the best that is any where ex-  
 ' tant, and most effectual to the preservation of  
 ' the Protestant religion; yet hoping that cle-  
 ' mency and indulgence may, in time, wear  
 ' out those prejudices, and reduce the dis-  
 ' senters to the unity of the church; and con-  
 ' sidering that this indulgence, how necessary  
 ' soever, cannot be dispensed by any certain  
 ' rule, but must vary, according to the cir-  
 ' cumstances of time, and the temper and prin-  
 ' ciples of those to whom it is to be granted;  
 ' and his majesty being the best judge when,  
 ' and to whom this indulgence is to be dis-  
 ' pensed, or as may be most consistent with  
 ' the public peace, and without just cause of  
 ' offence to others; and to the end his majesty  
 ' may be enabled to exercise it with universal  
 ' satisfaction, Be it enacted by the king's most  
 ' excellent majesty, by advice, and with the  
 ' consent of the lords spiritual and temporal,  
 ' and commons, in this present parliament as-  
 ' sembled, and by the authority thereof, that  
 ' the king's majesty may, by letters patents  
 ' under the great seal, or by such other ways  
 ' as to his majesty shall seem meet, dispense  
 ' with one act, or law, made the last session  
 ' of this present parliament (intituled, An Act  
 ' for the Uniformity of public prayers, and ad-  
 ' ministration of the Sacraments, and other  
 ' rites and ceremonies; and for establishing  
 ' the form of making, and ordaining, and con-  
 ' secrating bishops, priests and deacons, in the  
 ' Church of England) and with any other  
 ' laws or statutes concerning the same; or re-  
 ' quiring oaths, or subscriptions; or which do  
 ' enjoin conformity to the order, discipline, and  
 ' worship established in this church, and the  
 ' penalties in the said laws imposed, or any of  
 ' them: and may grant licences to such of his  
 ' majesty's subjects of the Protestant religion,  
 ' of whose inoffensive and peaceable disposition  
 ' his majesty shall be persuaded, to enjoy and  
 ' use the exercise of their religion and worship,  
 ' though differing from the public rule (the said  
 ' laws and statutes, or any disabilities incapa-  
 ' cities, or penalties, in them, or any of them  
 ' contained, or any matter or thing to the con-  
 ' trary thereof notwithstanding.)

' Provided always, and be it enacted, That  
 ' no such indulgence, licence, or dispensation  
 ' hereby to be granted, shall extend, or be con-  
 ' strued to extend to the tolerating, or permit-  
 ' ting the use or exercise of the Popish, or  
 ' Roman Catholic religion in this kingdom;  
 ' nor to enable any person or persons to hold or  
 ' exercise any place or office of public trust

' within this kingdom; who, at the beginning  
 ' of this present parliament were, by the laws  
 ' and statutes of this realm, disenabled there-  
 ' unto; nor to exempt any person or persons  
 ' from such penalties as are by law to be in-  
 ' flicted upon such as shall publish or preach any  
 ' thing to the depravation or derogation of the  
 ' book of Common-Prayer, or the government,  
 ' order and ceremonies of the church established  
 ' by law.

' Provided also, and be it enacted, That no  
 ' such licence or dispensation shall extend to  
 ' make any priest or minister capable of any  
 ' ecclesiastical living or benefice, with cure,  
 ' who shall not, before the archbishop of the  
 ' province, or bishop of the diocese where he  
 ' lives, make such subscription to the articles  
 ' of religion, as is enjoined by the statute of the  
 ' 13th of Elizabeth, made for reformation of  
 ' disorders in the church; nor shall extend, or  
 ' be construed to extend to dispense with the  
 ' book of Common Prayer: but that the said  
 ' book shall be constantly read in all the cath-  
 'edral and collegiate churches, and in all the  
 ' parish churches, and public chapels.'

Sir Rob. Sawyer. Here your lordship sees  
 what the Lords did in this matter.—We shall  
 now shew you, out of the Commons Journal,  
 what they did concerning this speech of the  
 King—Shew the Journal of the 25th of Fe-  
 bruary, 1662.

Mr. Jodrell sworn.

L. C. J. Did you examine that, Mr. Jodrell?

Mr. Jodrell. It is the original book. [The  
 book delivered into the court.]

Clerk reads. 'Die Mercurii 25. die Fe-  
 bruarii, 15 Car. 2. Resolved, That it be  
 presented—'

Sir Rob. Sawyer. You must begin above  
 —'The House then took into debate—'

Clerk reads. 'The House then took into  
 debate the matter touching indulgence to  
 dissenters, from the act of uniformity.

'The question being put, that the present  
 debate be adjourned till to-morrow morning,  
 the House was divided; the Yeas went out.

'Sir John Goodrick, and sir William Lowther,  
 tellers for the Noes; with the Noes 161.

'Sir Richard Temple, and sir John Talbot,  
 tellers for the Yeas; with the Yeas 119.

'And so it passed in the negative.

'Resolved, &c. That it be presented to the  
 King's Majesty, as the humble advice of this  
 House, That no indulgence be granted to the  
 dissenters, from the act of uniformity—'

Sol. Gen. Does your lordship think it to be  
 evidence?

L. C. J. Let them read it, Mr. Solicitor,  
 that we may hear what it is.

Clerk reads on.

'Ordered, That a Committee be appointed to  
 collect and bring in the reasons of this House  
 for this vote, upon the present debate; to be  
 presented to his Majesty, and that the nomi-  
 nating of the Committee be adjourned till to-  
 morrow morning.'

Sir Rob. Sawyer. That's all.

Sol. Gen. Pray, if there be any thing more, read on; you shall not parcel out a record, and take and leave what you will.

Mr. Finch. Did not you parcel out our Petition?

Sol. Gen. Read on, if there be any thing about this matter.

Clerk. That is all.

Sir Rob. Sawyer. Turn to the 27th of February, 1662.

Clerk reads. 'Veneris, 27. Februarii, 15 Car. 2.

' Sir Hencage Finch reports from the Committee appointed to collect and bring in the reasons of the House for their vote of advice to the King's Majesty; and in the close of those reasons to add, That the House will assist his Majesty with their lives and fortunes: and to pen an address to his Majesty for that purpose, the several reasons and address agreed to by the Committee in writing, he read in his place, and did bring up, and deliver the same in at the clerk's table.

' The first paragraph was read, and upon the question agreed to.

' The second paragraph was read, and upon the question agreed to.

' The third was read, and upon the question agreed to.'

Sir Rob. Sawyer. Go over that, and go to the Address itself.

Clerk reads. 'May it please your most excellent Majesty; We your Majesty's most dutiful and loyal subjects, the knights, citizens, and burgesses of the House of Commons in parliament assembled, having with all fidelity and obedience considered of the several matters comprized in your Majesty's late gracious declaration of the 26th of December last, and your most gracious speech at the beginning of this present session, do in the first place for ourselves, and in the names of all the Commons of England, render unto your sacred Majesty the tribute of our most hearty thanks for that infinite grace and goodness wherewith your Majesty hath been pleased to publish your royal intention of adhering to your act of indemnity and oblivion, by a constant and religious observance of it; and our hearts are further enlarged in these returns of thanksgiving, when we consider your Majesty's most princely and heroic profession relying upon the affections of your people, and the abhorring all sorts of military and arbitrary rule; but above all, we can never enough remember, to the honour of your Majesty's piety, and our own unspeakable comfort, those solemn and most endearing invitations of your Majesty's subjects, to prepare laws to be presented to your Majesty against the growth and increase of Popery; and withal, to provide more laws against licentiousness and impiety, at the same time declaring your own resolutions for maintaining the act of uniformity: and it becomes us always to acknowledge and admire your

' Majesty's wisdom in this your declaration, whereby your Majesty is pleased to resolve not only by sumptuary laws, but by your own royal example of frugality, to restrain that excess in men's expences, which is grown so general and so exorbitant, and to direct our endeavours to find out fit and proper laws for the advancement of trade and commerce.

' After all this, we most humbly beseech your Majesty to believe, that it is with extreme unwillingness and reluctancy of heart, that we are brought to differ from any thing which your Majesty hath thought fit to propose; and though we do no ways doubt but that the unreasonable distempers of men's spirits, and the many mutinies and conspiracies which were carried on during the late intervals of parliament, did reasonably incline your Majesty to endeavour by your declaration to give some alloy to those ill humours, till the parliament assembled, and the hopes of an indulgence, if the parliament should consent to it; especially seeing the pretenders to this indulgence did seem to make some title to it by virtue of your Majesty's Declaration from Bredah: nevertheless, we your Majesty's most dutiful and loyal subjects, who are now returned to serve in parliament, from these several parts and places of your kingdom for which we are chosen, do humbly offer it to your Majesty's great wisdom, that it is in no sort adviseable that there be any indulgence to such persons who presume to dissent from the act of uniformity and religion established, for these reasons.

' We have considered the nature of your majesty's declaration from Bredah, and are humbly of opinion, That your majesty ought not to be pressed any further.

' Because it is not a promise in itself, but only a gracious declaration of your majesty's intentions to do what in you lay, and what a parliament should advise your majesty to do, and no such advice was ever given, or thought fit to be offered; nor could it be otherwise understood, because there were laws of uniformity then in being, which could not be dispensed with but by act of parliament.'

Sir R. Sawyer. This is all that we read this for; your lordship and the jury see what is here declared by the parliament, That the act of uniformity could not be dispensed with, without an act of parliament.

Next, my lord, we shall shew you what was done in the year 1672.—Read the king's speech the 5th of February, 1672.

[The Journals of the Lords House were delivered in.]

Clerk reads. 'Die Mercurij, 5 Februarij, 1672.

' My lords and gentlemen;

' I am glad to see you here this day. I would have called you sooner together, but that I was willing to ease you and the country, till there were an absolute necessity. Since you were last here, I have been

forced to a most important, necessary, and expensive war; and I make no doubt but you will give me suitable and effectual assistance to go through with it. I refer you to my declaration for the causes, and indeed the necessity of this war, and shall now only tell you, that I might have digested the indignities to my own person, rather than have brought it to this extremity, if the interest, as well as the honour of the whole kingdom had not been at stake; and if I had omitted this conjuncture, perhaps I had not again ever met with the like advantage.

You will find that the last supply that you gave me, did not answer expectation for the ends you gave it, the payments of my debts; therefore I must in the next place recommend them again to your special care.

Some few days before I declared the war, I put forth my declaration for indulgence to dissenters, and have hitherto found a good effect of it, by securing my peace at home, when I had war abroad: there is one part in it that has been subject to misconstructions, which is that concerning the papists, as if more liberty was granted to them than to other recusants, when 'tis plain there is less; for the others have public places allowed them, and I never intended that they should have any, but only have the freedom of their religion in their own houses, without any concurrence of others; and I could not grant them less than this, when I had extended so much more grace to others, most of them having been loyal, and in the service of me, and the king my father: and in the whole course of this indulgence I do not intend that it shall any way prejudice the church, but I will support its rights, and it in its full power.

Having said this, I shall take it very ill to receive contradiction in what I have done; and I will deal plainly with you, I am resolved to stick to my declaration.

There is one jealousy more which is maliciously spread abroad, and yet so weak and frivolous, that I once thought it not of moment enough to mention; but it may have gotten some ground with some well-minded people, and that is, that the forces which I have raised in this war were designed to controul law and property. I wish I had had more forces the last summer; the want of them then, convinces me, I must raise more against this next spring; and I do not doubt but you will consider the charge of them in your supplies.

I will conclude with this assurance to you, That I will preserve the true reformed protestant religion, and the church, as it is now established in this kingdom, and that no man's property or liberty shall ever be invaded. I leave the rest to the chancellor.

Sej. Pemberton. Now go to the Journal of the Commons of the 14th of February, 1672.

[The Journal put in.]

Clerk reads. Veneris 13, die Februarij, 1672.

Mr. Powle reports from the committee appointed to prepare and draw up a petition and address to his majesty, the said petition and address, which he read in his place, and afterwards delivered the same in at the clerk's table, and the same being again twice read, is as followeth, viz.

Most gracious sovereign;

We your majesty's most loyal and faithful subjects, the commons assembled in parliament, do in the first place, as in all duty bound, return your majesty our most humble and hearty thanks for the many gracious promises and assurances which your majesty has several times, during this present parliament, given to us, that your majesty would secure and maintain unto us the true reformed protestant religion, our liberties and properties; which most gracious assurances your majesty, out of your great goodness, has been pleased to renew unto us, more particularly at the opening of this present session of parliament.

And further, we crave leave humbly to represent, that we have, with all duty and expedition, taken into consideration the several parts of your majesty's last speech to us; and withal, the declaration therein mentioned for indulgence to dissenters, dated the 15th of March last: and we find ourselves bound in duty to inform your majesty, that penal statutes, in matters ecclesiastical, cannot be suspended but by act of parliament.

We therefore, the knights, citizens, and burgesses of your majesty's house of commons, do most humbly beseech your majesty, That the said laws may have their free course, until it shall be otherwise provided for by act of parliament: and that your majesty would graciously be pleased to give such directions herein, that no apprehensions or jealousies may remain in the hearts of your majesty's good and faithful subjects.

Resolved, &c.

That this house doth agree with the committee in the petition and address by them drawn up to be presented to his majesty.

Sir R. Sawyer. Now turn to the 24th of February, 1672, in the same book.

Clerk reads. Lunæ, 24 Februarij, 1672.

Mr. Secretary Coventry reports and presents in writing from his majesty, his Answer to the humble Petition and Address of this House, which was thrice read, and the matter debated, and is as followeth; viz.

CHARLES R.

His majesty hath received an address from you, and he hath seriously considered of it, and returns you this answer, That he is very much troubled, that that declaration which he put out for ends so necessary for the quiet of his kingdom, and especially in that conjuncture, should have proved the cause of disquiet in his House of Commons,

‘ and give occasion to the questioning of his  
 ‘ power in ecclesiastics, which he finds not done  
 ‘ in the reigns of any of his ancestors. He is  
 ‘ sure he never had thoughts of using it other-  
 ‘ wise than as it hath been entrusted in him, to  
 ‘ the peace and establishment of the Church  
 ‘ of England, and the ease of all his subjects in  
 ‘ general; neither does he pretend to the right  
 ‘ of suspending any laws, wherein the prop-  
 ‘ erties, rights, or liberties of any of his sub-  
 ‘ jects are concerned, nor to alter any thing in  
 ‘ the established doctrine or discipline of the  
 ‘ Church of England. But his only design in  
 ‘ this, was to take off the penalties the statutes  
 ‘ inflicted upon dissenters, which he believes,  
 ‘ when well considered of, you yourselves  
 ‘ would not wish executed according to the ri-  
 ‘ gor and letter of the law; neither hath he  
 ‘ done this with any thought of avoiding or  
 ‘ precluding the advice of his parliament; and  
 ‘ if any bill shall be offered, which shall appear  
 ‘ more proper to attain the aforesaid ends, and  
 ‘ secure the peace of the church and kingdom,  
 ‘ when tendered in due manner to him, he will  
 ‘ shew how readily he will concur in all ways  
 ‘ that shall appear good for the kingdom.’

Sir R. Sawyer. Turn to the 26th of February,  
 1672.

Clerk reads. ‘ Die Mercurii, 26 Feb. 1672.

‘ Mr. Powle reports from the committee ap-  
 ‘ pointed to consider of an answer to return to  
 ‘ his majesty’s last message upon the debate of  
 ‘ the House, an answer agreed by the com-  
 ‘ mittee, and drawn up, and put into writing,  
 ‘ which he read in his place, and then delivered  
 ‘ the same in at the clerk’s table, where it was  
 ‘ twice read, and is as followeth; viz.

‘ Most gracious Sovereign;

‘ We your majesty’s most humble and loyal  
 ‘ subjects, the knights, citizens, and burgesses  
 ‘ in this present parliament assembled, do ren-  
 ‘ der to your most sacred majesty our most du-  
 ‘ tiful thanks, for that, to our unspeakable com-  
 ‘ fort, your majesty has been pleased so often  
 ‘ to reiterate unto us those gracious promises  
 ‘ and assurances of maintaining the religion  
 ‘ now established, and the liberties and prop-  
 ‘ erties of your people; and we do not in the  
 ‘ least measure doubt but that your majesty  
 ‘ had the same gracious intention in giving  
 ‘ satisfaction to your subjects, by your answer  
 ‘ to our last petition and address: yet, upon a  
 ‘ serious consideration thereof, we find that  
 ‘ the said answer is not sufficient to clear the  
 ‘ apprehensions that may justly remain in the  
 ‘ minds of your people, by your majesty’s hav-  
 ‘ ing claimed a power to suspend penal statutes  
 ‘ in matters ecclesiastical, and which your ma-  
 ‘ jesty does still seem to assert, in the said an-  
 ‘ swer, to be entrusted in the crown, and never  
 ‘ questioned in the reigns of any of your an-  
 ‘ cestors: wherein we humbly conceive your  
 ‘ majesty has been very much misinformed;  
 ‘ since no such power ever was claimed or ex-  
 ‘ ercised by any of your majesty’s predecessors;  
 ‘ and if it should be admitted, might tend to the  
 ‘ interrupting the free course of the laws, and

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‘ altering the legislative power, which hath al-  
 ‘ ways been acknowledged to reside in your  
 ‘ two houses of parliament.

‘ We therefore, with an unanimous consent,  
 ‘ become again most humble suitors unto your  
 ‘ sacred majesty, That you would be pleased  
 ‘ to give us a full and satisfactory answer to  
 ‘ our said petition and address, and that your  
 ‘ majesty would take such effectual order, that  
 ‘ the proceedings in this matter may not for  
 ‘ the future be drawn into consequence or ex-  
 ‘ ample.

‘ The answer to his majesty’s message was  
 ‘ again read by paragraphs, and the several pa-  
 ‘ ragraphs to the last were, upon the question,  
 ‘ severally agreed.

‘ The last paragraph being read, and the  
 ‘ question being put, that the word ‘unanimous’  
 ‘ should stand in the paragraph,

‘ The House divided:—The Noes go out.

‘ Tellers. Lord St. John and Mr. Vaughan,  
 ‘ for the Yeas, 180.

‘ Sir Richard Temple and sir Philip Howard,  
 ‘ for the Noes, 77. And so it was resolved in  
 ‘ the affirmative.

‘ The question being put to agree to the pa-  
 ‘ ragraph, it was resolved in the affirmative.

‘ Resolved, &c.

‘ That the whole Address be agreed to, as it  
 ‘ was brought in by the committee.’

Sir Robert Sawyer. Now turn to the Lords’  
 Journal, and there your lordship will see, that  
 the king does communicate this Address to the  
 Lords, and desires their advice. Read the 1st  
 of March, 1672.

Clerk reads. ‘ Die Sabbati primo die Martii,  
 1672.

‘ His Majesty this day made a short speech,  
 ‘ as follows:

‘ My Lords;

‘ You know, that at the opening of this ses-  
 ‘ sion, I spoke here to your satisfaction; it has  
 ‘ notwithstanding begotten a greater disquiet in  
 ‘ the House of Commons than I could have  
 ‘ imagined.

‘ I received an address from them, which I  
 ‘ looked not for, and I made them an answer  
 ‘ that ought to have contented them; but on the  
 ‘ contrary, they have made me a reply of such  
 ‘ a nature, that I cannot think fit to proceed  
 ‘ any further in this matter without your advice.

‘ I have commanded the Chancellor to ac-  
 ‘ quaint you with all the transactions, wherein  
 ‘ you will find both me and yourselves highly  
 ‘ concerned. I am sensible for what relates to  
 ‘ me, and I assure you, my Lords, I am not  
 ‘ less so for the privilege and the honour of  
 ‘ this House.

‘ Afterwards the Lord Chancellor read the  
 ‘ several papers and addresses of the House of  
 ‘ Commons, and his Majesty’s answer there-  
 ‘ unto, and opened his Majesty’s proceedings  
 ‘ upon them.’

The Address of the House of Commons was  
 read.

Sir Rob. Sawyer. Pass over that, you have  
 read it already.

Clerk reads. 'The next, his Majesty's Answer to the Address of the House of Commons, was read as follows,'

Sir Rob. Sawyer. That hath been read too.

Clerk reads. 'Then was read the reply of the House of Commons to his Majesty's Answer, as followeth,'

Mr. Finch. You have read that likewise.

Clerk reads. 'Upon this it is ordered, that the Lord Treasurer, duke of Buckingham, earl of Bridgewater, earl of Northampton, earl of Bristol, earl of Berks, earl of Bolingbroke, and the earl of Anglesey, do forthwith withdraw, and consider what humble thanks is fit to be given to his Majesty for his great favour in communicating this business to this House, and report the same. And accordingly, the said Lords Committees did withdraw themselves for that purpose.

'The Lords being returned, the duke of Buckingham reported what the Committee had prepared to present to his Majesty by way of thanks, which was read as followeth.

'We the Lords spiritual and temporal in parliament assembled, do unanimously present to your sacred Majesty our most humble thanks, for having been pleased to communicate to us what has passed between your Majesty and the House of Commons, whereby you have graciously offered us the means of shewing our duty to your Majesty, and of asserting the antient just rights and privileges of the House of Peers.

'The question being put, whether to agree with the Committee?

'It was resolved in the affirmative.

'Ordered, That his Majesty be desired, that his speech, and the papers read this day, may be entered into the Journal-book of this House.

'The lord treasurer, the duke of Buckingham, and the lord Chamberlain, are appointed to attend his Majesty presently, to know his pleasure, what time and place this whole House shall wait upon him, to present the humble thanks of this House for his great favour shewed this day.

'Ordered, That upon Monday morning next, this House will debate the whole matter of his Majesty's speech, and these papers; and to consider the points of privilege, and what else may arise thereupon.

'The lords that were appointed to attend his Majesty, return with this answer.

'That his Majesty has appointed this afternoon at five of the clock, for this House to wait upon him in the banquetting house, at Whitehall.

'Ordered, That all the judges now in town, shall attend this House on Monday morning next.'

Sir Rob. Sawyer. The third of March, 1672, is the next.

Clerk reads. 'Die Lunæ 3 die Martii, 1672.

'The Lord Chancellor reported, that the whole House on Saturday last waited upon

'his Majesty at Whitehall, and presented the humble Address of this House, and his Majesty was pleased to return this Answer.

'My Lords;

'I take this Address of your's very kindly; I will always be very affectionate to you, and expect you should stand by me, as I will always be by you.

'Then the House took into consideration the whole matter of his Majesty's speech on Saturday, and the three papers which his Majesty acquainted this House withal, and all the said papers in their order were read, and after a long debate, the question being put,

'Whether this House shall in the first place enter into consideration of giving advice to his Majesty?—It was resolved in the affirmative.

'It is ordered, that this business shall be taken into consideration to-morrow morning, at nine of the clock, the first business.

'Ordered, That the judges now in town, shall attend to-morrow morning.'

Sir Rob. Sawyer. The 4th of March, 1672.

Clerk reads. 'Next, the House took into consideration the advice to be given to his Majesty, concerning the Addresses made to him from the House of Commons.

'The Address of the House of Commons, and his Majesty's Answer were read, and after a long debate, the question being put, whether the King's Answer to the House of Commons, in referring the points now controverted to a parliamentary way by Bill, is good and gracious, that being a proper and natural course for satisfaction therein?

It was resolved in the affirmative.

Sir Rob. Sawyer. The 8th of March, 1672.

Clerk reads. 'Die Sabbati 8 die Martij, 1672.

'His Majesty on his royal throne, adorned with his crown and regal ornaments, commanded the gentleman usher of the black-rod to give notice to the House of Commons, that they attend his Majesty presently.

'The Commons being come with their speaker, his Majesty made this short speech following.

'My Lords and Gentlemen;

'Yesterday you presented me an address, as the best means for the satisfying and composing the minds of my subjects, to which I freely and readily agreed, and I shall take care to see it performed accordingly.

'I hope, on the other side, you gentlemen of the House of Commons will do your part; for I must put you in mind, it is near five weeks since I demanded a supply, and what you voted unanimously upon it, did both give life to my affairs at home, and dishearten mine enemies abroad; but the seeming delay it hath met withal since, hath made them to take new courage, and they are now preparing for this next summer a greater fleet, as they say, than ever they have had yet; so that if the supply be not very speedily dispatch'd, it will be altogether ineffectual, and the safety,

‘honour and interest of England must of necessity be exposed. Pray lay this to heart, and let not the fears and jealousies of some draw an inevitable ruin upon us all.

‘My Lords and Gentlemen;

‘If there be any scruple remaining with you concerning the suspension of penal laws, I here faithfully promise you, that what has been done in that particular, shall not for the future be drawn either into consequence or example. And as I daily expect from you a bill for my supply, so I assure you, I shall as willingly pass any other you shall offer me that may tend to the giving you satisfaction in all your just grievances.

‘Next my Lord Chancellor reported, That both Houses waited upon the King yesterday, and presented him with the Address against the growth of Popery, and his Majesty hath been pleased to return this answer.

‘My Lords and Gentlemen;

‘I do heartily agree with you in your Address, and shall give speedy order to have it put in execution. There is one part to which I believe it is not your intention that it should extend; for I can scarce say, those are in my pay that are presently to be employed abroad; but as for all other parts, I shall take care it shall be done as you desire.’

After which the Lord Chancellor said, he had somewhat more to impart to the House by the King’s command, which was,

‘That his Majesty last night, having spoken with several members of both Houses, found some dissatisfaction remaining concerning his answer to their address, in the particular of the officers to be employed abroad, of which number he had five or six that were of the best officers of France and Flanders, and being his own subjects, he had been very solicitous to get; but if that bred any umbrage, the king commanded him to let them know, that he resolves to give both his Houses full satisfaction to their desires.

‘There was another particular that the Lord Chancellor said he thought fit to acquaint them with, which, though it was by his Majesty’s leave, yet it was not by his command: however, he thought it his duty to acquaint the House with it (Mr. Secretary Coventry intending to acquaint the House of Commons with the same), That his Majesty had the last night, in pursuance of what he then intended, and declared this morning, concerning the suspension of Penal Laws not being for the future drawn either into consequence or example, caused the original declaration under the Great-Seal to be cancelled in his presence, whereof himself and several other lords of the council were witnesses.’

Sir Robert Sawyer. Turn to the 10th of March, 1672.

Clerk reads. ‘Die Lunæ decimo die Martij, 1672.

‘Ordered, That what my Lord Chancellor said on Saturday last, concerning his Majes-

ty’s causing the vacating his indulgence under the Great-Seal of England, shall be entered into the Journal-Book of this House, as on Saturday last.’

Sir Rob. Sawyer. We shall now come to that which passed in the parliament in 1685—Read the 9th of November, 1685. [The Journal of the Lords, 1685, put in.]

Clerk reads. ‘His Majesty being on his royal throne adorned with his regal robes and crown (the Lords being in their robes also) commanded the gentleman-usher to give notice to the House of Commons that they immediately attend his Majesty; who being come, his Majesty made the following speech.

‘My Lords and Gentlemen;

‘After the storm that seemed to be coming upon us when we parted last, I am glad to meet you all again in so great peace and quietness; God Almighty be praised, by whose blessing that rebellion was suppressed; but when I reflect what an inconsiderable number of men began it, and how long they carried it on without any opposition, I hope every body will be convinced that the militia, which hath hitherto been so much depended upon, is not sufficient for such occasions, and that there is nothing but a good force of well-disciplined troops in constant pay that can defend us from such as either at home or abroad are disposed to disturb us.

‘And in truth, my concern for the peace and quiet of my subjects, as well as for the safety of the government, make me think it necessary to increase the number to the proportion I have done. This I owed as well to the honour as to the security of the nation, whose reputation was so infinitely exposed unto all our neighbours, by having lain open to this late wretched attempt, that it is not to be repaired without keeping such a body of men on foot, that none may ever have the thoughts again of finding us so miserably unprovided.

‘It is for the support of this great charge, which is now more than double to what it was, that I ask your assistance, in giving me a supply answerable to the expence it brings along with it: and I cannot doubt, but what I have begun so much for the honour and defence of the government, will be continued by you with all the cheerfulness and readiness that is requisite for a work of so great importance.

‘Let no man take exceptions that there are some officers in the army not qualified according to the late tests for their employments; the gentlemen, I must tell you, are most of them well known to me; and having formerly served with me on several occasions, and always approved the loyalty of their principles by their practices, I think them fit now to be employed under me; and will deal plainly with you, that after having had the benefit of their services in such time of need and danger, I will neither expose them to disgrace, nor myself to the want of them, if there should

‘be another rebellion to make them necessary  
‘to me.

‘I am afraid some men may be so wicked to  
‘hope and expect that a difference may hap-  
‘pen between you and me upon this occasion ;  
‘but when you consider what advantages have  
‘risen to us in a few months by the good under-  
‘standing we have hitherto had, what wonder-  
‘ful effects it has already produced in the  
‘change of the whole scene of affairs abroad,  
‘so much more to the honour of the nation, and  
‘the figure it ought to make in the world, and  
‘that nothing can hinder a further progress in  
‘this way, to all our satisfactions, but fears and  
‘jealousies amongst ourselves ; I will not ap-  
‘prehend that such a misfortune can befall us as  
‘a division, or but a coldness between me and  
‘you ; nor that any thing can shake you in  
‘your steadiness and loyalty to me, who, by  
‘God’s blessing, will ever make you all returns  
‘of kindness and protection, with a resolution  
‘to venture even my own life in the defence of  
‘the true interest of this kingdom.’

Sir R. Sawyer. Turn to the Commons  
Journal, the 16th of Nov. 1685. [The Journal  
of the House of Commons put in.]

Clerk reads. ‘Die Lance, 16 die Novemb.  
‘1685.

‘Most gracious Sovereign ;

‘We your majesty’s most loyal and faithful  
‘subjects, the Commons in parliament assem-  
‘bled, do in the first place (as in duty bound)  
‘return your majesty our most humble and  
‘hearty thanks for your great care and con-  
‘duct in the suppression of the late rebellion,  
‘which threatened the overthrow of this go-  
‘vernement both in church and state, and the  
‘uttermost extirpation of our religion by law  
‘established, which is most dear unto us, and  
‘which your majesty has been pleased to give  
‘us repeated assurances you will always de-  
‘fend and support, which with all grateful  
‘hearts we shall ever acknowledge.

‘We further crave leave to acquaint your  
‘majesty, That we have with all duty and rea-  
‘diness taken into our consideration your ma-  
‘jesty’s gracious speech to us ; and as to that  
‘part of it relating to the officers in the army  
‘not qualified for their employment according  
‘to an act of parliament made in the 25th  
‘year of the reign of your majesty’s royal  
‘brother of blessed memory, entitled, An Act  
‘for preventing dangers that may happen by  
‘Popish recusants, We do, out of our bounden  
‘duty, humbly represent unto your majesty,  
‘That those officers cannot by law be capable  
‘of their employments, and that the incapa-  
‘cities they bring upon themselves thereby,  
‘can no ways be taken off but by act of par-  
‘liament.

‘Therefore, out of the great deference and  
‘duty we owe unto your majesty (who has  
‘been graciously pleased to take notice of  
‘their services to you), we are preparing a Bill  
‘to pass both houses for your royal assent, to  
‘indemnify them from the penalties they have  
‘now incurred ; and because the continuance

‘of them in their employments may be taken  
‘to be dispensing with that law without act of  
‘parliament, the consequence of which is of  
‘the greatest concern to the rights of all your  
‘majesty’s dutiful and loyal subjects, and to  
‘all the laws made for the security of their  
‘religion :

‘We therefore, the knights, citizens, and  
‘burgesses of your majesty’s House of Com-  
‘mons, do most humbly beseech your majesty,  
‘that you would be graciously pleased to give  
‘such directions therein, that no apprehensions  
‘or jealousies may remain in the hearts of  
‘your majesty’s good and faithful subjects.’

Mr. Pollexfen. My lord, we pray that these  
half dozen lines of the statute 1 Eliz. may be  
read. [A Statute-Book was then produced by  
Mr. Ince.]

L. C. J. We will have it read out of our  
own book. [Which was delivered into court.]

Clerk reads. ‘This is 1 Eliz. cap. 2. An Act  
‘for uniformity of religion, &c. Whereabout  
‘is it?’

Mr. Ince. It is the 15th paragraph, at these  
words—And for due execution, &c.

Clerk reads. ‘And for due execution hereof,  
‘the queen’s most excellent majesty, the lords  
‘spiritual and temporal in this parliament as-  
‘sembled, do in God’s name earnestly require  
‘and charge all the archbishops and bishops,  
‘and other ordinaries, and they shall endea-  
‘vor themselves, to the utmost of their know-  
‘ledge, that the due and true execution hereof  
‘may be had throughout their dioceses and  
‘charges, as they will answer before God for  
‘such evils and plagues, wherewith Almighty  
‘God may justly punish his people for neg-  
‘lecting this good and wholesome law.’

Sej. Levinz. Now, my lord, if your lord-  
ship pleases, the charge is a charge for a libel,  
and there are two things to be considered.

First, Whether the bishops did deliver this  
paper to the king? But that we leave upon the  
evidence that has been given; only we say,  
there has been no direct proof of that.

In the next place, supposing they did deliver  
this petition to the king, Whether this be a  
libel upon the matter of it, the manner of deli-  
vering it, or the persons that did it?

And with submission, my lord, this cannot  
be a libel, although it be true that they did so  
deliver it.

First, my lord, there is little disingenuity  
offered to my lords the bishops, in only setting  
forth part, and not the whole ; in only reciting  
the body, and not the prayer.

But, my lord, with your lordship’s favour,  
taking the petitionary part, and adding it to  
the other, it quite alters the nature of the  
thing ; for it may be, a complaint without  
seeking redress might be an ill matter ; but  
here taking the whole together, it appears to  
be a complaint of a grievance, and a desire to  
be eased of it.

With your lordship’s favour, the subjects  
have a right to petition the king in all their  
grievances, so say all our books of law, and so

says the statute of the thirteenth of the late king; they may petition, and come and deliver their petition under the number of ten, as heretofore they might have done, says the statute; so that they all times have had a right so to do, and indeed if they had not, it were the most lamentable thing in the world, that men must have grievances upon them, and yet they not to be admitted to seek relief in an humble way.

Now, my lord, this is a petition setting forth a grievance, and praying his majesty to give relief. And what is this grievance? It is that command of his, by that order made upon my lords the bishops, to distribute the declaration, and cause it to be read in the churches: and pray, my lord, let us consider what the effects and consequences of that distribution and reading is: it is to tell the people, that they need not submit to the Act of Uniformity, nor to any act of parliament made about ecclesiastical matters, for they are suspended and dispensed with. This my lords the bishops must do, if they obey this order; but your lordship sees, if they do it, they lie under an Anathema by the statute of 1 Eliz. for there they are under a curse if they do not look to the preservation and observation of that act: but this command to distribute and read the declaration, whereby all these laws are dispensed with, is to let the people know, they will not do what the act requires of them.

Now, with your lordship's favour, my lords the bishops lying under this pressure, the weight of which was very grievous upon them, they by petition apply to the king to be eased of it, which they might do as subjects: besides, my lord, they are peers of the realm, and were most of them sitting as such in the last parliament, where, as you have heard, it was declared, such a dispensation could not be; and then in what a case should they have been, if they should have distributed this declaration, which was so contrary to their own actings in parliament? What could they have answered for themselves, had they thus contributed to this declaration, when they had themselves before declared, that the king could not dispense?

And that this was no new thing, for it had been so declared in a parliament before, in two sessions of it, in the late king's reign, within a very little time one of another; and such a parliament that were so liberal in their aids to the crown, that a man would not think they should go about to deprive the crown of any of its rights. It was a parliament that did do as great services for the crown as ever any did; and therefore there is no reason to suspect, that if the king had had such a power, they would have appeared so earnest against it.

But, my lord, if your lordship pleases, these are not the beginnings of this matter; for we have shewed you from the fifteenth of Richard the second, that there was a power granted by the parliament to the king to dispense with a particular act of parliament, which argues, that it could not be without an act of parlia-

ment: and in 1662, it is said expressly, that they could not be dispensed with but by an act of parliament. It is said so again in 1672. The king was then pleased to assume to himself such a power as is pretended to in this declaration; yet upon information from his houses of parliament, the king declared himself satisfied that he had no such power, cancelled his declaration, and promised that it should not be drawn into consequence or example. And so the Commons, by their protestation, said in Richard the second's time, that it was a novelty, and should not be drawn into consequence or example.

Now, my lord, if your lordship pleases, if this matter that was commanded the bishops to do, were something which the law did not allow of, surely then my lords the bishops had all the reason in the world to apply themselves to the king, in an humble manner to acquaint him why they could not obey his commands; and to seek relief against that which lay so heavy upon them.

Truly, my lord, Mr. Attorney was very right in the opening of the cause at first, that is, That the government ought not to receive affronts, no, nor the inferior officers are not to be affronted; a justice of the peace, so low a man in office, is not. For a man to say to a justice of peace, when he is executing his office, that he does not right in it, is a great crime, and Mr. Attorney said right in it: but suppose a justice of peace were making of a warrant to a constable, to do something that was not legal for him to do, if the constable should petition this justice of the peace, and therein set forth, Sir, you are about to command me to do a thing which, I conceive, is not legal; surely that would not be a crime that he was to be punished for: for he does but seek relief, and shew his grievance in a proper way, and the distress he is under.

My lord, this is the bishops' case, with submission; they are under a distress, being commanded to do a thing which they take not to be legal, and they with all humility, by way of petition, acquaint the king with this distress of theirs, and pray him, that he will please to give relief.

My lord, there is no law but is either an act of parliament, or the common law; for an act of parliament there is none for such a power; all that we have of it in parliamentary proceedings, is against it; and for the common law, so far as I have read it, I never did meet with any thing of such a nature, as a grant or dispensation that pretended to dispense with any one whole act of parliament; I have not so much as heard of any such thing mentioned by any of the king's counsel; but here, my lord, is a dispensation that dispenses with a great many laws at once, truly I cannot take upon me to tell how many, there may be forty or above, for aught I know.

Therefore, my lord, the bishops lying under such a grievance as this, and under such a pressure, being ordered to distribute this de-

claration in all their churches, which was to tell the people they ought to be under no law in this case, which surely was a very great pressure, both in point of law and conscience too, they lying under such obligations to the contrary, as they did; with submission to your lordship, and you gentlemen of the jury, if they did deliver this petition (publishing of it I will not talk of, for there has been no proof of a publication, but a delivering of a petition to his majesty in the most secret and decent manner that could be imagined), my lords the bishops are not guilty of the matter charged upon them in this information. It has been expressly proved, that they did not go to disperse it abroad, but only delivered it to the king himself: and, in short, my lord, if this should be a libel, I know not how sad the condition of us all would be, if we may not petition when we suffer.

Mr. Finch. My lord, I challenge them to shew us any one instance of such a declaration, such a general dispensation of laws, from the conquest till 1672. The first umbrage of such a thing is that of Car. 2, 1662; but your lordship hears the declaration of the parliament upon it. Before that, as there was no such thing, so your lordship sees what the parliament did to enable the king (not to do this thing, but something like it) in Richard the second's time, where you see the parliament did give the king a power to dispense with the statute of provisors for a time; but at the same time declared that very grant of their own to be a novelty, and that it should not be drawn into consequence or example.

My lord, we shall leave it upon this point; to suspend law is all one as to abrogate laws; for so long as a law is suspended, whether the suspension be temporary, or whether it be for ever; whether it be at once, or at several times, the law is abrogated to all intents and purposes: but the abrogation of laws is part of the legislature, that legislative power is lodged (as I said before, and I could never find it otherwise in all our law) in Kings, Lord, and Commons.

L. C. J. You did open that before, Mr. Finch.

Mr. Finch. With this, my lord, that my lords the bishops finding this order made upon them to publish this declaration, did what in duty they were bound to do; and unless the jury do find, that they have done that which is contrary to law, and to the duty of their places, and that this petition is a libel and a seditious libel, with an intent to stir up sedition among the people (we rely upon it), my lords the bishops can never be found guilty upon this information.

L. C. J. Have you now done, gentlemen?

Mr. Finch. Yes, my lord, till they give us further occasion: if they have any other evidence to offer, we must answer it; if not, this is the answer we give to what they have said.

Sol. Gen. We make no bargain with you: if you have done, say so.

L. C. J. You must know, that you are not to have the last word.

Sol. Gen. You have been three hours already, if you have any more to say, pray conclude.

Mr. Finch. If they say they have no more evidence, then we know what we have to do.

L. C. J. If you do say any thing more, pray let me advise you one thing; don't say the same thing over and over again; for after so much time spent, it is irksome to all company as well as to me.

Mr. Finch. My lord, we have no more evidence to offer to your lordship at present, unless they, by offering new evidence, give us occasion to reply upon them.

L. C. J. Gentlemen, you shall have all the legal favour and advantage that can be; but pray let us keep to an orderly decent method of proceeding:

Sir R. Sawyer. Pray, my lord, favour me a word before we conclude. My lord, I do find very few attempts of this nature in any king's reign. In the reign of Henry the 4th, there was an act of parliament that foreigners should have a free trade in the city of London, notwithstanding the franchises of London: after the parliament rose, the king issued out his proclamation, forbidding the execution of that law, and commanding that it should be in suspense, 'usque ad proximum Parliamentum;' yet that was to be held against law.

L. C. J. Sir Robert Sawyer, that which you are to look to, is the publishing of this paper, and whether it be a libel or no. And as to the business of the parliament you mentioned, that is not to the purpose.

Sir R. Sawyer. My lord, I say, I would put it where the question truly lies; if they don't dispute the point, then we need not labour it; but I don't know whether they will or no, and therefore I beg your lordship's favour to mention one case more, and that is upon the statute of 31 Hen. 8. cap. 8. which enables the king by proclamation, in many cases, to create the law; which statute was repealed by 1 Edw. 6. cap. 12. That very act does recite, that the law is not to be altered, or restrained, but by act of parliament; and therefore the parliament enables the king to do so and so: but that was such a power, that the parliament thought not fit to continue, and it was afterwards repealed; but it shews, that at that time the parliament was of the same opinion, as to this matter, that other parliaments have been since.

Mr. Sommers. My lord, I would only mention the great case of Thomas and Sorrel in the Exchequer-chamber, upon the validity of a dispensation of the statute of Edward the 6th, touching selling of wine. There it was the opinion of every one of the judges, and they did lay it down as a settled position, that there never could be an abrogation, or a suspension (which is a temporary abrogation) of an act of parliament, but by the legislative power. That was a foundation laid down quite through the debate of that case. Indeed it was disputed,

how far the king might dispense with the penalties in such a particular law, as to particular persons; but it was agreed by all, that the king had no power to suspend any law: and, my lord, I dare appeal to Mr. Attorney General himself, whether, in the case of Godden and Hales, which was lately in this court, to make good that dispensation, he did not use it as an argument then, that it could not be expounded into a suspension: he admitted it not to be in the king's power to suspend a law, but that he might give a dispensation to a particular person, was all that he took upon to justify him at that time.

My lord, by the law of all civilized nations, if the prince does require something to be done, which the person who is to do it takes it to be unlawful, it is not only lawful, but his duty, *rescribere principi*. This is all that is done here, and that in the most humble manner that could be thought of. Your lordship will please to observe how far it went, how careful they were that they might not any way justly offend the king; they did not interpose by giving advice, as peers; they never stirred till it was brought home to themselves. When they made their petition, all they beg is, that it may not so far be insisted upon by his majesty, as to oblige them to read it. Whatever they thought of it, they do not take upon them to desire the declaration to be revoked.

My lord, as to matters of fact alledged in the said petition, that they are perfectly true, we have shewn by the journals of both houses. In every one of those years which are mentioned in the petition, this power of dispensation was considered in parliament, and, upon debate, declared to be contrary to law: there could be no design to diminish the prerogative, because the king hath no such prerogative. Seditious, my lord, it could not be, nor could possibly stir up sedition in the minds of the people, because it was presented to the king in private and alone: false it could not be, because the matter of it is true: there could be nothing of malice, for the occasion was not sought: the thing was pressed upon them; and a libel it could not be, because the intent was innocent, and they kept within the bounds set by the act of parliament, that gives the subject leave to apply to his prince by petition, when he is aggrieved.

*Att. Gen.* Have you done, gentlemen?

*Mr. Finch.* We have done, Sir.

*Att. Gen.* My lord, I shall be a great deal more merciful to your lordship and the jury than they have been, who have spent these four hours in that which I think is not pertinent to the case in question: they have let themselves into large discourses, making great complaints of the hardships put upon my lords the bishops, by the order of council, to read his majesty's declaration; and putting these words into the information of seditious, malicious, and scandalous: but, my lord, I admire that sir Robert Sawyer should make such reflections and observations upon these words, when I am sure

he will scarce find any one of his own exhibiting, that has so few of those aggravating words as this has; and therefore that might have been very well spared, especially by him.

In the next place, my lord, we are told what great danger our religion is in by this declaration: I hope we have an equal concern for that with them, or any person else whatsoever. But, however, I am sure our religion teaches us, not to preserve our religion, or our lives, by any illegal courses; and the question is, whether the course that my lords the bishops have taken to preserve, as they say, our religion, be legal or not? If it be not legal, then I am sure our religion will not justify the using such a course for never so good an end.

My lord, for the thing itself, I do admire that they, in so long a time and search that they have made, should not, which I expected, produce more precedents of such a paper as this is. They challenge us to shew, that ever there was any such declaration as this: I'll turn the same challenge upon them. Shew me any one instance, that ever so many bishops did come, under pretence of a petition, to reflect upon the king out of parliament.

*Sir R. Sawyer.* Is that your way of answering, Mr. Attorney?

*Att. Gen.* Pray, sir Robert Sawyer, you have had your time, don't interrupt us; sure we have as much right to be heard as you.

*L. C. J.* You have been heard over and over again, sir Robert Sawyer, already.

*Sir R. Sawyer.* My lord, I don't intend to interrupt him.

*Sol. Gen.* We cannot make them be quiet, they will still be chopping in upon us.

*Att. Gen.* That is an art that some people have always practised, not to permit any body to speak but themselves.

But, my lord, I say, that those few instances that they have produced, are nothing at all to this matter that is now upon trial before your lordship and this jury; nay, there are evidences against them; for they are only matters transacted in parliament, which are no more to be applied to this thing that is in controversy now, than any the most remote matter that could be thought of; and though they have gone so high in point of time, as to the reign of Richard the second, yet they have nothing between that and the late king's reign, to which they at last have descended down.

But, my lord, I say, that all the talk of Richard the second's time is wholly out of the case: truly, I do not doubt but in Richard the second's time they may find a great many instances of some such sort of petitioning as this; for our histories tell us, that at that time they had 40,000 men in arms against the king; and we know the troubles that were in that king's reign, and how at length he was deposed: but certainly there may be found instances more applicable to the case, than those they produce. As for those in king Charles the 2<sup>d</sup>'s time, do they any ways justify this petition? For now they are upon justifying the words of their pa-

tion, that this power has been declared to be illegal in 1662, 1672, and 1685.

For what was done in 1662? do they shew any thing more than some debates in the House of Commons, and at last an address, an answer by the king, a reply of the Commons, and then the thing dies? Pray, my lord, is a transaction in the House of Commons, a declaration of parliament? Sure, I think, no one will affirm that any thing can be a declaration of parliament, unless he that is the principal part concurs, who is the king: for if you speak of the court of parliament in a legal sense, you must speak of the whole body, king, lords and commons, and a declaration in parliament must be by all the whole body; and this is properly an act of parliament.

Why then they come to the year 1672, where your lordship observes, that the late king did insist upon his right; for after the dispute, which was in 1662, his majesty did issue out another declaration, and when it comes to be debated in parliament, he insists upon his right in ecclesiastical matters; and though his declaration was cancelled, yet there is no formal disclaimer of the right.

My lord, after all, how far these things that they have offered may work as to the point that they have debated, I shall not now meddle with it, nor give your lordship any trouble about it, because it is not at all pertinent to the case in question; for I do (after all this time and pains that they have spent) take leave to say, that these gentlemen have spent all this time to no purpose.

L. C. J. Yes, Mr. Attorney, I'll tell you what they offer, which it will lie upon you to give an answer to; they would have you shew how this has disturbed the government, or diminished the king's authority.

Att. Gen. Whether a libel be true or not, as to the matter of fact, was it ever yet in any court of justice permitted to be made a question whether it be a libel or not? or whether a party be punishable for it? And therefore I wonder to hear these gentlemen to say, that because it is not a false one, therefore it is not a libel. Suppose a man should speak scandalous matter of any noble lord here, or of any of my lords the bishops, and a *scandalum magnatum* be brought for it, though that which is spoken has been true, yet it has been the opinion of the courts of law, that the party cannot justify it, by reason it tends the disturbing of the peace, to publish any thing that is matter of scandal: the only thing that is to be looked into, is, whether there be any thing in this paper that is reflecting and scandalous, and not whether it be true or no? for if any man shall extra-judicially, and out of a legal course and way, reflect upon any of the great officers of the kingdom, nay, if it be put upon any inferior magistrate, he is to be punished and is not to make his complaint against them, unless he do it in a proper way. A man may petition a judge; but if any man in that petition shall come and tell the judge, sir, you

have given an illegal judgment against me, and I cannot in honour, prudence, or conscience obey it; I do not doubt, nor will any man, but that he that should so say, would be laid by the heels, though the judgment perhaps might be illegal.

If a man shall come to petition the king, as we all know, the council-doors are thronged with petitioners every day, and access to the king by petition is open to every body, the most inferior person is allowed to petition the king; but because he may do so, may he therefore suggest what he pleases in his petition? Shall he come and tell the king to his face, what he does is illegal? I only speak this, because they say, in this case his majesty gave them leave to come to him to deliver their petition; but the king did not understand the nature of their petition, I suppose, when he said, he gave them leave to come to him.

My lord, for this matter we have authority enough in our books; particularly there is the case of Wrenham [Wraynham] see vol. 2; p. 1059.] in my lord Hobart. The lord chancellor had made a decree against him, and he petitioned the king that the cause might be re-heard; and in that petition he complains of injustice done him by my lord chancellor, and he put into his petition many reflecting things. This, my lord, was punished as a libel in the star-chamber; and in that book it was said, though it be lawful for the subject to petition the king against any proceedings by the judges, yet it must not be done with reflections, nor with words that turn to the accusation or scandal of any of the king's magistrates or officers, and the justice of the decree is not to be questioned in the case; for there Wrenham, in his defence, would have opened the particulars wherein he thought the decree was unjust, but that the court would not meddle with, nor would allow him to justify for such illegality in the decree: so in this case, you are not to draw in question the truth or falshood of the matter complained against; for you must take the way the law has prescribed, and prosecute your right in a legal course; and not by scandal and libelling.

My lord, there is a great deal of difference between not doing a thing that is commanded, if one be of opinion that it is unlawful, and coming to the king with a petition highly reflecting upon the government, and with scandalous expressions telling him, Sir, you act illegally; you require of us that which is against prudence, honour, or conscience, as my lords the bishops are pleased to do in this petition of theirs. I appeal to any lord here, that if any man should give him such language, either by word of mouth or petition, whether he would bear it, without seeking satisfaction or reparation by the law.

My lord, there is no greater proof of the influence of this matter than the crowd of this day, and the harangue that hath been made: is it not apparent that the taking this liberty to canvass and dispute the king's power and au-

thority, and to censure his actions, possesses the people with strange opinions, and raises discontents and jealousies, as if the free course of law were restrained, and arbitrary will and pleasure set up instead of it?

My lord, there is one thing that appears upon the face of the information, which shews this not to be the right course; and if my lords the bishops had given themselves the opportunity of reading the declaration seriously, they would have found in the end of the declaration, that the king was resolved to call a parliament in November. Might not my lords the bishops have acquiesced under their passive obedience till the parliament met? But nothing would serve them but this, and this must be done out of parliament, for which there is no precedent can be shewn, and this must be done in such a manner as your lordship sees the consequence of, by your trouble of this day.

There is one thing I forgot to speak to: they tell us, that it is laid malicious and seditious, and there is no malice or sedition found; we know very well that that follows the fact, those things arise by construction of law out of the fact. If the thing be illegal, the law says it is seditious; a man shall not come and say, he meant no harm in it; that was the case of Williams:\* in his treasonable book, says he, I only intended to warn the king of the danger approaching, and concludes his book with God save the king; but no man will say, that a good preface at the beginning, or a good prayer at the end, should excuse treason or sedition in the body of a book. If I meet another man in the street and kill him, though I never saw him in my life, the indictment is, that it was 'ex malitia præcogitata,' as it often happens that a person kills one he never had acquaintance with before; and *in favorem vite*, if the nature of the fact be so, the jury are permitted to find according to the nature of the case; but in strictness of law there is malice implied: but, my lord, I think these matters are so common, and that is a point that has been so often settled, that the form of the indictment and information must follow the nature of the fact, that I need not insist upon it; if the act be unlawful, the law supplies the malice and evil intentions.

*Sol. Gen.* My lord, and gentlemen of the jury, I am of counsel in this case for the king, and I shall take leave to proceed in this method: first, I shall put the case of my lords the bishops, and then consider the arguments that have been used in their defence, and answer as much as is material to be answered; and then leave it to your lordship, and the jury's consideration, whether what has been said by these gentlemen, weigh any thing in this case.

First, my lord, I take it for granted, and I think the matter is pretty plain by this time, by my lord president's evidence, and their own confession, that it is not to be disputed, but

that this paper was presented by some of my lords the bishops to the king; I think there is no great difficulty in that matter; I just touch upon it, because I would follow them in their own method.\*

\* In sir William Williams's MSS. much of what follows is so materially altered that I have thought it best to print it here from those MSS.

Then, my lord, let us take this case as it is, upon the nature of the petition, and the evidence that they have given. Consider, then, whether it will justify all that is done: for the business of petitioning, I would distinguish between petitioning in parliament and petitioning out of parliament to the king, and inquire whether my lords the bishops out of parliament can present any petition to the king, and of what nature, if any? I do agree, that in parliament the lords and commons may petition or make addresses to the king, and signify their desires, and make known their grievances, and there is no doubt but that is the proper and natural way of application from the subjects to his majesty. In the beginning of the parliament, there are anciently receivers and triers of petitions appointed by the houses of parliament; and upon debates in parliament, there are committees frequently appointed to prepare and frame petitions and addresses to the king, as occasions require; but to deduce an argument from these proceedings, that because the lords in parliament have done thus, and the commons in parliament have done thus, therefore my lords the bishops may do it out of parliament, is no consequence; no such conclusion can be drawn from those premises. This I offer as an answer to their evidence and arguments in defence of this petition, from their parliamentary records and proceedings.

Pray, my lord, consider what evidence they have given, and how material it is in this case for their defence: they begun with that record in Richard 2d's time, which is no more than that the king might dispense with the statute of Provisoers till the meeting of the then next parliament, and a protestation of the commons at the end of it. Whether that be an act of parliament that is declaratory of the common law, or introductory of a new law *non constat*, and for aught appears, it might be a declaratory act; and if so, then it is rather an evidence of the king's prerogative of dispensing. It might be an act in affirmance of the king's prerogative; as there are a great many such acts we very well know, and generally most of the laws in that kind are in affirmance of the king's power. That act then turns as some argument for the king's prerogative, and then their own evidence will turn upon themselves, for they shew Richard 2. had that power, but whether that be an argument one way or other conclusive, is left to your lordship and the jury to consider.

They say there is no execution of such a power till very lately, and the first instance

\* See it in this Collection, vol. 3, p. 770.

Then, my lord, let us take this case as it is, upon the nature of the petition, and the evidence that they have given, and then consider whether it will justify all that is done: for the business of petitioning, I would distinguish and inquire, whether my lords the bishops out of

that they produce is that in the year 1662. I do not take the exercise of power to be a proof of the right of it. Your lordship knows that before the reign of Henry the 4th, there was a large jurisdiction assumed by the lords in original causes till the Statute of Appeals, 1mo. Hen. 4, which takes notice that before that time the lords had assumed an original jurisdiction in all causes, and would proceed and determine them before themselves in parliament. And it fell out to be so great a grievance, that it was thought necessary to make a law against it, that appeals in parliament should be abolished and destroyed; then did the Statute of Appeals, a mighty law in favour of the subject of England, and the resolutions upon that statute, settle the bounds between the king and the lords in a great measure; before that time, the lords were grown very powerful, and where there is power there always follow applications. Since that statute, accusations are [qu. not] allowed to be before the lords in parliament, unless it be by impeachment of the commons, there is the benefit of that statute. It did abolish much of the power the lords had before assumed to themselves, and did establish the impeachment of the commons, which is as ancient as the parliament, for that was never yet spoken against; the power of the commons of impeaching any person in parliament under the degree of the prince, and that is the regular legal way, and this the commons have often asserted to be their ancient right. This is the proper course and way to address and apply to the king; that is the proper way and course to redress grievances. This, I conceive, had been the course that should have been taken by my lords the bishops; they should have staid to apply to the king till the complaint had come into parliament, and then it had been regular for them to address the king in a parliamentary way what was fit and proper perhaps to come upon the complaint by the impeachment of the commons; they interpose and give their advice before their time; if there be any irregularity in parliament or out of parliament, the lords and commons are to make their complaint of it, and have it redressed in parliament, and a man is not to be his own judge in any case, nor must all men create difficulties of their own, nor set upon petitioning in this sort; I neither do know of any precedent, ancient or modern, for petitioning by the lords the bishops to the king out of parliament in this sort; neither do I find that my lords the bishops, or their counsel, have produced any precedents; but it is said for my lords the bishops that were under an anathema, or some curse, that sir Robert Sawyer speaks of by the first of Elizabeth, and

parliament can present any petition to the king? I do agree, that in parliament the lords and commons may make addresses to the king, and signify their desires, and make known their grievances there; and there is no doubt but that is a natural and proper way of appli-

for fear of that they pursued this course; but my lords know, better fall into the hands of God than of men: I leave this to the casuists to consider, rather than trouble the court with it. I pass this over as a new fancy of their own, and to have no weight in a court of law.

My lord, the law continued thus, and was frequently practised for the punishment of high misdemeanors by impeachment in parliament, from 1 H. 4, till 3 H. 7, which doth establish the court of Star-Chamber, for the punishment of exorbitant crimes in the intervals of parliament, and in that court great men were often brought to judgment and punishment for their high misdemeanors; and though very great power was given that court, and the greatest officers of the kingdom, assisted with lords spiritual and temporal, who were made judges of that court, yet they arrogated to themselves a greater power and jurisdiction than the law gave them, whereby the very court grew grievous to the subject, and was therefore abolished by the statute of 7 Car. 1; and one of the reasons expressed in the statute for taking away of that court is, because the matters examinable and determinable in that court, may have their proper remedy, redress, and due punishment in the ordinary methods and course of justice. So that upon those two considerations, because that court became exorbitant, and because all misdemeanors that were punishable there might be punished in the ordinary courts of justice, that court was dissolved and taken away. As the statute of H. 4, multiplied impeachments in parliament by taking away the power and judicature assumed by the lords out of parliament to determine crimes out of parliament, or otherwise than by impeachment, so did the court of Star-Chamber, from 3 Hen. 7, to 17 Car. 1, lessen impeachments in parliament.

My lord, they find fault with the words of the information, and they say, Why are these words put in 'seditiose maitiose.' If the matter complained of in the information be libellous and seditious, we may lawfully suggest in the information, this was done 'seditiose;' and 'tis no more than the law speaks, it results out of the matter itself, and if it be a libellous paper, the law says it is maliciously and seditiously done; and those gentlemen need not quarrel with us, for so are all the informations for misdemeanours in all times: and 'tis no more than the 'vi et armis' inserted in informations where there is no actual 'vi et armis' done. 'Vi et armis,' that is, only a supposition of law, and they may as well object to the conclusion of the information, why it concludes 'contra coronam et dignitatem domini regis.'

cation: for in the beginning of the parliament, there are receivers of petitions appointed, and upon debates, there are committees appointed to draw up petitions and addresses; but to come and deduce an argument, that because the lords in parliament have done thus (there

If it be an illegal thing, as a libel, these are necessary consequences and results out of the subject matter of the information; it is no more than the speaking of the law upon the fact alleged.

But, my lord, let us a little consider whether this matter were warrantable, and whether my lords the bishops had any warrant or call to do what was done. They pretend it was done upon this account: the king had set forth a declaration, and ordered them to read it: to excuse themselves from such reading, they make this petition or this libel, call it what you will, and they use this as the main argument, that they say the king has done illegally, and they tell the king plainly so, as has been often declared in parliament, and particularly in 1662, 72, and 85, in the beginning of his majesty's reign, and expose the prudence, honour and conscience of what the king has done.

Pray, my lord, let us consider a little whether there be any such declaration in parliament that they have given evidence of: have they read in evidence any declaration in parliament in 1662, or 1672, or in the beginning of his majesty's reign, tending to what is a declaration in parliament? First, a bill that was enacted by king, lords and commons, we in law know and allow such to be a declaration in parliament. If a bill pass the commons it is no declaration in parliament; nay, if it pass the lords and commons it is not a declaration in parliament, except it also pass the king and have the royal assent; all these are only *in fieri*, and pass as nullities, and the law takes no notice of them. We have it in our books over and over, and no court ought to suffer any such evidence to be given, though received this day. I know those gentlemen are very well acquainted with the authorities in Fitzherbert tit. Parliament. There was said an act to be passed by the king and the lords, but because the commons did not agree to it, it is declared and adjudged to be as a nullity, and the court would take no notice of it; and how can any man call that a declaration in parliament which is only a vote of the house of commons, or of the lords: such only is the evidence given this day of declarations in parliament, to justify this petition.

My lord, there is another declaration in parliament, and so owned and allowed, as a judgment given by the lords as they are a court of judicature in parliament, and that is a declaration also in parliament; for if any matter comes judicially before the lords in parliament, either by writ of error or by natural appeal from any of the other courts, or by adjournment, and there be any judgment given, that is a declaration in parliament, and may fairly,

being such methods of proceedings usual in parliaments) therefore my lords the bishops may do it out of parliament, that is certainly a *non sequitur*, no such conclusion can be drawn from those premises.

My lord, I shall endeavour to lay the fact

and ought to be so called. So likewise, there is another declaration in parliament, which is, when any matter or crime comes before the lords in parliament upon an impeachment of the commons, and they give judgment upon that impeachment, that is a declaration in parliament: but to say that there is any other declaration in parliament, is to say more than these gentlemen have made out. If they can shew me any such declaration in parliament to justify this petition, I will submit to them, and not speak a word against my lords the bishops: but if these learned gentlemen cannot shew me any such declaration, then all that is said in this petition, under favour, doth not to me appear to be true.

Let us reflect what is there in this case, upon this evidence as they offer, for a declaration in parliament. That in 1662 is only a vote and an opinion of the house of commons; and I always understood, and have been told so by some of the gentlemen of the other side, that such a vote signified nothing: if any thing, not a judgment in parliament. Besides, it seems to be a mistaken address, for they say in it, that the declaration in 1662, against which they address, was the first declaration of that sort, to suspend laws without act of parliament; and yet, in the same breath, they take notice of the king's declaration from Breda, which was before 1662. Here is a mighty argument used from the king's speech, that because he wished he had such a power, this must be declared in parliament, that he had no such power. Is the speech of the prince a declaration in parliament? Would those gentlemen allow all the speeches that were made upon the opening of the parliament to be declarations in parliament? If the king had said in his speech at the opening of that parliament what he says now in his declaration, would you let that go for a declaration in parliament? Then the chancellor's, or keeper's speech, or the lord privy seal's, must be a declaration in parliament. Whoever speaks the sense of the king by his command, if he do not speak that which was law and right, is questionable for it in parliament; and several have been impeached for so doing: for they look not upon it as the king's speech, except it be according to law. Nothing can turn upon the prince but what is legal; if it be otherwise, it turns upon him that speaks it, for the king cannot err. I never did hear that a speech made by the chancellor in parliament (and I will appeal to all the lords that hear me in it), was a declaration in parliament.

Then, my lords, we come to the evidence in 1672, which, with that in 1662 and that in Breda, shew that this of the king's is not such

before you as it really is, and then consider what is proper for the court to take notice of, as legal proof or evidence: and I take it, all those precedents that they have produced of what the lords did, and what the commons did in parliament, is no warrant for them to shelter themselves under, against the information here in question.

[Here Mr. Justice Powell spake aside to the Lord Chief Justice thus.]

Mr. Just. *Powell*. My Lord, this is strange doctrine! Shall not the subject have liberty to petition the king but in parliament? If that be law, the subject is in a miserable case.

L. C. J. Brother, let him go on, we will hear him out, though I approve not of his position.

*Sol. Gen.* The lords may address to the king in parliament, and the commons may do it, but therefore that the bishops may do it out of parliament, does not follow. I heard nothing said that could have given colour to such a thing, but the curse that has been read in 1 Eliz.

But pray, my lord, let us consider that evidence they have given: they have begun with that record in Richard the second's time, and what is that? That the king may dispense with the statute of provisors till the meeting of the next parliament, and a protestation of the commons at the end of it, whether that be an act of parliament that is declaratory of the common law, or introductory of a new law, *non constat*; and for aught appears, it might be a declaratory act; and if so, it is a proof of the king's prerogative of dispensing. It might be an act in affirmance of the king's prerogative, as there

a novelty, but has been attempted sometimes before. In 1672, the king was in distress for money; being entangled in a Dutch war, and wanting supply, he capitulates with his commons, as you have heard it read in their evidence, and upon the commons address to his majesty, he asserts it to be his right, and makes his complaint to the lords how the commons had used him. Whereupon conferences did arise between the lords and commons about it; at length it all ends in a speech from the king, wherein he tells them of his present necessities, well mixed with such gracious compliances, as prevailed with the commons for a good lump of money. Will this amount to a declaration in parliament? Can my lords the bishops fancy or imagine that this is to be imposed upon the king or upon the court for a declaration in parliament?

Then last of all, for that evidence in 1685 in this king's time, what is it more than the commons make an address to the king, and complain to his majesty of some of his officers in his army, that did pretend to have a dispensation to bear offices contrary to the test act, without taking the test and oaths as the law requires, can this be called a declaration in parliament? Will all addresses made by the late parliaments be allowed to be declarations in parliament?

are a great many such, we very well know; and generally most of the laws in that kind, are in affirmance of the king's power; so that the law turns as an argument for the king's prerogative, and they have given him that which will turn upon themselves: so it stood in Richard the second's time; but whether that be an argument one way or other conclusive, is left to your lordship and the jury.

Ay, but say they, there is no execution of such a power till very lately, and the first instance that they produce is that in the year 1662. But your lordship knows, that before the reign of Henry the fourth, there was great jurisdiction assumed by the lords in original causes: then comes the statute of appeals, 1 Hen. 4, which takes notice, that before that time the lords had assumed an original jurisdiction in all causes, and would proceed and determine them in parliament and out of parliament; and it fell out to be so great a grievance, that it was thought necessary to make a law against it, that appeals in parliament should be abolished and destroyed; and then comes that law in favour of the subject of England, and that settles the bounds between the king and the Lords in a great measure. Before that time the Lords were grown very powerful, and where there is a power, there always will be applications; and what is the effect of that statute, 1 Hen. 4? For all that we endeavour is, to make things as plain as can be, that no further applications, no accusations, no proceedings in any case whatsoever be before the lords in parliament, unless it be by impeachment of the commons, so that there is the *salvo*; and the use that I make of it is this, the commons, by that very statute, did abolish the power that the lords had arrogated to themselves, and ordered, that they should not meddle with any cause, but upon the impeachment of the house of commons, and establish the impeachment of the commons, which is as antient as the parliament, for that was never yet spoken against, the power of the commons impeaching any person under the degree of the prince; and that is the regular legal way, and so the commons asserted their antient right, and whatsoever the lords took notice of, must come by application of the commons; then conferences were to pass between the Houses, and both Houses by address apply to the king. This is the proper way and course of parliament, of which my lord Coke says, it is known to few, and practised by fewer; but it is a venerable, honourable way: and this is the course that should have been taken by my lords here, and they should have stayed till the complaint had come from the commons in parliament, and then it had been regular for them to address the king; but they were too quick, too nimble.

And whereas the statute of Hen. 4 says, That no lord whatsoever shall intermeddle with any cause, but by the impeachment of the commons; they interpose and give their advice before their time: if there be any irregularity in

parliament, or out of parliament, the commons are to make their complaint of it, and a man must not be his own judge, nor his own carver, nor must every man create difficulties of his own, nor set upon petitioning in this sort: but there I lay my foundation, that in such a matter as this, there ought to have been the impeachment of the commons in parliament before these lords could do any thing; and I know nothing can be said for the bishops more than this, that they were under an anathema, under the curse that sir Robert Sawyer speaks of; and for fear of that, they took this irregular course. But some would say, better fall into the hands of God than of men: some would say so (I say), I know not what they would say; but these being the methods that these lords should have taken, they should have pursued that method; the law should have carved out their relief and remedy for them, but they were for going by a new fancy of their own.

My lord, the law continued thus, and was practised so till 3 Hen. 7, where the grievance was found, that offences in the intervals of parliament could not be well punished, and then comes the statute that sets up the court of Star-Chamber, and there men were often brought to judgment and punishment for their sins; and though very great power was given them, yet they arrogated to themselves a greater; and therefore that court is abolished by the statute of 15 Car. 1; and what is the reason of abolishing that statute? Because the Star-Chamber did not keep within their bounds that the law set them, but assumed to themselves a larger power than the law would allow, and grew very exorbitant and very grievous to the subject: and another reason was, which the statute of 15 Car. 1. founded itself upon, because there was nothing that was brought in judgment before that court, but might be relieved and remedied in the ordinary methods of justice in the courts of Westminster-Hall: so that upon those two considerations, because that court was exorbitant, and because all the sins and misdemeanors that were punished there, might be punished in an ordinary way of law in another court, and therefore there was no need of that court, and so it was abolished, and the subject was pretty safe. If there was a crime committed here, a man might come properly before your lordship into this court, and have it punished.

My lord, they find fault with the words in the information, and they say, Why are these words put in, seditious, malicious? If the matter be libellous and seditious, we may lawfully say, and it is no more than the law speaks, it results out of the matter itself; and, if it be a libellous paper, the law says, it is maliciously and seditiously done; and these gentlemen need not quarrel with us, for so are all the informations in all times past, and it is no more than the 'vi et armis,' which is common form. It may be said, How can the publishing of a libel be said to be done 'vi et armis?'

That is only a supposition of law, and they may as well object to the conclusion of the information, that it was 'contra coronam et dignitatem domini regis.' If it be an illegal thing, or a libel, these are necessary consequences; it is no more than the speaking of the law upon the fact.

But, my lord, let us a little consider, whether this matter were warrantable, and whether they had any warrant to do what was done. They pretend it was done upon this account, That the king had set forth a declaration, and had ordered them to read it; which to excuse themselves from, they make this petition, or this libel (call it what you will), and they use this as the main argument, That they say the king has done illegally, and they tell the king plainly so, that it is illegal; for they take notice of this declaration, and say, it is illegal, because it is contrary to the declarations of parliament in 1662, 1672, and 1685.

Pray, my lord, let us consider a little, whether there be any declaration in parliament that they have given evidence of? Have they read any declaration of the parliament in 1662? What is a declaration in parliament, but a bill that is passed by the king, lords, and commons? That we know to be the meaning, and no other. If it pass the commons, it is no declaration in parliament; nay, if it pass the lords and commons, it is not a declaration in parliament, except it also pass the king. All these things are nullities, and the law takes no notice of them: we have it in our books over and over, and no court ought to suffer such evidence to be given. I know these gentlemen are very well acquainted with the authority in Fitzherbert, title, Parliament. There was such an act that was said to be by the king and the lords; but because the commons did not agree to it, it is declared and adjudged to be a nullity, and the court would take no notice of it; and how can any man call that a declaration in parliament, which is only a vote of the house of commons, or of the lords? No, sure, that is one of the heads I go upon; it is not a declaration in parliament, unless it be by an act of parliament.

Indeed, my lord, there is another sort of a declaration in parliament before the lords, as they are a court of judicature, and that is a fair declaration too; for if any thing comes judicially before the lords, either by writ of error, or by natural appeal from any of the other courts, or by adjournment, and there be any judgment given, that is a declaration in parliament, and may be fairly so called. So likewise there is another judicial declaration, which is, when any thing comes before the lords judicially, upon an impeachment of the commons, and they give judgment upon that impeachment, that is a declaration in parliament. But to say that there is any other declaration in parliament, is to say more than these gentlemen can make out. If they will shew me any such, I will submit to them, and not speak a word against my lords the bishops; but if

these learned gentlemen cannot shew me any such, then they have not said what was true in this petition, that it was so and so declared in parliament.

For let us consider what there is in this case upon this evidence; for that in 1662, is only a vote and opinion of the house of commons; and I always understood, and have been told so by some of the gentlemen of the other side, that such a vote signifies nothing: but besides, it seems to be a mistaken address, for they say in it, that the declaration in 1662, which they address against, was the first declaration of that sort to suspend laws without act of parliament; and yet in the same breath, they do take notice of the king's declaration from Breda. But here is a mighty argument used from the king's speech, that because he wished he had such a power, this must be declared in parliament that he had no such power. Is the speech of the prince a declaration to parliament? All the speeches that were made upon the opening of the parliament, will you say they are declarations in parliament? Then the chancellor, or the keeper's speech, or the lord privy seal's, must be a declaration in parliament. Whoever speaks the sense of the king, if he does not speak that which is law and right, is questionable for it, and several have been impeached for so doing; for they look not upon it as the king's speech, except it be according to law. Nothing can turn upon the prince but what is legal; if it be otherwise, it turns upon him that speaks it. I never did hear that a speech made by the chancellor (and I will appeal to all the lords that hear me in it) was a declaration in parliament.

Then, my lord, we come to the business in 1672, which, with that in 1662, and that in Breda, shews, that this of the king's is not such a novelty, but has been done often before. In 1672, the king was in distress for money, being entangled in a Dutch war, and wanted supply: he capitulates with his commons (you have heard it read), and, upon the commons address, he asserts it to be his right, and makes his complaint to the lords how the commons had used him; for when he gives them a fair answer, they replied, and there are conferences with the lords about it; but at length it all ends in a speech by the king, who comes and tells them of his present necessities, and so he was minded to remit a little at the instigation of the commons, and he has a good lump of money for it. Would this amount to a declaration in parliament? Can my lords the bishops fancy or imagine that this is to be imposed upon the king, or upon the court, for a declaration in parliament?

Then last of all, for that in 1685, in this king's time, what is it? The commons make an address to the king, and complain to his majesty of some of his officers in his army,\*

\* Here Mr. Justice Powell speaking to the Lord Chief Justice.

Mr. Just. Powell. My Lord, this is wide,

that might pretend to have a dispensation, something of that nature contrary to the Test Act; and what is done upon it? They make their application to the king, and the king answers them, and that is all: but since it is spoken of in the court, I would take notice that it is very well known by the case of Godding and Hales, the judgment of the court was against the opinion of that address.

But what sort of evidence is all this? Would you allow all the addresses of the House of Commons to be evidence? Give me leave to say it, my lord, if you suffer these votes, these copies of imperfect bills, these addresses and applications of one or both houses of parliament to the king, to be evidence of declarations in parliament, then what will or may be said of the \* Bill of Exclusion? Shall any body assert or mention that Bill of Exclusion to be a declaration in parliament? If so, then there is declaration against declaration; the declaration of the commons against the declaration of the lords. I know not of what judgment my lords the bishops may now be concerning those things, especially votes, addresses and speeches, and bills which passed the commons in parliament, and their being declarations in parliament, but I am sure they have spoken against it heretofore; yea, I am sure some of them have preached against it.

And if my lords the bishops have said, these are declarations in parliament, and they are not declarations in parliament; and if they accuse the king of having done an illegal thing, because he has done that which has been declared in parliament to be illegal, when it was never so declared, then the consequence is very plain, that they are sometimes in some things mistaken, and I suppose by this time they believe it.

I dare say it will not be denied me, that the king may, by his prerogative royal, issue forth his proclamation; it is as essential a prerogative as it is to give his assent to an act of parliament to make it a law. And it is another principle, which I think cannot be denied, that the king may make constitutions and orders in matters ecclesiastical; and that these he may make out of parliament, and without the parliament. If the king may do so, and these are his prerogatives, then suppose the king do issue forth his royal proclamation (and such in effect is this declaration under the great seal) in a matter ecclesiastical, by virtue of his prerogative royal; and this declaration is read in the council, and published to the world, and then

Mr. Solicitor would impose upon us: let him make it out if he can, that the king has such a power, and answer the objections made by the defendants' counsel.

L. C. J. Brother, impose upon us! He shall not impose upon me; I know not what he may upon you; for my part, I do not believe one word he says.

\* Here there was a great hissing. [See what passed at the end of the Trial.]

the bishops come and tell the king, Sir, you have issued out an illegal proclamation or declaration, being contrary to what has been declared in parliament, when there is no declaration in parliament; is not this a diminishing the king's power and prerogative in issuing forth his proclamation or declaration, and making constitutions in matters ecclesiastical? Is not this a questioning of his prerogative? Do not my lords the bishops in this case raise a question between the king and the people? Do not they, as much as in them lies, stir up the people to sedition? For who shall be judge between the king and the bishops? Says the king, I have such a power and prerogative to issue forth my royal proclamation, and to make orders and constitutions in matters ecclesiastical, and that without the parliament, and out of parliament. Say my lords the bishops, you have done so, but you have no warrant for it. Says the king, every prince has done it, and I have done no more than what is my prerogative to do. But this, say the bishops, is against law. How shall this be tried? Should not the bishops have had the patience to have waited till a parliament came and complained there, and sought redress. The question in this case is not whether the king may dispense with the law, but whether he may issue out his proclamation in matters ecclesiastical. Sir W. W.'s MS. when the king himself tells them, he would have a parliament in November next at furthest.

L. C. J. Pray, Mr. Solicitor, come close to the business, for it is very late.

Sol. Gen. My lord, I beg your patience; you have had a great deal of patience with them, pray spare me a little. I am saying, when the king himself tells them, that he would have a parliament in November at furthest,\* yet they have no patience to stay till November, [at which time this power of dispensing with the law might very properly and naturally be examined and redressed, but my lords the bishops, MS.] make this application to him [himself complaining to himself against himself, by accusing him of an illegal procedure, MS.]. Is not this raising a question upon the king's prerogative in issuing forth declarations? and upon the king's power and right in matters ecclesiastical? And when I have said this, that my lords the bishops have so done, if it be true that they have raised a question upon the right of the king, and the power of the king in matters ecclesiastical, then they have stirred [to which they make themselves a party, doth not this tend to stir, MS.] up sedition. That they have so done is pretty plain: and for the consequence of it time will shew it. I shall appeal to the case in 2 Cro. 2 Jac. 1. That is a plain direct authority for me.

Just. Powell. Nay, Mr. Solicitor, we all very well know, to deny the king's authority

\* There is no reason to believe that James, when he said this, had the slightest intention of calling a parliament.

in temporals and spirituals, as by act of parliament, is high treason.

Sol. Gen. I carry it not so far, Sir. We have a gracious prince, and my lords the bishops find it so by this prosecution: but what says that case? It is printed in three books, in Noy 100, in Moor 375, and in Mr. Just. Cro. 371: what says that case? The king may make orders and constitutions in matters ecclesiastical.

Just. Powell. But how will you apply that case to this in hand, Mr. Solicitor?

Sol. Gen.\* I will apply it by and bye, Sir; I would first shew what it is: there is a convention of the greatest men in the kingdom.

Just. Powell. Indeed, Mr. Solicitor, you shoot at rovers.

Sol. Gen. There is the lord privy seal, the archbishop of Canterbury, and a great many others: it is the greatest assembly we meet with in our books, and all of them are of this opinion, that the king may make orders and constitutions in matters ecclesiastical.

My lord, there is another authority, and that is, from the statute 1 Eliz. which † erected the high commission court, and that statute was not introductory of a new law, but declaratory of the old law. The king by his proclamation declares his sense to do such and such a thing; the court and all persons there give their judgment and opinion upon that statute, that they looked upon it as the grossest thing, and the foulest affront to the prince, for any man to bring into question that power of the king in matters ecclesiastical: 'tis said to be a very high crime. Why then, my lord, what is done in this case?

Just. Powell. Mr. Solicitor, pray, when you are applying, apply that other part of the case too, which says, that it was a heinous offence to raise a rumour that the king did intend to grant a general toleration; and is there any law since that has changed it, Mr. Solicitor?

Sol. Gen. In the main, judgment goes another way. As for that part, it was personal to the prince that then was, of whom they had

\* The case will apply itself when you have considered it. Upon hearing of that solemn case, there was a convention of the highest officers and greatest men in the kingdom to judge of it. Sir W. W.'s MS.

† In the MS. the remainder of this speech is thus given: "appointed commissioners to be made by the queen to hear matters ecclesiastical, and that statute was not introductory of a new law but declaratory of the common law, and the divulging of that ordinance by the queen's proclamation was held a gracious admonition. The court and all persons there delegated declare their judgment, that it was an high affront to the prince for any man to bring into question the power of the king in matters ecclesiastical: it is said there to be a very high crime: without farther incroaching upon your patience, I refer your lordship to the case at large, reported in those books."

scandalously reported, that he intended to introduce popery. They looked upon this report as a scandal to king James, that it was a sowing of sedition, and stirring up people against the government, and that will come up to our case, I think, without particular application: for as some men do it on the right side, others do it on the left; and whoever he be that endeavours to bring a dislike of the king or government upon the people, may be said to be a mover of sedition against the prince; but that case, in some parts of it, I take to be personal to the prince himself, and does not go to his successors.

Now, my lord, I come to that which is very plain from the case of *De Libellis Famosis*, in lord Coke's Reports: if any person have slandered the government in writing, you are to examine the truth of that fact in such writing, but the slander which it imports to the king or government; and be it never so true, yet if slanderous to the king or the government, it is a libel, and to be punished: in that case, the right or wrong is not to be examined, or if what was done by the government be legal or no; but whether the party have done such an act. If the king have a power (for still I keep to that) to issue forth proclamations to his subjects, and to make orders and constitutions in matters ecclesiastical, if he do issue forth his proclamation, and make an order upon the matters within his power and prerogative; and if any one would come and bring that power in question otherwise than in parliament, that the matter of that proclamation be not legal, I say that is sedition, and you are not to examine the legality or illegality of the order or proclamation, but the slander and reflexion upon the government, and that, I think, is very plain upon that case, in the fifth Report *De Libellis Famosis*; for it says, If a person do a thing that is libellous, you shall not examine the fact, but the consequence of it; whether it tended to stir up sedition against the public, or to stir up strife between man and man, in the case of private persons: as if a man should say of a judge, he has taken a bribe, and I will prove it; this is not to be sent in a letter, but they must take a regular way to prosecute it according to law.

If it be so in the case of an inferior magistrate, what must it be in the case of a king? To come to the king's face, and tell him, as they do here, that he has acted illegally, doth certainly sufficiently prove the matter to be libellous. What do they say to the king? They say and admit, that they have an averseness for the declaration, and they tell him from whence that averseness doth proceed: and yet they insinuate that they had an inclination to gratify the king, and embrace the dissenters, that were as averse to them as could be, with due tenderness, when it should be settled by parliament and convocation. Pray what hath their convocation to do in this matter?

L. C. J. Mr. Solicitor-General, I will not interrupt you; but, pray come to the business

before us. Shew us that this is in diminution of the king's prerogative, or that the king ever had such a prerogative.

*Sol. Gen.* I will, my lord, I am observing what it is they say in this petition—They tell the king it is inconsistent with their honour, prudence and conscience, to do what he would have them to do: And if these things be not reflective upon the king and government, I know not what is. This is not in a way of judicature: possibly it might have been allowable to petition the king to put it into a course of justice, whereby it may be tried; but alas! there is no such thing in this matter.

It is not their desire to put it into any method for trial, and so it comes in the case *de Libellis Famosis*; for by this way they make themselves judges, which no man by law is permitted to do. My lords the bishops have gone out of the way, and all that they have offered does not come home to justify them; and therefore I take it, under favour, that we have made it a good case for the king: We have proved what they have done, and whether this be warrantable or not, is the question, gentlemen, that you are to try. The whole case appears upon record; the declaration and petition are set forth, and the order of the king and council. When the verdict is brought in, they may move any thing what they please in arrest of judgment. They have had a great deal of latitude, and taken a great deal of liberty; but truly, I apprehend, not so very pertinently. But I hope we have made a very good case of it for the king, and that you, gentlemen, will give us a verdict.

*Just. Holloway.* Mr. Solicitor, there is one thing I would fain be satisfied in: You say the bishops have no power to petition the king.

*Sol. Gen.* Not out of parliament, Sir.

*Just. Holloway.* Pray give me leave, Sir: Then the king having made such a declaration of a general toleration and liberty of conscience, and afterwards he comes and requires the bishops to disperse this declaration; this, they say, out of a tenderness of conscience, they cannot do, because they apprehend it is contrary to law, and contrary to their function: What can they do, if they may not petition?

*Sol. Gen.* I'll tell you what they should have done, Sir. If they were commanded to do any thing against their consciences, they should have acquiesced till the meeting of the parliament. [At which some people in the court hissed.]\*

*Att. Gen.* This is very fine indeed! I hope the court and the jury will take notice of this carriage.

*Sol. Gen.* My Lord, it is one thing for a man to submit to his prince, if the king lay a command upon him that he cannot obey, and another thing to affront him. If the king will

\* This and Mr. Attorney General's remark are cancelled in sir William Williams's MS. As to noise in court, see the end of the case.

impose upon a man what he cannot do, he must acquiesce; but shall he come and fly in the face of his prince? Shall he say it is illegal? and the prince acts against prudence, honour or conscience, and throw dirt in the king's face? Sure that is not permitted; that is libelling with a witness.

*L. C. J. Truly*, Mr. Solicitor, I am of opinion that the bishops might petition the king; but this is not the right way of bringing it in. I am not of that mind that they cannot petition the king out of parliament; but if they may petition, yet they ought to have done it after another manner: for if they may in this reflective way petition the king, I am sure it will make the government very precarious.

*Just. Powell*. Mr. Solicitor, it would have been too late to stay for a parliament; for it was to have been distributed by such a time.

*Sol. Gen.* They might have lain under it and submitted.

*Just. Powell*. No, they would have run into contempt of the king's command, without petitioning the king not to insist upon it; and if they had petitioned, and not have shewn the reason why they could not obey, it would have been looked upon as a piece of sullenness, and that they would have been blamed for as much on the other side.

*Serj. Baldock*. After so long a debate, I shall not trouble you long; most things that are to be said have been said; but I shall only say this in short: I cannot deny, nor shall not, but that the subject has a right to petition; but I shall affirm it also, he has a duty to obey; and that in this case, the power of the king to dispense with penal laws in matters ecclesiastical, is not a thing that is now in question, nor need we here have had these long debates on both sides. It may be perceived plainly, by the proofs that have been read, that the kings and princes have thought themselves that they had such a power, though it may be the parliament thought they had not; and therefore the declarations of the one or the other I shall not meddle with in this case. That power itself which the king has, as king of this realm, in matters rather ecclesiastical and criminal, than matters of property, may somewhat appear by what has been read before your lordship. But all this will be nothing in our case, neither has his majesty now depended so much upon this thing. The declaration has been read to you, and what's there said? The king there says, That for those reasons he was ready to suspend those laws; and be they suspended. Yet, my lord, with this too, that he refers it to, and hopes to make it secure by a parliament. So that there being this, it has not gone, I think, very far; and it not having been touched here, it is not a point of duty in my lords the bishops, as bishops, that's here inquired into. Whether they should have meddled with this or no, in this manner, is the question. That the king is supreme over all of us, and has a particular supremacy over them, as supreme ordinary and governor, and moderator of the church, is very

plain; and, my lord, it is as plain, that in such things as concern the church, he has a particular power to command them. This is not unknown, but very frequent and common in matters ecclesiastical, and matters of state. It is not here a question now, whether these declarations which they were commanded to take care of getting read, were legal or not legal? What prudence there was, what honour there was, what conscience there was, for their not reading it, is not the question neither: But the point was, the king as supreme ordinary of his kingdom, to whom the bishops are subject, does in council order; and what is it he orders? Their sending out and distributing his declaration. They were concerned in no more than that, and it had been a very pretty thing, a small thing, to send out the king's declaration to be read by the clergy. All the clergy were ordered to read it, but my lords the bishops were only commanded to distribute it. This he might do by virtue of his power ecclesiastical. And if this be not an evil in itself, and if it be not against the word of God, certainly obedience was due from my lords the bishops; active obedience was due from them to do so much as this. It was no consent of theirs, it was no approbation of theirs of what they read, that was required. So that if they had read it, or another had read it by the king's order, especially if that order be legal, they are bound to do it by virtue of their obedience, and not to examine more.

And, my lord, in this petition, here they come to relieve, not only themselves that were present, (for I speak to the preamble, as others before me have spoke to the conclusion) but they do involve the rest of the bishops that were absent; for it is in behalf of themselves, and their brethren, and all the clergy of that province. Now that all these should join in the petition, is a thing very uncertain. How does it construe here, whether they were all together and consented to it, or how all their minds could be so fully known, that they would be all involved in the disobedience to this order of the king? Then, my lord, what is the thing they are greatly averse to? There are two things required in the order: the bishops required to distribute the declaration to the inferior clergy, and the inferior clergy are required to read it. Then their averseness must be to distribute it, and the others to read it, and so they will be involved; none of whom did ever appear to have joined in it. And then they give reasons for their averseness; and it is true, reasons might have been given, and good reasons should be given, why they should not do this in duty to his majesty; more gentle reasons, and other kind of reasons than those that they have given.

*L. C. J. Pray*, brother, will you come to the matter before us?

*Serj. Baldock*. I have almost done, my lord.

*Just. Powell*. The information is not for disobedience, brother, but for a libel.

*Serj. Baldock*. No, Sir, it is not for dis-

obedience, but it is for giving reasons for the disobedience in a libellous petition, and I am going on to that. The declaration is said in the petition to be illegal; which is a charge upon the king, that he has done an illegal act. They say, they cannot in honour, conscience, or prudence, do it; which is a reflection upon the prudence, justice, and honour of the king in commanding them to do such a thing: and this appearing to have been delivered to the king by my lords the bishops, persons to whom certainly we all owe a deference, as our spiritual masters, to believe what things they say as most likely to be true; and therefore it having an universal influence upon all the people, I shall leave it here to your lordship and the jury, whether they ought not to answer for it.

*Recorder.* Will your lordship please to spare me one word?

*L. C. J.* I hope we shall have done by and bye.

*Recorder.* If your lordship don't think fit, I can sit down.

*L. C. J.* No, no, go on, sir Bartholomew Shower, you'll say I have spoiled a good speech.

*Recorder.* I have no good one to make, my lord, I have but a very few words to say.

*L. C. J.* Well, go on, Sir.

*Recorder.* That which I would urge, my lord, is only this: I think, my lord, we have proved our information, and that they have made no answer to it; for the answer they have made is but argumentative, and taken either from the persons of the defendants, as peers, or from the form of its being a petition. As peers, it is said they have a right to petition to, and advise the king; but that is no excuse at all; for if it contains matter reproachful or scandalous, it is a libel in them as well as in any other subject; and they have no more right to libel the king than his majesty's other subjects have; nor will the privilege of their peerage exempt them from being punished. And for the form of this paper, as being a petition, there is no more excuse in that neither: for every man has as much right to publish a book, or pamphlet, as they had to present their petition. And as it would be punishable in that man to write a scandalous book, so it would be punishable in them to make a scandalous, and a libellous petition. And the author of Julian the Apostate, because he was a clergyman, and a learned man too, had as much right to publish his book, as my lords the bishops had to deliver this libel to the king. And if the city of London were so severely punished as to lose their charter, for petitioning for the sitting of a parliament, in which there were reflecting words, but more soft—

*Just. Holloway.* Pray, good Mr. Recorder, don't compare the writing of a book to the making of a petition; for it is the birthright of the subject to petition.

*Recorder.* My lord, it was as lawful for the city of London to petition for the sitting of a

parliament, as it was for my lords the bishops to give reasons for their disobedience to the king's command: and if the matter of the city of London's petition was reckoned to be libellous, in saying that what the king had done in dissolving the parliament, was an obstruction of justice, what other construction can be made of my lords the bishops saying that the king's declaration is illegal? And if the matter of this petition be of the same nature with that of the city of London, your lordship can make no other judgment of it, but that it ought to have the same condemnation.

*Just. Powell.* Mr. Recorder, you will as soon bring the two poles together, as make this petition to agree with Johnson's book. They are no more alike than the most different things you can name.

*Serj. Trinder.* My lord, I have but one word.

*L. C. J.* How unreasonable is this now, that we must have so many speeches at this time of day! But we must hear it; go on, brother.

*Serj. Trinder.* My lord, if your lordship pleases, that which they seem most to insist upon on the other side, and which has not been much spoken to on our side, is, that this power which his majesty has exerted, in setting forth his declaration, was illegal, and their arguments were hypothetical. If it were illegal, they had not offended; and they offered at some arguments to prove it illegal; but as to that, my lord, we need not go much further than a case which is very well known here, which I crave leave to mention, only because the jury, perhaps, have not heard of it, and that was the case of sir Edward Hales;\* where, after a long debate, it was resolved, That the king had a power to dispense with penal laws.

But, my lord, if I should go higher into our books of law, that which they seem to make so strange of, might easily be made appear to have been made a frequent and constant practice.—

*L. C. J.* That is quite out of the case, brother.

*Serj. Trinder.* I beg your lordship's favour for a word or two. If your lordship please to consider the power the king has, as supreme ordinary, we say, he has a power to dispense with these statutes as he is king, and to give ease to his subjects, as supreme ordinary of the whole kingdom, and as having supreme ecclesiastical authority throughout the kingdom. There might be abundance of cases cited for this, if there were need: the statute of *primo* Eliz. doubtless is in force at this time, and a great many of the statutes that have been made since that time, have express savings of the king's supremacy: so that the king's power is unquestionable. And if they have come and questioned this power in this manner, by referring themselves to the declarations in parliament, they have done that

\* See Vol. 11, p. 1166, of this Collection.

which of late days has been always looked upon as an ill thing; as if the king's authority was under the suffrages of a parliament. But when they come to make out their parliament declarations, there was never a one, unless it be first in Richard the second's time, that can properly be called a parliament declaration, so that of the several parliaments is a matter perfectly mistaken; and if they have mistaken it, it is in the nature of false news, which is a crime for which the law will punish them. More things might be added, but I consider your lordship has had a great deal of patience already, and much time has been spent, and therefore I shall conclude, begging your lordship's pardon for what I have said.

L. C. J.\* I do assure you, if it had not been

\* Narcissus Luttrell gives a copious account of this trial, and of preceding and subsequent events connected with it. The following is his account of the latter part of the trial and of what followed it:

"June 29, 1688. The Chief Justice summed up the evidence, and left it to them if they thought there was sufficient to prove a publication, for if then I take it to be a libel, and so judge Allybone held; but Holloway thought it was none, being not done with a seditious intent. Powell held the same, and said if the king had such a dispensing power, there was no need of parliaments, but in all his life he never had read of any such power. So the trial held 'till 6 in the evening, and the jury went away and lay together till 6 the next morning, when they agreed (one Arnold stood out till then, the rest agreed over night) they would give no privy verdict, but came into court, and being called they found all the defendants Not Guilty; at which there was a most mighty huzzah, and shouting in the hall, which was very full of people; and all the way they came down, people asked their blessing on their knees; there was continued shoutings for half an hour, so that no business could be done; and they hissed the Solicitor.

"And at night was mighty rejoicing in ringing of bells, discharging of guns, lighting of candles, and bonfires in several places, though forbid, and watchmen went about to take an account of such as made them; a joyful deliverance to the Church of England.

"July 2. Several persons are taken up on account of making bonfires on the bishops' day, and for committing pretended disorders.

"July 7. Letters out of the country from several parts, speak of the great rejoicings that were observed in several towns for joy of the bishops' acquittal: particularly at Gloucester, Bristol, Bedford, Litchfield, &c.

"Bills were preferred against several persons at the sessions for riots in making bonfires the evening that the bishops were acquitted, but the grand jury found them ignorant.

"October. Sir William Williams's chamber windows in Gray's Inn, were broken very

a case of great concern, I would not have heard you so long. It is a case of very great concern to the king and the government on the one side, and to my lords the bishops on the other; and I have taken all the care I can to observe what has been said on both sides. It is not to be expected that I should repeat all the speeches, or the particular facts, but I will put the jury in mind of the most material things, as well as my memory will give me leave; but I have been interrupted by so many long and learned speeches, and by the length of the evidence which has been brought in, in a very broken, unmethodical way, that I shall not be able to do so well as I would.

Gentlemen, thus stands the case: it is an information against my lords the bishops, his

much one night and reflecting inscriptions fixed over his door."

"The imprisonment of the bishops was now uppermost in the minds of most of the people, who flocked to them in such numbers, for their blessing, and to condole their hard usage, that great and very extraordinary remarks were made both of persons and behaviour. Among the rest, ten nonconformist ministers went to pay them a visit, which the king took so heinously, that he sent for four of them to reprimand them; but their answer was, That they could not but adhere to the prisoners, as men constant and firm to the Protestant faith, or to that purpose. Nay, what is more extraordinary, the very soldiers that kept guard in the Tower, would frequently drink good health to the bishops; which being understood by sir Edward Hales, constable of the Tower, he sent orders to the captain of the guard, to see it was done no more; but the answer he received was, that they were doing it at the very instant, and would drink that, and no other health, while the bishops were there.

"At length the first day of the term came about, when the archbishop and the rest moving for the Habeas Corpus, twenty-one of the very prime of the nobility appeared at the King's Bench to bail them, and they were bailed accordingly. Upon this occasion the hall and Palace-yards were crowded with thousands of people, who begging their blessing as they passed, the archbishop freely gave it, and as freely, at the same time, exhorted them to be constant to their religion. A fortnight afterwards, an information was exhibited against their lordships, in the King's Bench, for that they had framed and published a seditious libel, of which the jury would not find them guilty, the counsel for the bishops, the ablest of their profession in all England, produced such arguments in their behalf, that the judges were divided, two of them declaring that the proofs did not extend to the making their petition or address a libel, and two of them that they did, which cost sir Richard Holloway and sir John Powell their seats on the bench, as soon as the term was over. In

grace my lord of Canterbury, and the other six noble lords; and it is for preferring, composing, making, and publishing, and causing to be published, a seditious libel: the way that the information goes is special, and it sets forth, that the king was graciously pleased, by his royal power and prerogative, to set forth a declaration of indulgence for liberty of conscience, in the third year of his reign; and afterwards upon the 27th of April, in the fourth year, he comes and makes another declaration; and afterwards in May, orders in council that this declaration should be published by my lords the bishops in their several dioceses; and after this was done, my lords the bishops come and present a petition to the king, in which were contained the words which you have seen.

Now, gentlemen, the proofs that have been upon this, you will see what they are. The two declarations are proved by the clerks of the council, and they are brought here under the great seal. A question did arise, whether the prints were the same with the original declarations, and that is proved by Hills, or his

the course of this trial, the power of the king to dispense with the laws, that grand point, was most exquisitely discussed by the bishops' counsel, who were so much an overmatch for the king's, that at court it was most heartily wished this business had never been pushed to such a crisis. Westminster-hall, the Palace-yards, and all the streets about, were thronged with an infinite people, whose loud shouts and joyful acclamations upon hearing the bishops were acquitted, were a very rebellion in noise, though very far from so either in fact or intention. Bonfires were made, not only in the city of London, but in most towns in England, as soon as the news reached them; though there were strict and general orders given out to prevent all such doings; and the clergy preached more loudly, and more freely than ever against the errors of the Latin church. The next day I waited on the king to the camp on Hounslow-heath, where every body observed him to labour under a very great disturbance of mind; but he spoke very kindly to me as I rode by him, upon several occasions.

"I was present, as a justice, at the general sessions held for the liberty of Westminster, and some days afterwards, at the same held for the county of Middlesex, at Hicks's Hall, where I found such a strange revolution among the justices of the peace, so many papists and fanatics put into the commission, that I neither sought business, nor chose to mix with them. At this last place there were several indicted as rioters, for that they had been concerned in making of bonfires, or contributed thereto; but the grand jury would find no bill, though they were sent out no less than three times; so generally did the love of the bishops and the Protestant cause prevail." *Reresby's Memoirs*, p. 262.

man, that they were examined, and are the same. Then the order of the council was produced by sir John Nicholas, and has likewise been read to you. Then they come to prove the fact against the bishops, and first they fall to proving their hands. They begun indeed a great way off, and did not come so close to it as they afterwards did; for some of their hands they could hardly prove, but my lord archbishop's hand was only proved, and some others; but there might have been some question about that proof. But afterwards it came to be proved, that my lords the bishops owned their hands; which if they had produced at first, would have made the cause something shorter than it was.

The next question that did arise, was about the publishing of it, whether my lords the bishops had published it? And it was insisted upon, that no body could prove the delivery of it to the king. It was proved, the king gave it to the council, and my lords the bishops were called in, and there they acknowledged their hands; but nobody could prove how it came to the king's hands. Upon which we were all of opinion, that it was not such a publishing as was within the information; and I was going to have directed you to find my lords the bishops not guilty: but it happened, that being interrupted in my directions, by an honest, worthy, learned gentleman, the king's counsel took the advantage, and informing the court that they had further evidence for the king, we staid till my lord president came, who told us how the bishops came to him to his office at Whitehall, and after they had told him their design, that they had a mind to petition the king, they asked him the method they were to take for it, and desired him to help them to the speech of the king: and he tells them he will acquaint the king with their desire, which he does; and the king giving leave, he comes down and tells the bishops, that they might go and speak with the king when they would; and, says he, I have given direction that the door shall be opened for you as soon as you come. With that the two bishops went away, and said, they would go and fetch their other brethren, and they did bring the other four, but my lord archbishop was not there; and immediately when they came back, they went up into the chamber, and there a petition was delivered to the king. He cannot speak to that particular petition, because he did not read it, and that is all that he knew of the matter; only it was all done the same day, and that was before my lords the bishops appeared at the council.

Gentlemen, after this was proved, then the defendants came to their part; and these gentlemen that were of counsel for my lords, let themselves into their defence, by notable learned speeches, by telling you that my lords the bishops are guardians to the church, and great peers of the realm, and were bound in conscience to take care of the church. They have read you a clause of a statute made in queen

Elizabeth's time, by which they say, my lords the bishops were under a curse, if they did not take care of that law: then they shew you some records; one in Richard the second's time, which they could make little of, by reason their witness could not read it; but it was, in short, a liberty given to the king, to dispense with the statute of provisors. Then they shew you some journals of parliament; first in the year 1662, where the king had granted an indulgence, and the house of commons declared it was not fit to be done, unless it were by act of parliament: and they read the king's speech, wherein he says, he wished he had such a power; and so likewise that in 1672, which is all nothing but addresses and votes, or orders of the house, or discourses; either the king's speech, or the subjects addresses; but these are not declarations in parliament. That is insisted upon by the counsel for the king, that what is a declaration in parliament is a law, and that must be by the king, lords, and commons; the other is but common discourse, but a vote of the house, or a signification of their opinion, and cannot be said to be a declaration in parliament. Then they come to that in 1685, where the commons take notice of something about the soldiers in the army that had not taken the test, and make an address to the king about it: but in all these things (as far as I can observe) nothing can be gathered out of them one way or the other; it is nothing but discourses. Sometimes this dispensing power has been allowed, as in Richard the 2nd's time, and sometimes it has been denied, and the king did once waive it: Mr. Solicitor tells you the reason, there was a lump of money in the case; but I wonder indeed to hear it come from him.

*Sol. Gen.* My lord, I never gave my vote for money, I assure you.

*L. C. J.* But those concessions which the king sometimes makes for the good of the people, and sometimes for the profit of the prince himself (but I would not be thought to distinguish between the profit of the prince and the good of the people, for they are both one; and what is the profit of the prince is always for the good of the people), but I say, those concessions must not be made law, for that is reserved in the king's breast; to do what he pleases in it at any time.

The truth of it is, the dispensing power is out of the case, it is only a word used in the petition; but truly, I will not take upon me to give my opinion in the question, to determine that now, for it is not before me: the only question before me is, and so it is before you, gentlemen, it being a question of fact, whether here be a certain proof of a publication? And then the next question is a question of law indeed, whether if there be a publication proved, it be a libel?

Gentlemen, upon the point of the publication, I have summed up all the evidence to you; and if you believe that the petition which these lords presented to the king was this peti-

tion, truly, I think, that is a publication sufficient: if you do not believe it was this petition, then my lords the bishops are not guilty of what is laid to their charge in this information, and consequently there needs no inquiry whether they are guilty of a libel? but if you do believe that this was the petition they presented to the king, then we must come to inquire whether this be a libel.

Now, gentlemen, any thing that shall disturb the government, or make mischief and a stir among the people, is certainly within the case of 'Libellis Famosis;' and I must in short give you my opinion, I do take it to be a libel. Now this being a point of law, if my brothers have any thing to say to it, I suppose they will deliver their opinions.

*Just. Holloway.* Look you, gentlemen, it is not usual for any person to say any thing after the Chief Justice has summed up the evidence; it is not according to the course of the court: but this is a case of an extraordinary nature, and there being a point of law in it, it is very fit every body should deliver their own opinion. The question is, Whether this petition of my lords the bishops be a libel or no. Gentlemen, the end and intention of every action is to be considered; and likewise, in this case, we are to consider the nature of the offence that these noble persons are charged with; it is for delivering a petition, which, according as they have made their defence, was with all the humility and decency that could be: so that if there was no ill intent, and they were not (as it is not, nor can be pretended they were) men of evil lives, or the like, to deliver a petition cannot be a fault, it being the right of every subject to petition. If you are satisfied there was an ill intention of sedition, or the like, you ought to find them guilty: but if there be nothing in the case that you find, but only that they did deliver a petition to save themselves harmless, and to free themselves from blame, by shewing the reason of their disobedience to the king's command, which they apprehended to be a grievance to them, and which they could not in conscience give obedience to, I cannot think it is a libel: it is left to you,\* gentlemen, but that is my opinion.

*L. C. J.* Look you, by the way, brother, I did not ask you to sum up the evidence (for that is not usual) but only to deliver your opinion, whether it be a libel or no.

*Just. Powell.* Truly I cannot see, for my part, any thing of sedition, or any other crime, fixed upon these reverend fathers, my lords the bishops.

For, gentlemen, to make it a libel, it must

\* As to the respective provinces of judge and jury, see in this Collection the cases of *Lilburne*, vol. 4, p. 1379, et seq.; of *Bushell*, vol. 6, p. 1013, et seq.; of *R. Thompson*, vol. 8, p. 36, et seq.; and the other cases therein cited. See, too, particularly the case of the dean of *St. Asaph*, A. D. 1783, in this Collection, and the Statute, 32 G. 3, c. 60.

be false, it must be malicious, and it must tend to sedition. As to the falshood, I see nothing that is offered by the king's counsel, nor any thing as to the malice: it was presented with all the humility and decency that became the king's subjects to approach their prince with.

Now, gentlemen, the matter of it is before you; you are to consider of it, and it is worth your consideration. They tell his majesty, it is not out of averseness to pay all due obedience to the king, nor out of a want of tenderness to their dissenting fellow subjects, that made them not perform the command imposed upon them; but they say, that because they do conceive that the thing that was commanded them was against the law of the land, therefore they do desire his majesty, that he would be pleased to forbear to insist upon it, that they should perform that command which they take to be illegal.

Gentlemen, we must consider what they say is illegal in it. They say, they apprehend the declaration is illegal, because it is founded upon a dispensing power, which the king claims, to dispense with the laws concerning ecclesiastical affairs.

Gentlemen, I do not remember, in any case in all our law (and I have taken some pains upon this occasion to look into it), that there is any such power in the king, and the case must turn upon that. In short, if there be no such dispensing power in the king, then that can be no libel which they presented to the king, which says, that the declaration, being founded upon such a pretended power, is illegal.

Now, gentlemen, this is a dispensation with a witness; it amounts to an abrogation and utter repeal of all the laws; for I can see no difference, nor know of none in law, between the king's power to dispense with laws ecclesiastical, and his power to dispense with any other laws whatsoever. If this be once allowed of, there will need no parliament; all the legislature will be in the king, which is a thing worth considering, and I leave the issue to God and your consciences.

Just. *Allybone*. The single question that falls to my share is, to give my sense of this petition, whether it shall be in construction of law a libel in itself, or a thing of great innocence. I shall endeavour to express myself in as plain terms as I can, and as much as I can, by way of proposition.

And I think, in the first place, that no man can take upon him to write against the actual exercise of the government, unless he have leave from the government, but he makes a libel, be what he writes true or false; for if once we come to impeach the government by way of argument, it is the argument that makes it the government or not the government. So that I lay down that, in the first place, the government ought not to be impeached by argument, nor the exercise of the government shaken by argument; because I can manage a proposition in itself doubtful, with a better pen than another man: this, say I, is a libel.

Then I lay down this for my next position,

that no private man can take upon him to write concerning the government at all; for what has any private man to do with the government, if his interest be not stirred or shaken? It is the business of the government to manage matters relating to the government; it is the business of subjects to mind only their own properties and interests. If my interest is not shaken, what have I to do with matters of government? They are not within my sphere. If the government does come to shake my particular interest, the law is open for me, and I may redress myself by law: and when I intrude myself into other men's business that does not concern my particular interest, I am a libeller.

These I have laid down for plain propositions; now then let us consider further, whether, if I will take upon me to contradict the government, any specious pretence that I shall put upon it shall dress it up in another form, and give it a better denomination? And truly I think it is the worse, because it comes in a better dress; for by that rule, every man that can put on a good vizard, may be as mischievous as he will to the government at the bottom: so that whether it be in the form of a supplication, or an address, or a petition, if it be what it ought not to be, let us call it by its true name, and give it its right denomination—it is a libel.

Then, gentlemen, consider what this petition is: this is a petition relating to something that was done and ordered by the government. Whether the reasons of the petition be true or false, I will not examine that now, nor will I examine the prerogative of the crown, but only take notice that this relates to the act of the government. The government here has published such a declaration as this that has been read, relating to matters of government; and shall, or ought any body to come and impeach that as illegal, which the government has done? Truly, in my opinion, I do not think he should, or ought; for by this rule may every act of the government be shaken, when there is not a parliament *de facto* sitting.

I do agree, that every man may petition the government, or the king, in a matter that relates to his own private interest, but to muddle with a matter that relates to the government, I do not think my lords the bishops had any power to do more than any others. When the house of lords and commons are in being, it is a proper way of applying to the king: there is all the openness in the world for those that are members of parliament, to make what addresses they please to the government, for the rectifying, altering, regulating, and making of what law they please; but if every private man shall come and interpose his advice, I think there can never be an end of advising the government. I think there was an instance of this in king James's time, when by a solemn resolution it was declared to be a high misdemeanor, and next to treason, the king to put the penal laws in execution.

Just. *Powell*. Brother, I think you do mistake a little.

Just. *Allybone*. Brother I dare rely upon it that I am right : it was so declared by all the judges.

*Sol. Gen.* The Puritans presented a petition to that purpose, and in it they said, if it would not be granted, they would come with a great number.

Just. *Powell*. Aye, there it is.

Just. *Allybone*. I tell you, Mr. Solicitor, the resolution of the judges is, That such a petition is next door to treason, a very great misdemeanor.

Just. *Powell*. They accompanying it with threats of the people's being discontented.

Just. *Allybone*. As I remember, it is in the second part of the folio 35, or 37, where the resolution of the judges is, That to frame a petition to the king, to put the penal laws in execution, is next to treason ; for, say they, no man ought to intermeddle with matters of government without leave of the government.

Serj. *Pemberton*. That was a petition against the penal laws.

Just. *Allybone*. Then I am quite mistaken indeed, in case it be so.

Serj. *Trinder*. That is not material at all which it was.

Mr. *Pollexfen*. They there threatened, unless their request were granted, several thousands of the king's subjects would be discontented.

Just. *Powell*. That is the reason of that judgment, I affirm it.

Just. *Allybone*. But then I'll tell you, brother, again, what is said in that case that you hinted at, and put Mr. Solicitor in mind of : for any man to raise a report that the king will or will not permit a toleration, if either of these be disagreeable to the people, whether he may or may not, it is against law ; for we are not to measure things from any truth they have in themselves, but from that aspect they have upon the government ; for there may be every tittle of a libel true, and yet it may be a libel still : so that I put no great stress upon that objection, that the matter of it is not false ; and for sedition, it is that which every libel carries in itself ; and as every trespass implies *vi & armis*, so every libel against the government carries in it sedition, and all the other epithets that are in the information. This is my opinion as to law in general. I will not debate the prerogatives of the king, nor the privileges of the subject ; but as this fact is, I think these venerable bishops did meddle with that which did not belong to them : they took upon them, in a petitionary, to contradict the actual exercise of the government, which I think no particular persons, or singular body, may do.

L. C. J. Gentlemen of the jury, have you a mind to drink before you go?

Jury. Yes, my lord, if you please. [Wine was sent for the jury.]

Juryman. My lord, we humbly pray that your lordship will be pleased to let us have the papers that have been given in evidence

L. C. J. What is that you would have, Sir ?

*Sol. Gen.* He desires this, my lord, that you would be pleased to direct that the jury may have the use of such writings and statute-books as may be necessary for them to make use of.

L. C. J. The statute-book they shall have.

*Sol. Gen.* But they can have no papers but what are under seal.

Serj. *Levinz*. They may have them by consent, and they may have a copy of the information.

L. C. J. They shall have a copy of the information, and the declarations under seal.

Mr. *Pollexfen*. If they have those, and the libel, as they call it, they will not need a copy of the information.

*Att. Gen.* My lord, we pray that your lordship would be pleased to ascertain what it is they shall have.

L. C. J. They shall have a copy of the information, the libel, and the declarations under the great seal.

*Sol. Gen.* But not the Votes of the House of Commons, nor the Journals, for they are not evidence.

L. C. J. No, I don't intend they shall.

Sir R. *Sawyer*. My lord, we pray they may have the whole petition.

Just. *Holloway*. That is, with the direction and prayer, you mean.

*Att. Gen.* Yes, with all our hearts.

[Then the court arose, and the jury went together, to consider of their verdict, and stayed together all night, without fire or candle.]

On Saturday the 30th day of June, 1688, about ten o'clock in the morning, the archbishop, and the rest of the bishops, came again into the court, and immediately after the jury were brought to the bar.

Sir S. *Astry*. Crier, take the appearance of the jury. Sir Roger Langley.

Sir Roger Langley. Here.

Crier. Vous avez, &c. And so all the rest were called, and answered. Then proclamation for silence was made.

Sir S. *Astry*. Gentlemen, are you agreed on your verdict? Jury. Yes.

Sir S. *Astry*. Who shall say for you?

Jury. Foreman.

Sir S. *Astry*. Do you find the defendants, or any of them, guilty of the misdemeanor whereof they are impeached, or not guilty?

Foreman. Not guilty.

Sir S. *Astry*. Then hearken to your verdict, as the court hath recorded it.—You say, the defendants, and every of them, are not guilty of the misdemeanor whereof they are impeached ; and so you say all?—Jury. Yes.

[At which there were several great shouts in court, and throughout the hall.]

Mr. Solicitor General taking notice of some persons in court that shouted, moved very earnestly that they might be committed : whereupon a gentleman of Gray's-Inn was laid

hold of, but was soon after discharged. And after the shouting was over, the Lord Chief Justice reproving the gentleman, said;

*L. C. J.* I am as glad as you can be that my lords the bishops are acquitted; but your manner of rejoicing here in court is indecent, you might rejoice in your chamber, or elsewhere, and not here. [Then speaking to Mr. Attorney, he said:]

Have you any thing more to say to my lords the bishops, Mr. Attorney?

*Att. Gen.* No, my lord. [Then the Court arose, and the bishops went away.]

After the revolution, complaint was made against the proceedings in this case, as in others.

I find in the Lords' Journal, that on May 1st, 1689, "The earl of Huntingdon made report from the committee of privileges, 'That the duke of Grafton, the lord Lovelace, the archbishop of Canterbury, the bishops of St. Asaph, Bristol, Peterborough, Ely, Bath and Wells, and Chichester, having been desired by the lords of the committee to cause to be brought this day before their lordships, a relation in writing of the proceedings against their lordships, in the court of King's Bench, in prejudice to the privileges of the peers in general, as well as to their persons in particular; which having not been done by any of the said lords, that it is the opinion of the committee, that the House be moved to take some effectual order therein.'"

"Upon report from the lords committees for privileges, it is ordered, by the lords spiritual and temporal in parliament assembled, That Mr. Ince do attend their lordships, with an account, in writing, of the proceedings that were had, in the court of King's Bench, against the archbishop of Canterbury, the bishop of Bath and Wells, the bishop of St. Asaph, the bishop of Bristol, bishop of Ely, bishop of Chichester, and bishop of Peterborough, in Trinity term last."

But I have not discovered that any farther proceedings were had on the matter.

All the historians of this period relate the expressions of joy which this acquittal of the bishops called forth. Kennett writes as follows:

"There were immediately very loud acclamations through Westminster-hall, and the words 'Not guilty,' 'Not guilty,' went round with such shouts and huzzas, that the king's Solicitor moved very earnestly that such as had shouted in the court might be committed. But the shouts were carried on through the cities of Westminster and London, and flew presently to Hounslow-heath, where the soldiers in the camp echoed them so loud that it startled the king, who was that day entertained in the earl of Feversham's tent: inso-

much that his majesty sent him out to know what was the matter. The earl came back and told the king, 'It was nothing but the soldiers shouting upon the news of the bishops being acquitted.' The king replied, 'And do you call that nothing? but so much the worse for them.' What his majesty meant by the last words he had not much time to interpret: he could only shew some indignation, that the bishops had escaped a legal penalty, and he threatened to deliver them up to the ecclesiastical commissioners. And for the two judges, Holloway and Powell, he immediately turned them out, and would have meditated some farther severity, if his following reign would have allowed it.

"This acquittal of the bishops encouraged the clergy in their honest resolutions of not reading the Declaration; but the ecclesiastical commissioners were instructed to call them to an account for it, for which purpose, on July 12, they met in the council-chamber and made an order, 'That whereas they had received information that divers rectors, vicars and curates, had omitted or neglected to read the said Declaration, to the manifest contempt of his majesty's authority-royal, they do hereby command and require all chancellors, archdeacons, commissaries and officials, to inquire strictly within their respective jurisdictions, in what churches and chapels his majesty's said Declaration was read, and in what churches and chapels the same was omitted, and to transmit an account thereof upon the 16th of August next.' The commissioners met again on that day, and finding that little or no inquiry had been made, they were much divided what to do in the matter. After a long consultation they were content to give longer time, and therefore published another order, 'Commanding all chancellors, archdeacons, commissaries, officials, and others having ecclesiastical jurisdiction, strictly to inquire of the church-wardens, as one of their articles of inquiry, at their respective visitations, (which visitations they were required to hold and keep before the 15th day of November next) in what churches and chapels his majesty's said Declaration was read, and in what the same was omitted, and to transmit an account thereof to them on the 6th day of December next.' But Providence prevented a return to this inquiry. The bishop of Rochester finding by this time the drift of the ecclesiastical commission, thought it inconsistent with his profession and character to act any longer in it, and therefore he wrote a letter to his colleagues, desiring to be excused from sitting amongst them."

It appears, that the 'Declaration' was not read in more than seven churches in London, and two hundred throughout England. See Kennett, Rapin, Burnet, and Hume.

May 20th, 1688, being the day appointed for reading the King's Declaration in London, it was only read in some few places, as at West-

minster-abbey," [Sprat being Dean. See the Introduction to the Trials for the Rye-House Plot, vol. 9, p. 362], "at Serjeants'-Inn, in Fleet-street," [a chapel, I apprehend, belonging to the Judges and other Serjeants at Law], "Mr. Hall's in Wood-street, Mr. Elliott's at Duke's-place," and some few others.

"The bishops that were for reading the King's Declaration, and dispersed it into their bishoprics, were the bishops of Durham," [Crew: he absconded for some time, but returned and took the oaths to King William.\* He was excepted out of the 'Bill of Indemnity and Free Pardon,' passed in 1690, but made his peace and retained his bishopric many years]. "Lincoln," [Barlow. He took the oaths to King William]. "Hereford," [Croft. He wrote 'The Naked Truth.' He was deprived for not taking the oaths to King William]. "Rochester," [Sprat, who was one of King James's privy councillors. See some account of him as above. He took the oaths to King William]. "Chester," [Cartwright. See some account of him, p. 27, of this Vo-

\* "The bishop of Durham, who had been at the House but twice before, came to day to give his vote against the king, who had raised him." Clarendon's Diary, Feb. 6, 1689.

lume], and "St. David's," [Watson. He took the oaths to King William; but, in 1699, was deprived for simony. See his Case in this Collection]. Narcissus Luttrell's MS. "Brief Historical Relation," &c.

"It generally happened wherever it was read, that the congregation immediately left the church. One minister, before he began to read it, told his flock, 'that he could not refuse the order sent him to read the Declaration, but that he knew no order which obliged them to hear it.'" Rapin.

After the acquittal of the bishops on the prosecution for their petition, it appears that James entertained the design of proceeding before the ecclesiastical commissioners against them for not causing his 'Declaration' to be read. No such proceedings, however, were instituted; but the ecclesiastical commissioners endeavoured to enforce the reading of the Declaration by the compelled instrumentality of the archdeacons and chancellors, of whom some undisguisedly resisted the attempt, and some less resolutely excused their non-compliance. Narcissus Luttrell relates, that on October the 5th, the king declared in council that the ecclesiastical commission was dissolved.

The following Articles, extracted from Tanner's MSS. in the Bodleian Library at Oxford, give some curious particulars relating to this interesting transaction, and the persons concerned in it. See Gutch's Collectanea Curiosa.

*Princess of Orange's Letter to Archbishop Sancroft.*

*Lee, Oct. 1, 1687.*

Though I have not the advantage to know you, my lord of Canterbury, yet the reputation you have makes me resolve not to loose this opportunity of making myself more known to you, than I could have been yet. Dr. Stanly can assure you, that I take more interest in what concerns the church of England than myself, and that one of the greatest satisfactions I can have is to hear how all the clergy shew themselves as firm to their religion, as they have always been to their king, which makes me confident God will preserve his church, since he has so well provided it with able men. I have nothing more to say, but beg your prayers, and desire you'll do me the justice to believe, I shall be very glad of any occasion to shew the esteem and veneration I have for you.

MARIE.

To the Archbishop of Canterbury.

VOL. XII.

*Copy of the Archbishop's Answer: probably never sent.\**

May it please your royal highness,

The high and dear esteem you have of the church and holy religion established amongst us, which you are pleased so emphatically to

\* This probability arises from the following letter written in the year 1715, by Dr. Stanley to Dr. Hicks, which is published by Mr. Gutch in the introduction to the first volume of his Collectanea :

"Sir ; *Amer Corner, May 26.*

"I do not remember, that I ever heard, that the late good archbishop Sancroft was thought to have invited the prince of Orange over into England. If any one did charge him with it, I believe it was without grounds. All that I can say as to the matter is, that an. 1687, when I came into England out of Holland, I confess I did desire the archbishop to write to the then princess of Orange, on whom I had the he-

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declare in your *gracious*\* letter *with* which you were lately pleased to honour me with, and the full assurance which further Dr. St. gives <sup>us</sup> me that you hold this pious good affection towards [us] in common with that great and excellent prince in whose bosom you lie, are *such* strong and rich consolations, which as we never needed more than now, *nor* could they never come more seasonable or welcome to us. It hath seemed good to the infinite wisdom to exercise this poor Ch. with trials of all sorts and of all degrees. But the greatest calamity that ever

<sup>was</sup> befell us *is* that it pleased God in his wise and just providence to permit wicked and ungodly men, after they had barbarously murdered the father, to drive out the sons from abiding in the inheritance of the Lord, *and as it were to say* had said to them go and serve other Gods.

The <sup>dreadfull</sup> *dismall* effects hereof we still feel every <sup>most</sup> moment but *can* not, nay we cannot particularly express. And though all this (were it yet much more) cannot in the least shake or alter our steady loyalty to our sovereign and the royal family in the legal succession of it, yet it imbibbers the very comforts that are left us; it blasts all our present joys and makes us sit down with sorrow in dust and ashes. Blessed

<sup>night</sup> be God who in so dark and dismal a *time* hath caused some dawn of light to break forth upon us from the Eastern shore, in the constancy and good affection of your royal highness and the excellent prince towards us, for if this should fail us too (which the God of Heaven and Earth forbid) our hearts must surely break. And as our thanksgivings for you both go up before God continually, so we all pray for you without ceasing, that God would crown you with all the blessings of Heaven and Earth. He hath inspired your R. Highness (with Marie in the Gospel) to chuse the better part, and I trust it shall never be taken from you. Be faithfull unto death and he will give you a crown of life. In the close of all your royal highnesses personal but most undeserved grace and fa-

nour to attend, to encourage her still to give countenance to the church of England: but he was pleased not to write to her. And afterwards when we were come over into England, and a report being spread abroad, that some of the lords spiritual as well as temporal had invited the prince of Orange into England, in my discoursing with the archbishop, I remember he said to me, I am now glad I did not write to the princess as you desired, for if I had written to her, they would have said, that I had sent to invite them over. This is true, and this is all that I can say of that affair.

I am, Sir, &c. WILL. STANLEY.

\* The words in *italic* are erased in the original.

your to your poor unworthy servant must not be forgotten, *whereby* which you have put new life into <sup>a dying</sup> *an* old man, <sup>ready to</sup> *who was ever sinking* under double the burthen of age and sorrow, but will <sup>so long as</sup> *while* he holds his soul in life continue to be indeclinably to be what he is upon so many obligations. (May it please your royal highness) Your m. devoted faithful humble servant and daily Orator, at the throne of Grace.

"W. C."

"Lambhith House, Nov. 3, 1687."

Dr. Stanley's Letter to Archbishop Sancroft.

Hague, Jan. 24, (Febr. 3) 1687-8.

May it please your grace;

When I returned hither [from] England, I durst not make bold to trouble your grace so much, as to acquaint you how graciously and kindly the princess received your grace's letter, and the prince your humblest service, but desired my uncle Dr. Beveridge to do it for me, which I doubt not but he hath done. But I reckon myself bound in duty now to address myself immediately to your lordship by reason of something which hath lately happened here; with which, I think, I ought to acquaint your grace, who I know are so truly concerned for the good of our church, and so in some measure prevent the ill reports which may possibly be raised of our excellent princess.

I suppose your grace may have heard, that the king hath not been wanting to press his daughter here to be favourable to popery; but least you should have heard more than is true, and that the papists should (as their way is) dishearten people, by representing her as inclined to them, I presume to acquaint your lordship with the sum of all that hath passed (her royal highness [being] pleased to make me privy to it, and giving me express leave to communicate it to your grace.) Whatever reports have been raised, the king hath scarcely ever spoken or written to our excellent princess to persuade her to popery till last Christmas: when the marquis d'Abbeville came hither the king sent to her a very long letter of two sheets of paper, written with his own hand, containing the motives of his own conversion to popery. This letter the marquis d'Abbeville gave to the princess on Christmas-day. The sum of the letter (for she shewed it me afterwards) was this; that he had been during his exile zealous for the Church of England, and was scarcely ever spoken to by any body, but one Nun, to turn papist. Nay he endeavoured to confirm his brother the duke of Gloucester in the Church of England; from which he was once thought to be warping. But he says, that the first thing that wreought with him, was, the holy and exemplary lives and constant devotion of those of the Church of Rome, the divisions among Protestants, with the necessity of an infallible judge to decide controversies, together with some promises which Christ

made to his church in general, that the gates of Hell should not prevail against it, and some others made to St. Peter; and there being no person that pretends to infallibility but the bishop of Rome, he concluded this church and infallibility must needs be with them. Afterwards he is very severe against the Church of England for its cruelty towards dissenters; saying, that dissenters can give as good reasons for their separating from us, as we for our departure from Rome; nay, that any county in England can with as much reason separate from the rest, and choose officers and make laws for itself, as we could separate from the bishop of Rome, and from those that hold communion with him. This is the main of what I remember was in the king's letter. Our excellent princess seeing this letter written with the king's own hand, was resolved not only to write an answer, as the king desired, but to write it presently, and without consulting us, that he might see she was very ready to give an account of herself, and might be [able] truly to say it was her own answer. And therefore the very next day being post day, she made haste and wrote a letter of two sheets of paper (which she afterwards did read to me) which truly I can without flattery say, I think was one of the best letters that I ever saw, and as full to the case as I could desire, she treating him with that respect that was due to her father, and a king, and yet speaking her mind freely and openly as became the cause of religion; answering every objection so handsomely, that I confess [I] could [not] sufficiently admire it, and thank God for it. And in vindication of our church said, that as she had used all means to inform herself concerning religion, so she was well satisfied in what she had done, when she embraced the Church of England, and she hoped that God would give her grace to live and die in it. Besides much more which it would be too long to trouble your grace with. I confess I never was so fully satisfied in my life, as on this occasion with her, and though I knew she did understand her religion exceeding well, yet now me-thoughts she even outdid herself. And if ever I can procure a copy of her letter, I hope it may be with leave of communicating it to your grace and my lord of London, and I am sure you would be very well pleased with it.

After she had sent this letter to the king, his majesty was pleased to answer little or nothing, but would have had her discoursed with Father Morgan, who was rector of the jesuits college at Rome, and now lives with marg. d'Abbeville; but though she would willingly answer whatever the king shall write to her, she hath absolutely refused to admit this jesuit to discourse with her; for if she should allow of any such discourse, she is sensible how they would boast presently, that she listened to them, and was inclining towards them; which, I thank God, I think she is as far from, as I can desire. And besides

she hath given me this assurance, that if ever there should be any objection or difficulty put to her, which she cannot clearly answer, she will not fail to command my advice and assistance in it. I make bold to acquaint your grace thus at large with this affair, that if the papists should raise any report of it, your grace may have somewhat wherewithall to satisfy yourself and others, so far as in your great prudence you think fit. Our excellent princess's reputation as to religion being of so great moment, I hope your grace will pardon my thus representing this matter between the king and her to you; for I know your grace's hearty concern for the church; but I dare not speak of it even here, or write of it to any body else for several reasons; only my lord of London knows somewhat of it.

And as I thus beg your lordship's pardon so I must humbly also beg your commands and directions as to my management either in this affair or in any thing else, in which the good of the church is concerned, which I can truly, and with a safe conscience, say, is much dearer to me than my life itself, or any thing else I have in this world; and therefore your grace may be sure, I will not fail (by the blessing of God) to make all the good impressions that I shall be able; but your grace's commands and assistance will enable me to do much more; and I know that any thing will be much the better taken also as coming from your grace. To this purpose I humbly crave leave to beg of your grace, that you will be pleased sometimes to write to her highness. I am from herself assured, that she will take it very well, and when your grace thinks fit to write to her, if you will please to give your letter to Dr. Tenison, he will frequently find a private hand by which to send it enclosed to me. And if your grace doth take some notice to her of her carriage in this affair, as I have related it, it will I believe, be very acceptable. I again most humbly beg your grace's pardon for this long letter, and for my bad writing, for the gentleman that is to carry it, is in so great haste that I have not time to transcribe it. I bless God their highnesses are in good health, and beg your grace's prayers to God for them, and your blessing on your grace's most humble and obedient servant,  
WILL. STANLEY.

*Another Letter from the same to the Archbishop.*

*Houslaerdyke, May 31 (June 10), 1688.*

May it please your grace;

I hope your grace did pardon the trouble which I gave you of a letter since I returned hither out of England, and in confidence of that I having the opportunity of a friend going for London, whom I can trust, presume to acquaint your grace with how great satisfaction the news was received here of the petition, which your grace and your brethren the bishops presented to his majesty. All men here, that love the church or reformation, do rejoice in it, and thank God for it, as an act very prudent and

resolute, and every way becoming your places and characters; but especially our excellent prince and princess were so very well pleased with it, (notwithstanding what the marquis of Abbeville, the king's envoy here, could say against it) that they have both vindicated it before him, and given me a command in their names to return your grace their hearty thanks for it; and at the same time to express their real concern for your grace and all your brethren, and for the good cause in which you are engaged; and, I dare say, they are not only highly satisfied with your grace's conduct, but reckon themselves particularly obliged by your grace's so steadily maintaining the church; and your refusing to comply with the king is by no means looked on by them as tending to disparage or depress the monarchy; for they reckon the monarchy to be really under-valued and injured by all unreasonable and illegal actions, though never so much pretending to enhance it. Indeed we have great reason to bless and thank God for their highnesses steadiness, in so good a cause, and their affection towards us. They do give us all the comfortable prospect that we ourselves can desire. And I pray God in his good time to answer and fulfill all these our hopes in them. I will not trouble your grace with news from hence; only I cannot but acquaint your grace here hath lately been discovered a great design against the life of the prince by poison. The person, who was to have done it, discovered it, and produced the poisons, but he could not produce the person that hired him; for he would never tell him his name, nor meet him in any house. He gave him some money in hand, and promised him more, if he would but first poison his landlord where he lodged, and then he should have much more for doing the same to the prince; and because this person delayed to do either, he was by an unknown hand stabbed here in the fair time, but is not dead. We discourse but little of it, but it is most true, that there was such a wicked design, which I thank God is defeated; and I pray God for ever to blast all designs against their highnesses, and to make them great and lasting blessings to our church and nation. To which purposes I humbly beg your grace's prayers to God for them, and your blessing on your grace's most humble and obedient servant,

WILL. STANLEY.

MATTER OF FACT: by the H. of C.—

### I. *Concerning the King's Dispensing Power.*

December 26th, 1662, king Charles 2 set forth a Declaration to all his loving subjects, containing an indulgence (though far less than hath been since granted) to dissenters; there being then no other test upon any sort of them, but the oaths of allegiance and supremacy. At the opening of the next session of parliament, February 13th, 1662, the king in his speech explained his meaning in his said declaration, lest (as he said) "some should mistake him there-  
in." In that speech he used these words; "I

could heartily wish, I had such a power of indulgence, &c.:" whereby it is manifest, that he knew he had no such power by his prerogative.

The house of commons coming to consider of that speech, fell upon the questioning the legality of that declaration: and after long debates, upon February 28th presented an address to the king, containing the several reasons against that indulgence; and averring positively; "that the laws of uniformity, then in force, could not be dispensed with, but by act of parliament." This address was received by his majesty very graciously; as appears by his answer, which is in print, with the address and reasons.

While this was doing in the house of commons, a bill was brought into the house of peers, intituled, "An Act concerning his majesty's power in ecclesiastical affairs." The scope of it was to enable the king to dispense with the act of uniformity, and to give indulgence to dissenters. The cause of the bill is thus laid down in the preamble: "considering that this indulgence, how necessary soever, cannot be dispensed by any certain rule, &c. and his majesty being the best judge, when, and to whom this indulgence is to be dispensed, and as may be most consistent with the public peace, and without just cause of offence to others, and to the end his majesty may be enabled to exercise it with universal satisfaction, be it enacted, &c.:" This bill was read the first time February 23d. It was after read a second time, and committed. But whosoever hath the curiosity to look into the journals of that house, will find, that though the committee sat several times, they made very little progress in it, and that at last it died away there, without any report made to the house. By this proceeding it seems very clear, both that the king had then by law no such dispensing power; and that the parliament were not then inclined to grant him any such power.

After this all things continued quiet for above nine years. But March 15th, 1671, the king set forth another Declaration of Indulgence, much fuller than the former. The parliament met not till February 4th, 1672, (which was near a year after the declaration was published.) The king, in his speech at the opening of that session, speaking, (among other things) of his declaration, was pleased to say: "Having said this I shall take it very ill to receive contradiction in what I have done; and I will deal plainly with you; I am resolved to stick to my declaration." The house of commons, February 19th, made an humble address to his majesty; wherein they inform him, "that penal laws in matters ecclesiastical cannot be suspended but by an act of parliament." The king returned an answer February 24th, in which he says, "that he is much troubled, that that declaration, which he put out for ends so necessary to the quiet of his kingdom (and especially in that conjuncture) should have proved the cause of disquiet in his house of

commons, and given an occasion to the questioning of his power in ecclesiastics: which he finds not done in the reigns of any of his ancestors, &c." Neither doth he pretend to the right of suspending any laws, "where the properties, rights, or liberties of any of his subjects are concerned, &c." This answer of his majesty was not satisfactory. The house replied, February 27th, in another address, in which they say, "that the power to suspend penal laws in matters ecclesiastical was never claimed, nor exercised by any of his majesty's predecessors." It is fit here to observe, that in this debate in the house of commons (which lasted above eight hours) all the lawyers in the house (among whom were several of the king's counsel) were commanded to deliver their opinion, as to the legality of the declaration: which every one of them did distinctly by himself, and declared, that penal laws could not be suspended, but by act of parliament.

While these things were transacting in the house of commons, the king acquainted the house of peers, what had past between him and the commons. The lords did little more thereupon, than appoint a committee to consider of what his majesty had communicated unto them. For while they were considering of it, the house of commons, taking notice of the great concourse of papists to town, and that many of them were got into employments in the army, prepared an address to be presented to the king, against the growth of popery: which they sent up to the lords, March 4th, desiring their concurrence to it. Their lordships granted it; and March 7th both houses presented it to his majesty; and his majesty, March 8th, went to the house of peers, sent for the commons, and made a short speech to both houses; wherein he told them, "that he freely and readily agreed to the address, they presented to him the day before, and would take care to see it performed accordingly:" adding farther these words; "if there be any scruple yet remaining with you, concerning the suspension of penal laws, I faithfully promise you, that what hath been done in that particular, shall not for the future be drawn either into consequence or example." And after his majesty was gone out of the house of peers, the lord chancellor acquainted the lords (and Mr. secretary Coventry did the same in the house of commons) that the night before the king had caused the original declaration of indulgence under the great seal to be cancelled; of which he, and several other lords of the council were witnesses.

Thus ended this unhappy dispute between the king and his parliament, which occasioned many warm debates; and harsh and angry things were said on both sides, that had been much better avoided. This declaration, together with the impertinence of the Papists (to give it no worse name) gave occasion to the parliament in this very session to pass that act, wherein the first test was imposed on all persons who had any office, &c.

From what hath been said, it is (I think) very clear, that to this time the king had no power to dispense with penal laws in matters ecclesiastical. For in February, 1662, his majesty owned that he had no such power; and we all know, that the parliament have past no law since to enable him to exercise that power. How therefore the present judges came to be so far enlightened, as to give their opinions so positively, that the king may by law dispense with the act, whereby the last test is imposed (without which no man can sit in either house of parliament, or enjoy any office); and also with all other penal laws, even where the property of the subject is concerned (which his late majesty disclaimed the pretending to); I say, how these judges came to so fit a resolution in this great point, may be fit one day to inquire.

The Declarations, Speeches, Addresses, and Replies, above-mentioned, are all in print.

## II. Concerning the Act imposing the Test, 1678:

The bishop of Oxford, in his late book, intitled, "Reasons for abrogating the Test," &c. in the very entrance of it, lays down this assertion; "That the test imposed upon all members of parliament, October 30th, 1678, ought to be repealed for several reasons."

First, "Because it doth not only diminish, but utterly destroy the natural right of peerage; and turns the birthright of the English nobility into a precarious title: so that, what was in all former ages only forfeited by treason, is now at the mere of every faction, or every passion in parliament."

Answer. How the bishop handles the matters of transubstantiation and idolatry, I take not upon me to judge: but as to what concerns the house of peers, and the transactions there, I will venture to say, he is grossly mistaken in matters of fact; which shews at least want of care to be well informed. Had he looked into the printed statute-book he would have found, that the act he mentions, past November (not October) 30th, and had he been conversant in the journals of the house of peers (which he ought to have studied, before he had taken upon him to write of their affairs) he might have found, that lords have been deprived of their places in parliament, and the privilege of voting there for less crimes than treason; and that even by judgment of the house of peers only, without an act of parliament. The lord viscount St. Albans, lord chancellor, and the earl of Middlesex, lord treasurer, temp. Jac. 1. were not only deprived of their offices, and made incapable of ever holding any other, but also of ever sitting in parliament; and all this by the censure of the house of lords only: and in elder times, in the reign of Henry 4, the duke of Anmarie, and others. And to come nearer our own time; how often have the lords made orders, (scarce a session since 1660, in which they have not) that all the members of that house should take the oath of allegiance?

and accordingly all the peers, even the Roman Catholic, have taken that oath more than once since his late majesty's restoration; even his present majesty too, when duke of York. There is no question but that every court may prescribe rules to all the members of that court; much more the supreme court, the house of peers, who frequently have imprisoned and suspended their members from sitting and voting there, for no other offence than contempt: one eminent example whereof might be given, which happened a few years since, but that I am willing to avoid reflections upon passages which 'tis better to forget.

And if peers may be deprived of sitting and voting in parliament by judgment of the house of lords only: certainly he must be very audacious who presumes to question what the supreme authority of the nation (king, lords, and commons) have done by act of parliament: especially it being no more (after all) than to provide a security, that those who are of a different religion from that established by law, should not be in a capacity to destroy the religion of the country. If the bishop would but view the late edicts which have been published in France to suppress the reformed religion there, where the Protestant peers had as much right to sit in parliament as the Roman Catholic peers can pretend to here: or if he would have looked into the history of Sweden, and seen what security the legislative power of that kingdom hath provided for the maintaining of the religion there established, he would not have thought it so very strange, that our king and parliament should make new laws for the support of the religion of the country, when they find it like to be invaded, and disturbed by those who make it their constant business to undermine it.

'Tis very true (what he says) that in the act for the first test, 1673, the rights of peerage are secured to the lords by proviso. And if he had well minded that other act, 1678, with which he is so much displeas'd;

1. There is no right of peerage at all invaded, but that of sitting and voting in parliament, till they take the oaths, and subscribe the declaration: which so soon as any lord will perform, he may take his place in parliament, though discontinued for some time; for a writ is sent him every time a parliament is summoned. And that he looses no other privilege of peerage, is, I think, very plain, by the trial of the late lord viscount Stafford; who, notwithstanding this act, was tried by his peers according to his undoubted right; which clearly shews what is and what is not taken away by this act. But

2. For that which is taken away, sc. the right to sit, and vote (which he calls the birth-right, and natural right of peerage), he should have considered the reason of doing so, given in the preamble of that act: viz. "Forasmuch as divers good laws have been made for preventing the increase and danger of Popery in this kingdom, which have not had the desired

effects, by reason of the free access which Popish recusants have had to his majesty's court, and by reason of the liberty which of late some of the recusants have had, and take to sit, and vote in parliament, &c." Is it not plain hereby, that the wisdom of the nation thought it necessary for the security of religion, and the government, that Popish recusants should be debarred from coming to court, and sitting in parliament? And these are all the rights of their peerage, that are not so much taken away, as suspended, till they conform.

To confirm this first reason for abrogating the test, the bishop insists much upon a debate in the house of peers, 1675, when the test, or oath of loyalty (as he calls it) was brought in there, where he affirms several things.

First, "That the matter of the test itself (viz. that 'tis not lawful upon any pretence whatsoever to take up arms against the king, and by his authority, against his person) was such as nobody could except against; but the only debate was, Whether the proposing this as a qualification for a right to sit in parliament, did not intrench upon the privileges of that house, and the fundamental right of peerage? which (he saith) was thrown out by an unanimous vote of the house, April 21."

Secondly, He confesseth, "That the question being put, it was at first resolved in the negative: but that some lords (sc. 23 in all) did enter their dissent against this vote, as a thing unprecedented in former times; as the highest invasion of the liberties and privileges of the peerage; and most destructive of the freedom, they ought to enjoy, as members of parliament: because the privilege of sitting and voting in parliament is an honour they have by birth; and a right so inherent in them, and inseparable from them, that nothing can take it away, but what by the law of the land takes away their lives, and corrupts their blood."

Thirdly, "The debate, he saith, was kept up many days, but that it was at last resolved, April 30th, That no oath should be by this bill imposed." And,

Fourthly, "That a general order was past, *namine contradicente*, to be added to the standing order of that house, That no oath shall be imposed by any bill, or otherwise upon the peers, with a penalty in case of refusal to lose their places, and votes in parliament, or liberty of debates therein."

Answer. This bill was intituled, "An Act to prevent the Dangers which may arise from Persons disaffected to the Government:" and the oath in it contained (beside the clause he mentions) another, obliging them to abjure all endeavours to alter the government in the church. It was brought in April 15th, and read the first time; and the second time April 20th; when, and for several days after, there was a very great and long debate, Whether

the bill should be committed, or not; so that it was not committed till April 26th. In the mean time, April 21st, there was a collateral debate, Whether the very proposal of this oath with such a penalty were a breach of the fundamental right of peerage, and so the bill to be cast out: which was resolved in the negative by 87 lords; 23 dissenting, and entering the protestation, he mentions. So that there was nothing cast out by the unanimous vote of the house, April 21st, as the bishop grossly mistakes, for want of perusing the journals of the house. But the same day the peers resolved to proceed upon the main point, Whether the bill should be committed: and April 26, the question being put, it was committed to a committee of the whole house. Against this the former lords entered a second protestation, with a new reason, that it strikes at the very root of government; to which freedom of votes and debates is necessary in those that have power to make, or alter laws; whereas this bill obliges to abjure all endeavours to alter the church government, without regard to any thing, that prudence in government, Christian compassion to Protestant dissenters, or the necessity of affairs at any time may require. But the majority of the house were much dissatisfied with the proceedings of these dissenters: and therefore April 29th, the question being propounded, whether the reasons given in that protestation of April 26 did reflect upon the honour of the house, and were of dangerous consequence; it was resolved in the affirmative: against which several lords entered their dissents, asserting the right of protesting with reasons. For all this the committee of the whole house proceeded upon the bill April 30th, and May 3d; and past these two preliminary orders (to which the house agreed),

1. "That no oath shall be imposed by any bill, or otherwise upon the peers, with a penalty in case of refusal to lose their places, or votes in parliament, or liberty of debates therein; and that this be added to the standing orders of the house."

2. "That there shall be nothing in this bill, which shall deprive any member of either house of their just, ancient freedom, and privilege of debating any matter propounded, or touching the repeal or alteration of any old, or the preparing any new laws, &c. &c." Now the dissenters thought they had gained their point; but the business was brought about again; and the major part of the house (notwithstanding the unanimous laying aside the oath with the penalty in the bill mentioned) did upon the same May 3d (when the second preliminary order was made) pass the first enacting clause, "That all and every person, and persons, as well peers as commoners, that do, or shall hold, or enjoy any beneficial office, or employment, ecclesiastical, civil, or military; or be a privy councillor, or justice of peace; or (as they added the next day, May 4th) have or shall have right to sit and vote in either house of parliament, &c." Against this

vote also several lords entered their dissent, as being contrary to the two orders above-mentioned, which were past as previous directions to the committee of the whole house, to whom the said bill was committed; and insisted that the proviso in the late act (sc. 1673) for preventing dangers from Popish recusants, might be added to this bill, for the preserving the privileges of the peers, which the house had not been pleased to admit of. Thus it appears, that the peers had finally ordered, that an oath should be taken by the peers: but what the penalty should be in case of refusal (though there were many adjournments of the committee from hence till the 4th of June) was not determined: and though several penalties were moved at the committee, yet nothing was resolved on, nor any report made to the house after May 7th. And in the mean time, some unlucky disputes happening between the two houses about other matters, the parliament was prorogued June 9th till October, and so the bill fell, and was never resumed.

This is in short the narrative of the matter of fact, which past then in the house of peers upon this occasion out of their own journals. Whence it appears,

First, that it was then the sense of that house (23 only dissenting) that the imposing of an oath upon the lords, even with the penalty of losing their places and votes in parliament in case of refusal, is not a breach of the fundamental rights of peerage. How the two orders of April 30th, and May 3d (which lay aside the oath, and the penalty) came to be gained, and what was the project and intrigue of these transactions throughout, would carry me too far into the history of that time. It is enough against the bishop, that the oath and penalty were presently resumed, and proceeded upon. And,

Secondly, These very lords, or some of them, seem to have altered their opinion herein afterward; for the bill for the test 1678, (at which the bishop is so much offended) past almost unanimously: 7 lords only (besides the then duke of York) dissenting, and they all papists. And I cannot think the dissenting peers will be pleased, that his lordship should question or arraign them (as he doth p. 2th) for changing their opinion, and consenting to the test bill 1678; they being sufficient judges of their own rights and honours, without his lordship's assistance.

Thirdly, As to what was added to the standing orders of the house, it is in fine no more than an order; and the peers are masters of their own orders, and may observe, or set them aside, as they see good. One reason, which the 23 lords gave, why they dissented to the bill, was to preserve their ancient privilege of altering old, and making new laws: and shall the peers be denied the freedom to set aside their own orders? This very order (which the bishop takes to be so obligatory) was often urged in 1678, and yet almost unanimously set aside, and even by these very dissenting lords too,

II. The bishop's second reason for the repealing the test is, because of its "dishonourable birth and original; it being the first born of Oates his plot, &c."

Answer. Though Oates hath been since detected, and proved a most abominable cheat, and impostor; I could wish, that what hath happened since did not make several things, which he then related, look like truths now, which many good men did not then believe. Nay, though Oates had never been, doth it therefore follow, that there was no Popish plot? Certainly no man reads Mr. Coleman's Letters, but must be convinced, that there was a plot laid (before Oates appeared) to extirpate the northern heresy (as he called it), and that two of the French king's confessors at least were privy to it. Whoever looks into the transactions of parliament for 8 or 9 years before 1678 (and especially 73, 4 and 5) and sees how much time was spent in modelling laws for the security of the Protestant religion, and in contriving methods for the government, in the case of a Popish successor; will not sure impute the original of those endeavours to Oates's perjury. If the bishop would look into the Journals of the house of peers, he would find, that November 9th, 1675, a bill was brought from the house of commons, intitled, "An Act for hindering Popish recusants from sitting in either house of parliament," (certainly nothing akin to Oates, or his plot) which probably had past that session, but the parliament was in the same month prorogued to February 1676: and whether the proceedings upon that bill might not occasion that long prorogation, I leave to inquiry. What reasons induced the parliament 1673 to pass the first test act, it would not perhaps be very agreeable to inquire: but sure it had nothing to do with Oates's plot. They that knew the state of the court, and circumstances of affairs at that time, cannot doubt but that it was to keep those out of offices and employments, who by obtaining them would be in a capacity to suppress the Protestant, and introduce the Romish religion. And if the Papists had modestly submitted to that act, and not occasioned fresh jealousy by frequenting the court, and being too busy there, in all probability no new laws would have been made against them. Upon the whole, I do not see (for all the bishops' arguments) that the laws we are possess of, for the security of our religion, should be accounted odious, and repealed, because Oates is proved an impostor: for long before he was thought of, all papists were by several laws excluded from all offices in the government. And whether this be a proper time to give them power to destroy the Protestant religion, (for no man can doubt, if they had the power, and the laws were out of the way, they would think themselves bound to do it) a parliament (when the king thinks fit to call one) will be the best judge.

III. The bishop's next reason, why he would have the test abrogated, is because of

the "incompetent authority, by which the law was enacted."

Answer. His lordship having as (he thinks) settled the ecclesiastical polity; sawcily takes upon himself to question the powers and authorities upon earth. He may as well pretend, that the parliament had not a competent authority to enact the oath of allegiance. For I have heard many Papists profess, that the main reason, why they cannot take the oath is, because the parliament hath not a competent authority to determine what is impious, or heretical; which that oath doth. Though I will not argue with his lordship's divine verities, yet I am satisfied in myself, that I may take the oaths, and make the subscriptions appointed by law, without intrenching upon the authority of the church. But, however, he who can content himself in his private station, without the ambition of making a figure in the state, incurs no penalty from either of the acts, nor is obliged to take the oaths, or tests. But he thinks he may say any thing, because no authority is like to question him, but a parliament: and therefore to that I leave him. When that shall sit, he may perhaps know, whether they will allow him to question their authority in the legislature: I am apt to think, that neither lords nor commons will sit down quietly under the severe and foul language he hath given them. He may then be taught, that though he may refuse all freedom in debates about any bills, which are preparing; yet when they are past into laws, (the royal assent being given them) it is dangerous to arraign them; the king's laws being the life of the government.

IV. His last reason for repealing the test is, "because of the uncertainty and falsehood of the matter contained in the declaration itself."

Answer. What is the true notion of transubstantiation, and idolatry, according to the church of England, I will leave to be debated with the bishop by abler persons, (who I doubt not) will take him to task in these particulars. However we will not learn this of him, who was born of fanatical parents, and was educated in their principles: and though he hath since for preferment swallowed all oaths, and tests, and hath written with great sharpness against popery, yet hath he not shewed himself to have the true principles of the church of England. But admitting this, I shall only shew him here some few more of his mistakes in matter of fact, and correct them: which was my main design.

1. He seems, p. 9th and 10th, to take little Archibopiel (as he calls him, meaning the E. of Shafsbury) to have been the infamous author of this test: but they who understand the affairs of that time much better than the bishop can pretend to do, know it was otherwise. The bill was sent up from the house of commons; being but the reviving of that before mentioned, which they sent up once before in November 1675; as thinking still, that it was necessary for the preservation of the government. If Shafsbury concurred in it, it was only because

it came from the house of commons; he being then very industrious in his courtship to that house.

2. As to what he saith p. 10th: "That the design of the test was to pursue, and hunt down the heir of the crown; and in order to that, to strip him of the guards of his most faithful friends; he forgets that, by particular proviso, nothing in that act was to extend to the duke of York; and if the guards of his most faithful friends (which he mentions) were not papists, the act meddled not with them; and if they were, he was stript of them by the test imposed 1673."

3. Who were the two fathers, or rather mid-wives (as he calls them p. 11th) of the first test in 1673, doth not appear by the journals of the house of commons; so that his lordship can only have been told, that they were "the two famous burgesses of Oxford." And in that he may have been misinformed in the whole, as I am sure he is in part. For the alderman, he mentions, was not then a member of parliament; and it can be made appear, that the recorder of Oxford, who was one of their burgesses, never opened his lips in that matter.

4. He tells us, what was objected against the "church of England by the Roman divines of Cologn. in his majesty's presence; and that thereupon Dr. Cosins (then dean of the chapell) by his majesty's command wrote a discourse to vindicate the church of England, and to give account of its sense concerning the true real presence." But there are persons yet living, who know, that there never were any disputes before the king, while he resided at Cologn, by any of the Roman divines; that Dr. Cosins was never dean of the chapell royal, nor ever at Cologn (but remained at Paris, to take care of the queen mother's protestant servants), and that if the bishop had looked upon Dr. Cosins's history of transubstantiation (which I suppose is the discourse he means) he would have found that it was written at Paris, long before the king's being at Cologn.

*Audacious attempts of Popish Seducers in King James's reign.*

Books and pamphlets prejudicial to the church are sold on every stall, cryed about by hawkers in the streets as commonly as Gazetts, thrown or brought into houses, or sent by penny post bundles, such as, the Touchstone of the reformed Gospel: the Translation of the Mass: the Papist misrepresented: the Exposition of the Bishop of Meniv.

Papists bring papers into coffee houses and plead the cause out of them as out of so many briefs: thus did a new convert in a coffee house in Covent Garden. A priest discoursed publicly in such a house in a neighbouring parish about invocation of saints.

Some priests of foreign ministers catechise the children of the English in English, and by way of sermon expound an hour in an afternoon, and reflect upon our church.

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Thus have done father Jacob and another father at the resident's of Florence.

When the churchmen come to dying persons they often find that priests or lay-papists have been tampering with them. This was the case of Mr. J. M.

Sometimes priests come in disguise, and under the pretext of administering physic. Thus did one nigh Charing Cross, who came to a man, now dead, with a glass of medicinal liquor.

Papists, both of the laity and clergy, offer arguments to the passengers in hackney coaches to Windsor, and other places, and perhaps Dr. B. may call to mind the beginning of his own unacceptable discourse to a military person in his coach from Islington.

Papists deal with children, and sometimes forbid them to read the Bible in our translation: so they dealt with the daughter-in-law of one Mrs. Hall about sixteen years old.

Sometimes they suggest great hopes of recovery to the sick, upon reconciling themselves to the Church of Rome: so they did in the case of a sick woman, not far from Somerset House, in great pain with the stone.

Some papists pretend kindred, where they are not akin; and under this cover make visits, and enter into discourse about religion, as in the case of a lady in Covent-Garden.

Priests and others offer to pregnant youths preferment at Doway, or St. Omers; as in the case of a student in King's college.

Some priests christen children, even where the parents are against it; ex. gr. Dan Maniato, servant to the resident of Florence, came with a priest to the house of Francis Herd, of Soho, (whose wife the said Daniel had abused) and he christened the said child, without any leave, and to the great grief of the said Francis Herd, and without any notice there taken of the said Maniato's violence and adultery. It is true, this is a last year's story, and heard of formerly, but not so confirmed to me as in this week.

I suppose you do not expect, that I should tell you of every thing that I have heard or known of this nature, especially of such relations as have been received under the seal of secrecy. Enough hath been said to satisfy you that our churchmen do not unnecessarily break silence. I am, &c. O. O.

*The Case of reading the 'Declaration for Liberty of Conscience,' briefly stated in four Propositions: [by Mr. Jonas Proast, Chaplain of All Souls, and afterward Archdeacon of Berks.]*

1. The intent of the Declaration itself is, that men may use such a liberty, in matters of religion, as cannot be used, without violating the laws of God and this kingdom.

2. The intent of the order for the clergy's reading the declaration is, that the declaration may have the fuller effect, in the more general use of that unlawful liberty.

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3. Therefore, in the king's intention, and according to the most natural construction of the thing itself, the clergy's reading the declaration is a direct promoting the use of that unlawful liberty.

4. Therefore the clergy cannot lawfully obey the order for their reading the declaration.

*Copy of a Letter in Archbishop Sancroft's own hand.*

My lord; This is only in my own name, and in the name of some of our brethren now here upon the place, earnestly to desire you, immediately upon the receipt of this letter, to come hither with what convenient speed you can, not taking notice to any that you are sent for. Wishing you a prosperous journey and us all a happy meeting,

I remain your very loving brother.

*Two Letters to the Archbishop from the Bishop of Winchester [NEWS.]*

May it please your Grace;

Though I was to-morrow to begin a course of phys, yet I shall, God willing, come part of the way towards you: and am your obedient son and servant,

P. WINCHESTER.

Farnham Castle, May 13, 1688.

May it please your Grace;

The wounds in my hand, which have of late been uneasy to me, have this night afflicted me to that degree, that I am forced to let blood, and so am made at present uncapable for to bear the motion of a coach. What ease I may receive by this I cannot yet tell, though it hath formerly been successful. But it is very uneasy to me that I am disappointed in my intentions of waiting on you. I beg your pardon and prayers for your obedient son and servant,

P. WINCHESTER.

Farnham Castle, May 14, 1688.

*Letter to Archbishop Sancroft from John Tillotson, D. D. Dean of Canterbury.*

May it please your Grace;

Though I am very sensible, how unfit I am to advise in difficult cases, yet I could never forgive myself, if I should be wanting to our religion and church in any thing, wherein your grace shall think I may be in the least serviceable; and therefore I shall not fail, God willing, to wait upon your grace to-morrow morning at the hour appointed. I humbly beg your grace's blessing, and remain, my lord, your grace's, &c.

J. TILLOTSON.

*Letter to the Archbishop from the Bishop of Landaff [BEAV.]*

May 27, 1688.

May it please your Grace;

There came to my hand from my brother of Gloucester, Friday night last, a copy of a petition, delivered to his majesty by six bishops

of your province, on behalf of your graces themselves, and of others their absent brethren.

My lord, I was one of those absent; but I was absent in body only, my soul went along with them. I wholly concurred with them with my heart, and I now send my hand to bear testimony thereto.

Because I find I cannot be back soon enough in my diocese (whither I am hastening) to give a stop to the distributions myself, I have ordered a messenger to be dispatched with all speed to my chancellor (who is upon the place) with my commands to him; to detain what declarations shall be sent, and I make no doubt but to be obeyed.

God preserve your grace; grant us all to be of one mind; and to dare to do well in evil times. This is the prayer of your grace's most humble and dutiful servant,

W. LANDAFF.

*Letter from the Bishop of Worcester [THOMAS.]*

Worcester, June 3d. —88.

Worthy Sir;

I thank you for your congratulating my recovery, which as yet is so very infirm I rather creep than go. I pray present my dutifully devoted observance to my lord's grace of Canterbury. I pray God direct and prosper his steerage of the church of England in these tempestuous times. In a cordial compliance with his grace's pious conduct in the late petition presented to the king, I have retained in my custody the packet of the printed copies of the royal declaration of indulgence, which I could not transmit to the clergy of my diocese committed to my pastoral charge (*salva conscientia, salvo honore ecclesie Anglicanæ*). It is a piercing, wounding affliction to me to incur his majesty's displeasure, to be misinterpreted guilty of the least degree of disloyalty or ingratitude (which my soul abhors) towards my inexpressibly obliging master and benefactor, patron and sovereign, whose special mandate I have received in the concern of the indulgence imparted to me by the lord bishop of St. David's; wherein nothing could divert or slacken my infire submission and utmost conformity, but my dread of the indignation of the King of Kings, to whom, being near the brink of the grave, I must shortly give an account of my managing of the episcopal station (wherein God be merciful to me), I apprehend it a duty incumbent on me, indispensably strict, to be a skreen to my clergy, to endeavour to secure them from sins and perils, not to lay trains for either, by recommending the publication of that to their parishioners, wherein my own judgment is abundantly dissatisfied, and theirs also.

I resolve by God's gracious assistance to suffer the greatest temporal evil of distress rather than to act or promote the least spiritual evil of guilt: I rest your faithful friend to serve you,

W. WORCESTER.

*Letter from the Bishop of Carlisle [SMITH] to the Bishop of Ely [TURNER.]*

*Rose Castle, June 4, 1688.*

My very good Lord,

Your kind letter of the 26th past came safe to my hands on the 31st, for which I return your lordship my most humble thanks, and do account myself very much obliged to you for it; it having acquainted me with many particulars whereof till then I was wholly ignorant. The petition itself had been sent me some few days before, with which I was so very much pleased and satisfied, that I immediately resolved to take the first opportunity of declaring my assent to it, and my very hearty concurrence with your lordships in it. I desire you will be pleased to let me know in what form you would have me do it, for at present I am at a loss, in regard to the title of your petition (running for the province of Canterbury only) seems to have shut me out, at which I must confess I did (at the first reading of it) somewhat repine. With all this, my lord, I beg you will please to acquaint my lord's grace, to whom I present my most humble duty, and my very humble service to yourself, and the rest of the seven, remaining ever (my very good lord) your lordship's most affectionate brother and most faithful servant,

THO. CARLIOL.

My lord, I have disposed of your letter, so as your lordship directed, no eye having seen the inside of it but my own.

Yesterday, your lordship knows, was the day appointed for the first reading of the declaration, but I do not believe it was read by any one man of this diocese.

When your lordship shall give me the honour of another letter, be pleased to put it under a cover, directed to Mr. John Nicholson, at Rose Castle, near Carlisle, Cumberland.

*The PETITION of some of the Bishops to his Majesty [K. JAMES 2.] against distributing and reading his Declaration for Liberty of Conscience; with some proceedings thereupon.*

On Friday, May 18th, 1688, a Petition to the king was formed at Lambeth, by William lord archbishop of Canterbury, and several suffragan bishops of that province; (viz. Henry lord bishop of London, William of St. Asaph, Francis of Ely, John of Chichester, Thomas of Bath and Wells, Thomas of Peterborough, and Jonathan of Bristol;) in the presence, and with the consent of John Tillotson, D. D. dean of Canterbury, Edward Stillingfleet, D. D. dean of St. Paul's, Simon Patrick, D. D. dean of Peterborough, Thomas Tenison, D. D. vicar of St. Martin's in the fields, Robert Grove, D. D. rector of St. Andrew's Undershaft, and William Sherlock, D. D. master of the Temple. The tenor of the Petition was as followeth:

[Here follows the Petition, see p. 299.]

In the evening of the same day, the petition being finished, all the subscribers (except the archbishop, who had been forbidden the court almost two years before,) went over to Whitehall to deliver it to the king. In order thereto the bishop of St. Asaph went first to the earl of Middleton, (principal secretary) in the name of all the rest, to desire his assistance for the introducing them to his majesty: but he had been sick for a fortnight before, and so confined to his chamber. Then St. Asaph (his brethren staying at the earl of Dartmouth's house) went, and made the like application to the earl of Sunderland, desiring him to peruse the petition, and acquaint his majesty with it, that he might not be surprised at the delivery of it; and withal to beseech his majesty to assign the time and place, when and where they might all attend him, and present their petition. The earl refused to inspect the petition, but went immediately, and acquainted the king with their desire; and they were presently thereupon brought to the king in his closet within his bed chamber; where the bishop of St. Asaph with the rest, (all being upon their knees,) delivered their petition to his majesty. The king was pleased (at first) to receive the petitioners and their petition graciously, and upon the first opening of it to say, this is my Lord of Canterbury's own hand: to which the bishops replied, yes, Sir, it is his own hand. But the king, having read it over, and then folding it up, said thus, or to this effect.\*

*King.* This is a great surprise to me: here are strange words. I did not expect this from you. This is a standard of rebellion.

*St. Asaph* (and some of the rest) replied, that they had adventured their lives for his majesty; and would lose the last drop of their blood, rather than lift up a finger against him.

*King.* I tell you this is a standard of rebellion: I never saw such an address!

*Bristol* (falling down on his knees) said, Rebellion! Sir, I beseech your majesty, do not say so hard a thing of us. For God's sake do not believe, we are, or can be guilty of a rebellion. It is impossible, that I or any of my family should be so. Your majesty cannot but remember, that you sent me down into Cornwall to quell Monmouth's rebellion; and

\* The account commonly reported of what passed between the king and the bishops upon their delivery of the Petition is that given by Kennet, as follows:

"Upon the reading of it the king started, and shewed himself to be very much incensed, and made this answer in a very angry manner: I have heard of this before, but did not believe it. I did not expect this from the church of England, especially from some of you. If I change my mind, you shall hear from me; if not, I expect my command shall be obeyed. The bishops replied, We resign ourselves to the will of God; and then immediately retired."

I am as ready to do what I can to quell another, if there were occasion.

*Chichester.* Sir, we have quelled one rebellion, and will not raise another.

*Ely.* We rebel, Sir! we are ready to die at your feet.

*Bath and Wells.* Sir, I hope you will give that liberty to us, which you allow to all mankind.

*Peterburgh.* Sir, you allow liberty of conscience to all mankind: the reading this declaration is against our conscience.

*King.* I will keep this paper. It is the strangest address which I ever saw: it tends to rebellion. Do you question my dispensing power? Some of you here have printed, and preached for it, when it was for your purpose.

*Peterburgh.* Sir, what we say of the dispensing power refers only to what was declared in parliament.

*King.* The dispensing power was never questioned by the men of the church of England.

*St. Asaph.* It was declared against in the first parliament called by his late majesty, and by that which was called by your majesty.

The *King* (insisting upon the tendency of the petition to rebellion) said, he would have his declaration published.

*Bath and Wells.* We are bound to fear God, and honour the king. We desire to do both: we will honour you; we must fear God.

*King.* Is this what I have deserved, who have supported the Church of England, and will support it? I will remember you that have signed this paper. I will keep this paper; I will not part with it. I did not expect this from you; especially from some of you. I will be obeyed in publishing my declaration.

*Bath and Wells.* God's will be done.

*King.* What's that?

*Bath and Wells.* God's will be done, and so said Peterburgh.

*King.* If I think fit to alter my mind, I will send to you. God hath given me this dispensing power, and I will maintain it. I tell you, there are seven thousand men, and of the Church of England too, that have not bowed the knee to Baal.

This is the sum of what passed, as far as the bishops could recollect it; and, this being said, they were dismissed.

The petition was after approved and subscribed by divers of the absent bishops: sc. by Henry London, May 23rd, Will. Norwich, May 23rd, Robert Gloucester, May 21st, Seth Sarum, May 26th, William Landall, May 27th, William Worcester, June 3rd, Peter Winchester, May —, Tho. Exon, May 29th.

Thus things remained for some time after: and though in the mean while many, and very different methods of severity intended against us were spoken of in the talk of the town, yet nothing seems to have been resolved on;

at least nothing was done till Sunday May 27th. Late in the evening that day one of his majesty's messengers served the archbishop of Canterbury with the following summons.

"*Locus Sigilli.* Robert earl of Sunderland, baron Spencer of Wormleighton, president of his majesty's most honourable privy council, principal secretary of state, and knight of the most noble order of the garter, &c.

"These are in his majesty's name to require William lord archbishop of Canterbury, to appear personally before his majesty in council upon the eighth day of June next, at five in the afternoon, to answer to such matters of misdemeanor, as on his majesty's behalf shall then and there be objected against him: and you are hereby required to summon the said William lord archbishop of Canterbury to appear accordingly: and for so doing this shall be your warrant. Given at the court at Whitehall the 27th day of May 1688.

"SUNDERLAND P."

"To sir John Taylor, one of his Majesty's Messengers in ordinary."

So many of the petitioners as were in town, (viz. the bishops of Ely, Chichester, and Peterburgh) were at the same time served with the like summons by other of the king's messengers; and the like sent after the rest, who were gone home into their dioceses.

*Letter to the Archbishop from the Bishop of Norwich* [LLOYD.]

May it please your Grace; June 1, 1688.

I should have waited upon your grace had I not been harrassed with the new distemper (as its called) and thereby been confined to my chamber for these two days last past.

I was last Wednesday with Mr. Henry Pollexphen, who promised to appear for your grace, and the rest of my lords the bishops, if desired so to do. I asked of him, whether I might acquaint your grace with what he promised? His answer was, I pray give my duty to his grace, and assure him, that I will faithfully serve him, as far as my skill in my profession will enable me.

I have sent your grace the papers that your grace was pleased to communicate unto me, which with my due thanks and humble duty tendered is all at present. From your grace's most obliged servant, to command,

WILLIAM NORWICH.

*Letter to the Archbishop from the Bishop of London* [COMPTON.]

My Lord;

Friday.

I was yesterday in town, but had not time to wait upon you. I thought it therefore my duty to give you the best intelligence I could meet with, which was this; they were resolved before the time of your appearing to make all the clerks of the council justices of the peace. He that discovered this seemed likewise to hint, that it was done to capacitate them to

take your several recognizances. What use this may be to you, I know not; but I thought it my duty to impart so much from, my lord, your grace's most faithful servant,

H. LONDON.

*Letter to the Archbishop from the Bishop of Ely: with two Papers.*

*Ely House, Friday Morn.*

May it please your Grace;

We spent much time yesternight with our ablest and kindest advisers, who are unanimous in this opinion, that we should by no means answer particular questions, but keep to the general; what are the matters of misdemeanor against us; and desire a copy of our charge. Two of our number had a long discourse (even till past eleven at night) with sir R. Sawyer, from whom we received more instruction than from all the rest. That conference is summed up in the inclosed half sheet of paper [N<sup>o</sup> I.] and our measures of answering are set down to us. The other paper (the sheet) [N<sup>o</sup> II.] are the minutes out of the counselbook on my lord Lovelace's case. All our wise friends are of the mind that we should give no recognizances. We shall attend your grace between two and three (cum Deo) Your grace's most obedient servant,

FRA. ELY.

N<sup>o</sup> I.

*Our appearance before the Council.*

Q. Whether the privy council, being no court of record, can require us to enter into recognizances for appearance in any case, where they are not particularly authorised so to do by act of parliament?—*A.* Never done.

It does not appear that any of the House of Lords ever gave recognizances for misdemeanor.

The privy council have not committed for misdemeanor.

If no recognizances be given, their proceedings with us must be by subpoena out of the King's-Bench; and then we may imparle till the term after.

Q. My lords, do you own this petition to be yours? And are these your subscriptions?

*A.* The petition was delivered to the king personally: his majesty knows what we delivered. Therefore before we make answer to this question, which may accuse ourselves, we humbly desire to know, whether the king requires it of us?

[The following paragraph in the archbishop's hand:]

We are not bound to accuse ourselves. Notwithstanding, if the king requires it, we will declare the true matter of fact; trusting in his majesty's justice and generosity, that it shall not be turned to our prejudice.\*

\* Tindal, in a Note to his translation of Rapin, says,

"It seems as the bishops were going to the

May it please your Majesty;

We are summoned here to answer to matters of misdemeanor which shall be objected against us; which objections we are ready to receive; and when we have received them we shall humbly beg, that we may be allowed some convenient time to advise what answer to make.

We are here, in obedience to his majesty's commands, to receive our charge, if there be any against us: but we humbly desire, that we may be excused from answering questions from whence occasion may be taken against us.

Whatever we did, we did it not out of any factious or seditious design, but out of a sense of our duty, both as prelates of the church and peers of the realm, to lay before your majesty the obligation that lies upon us to preserve the laws of the land, and our religion according to the reformation. And we should not have interposed herein, had not your majesty's order for publishing the declaration in our churches made it necessary for us to apply to your majesty.

N<sup>o</sup> II.

The lord Lovelace gave no positive answers to the affidavits of words spoken by him;

But desired copies of them, that he might advise with counsel, and have time to give his answer: which copies were not granted.

It was told him it was matter of fact.

His answer was, He had not skill in the laws, but perhaps matter of law might arise upon perusal of those affidavits.

And his lordship asked, What reparation he was to expect, in case those who had sworn to the affidavits should be proved perjured?

The attorney was ordered to bring an information against his lordship, in the King's Bench, the next term.

But there was not any recognizance tendered to his lordship for his appearing.

Nor can it be remembered, that any such

council, they were advised to remember, that no man was obliged by the law to accuse himself. Accordingly when the king in council, holding the petition in his hand, asked them whether they had signed that paper? They made a low bow and said nothing. What! says the king. Do you deny your own hands? Upon which they silently bowed again. Then the king told them, If they would own it to be their hands, upon his royal word not a hair of their head should be touched: whereupon the archbishop says, Relying on your majesty's word, I confess it to be my hand. And so said all the rest. Then being ordered to withdraw, when they were called in again, they found the king vanished, and Jefferies in the chair, who using them very roughly, sent them to the Tower. The translator had these particulars from the late bishop of Durham's own mouth." Rapin's History of England, vol. 2, p. 763, Note, 3rd edition.

recognizance hath been tendered to any peer of the realm for the like appearance.

*The Bishops appear again.*

On Friday, June 8th, at five in the afternoon, his majesty came into the privy council. About half an hour after, the archbishop and six bishops, who were attending in the next room, were called into the council chamber, and graciously received by his majesty.

The lord chancellor took a paper then lying on the table, and shewing it to the archbishop, asked him in words to this effect—

Is this the Petition, that was written and signed by your grace, and which these bishops presented to his majesty?

The archbishop received the paper from the lord chancellor, and addressing himself to his majesty, said to this purpose—

Sir, I am called hither as a criminal; which I never was before in my life, and little thought I ever should be, especially before your majesty: but, since it is my unhappiness to be so at this time, I hope your majesty will not be offended, that I am cautious of answering questions. No man is obliged to answer questions, that may tend to the accusing of himself.

His majesty called this chicanery, and hoped he would not deny his hand.

The archbishop still insisted upon it, that there could be no other end of this question, but to draw such an answer from him, as might afford ground for an accusation; and therefore desired, there might be no answer required of him. St. A—— said, all divines of all Christian churches agree in this, that no man in our circumstances is obliged to answer any such question. The king still pressing for an answer with some seeming impatience, the archbishop said, Sir, though we are not obliged to give any answer to this question, yet, if your majesty lays your commands upon us, we shall answer it, in trust upon your majesty's justice and generosity, that we shall not suffer for our obedience, as we must, if our answer should be brought in evidence against us. His majesty said, no; I will not command you: if you will deny your own hands, I know not what to say to you, &c. The lord chancellor said, withdraw. After about half a quarter of an hour they were called in again: then the lord chancellor said, his majesty has commanded me to require you to answer this question—Whether these be your hands that are set to this Petition? His majesty himself also said, I command you to answer this question. Then the archbishop took the Petition, and having read it over, said, I own, that I writ this petition, and that this is my hand. Then the lord chancellor asked each of the bishops; and they all acknowledged their hands, and that they delivered this Petition. Then they were commanded to withdraw. After a while they were called in a third time. Then the lord chancellor told them, it is his majesty's pleasure to have you

proceeded against for this Petition; but it shall be with all fairness in Westminster-hall: there will be an information against you, which you are to answer; and in order to that you are to enter into a recognizance. The archbishop said, that without a recognizance they should be ready to appear and to answer, whensoever they were called. One of the bishops said, the lord Lovelace had been called before the council to answer to a complaint that was brought in against him, and that he was allowed to answer it in Westminster-hall without entering into any recognizance; and that they hoped, they might be allowed to answer in like nature. The lord chancellor said, the lord Lovelace had affronted his majesty, and had behaved himself very rudely before them; and therefore his majesty would have him proceeded against the common way; but, for the bishops there present, his majesty was pleased to treat them with all favour in respect of their character; and therefore he would have them enter into recognizance. His majesty was pleased to say, I offer you this as a favour, and I would not have you refuse it. St. A—— said, whatsoever favour your majesty vouchsafes to offer to any person, you are pleased to leave it to him whether he will accept it, or no; and you do not expect he should accept it to his own prejudice. We conceive, that this entering into recognizance may be prejudicial to us; and therefore we hope your majesty will not be offended at our declining it. Then the lord chancellor said, there are but three ways to proceed in matters of this kind; it must be either by commitment, or by recognizance, or by subpoena out of the King's-Bench. His majesty was not willing to take the common way in proceeding against you, but he would give you leave to enter into recognizance; and his lordship again advised them to accept it. Some of the bishops said, they were informed, that no man was obliged to enter into recognizance, unless there were special matter against him, and that there was oath of it made against that person: this they said not considering, that now the Petition was made special matter, and that their confessing it was as good as an oath. But at last they insisted on this, that there was no precedent for it, that any member of the House of Peers should be bound in recognizance for misdemeanor. The lord chancellor said there were precedents for it; but, being desired to name one, he named none. The bishops desired to be proceeded against the common way; but that was not allowed, and they were a third time commanded to withdraw.

Awhile after they were called in a fourth time, and asked, whether they had considered of it better? and, whether they would accept his majesty's favour? The archbishop said, he had the advice of the best counsel in town; and they had warned him of this, assuring him, it would be to his prejudice; and therefore he desired, that it might not be required, offering his promise again to appear and to answer,

whensoever he should be called. But his majesty seemed to be displeas'd, and said, you will believe others before you will believe me: so they were the fourth time commanded to withdraw.

A good while after this the earl of Berkeley came forth to the bishops, and endeavour'd first to persuade the archbishop to enter into recognizance, which he thought had been agreed between them over night; for on Thursday night, almost at bed time, his lordship came to the archbishop at Lambeth, and after half an hour's discourse at last came to speak of his appearing at council the next day, and then advis'd his grace to offer a recognizance: his grace said, I am advis'd to that way: his lordship said, that is well, and soon after took his leave. Now he seem'd to look upon it as something strange, that his grace should refuse to enter into recognizance: but, finding him fix'd, he endeavour'd to persuade the other bishops. He told them, he would do it, if he were in their case; but, finding them all of a mind, he went outward from the council, but soon after return'd that way into the council chamber again: from whence about half an hour after came forth Mr. Riley, a serjeant at arms, with the warrant, signed with fourteen hands, to carry the seven bishops to the Tower; and another warrant, with nineteen hands and seals, for the lieutenant of the Tower to keep them in safe custody.

*Dialogue between the King and Bishops after the third or fourth coming in.*

A. Sir, we appear before you this day by virtue of your summons as criminals; the first time that ever I stood as a criminal before any man, and I am sorry that it happens to be before my sovereign lord. We are advis'd, Sir, that they, who are in this condition of criminals, are not oblig'd to answer to questions, which may be to their prejudice: notwithstanding, if your majesty requires it of us, we will tell you the true matter of fact, trusting in your majesty's justice and generosity, that no advantage shall be taken against us from our confession.

Q. Is this your petition?

R. Pray, Sir, give us leave to see it; and, if upon perusal it appears to be the same—yes, Sir; this is our petition, and these are our subscriptions.

Q. Who were present at the forming of it?

R. All we, who have subscribed it.

Q. Were no other persons present?

R. 'Tis our great infelicity, that we are here as criminals; and your majesty is so just and generous, that you will not require us to accuse either ourselves or others.

Q. Upon what occasion came you to London?

R. I received an intimation from the archbishop, that my advice and assistance was required in the affairs of the church.

Q. What were the affairs which you consulted of?—R. The matter of the Petition.

Q. What is the temper you are ready to come to with the dissenters?

R. We refer ourselves to the Petition.

Q. What mean you by the dispensing power being declared illegal in parliament?

R. The words are so plain, that we cannot use any plainer.

Q. What want of prudence or honour is there in obeying the king?

R. What is against conscience is against prudence, and honour too; especially in persons of our character.

Q. Why is it against your conscience?

R. Because our consciences oblige us (as far as we are able) to preserve our laws and religion according to the reformation.

Q. Is the dispensing power then against law?—R. We refer ourselves to the Petition.

Q. How could the distributing and reading the declaration make you parties to it?

R. We refer ourselves to our Petition, whether the common and reasonable construction of mankind would not make it so.

Q. Did you disperse a printed letter in the country, or otherwise dissuade any of the clergy from reading it?

R. If this be one of the articles of misdemeanor against us, we desire to answer it with the rest.

*General.* We acknowledge the Petition: we are summon'd to appear here to answer such matters of misdemeanor, as should be objected; we therefore humbly desire a copy of our charge, and that time convenient may be allow'd us to advise about it, and answer it. We are here in obedience to his majesty's command to receive our charge, but humbly desire, we may be excus'd from answering questions, from whence occasion may be taken against us.

*Warrant of Commitment of the Bishops to the Tower.*

These are in his majesty's name and by his command to require you to take into your custody the persons of William lord archbishop of Canterbury, William lord bishop of St. Asaph, Francis lord bishop of Ely, John lord bishop of Chichester, Thomas lord bishop of Bath and Wells, Thomas lord bishop of Peterborough and Jonathan bishop of Bristol, for contriving, making and publishing a seditious libel in writing against his majesty, and his government, and them safely to keep in your custody, until they shall be deliver'd by due course of law: for which this shall be your sufficient warrant. At the council chamber in Whitehall this 8th day of June 1688.

To the Lieutenant of the Tower of London.

Jefereys, C. Sunderland, P. Arundel, C. P. S. Powis, Bolgrave, Morray, Middleton, Edw. Herbert, Melfort, Dover, Huntington, J. Erule, Castlemain, Peterb, N. Butler, Preston, Godolphin, Craven, Dartmoth.

June 12, 1688. This is a true copy of the original compar'd by us.

N. Powel, Not. P. T. Newcome, F. Nichols.

*Order of Council for prosecuting the Bishops.*

At the Court at Whitehall, June 8th, 1688,

Present,

The King's most excellent Majesty,  
 Ld. Chancellor, E. of Middleton,  
 Ld. President, E. of Melfort,  
 Ld. Privy Seal, E. of Castlemain,  
 Marq. of Powis, Viscount Preston,  
 Ld. Chamberlain, Ld. Dartmouth,  
 E. of Huntington, Ld. Godolphin,  
 E. of Peterborow, Ld. Dover,  
 E. of Craven, Mr. Ch. of the Exch.  
 E. of Berkeley, Ld. Ch. Just. Herbert,  
 E. of Moray, Sir Nicholas Butler,  
 Mr. Petre.

There being this day issued a warrant by his majesty's special command in council, under the hands and seals of the lords of his majesty's most honourable privy council, for committing to the Tower of London, his grace William lord archbishop of Canterbury, William lord bishop of St. Asaph, Francis lord bishop of Ely, John lord bishop of Chichester, Thomas lord bishop of Bath and Wells, Thomas lord bishop of Peterborough, and Jonathan lord bishop of Bristol, for contriving, making and publishing a seditious libel against his majesty, and his government (a copie whereof is hereunto annexed) there to be safely kept, until they shall be delivered by due course of law: It is this day further ordered by his majesty in council, that sir Thomas Powis, knight, his majesty's attorney general, and sir William Williams, knight, his majesty's solicitor general, do forthwith prepare an information against the said archbishop, and the several other bishops above named, for the offence aforesaid, and prosecute the same according to law, in his majesty's court of the King's-Bench the next term.

Ex. Orig.

*Letter to the Archbishop from the Bishop of London.*My Lord; *Saturday.*

This comes to bring that service to you, which by the help of God shall be never wanting. I am sorry with all my heart, that his majesty has no more confidence in his best friends. I pray God give you your health during your continuance in this place, which will, I hope, be but a very short time. How long I shall be from you I cannot tell: but you may be assured my heart shall be ever with you. And whilst I am at liberty, I beseech you not to spare me in any thing I am able to perform. It is not now a time of ceremony; and therefore I should hate myself, if I had the least regret in undergoing any duty, whereby I might most express myself, my lord, your grace's, &c.

H. LONDON.

*Another to the same from the same: With a list of Bail.*My Lord; *Tuesday.*

The inclosed is a list of such lords, as your respective lordships are advised to write to,

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that they would be your bail at Westminster hall, when the time shall come. You may be assured the advice comes from your best friends: I forgot when I waited upon you yesterday to mention sir John Holt of Grayes Inne. Indeed you ought to take him in for many reasons: and I know he has a hearty desire, as well as skill, to serve you. If you have any commands for me, I beseech you send them by the bearer to, My lord, your grace's, &c.

H. LONDON.

*List of Bail for the Bishops.*

Archbp. of Cant.	{ E. of Bedford. E. of Danby. Ld. V. Fauconberge. Ld. M. Halifax. †E. of Ossory.
Bp. of St. Asaph.	{ E. of Clarendon.* E. of Carbery,† als. Ld. Bul- lingbrook.
Bp. of Ely.	{ E. of Burlington. E. of Manchester. Ld. Grey.
Bp. of Chichester.	{ E. of Caerlisle. Ld. V. Newport. Ld. Paget,† als. Ld. North.
Bp. of Bath and Wells.	{ E. of Clare. E. of Shrewsbury. E. of Dorset,† als. Ld. Crew.
Bp. of Peterburg.	{ E. of Kent. E. of Nottingham. E. of Radnor.
Bp. of Bristol.	{ †E. of Worcester. E. of Devonshire. E. of Scarsdale,† als. Ld. Chandois. Ld. Lumley.

*Letter to the Archbishop from the Bishop of Norwich: with one enclosed from Sir Thomas Clarges:*

May it please your Grace; 8 o'clock.

When I returned from your grace I found the enclosed left at my lodgings by sir Thomas Clarges. I would not have troubled your grace with it but for the last line of it.

I do believe your grace nor my lords will be sent for to Westminster to-morrow: not only upon the authority of the enclosed, but from other hands, I find, that its not thought fit to bring you to Westminster to-morrow: the reasons I shall respite till to-morrow betimes in the morning: in the mean time I heartily pray for your grace his happiness and the rest of my lords at the Tower, and am Your grace's most obliged servant, to command,

WILLIAM NORWICH.

My Lord;

At Mr. Finch his chamber I met my lord of Nottingham, whose opinion was, That it is best for the lords to plead the generall issue: because upon a tryall they could say more, and give more in evidence, than could be expressed

\* The words in *italic* are erased in the original.  
 † In the archbishop's hand: the rest in the bishop of London's.]

in a plea. Mr. Finch was not thoroughly convinced, but said, if the information were so peon'd that the petition would be at large included in it, he should think it might be best to plead the general issue, yet he would conclude nothing thereof, till he should advize with the rest of their lordships' counsel. I went from him to Mr. Grang the attorney, and he agreed, That if the matter was fully mentioned in the information he believed the counsel must advize to plead the general issue. It is said the master of the office will stick the jury, and will name eight and forty, whereof the attorney for the king would put out 12, and the attorney for the lords as many: and it may be hoped, in so many, there may be a competent number of good men. My lord of Nottingham is gone to the Tower. There will be about twenty peers at Westminster to-morrow to serve the lords, if need be: but I am told by a friend, the king's attorney will not be ready till Saturday or Monday. I am your lordship's, &c.

June the 14th, 1688.

THO. CLARGES.

*Letter to Mrs. Nalson from Dr. Nalson.*

I might tell you, to excuse my silence, that I have been ill, but all privet concern and thought of ceremony must give place to that extreme trouble we must needs all of us be in whilst our spirituall fathers are under confinement; a trial of patience so great that it were cruelty to expect we should not bemoan ourselves; but if it be a crime to lament (what the higher powers here below command so severely) innumerable are the transgressors; for ever since the black Friday sentence the nobles of both sexes keep their constant court at the Tower, where every day vast multitudes of all conditions run perpetually, all in tears, to beg the holy men's blessings: the soldiers wait as mourners, and become so devout, that though the scene be truly sad, the end I hope will be the saving of many, and a most glorious confirmation of the truth, and the sacredness of our religion, which seems to be now brought on a public stage, that all the world may see more clearly her conformity to what the first confessors embraced and recommended so very tenderly to mankind's care and affection. Thanks be to God, who gives us pastors that will not (nor, by a criminal silence, give others encouragement to) lead us astray. I need not tell you how much this integrity of the bishops has served to convince their censurers of rash and uncharitable conceits, nor how sensible people grow of the fatal consequences of weakening the established church by a humourous dread of her severity. I am willing to hope that the storm that's grown so loud, and seems still to denounce terrible things, will end in a glorious calm: it will do so to all that are wise and true of heart. Let's, dear friend, pray and endeavour to love God more, and with sincere humility set ourselves to the practice of all Christian virtues.

To-morrow its thought our illustrious con-

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fessors will be sent for to Westminster; they will not be solitaires there. God Almighty overrule the hearts of the children of men, and, if it be his blessed will, deliver our saints from all that wish them evil.

June the 14th, 1688.

My service to your good neighbours, who I dare say pray for us.

*Some heads to discourse on and consider.*

1. Each counsel to have ten guineas sent them to-day.
2. Some one hand ought to give all fees: because when two pay it breeds confusion, and may cause both to pay for the same thing.
3. Those who are to act as attornies must unite in temper and affection, and go to counsel together, not apart, that both equally knowing the result of advices may follow them accordingly.
4. That three of the lords may act and direct for all the rest.
5. That the officers of the Tower be considered as shall be thought fit.
6. And the warders who come up to attend your lordships gratified in like manner.

[The following in the archbishop's hand.]

7. To correct and supply the narrative of what past between the king and the bishops at the delivery of the petition.
8. To set down an exact narrative of what past in the council-chamber, June 8th, between the king, the lord chancellor, and the bishops.

*Letter to the Archbishop from the Bishop of Winchester.*

May it please your Grace;

This waits upon you with a tender of my most humble duty; and though I cannot by this way express the deep sense I have of your grace's and my brethren's sufferings, yet I beseech you be assured, that as I am not wanting in my prayers for you and them, so I shall never sacrifice the honour of our zealously loyal mother the church to any interest whatsoever. I am your grace's, &c.

F. WINCHESTER.

Farnham Castle, June 24, 1688.

*Minutes for his Grace of Canterbury: Prepared by Mr. Hanses, to have been spoken at the Trial.*

That it is a very sensible affliction, both with respect to the church of England and to himself, to appear in a court of justice as a criminal; but as the loyalty of the church, as well in her principles as constant practices, have been so conspicuous; and his grace having in the whole course of his life approved himself a true son of that church, in the point of duty and obedience as in all other particulars, so he doth not doubt so to make his innocence and integrity appear on this occasion, as not only

to acquit himself to the court and to the world from all sedition, malice, faction and libelling, great crimes in themselves, and which he has in the utmost detestation, but effectually to prevent any imputation to the church of England on this occasion.

That it has pleased God to call him to the great dignity, office and authority, of an archbishop in this church; whereby he has the honour to be *primus par Angliã*; and as the charge committed to him is greater, so he thought it more incumbent upon him to take an exact care, to discharge a good conscience in the exercise of that great dignity, and the more carefully to watch over that flock God had committed to him: and this God, this nation, and the world required of him.

That he always esteemed it his duty, as a prelate, not only to do his utmost endeavour to conserve the profession of the reformed religion amongst us, but to promote the honour and interest of the church, and to oppose, as far as lawfully he could, all that tended to her ruin, and struck at her safety (for which glorious ends he was always ready even to lay down his life, if ever it should please God to call him to it.) And as a peer of the realm he thought himself likewise under very great obligations, not only not to betray the laws himself, but also to endeavour to transmit them to posterity, that the ages to come might have no reason to curse his memory.

That as all his brethren, the bishops of this church, so he more eminently, were counsellors to the king by their office, in matters ecclesiastical, as the temporal peers were of his counsel in lay matters, and his judges in matters of law: that the reformed bishops had always showed themselves honest counsellors, and faithful servants to the crown.

That his majesty having thought fit to publish his Declaration for liberty of conscience, where at once he had suspended all ecclesiastical laws whatsoever, it was obvious to observe, how fatal this must needs prove both to the church and religion established, and the laws of the land.

But being unwilling to intermeddle, till there was absolute necessity for it, in a matter that might possibly give offence to the king, whose good opinion and favour we are ambitious to preserve, so far as it can be done without a violation of our consciences, or betraying the trust by God and the laws reposed in us: till the matter was brought home to our own doors, by an order published in the Gazette for the reading of the last Declaration, &c. he was loath to reflect so much upon it, as he has found himself obliged to do since.

Then he apprehended it was high time to consider what would become him to do with regard to God, the king, and his own conscience; and therefore seriously considering the said Declaration, and how far he could comply with the king's command for the reading of it, if it should be legally sent to him, which he apprehends it has not yet been, a

publication in a Gazette not being such a due notice as he was obliged to have any regard to: however, having attentively considered it, he soon found how it shook the force of all our laws, and the very foundation of the reformed church of England, and in that the whole Protestant religion; that it seemed to alter the whole frame of the government, and introduce a new constitution; and with respect to ecclesiastical affairs, which was more his concern, he found all the statutes of provisors, for maintaining of which our Popish ancestors in all ages had so zealously contended, set aside; all the laws for asserting the rights and liberties of this church, and all that supremacy and superiority in matters, and over persons ecclesiastical, which our church justly attributes to the king, and which all good Christian kings have ever exercised, &c. in opposition to the groundless and unjust usurpations of the pope and church of Rome, suspended, and in effect abolished. That it was apparent, that if the king had that power, which in these declarations he had exercised, the reformation itself was become arbitrary, and that the church of England, as it was the religion of the state, had no other subsistence, but by the king's mere favour. Whereas he did humbly hope he might say, it was founded upon a much firmer basis, if all the laws made against Popery, and for the establishment and security of the Protestant religion, were in being and full force; all which, by virtue of this supposed power of the king, were laid asleep and set aside. That for such laws as punished men for the exercise of their religion, or their dissent from the church, he was no otherwise concerned, than as they were laws of the land; and as such, he humbly conceives, cannot be suspended by a less authority than that which first made them, they being only laws of state, and always so considered by him and the church. [And here may be said what shall be judged convenient about taking off penal laws against Dissenters.]

But that which more nearly touched him, was, that thereby all those laws, by which the church has its legal establishment, and by which she is fenced and guarded against the sworn enemies of her peace, are vacated and made useless; that all the acts of uniformity, and all the acts for taking the oaths of allegiance and supremacy, and the tests, are suspended and dispensed with; all which laws are so much the fences, the mounds and the bulwarks of the Protestant religion and the church of England, that no man can concur to the weakening or destroying of them, without betraying at once his religion and the laws of the land.

These were the consequences and effects of that power, and these we were commanded to make ourselves parties to in publishing and teaching them to our people.

That seemed apparently to tend to the introducing of Popery again, and the destruction of the church of England and the Protestant reli-

gion amongst us, which so many of our predecessors had sealed with their blood.

That he could not but think himself under the highest obligations to lay these things to heart, and to bethink himself, how to do his duty on this great occasion; that he might neither lie under the imputation of want of zeal for his religion, or be thought wilfully disobedient to the king; for he clearly saw he could not in prudence, honour, or conscience, obey him.

He called to mind what his predecessors had done on the like occasions. He remembered that archbishop Abbot wrote a very bold and a very honest letter to king James I. in the 21st year of his reign, on this very subject of dispensing with the laws in matters of religion; at which that king took no offence: wherein he told him, that he thought it the duty of his place, to let him know, that the "toleration he [endeavour'd] to set up by proclamation could not be done without a parliament, unless his majesty would let his subjects see, that he would take unto himself ability to throw down the laws of the land at his pleasure." Rushworth, vol. 1, p. 85.

He remembered what king James I. himself, during the treaty of the Spanish match, had replied to a demand of the king of Spain about a general toleration; "that he, of his own authority, could not grant a general liberty of exercising the Roman religion." Rushworth, vol. 1, p. 67.

That, in the same king's time, a prohibition to the judges and bishops to execute the laws against Papists was laid aside, and this reason given for it by the lord keeper Williams: "Because to forbid the judges and justices of a peace against their oaths was a thing unprecedented in this kingdom." Rushworth, vol. 1, fol. 101.

And that, 2 Charles I, by the king's command the earl of Bristol was impeached in the Lords House for having but presumed to counsel the king against law, "to grant a free toleration and silencing of all the laws made and standing in force against the Papists." Rushworth, p. 251.

And that in parliament in 1662 and 1672, and the last parliament, this power had been questioned and declared illegal, &c.

That thereupon he thought it his duty to attend his majesty, in hopes, if not to move his majesty from the main point, yet humbly to lay his reasons before him, why he could not comply with his majesty, and prevail of him to revoke his command as to the reading of it, &c.

And this being a thing of the greatest importance, he was unwilling to be alone in it; especially considering that it was the common cause of the whole church, he was willing to have the advice and assistance of all his brethren that were in and near the town.

That being met, and the whole matter laid before them, and all having an equal zeal for the Protestant religion, and concern for the

laws of the land, and clearly seeing he had not made a false judgment of this matter, and concurring in opinion with him, they all concluded to make an humble address to the king; and having conceived it in the most soft and modest terms that could be, without affixing any thing directly in derogation of the king's power, but laying only before him what had been done and declared before that time, and letting him know with the greatest decency, that in conscience they could not comply with his commands, and humbly begging him to be so gracious, as not to insist upon his command, and hoping that when all his majesty's subjects had liberty of conscience, those who had most pretence to it should not be the only persons to whom it is denied: and therefore presumed with greater confidence to wait on the king, which yet they did not do, till leave had been obtained from the king, and that they were introduced into the king's closet, where they privately and humbly laid themselves and their address at his feet.

That this being the fact, and these the inducements; that in all this they having done nothing but what became them both as prelates and peers in the discharge of their duties, and that in the most humble and secret way that could be; that it being the right of every subject in England to petition, and their petition being delivered with the king's leave, and the matter of it so modest and inoffensive, and the terms so dutiful and respectful; he cannot believe he need use many words to persuade men of conscience, integrity, and understanding, how strange a thing it would be to turn such a petition into a libel, and the honest discharge of their conscience and duty into an offence.

*A Speech prepared by the Bishop of St. Asaph, to have been spoken at \* our Trial.*

My Lords, and you Gentlemen of the Jury; We are here before you under a load of accusation, such as was never laid before upon so many of our order (I think) in this, or any other kingdom. It is a load, that we should sink under, considering from whence it cometh, if we were not supported with (give me leave to say) a good conscience, and testimony of Him that is greater than our conscience, and knoweth all things. Without this it would overwhelm us to think, that our gracious prince, of whose favour and bounty we have had so much and so long experience; that he should at last look upon us, as so ungrateful, so ungrateful, as we are set forth in this information; nay, as we must acknowledge ourselves to be, if we had given any colour to this information: we had been ministers indeed, if we had given any just grounds for it. We to conspire against the king!—to undermine his government by making and publishing seditious libels! What strange kind of men would they make of us! We, that not only by past obli-

\* The whole in archbishop Sancroft's hand.

gations, but by our present interests, and all our hopes of this life and the future, have not only the strongest, but all possible motives to hold us to obedience and loyalty! In a word, we, whose holy religion teaches us, under pain of damnation, not to rebel against our king, though he be of another religion; nay, though he should be an enemy to our religion! This is the Christian doctrine, which we profess, and which we constantly teach; in which we have always lived, and by the grace of God we will die. Let them say so, if they can, who put you and us to all this trouble, by persuading his majesty otherwise of us.

God be thanked, we have so beloved ourselves not only in former reigns, but even in the reign of his present majesty (whom God long preserve), that they cannot charge us justly with any thing; and least of all with this crime of sedition. They can pretend no other colour for this charge, but what they draw out of a petition, that we lately presented to his majesty. But what is there so criminal in this? For our parts we do not see it: we do not see, that we have transgressed the bounds of our duty. They cannot say we did so much as petition, till we were forced to it. We knew of his majesty's declaration a twelvemonth before. We saw, it assumed such a power as we did not understand. We saw, it contained a toleration that we could not approve; that actually took away all the legal establishment of our church, and tended, as far as we could judge, to the bringing in of popery. This we saw with sad hearts: yet all that twelve month we were silent; we laid our hands on our mouths, which perhaps was a fault in us, but surely deserved another name than sedition. But at last, after a full twelvemonth, when this declaration came forth with an order annexed, that we must be parties to it, we were at least to be the instruments for the publishing of it; nay, we must bring in this, as a parenthesis, into the worship of God: this was enough to make the dumb to speak: they would have spoke, they would have roared at it in any church of the Roman communion: they may excuse us, if we could hold silence no longer.

But yet we did not break it neither seditiously; but on the contrary with all the duty in the world. The archbishop of Canterbury, who by his place is counselor to his majesty, and who ought to be advised with in all things belonging to the church, was so far from being advised with in this, that he knew nothing of it, till he saw it in the Gazette. When he saw this strange thing there, he was at the present surprised with it; he saw what the consequence of it would be; he saw, he must do something to prevent such things as have since happened, or worse; but yet he would do nothing without the advice of his suffragans. He therefore sent for as many as were within call; and with their advice, he resolved to petition his majesty.

The effect of our petition was, as you have

heard, to beseech his majesty, that he would not impose this hardship upon us; that he would not lay this burthen on our consciences; that he would give us leave to worship God in quiet, and to enjoy that liberty which the law had given us, and which he was giving to the rest of his people. We do not see that the matter of our petition was seditious. But for that it hath been sufficiently cleared by our counsel.

And for the manner of presenting our petition; this was surely so far from being seditious, that it was with the greatest humility and submission in the world. Before we came to his majesty, we acquainted his principal secretary of state, the lord president of the council; who, if he were present, we presume; would witness for us, that we did what we thought would have secured us from ever having this charge brought in against us. We offered, and desired, that he himself would receive our petition, and shew it his majesty, before we appeared to deliver it; or at least, that he would be informed of the contents, to the end that it might be no surprise to his majesty. I spoke these words, as the bishop of Chichester knows; for he was present there with me. This, we thought, was the dutifullest way we could take to present our petition. If we had known any way more dutiful, we would have taken that; but we knew of no better. And when this was refused by his majesty's secretary, what could we do more? We must follow him, the way he would go. He went and acquainted his majesty; he brought us word, that we had leave to present our petition. We did present it to his majesty alone in his closet. If there was any fault in our petition, his majesty might have covered it; he might have suppress our petition; and if it had pleased his majesty to have done so; if he had but declared that such was his pleasure, there had been no copy of it now remaining in the world.

This is a short account of that seditious libel, as they call it, and of our seditious publishing of it in the presence of his majesty. We know his majesty can do no wrong, but they may that act for him; and do it, in thus charging us and our petition. It is easy to give evil words and hard names to the most innocent persons, and to the best things in the world; but we trust you have the prudence to distinguish, and in that trust we leave our cause in your hands.

Only this we have to say farther; and we have heard our counsel say it, who are better able to judge: they say, this is the greatest cause that ever came to this bar. It is not the proper concern of six or seven bishops: what are they to the great consequence of this cause? The consequence of it extends to the whole church and kingdom; it extends to the Protestant religion, and all the laws of England: the happiness of this and future ages depends upon it. Surely, if ever there was any cause that required mature deliberation, there ought to be the greatest deliberation in the

judging of this. We beseech you therefore not to look at all upon us, but upon our cause. And we beseech God to bless his sacred majesty, and to incline his royal heart towards us. We beseech God to forgive them, that have set him against us. We beseech God to direct and govern your councils; that whatsoever becomes of us, the glory of God may be promoted, and that you yourselves may rejoice, and the whole nation may bless God with you, for your wise and righteous verdict.

*Letter to the Archbishop from Mr. Ince.*

May it please your Grace;

We have watched the jury all night carefully, attending without the door on the stair-head.

They have by order been kept all night without fire or candle, bread, drink, tobacco, or any other refreshment whatever, save only some basons of water and towels this morning about four.

The officers, and our own servants, and others hired by us to watch the officers, have and shall constantly attend, but must be supplied with fresh men to relieve our guards, if need be.

I am informed by my servant and Mr. Grange's, that about midnight they were very loud one among another; and the like happened about three this morning; which makes me collect they are not yet agreed: they beg for a candle to light their pipes, but are denied.

In case a verdict pass for us (which God grant in his own best time) the present consideration will be how the jury shall be treated.\*

\* Mr. Barrington (Observations on 34 and 35 H. 8), notices that "the 26 H. 8, c. 4, (of which he speaks as introductory of a thorough union of laws between England and Wales) enjoins, that jurors in Wales should not, without leave of the court, be permitted to have either meat or drink." To which he adds, by way of Note, "The ill effects of a bribe to a jury, by their being better feasted perhaps by the plaintiff than the defendant, are not now apprehended, though I am persuaded this was the cause of this injunction; as sir Thomas Smith mentions, that in his time it was usual for the party, who obtained the verdict, to give the jury a dinner. (Commonwealth, p. 74.) I must admit, however, that sir Henry Spelman derives this restraint from an ancient canon, 'quod de nocte non est honestum iudicium exercere.' Rel. Spelm. p. 89, which at the same time accounts for the jury being denied candles, if the leave of the court is not obtained. We now think the regulation a wise one, and adhered to it, because it contributes to the greater dispatch of business; causes at this time, however, did not 'hang' as they do at present: one reason for which (amongst many others) arose from all witnesses in civil causes being examined by the judge, as is still the practice at the crown bar. This informa-

The course is usually each man so many guineas, and a common dinner for them all.

The quantum is at your grace's and my lords' direction.

But it seems to my poor understanding, that the dinner might be spared, least our watchful enemies interpret our entertainment of the jury for a public exultation and a seditious meeting; and so it may be ordered thus:

Each man . . . . . guineas for his trouble.

And each man a guinea over for his own desire: with my lords order, that I or some other

tion with regard to the ancient practice, I remember to have heard from an aged and eminent serjeant, who likewise believed the first precedent for an adjournment to have been within these forty years. Adjournments are, by the great diligence and spirit of the present bench, avoided as much as possible: if a cause, however, lasts more than sixteen hours, it is ridiculous to call it a decision, as attention to the evidence cannot be longer expected.

"Stiernhook expresses himself in the following manner, with regard to the confinement of an English jury: 'Ad absolvendum verò vel condemnandum, in Angliâ, necessitate compelluntur, atque consueque famelici et quasi captivi includuntur. nemine intromissa, donec absolverint seu condemnaverint.' De Jure Sueonum et Gothorum vetusto, Holmiz, 1672, cap. iv. p. 59."

The passage to which I suppose Mr. Barrington to refer, I find in Smith's Commonwealth, book 2, chap. 18, as follows:

"Then there is a bailiff charged with them to keep them in a chamber not far off, without bread, drink, light, or fire, until they be agreed; that is, till they all agree upon one verdict concerning the same issue, and upon one among them who shall speak for them all when they be agreed: for it goeth not by the most part, but each man must agree. They return, and in so few words as may be, they give their determination: few I call six, or seven, or eight words at the most (for commonly the issue is brought so narrow, that such number of words may be enough to affirm or to deny it), which done, they are dismissed to go whither they will. The party with whom they have given their sentence, giveth the inquest their dinner that day most commonly, and this is all they have for their labour, notwithstanding that they come, some twenty, some thirty, or forty miles or more, to the place where they gave their verdict, all the rest is of their own charge."

As to adjournment in criminal cases, see, moreover, the Trials for Treason in the year 1794; and Stone's Case, A. D. 1796. See, also, vol. 8, p. 730, difference of opinion in an Assize. See Bracton De Legibus et Consuetudinibus Angliæ, lib. 4, c. 19. De Assisa Nova Disseisinæ. As to juries eating, see Rex v. Burdett, 12 Mod. 111, and the books there cited.

intreat them, in your names, not to dine together, for the reasons aforesaid.

I conceive my lords the bishops will resolve how to direct me in this point, before they come into court.

There were 22 of the jury appeared, and no more.

And they that did not serve will expect a reward as well as those who did.

I beg your grace's pardon for this trouble: 'tis only to enable my lords to consult what is fit to do decently on our part, and all is entirely submitted to your grace's and my lords judgment by, my lord, your grace's most humble servant,  
Jo. INCE.

Six o'clock in the morning, June 30, 1688,\*  
at the Bell Tavern, King-street.

Just now the officer brings me word they are all agreed, and are sending to my lord chief justice to know, where he pleases to take their verdict.

There must be 150 or 200 guineas provided.

An Account of the Proceedings at Westminster-hall on the 29th and 30th of June, 1688; relating to the Trial and Discharge of the Archbishop of CANTERBURY, the Bishop of St. ASAPH, Bishop of CHESTER, Bishop of ELY, Bishop of BATH AND WELLS, Bishop of PETERBOROUGH, and the Bishop of BRISTOL.

The Indictment, when read, was very much excepted against, on the account of its form, in that it did not mention all the petition they were indicted for; there was not either the title of it expressing to whom it was directed (viz. "To the king's most excellent majesty," was omitted,) and the prayer afterwards ("We therefore pray," &c.) was not there; which, being closely pursued by the bishops counsel, seemed to invalidate the whole business. Then it was not and could not be proved by the king's counsel, that the bishops presented the petition to the king. They had in the court the original, and subpoena'd some of the archbishop's and bishops' chaplains, servants, and others, to prove their hands, which was not done very clearly upon most of them; all the proof the king's counsel had for the presenting the petition to his majesty, did not directly prove it upon them; the most it amounted to was, either that the king told them he had it from the bishops, or, that my lord chancellor did ask them if it were theirs (when they were summoned before the king and council), and that they then expressed an averseness to own

\* A letter of this date from Ince to the archbishop, agreeing almost word for word, so far as it goes, with this, is given in Macpherson's Original Papers, vol. 1, p. 152, purporting to be extracted from Tanner's Collection, in the Bodleian; but several passages in the letter as here given are there omitted. As to Macpherson's authenticity, see before in this Collection, vol. 6.

it; saying before the king, that if his majesty did insist on it, and that it should not be improved to their disadvantage, or produced in evidence against them, that they would be plain, and leave it to his majesty. Upon this the bishops counsel had some reflections which my lord chief justice told them he must not hear. But this did not amount to a full proof of the point.

Then the bishops counsel did greatly insist upon the indictment being laid in a wrong county; for it was proved upon oath, that the archbishop was not out of his house for a very considerable time before he was summoned to the king in council. Now what was alleged against them was done at Lambeth, and therefore in Surrey the indictment ought to have been laid, which seemed much to affect them.

After this, the bishops' counsel objected against the term 'publishing;' whereas what was said to be done by them, was in the privatest way that could be, and given only to the king; which caused a long debate between both parties, of things requisite to denominate a 'publication.'

And here things were going to a conclusion, and the judge was entered upon summing up the evidence; but Mr. Finch (one of the bishops' counsel) interrupted my lord chief justice, saying, there was one material evidence remaining. Whereupon my lord desisted, though with some seeming dissatisfaction to the rest of the bishops' counsel: for the judge was going on very favourably for the bishops' cause: some of the bishops importuned my lord chief justice to proceed, but he would not: and so it brought on more discourse about the former subjects, and occasioned the sending for my lord president, who came into court after it had stayed an hour for him: the evidence, that he gave upon oath, could not fully prove the delivery of the petition to the king by the bishops. When before, for the proof of this the solicitor did very greatly importune some witness for the king, (that had upon oath delivered what they knew about this matter, which was as aforesaid) by putting to them very intricate questions; my lord chief justice reproved him, saying, it was not to be suffered; adding, that if he went on thus, he would let the bishops counsel loose on him.

After these things, my lord chief justice asked the bishops' counsel, what else they had to plead? whereupon they proceeded to that part of the indictment that called the bishops' petition 'a scandalous, seditious libel, &c.' which occasioned very great, solemn, and most pleasing debates: for, hereupon they entered into and discussed the lawfulness of the declaration and the dispensing power, which were harangued by every one of the bishops' counsel in most brisk, home and admirable speeches, for the space of three hours, shewing the declaration to be against and contrary to law, which no power could dispense with or abrogate, but that which made it, (viz. a parlia-

ment) and that the ecclesiastical laws had the same foundation as the civil, and could be therefore no more dispensed with. That the declaration did evacuate the laws for Sabbath-breaking, fornication, &c. and let loose the reins to the most extravagant sects and licentious practices; and that all laws might be dispensed with, as well as some: That the bishops were sworn to maintain the ecclesiastical laws; and in representing the case thus to his majesty, they had done as the law directed them, and according to prudence, honour, and conscience. There were hereupon publicly read several acts of parliament, records of the Tower, and parliament records; among which, one act of parliament was observable, that gave the king power to dispense with a law for a stated time: so that what dispensing power he ever had, was both given and bounded by parliament. From what they produced out of the parliament records and otherwise, they greatly confirmed what was said in the petition, of the dispensing power having been often declared illegal in parliament, and particularly in the years 62 and 72; and in the beginning of his majesty's reign, which was in 85, when the parliament declared the popish officers could not be dispensed with, but that it was contrary to law to do so, though they were willing by act of parliament to indemnify such as his majesty should nominate, &c. And they shewed how the like dispensing power upon the same occasion was accounted illegal in 62 and 72, both by parliament and the king himself, who suffered the seal to be tore off, and gave the testimony of his disowning such a dispensing power. To which the solicitor's chief answer was, that the king then lacked money, and that such acts as aforesaid (whatever they might say) did confirm, not give the king's dispensing power. In short, the bishop's counsel behaved themselves in this weighty matter with a great deal of gallantry and plainness, no wise inferior to most men's expectations and desires.

The chief of the managers for the king was the solicitor, William Williams, who, as was apprehended, did no great wonders for invalidating the foregoing arguments. He was very hot and earnest (if not passionate) in proving it a libel; saying, it would be so, though it were done by them to redress a certain grievance: whereupon, my lord chief justice, asking what course then they should take, or what they should do in such circumstances, he answered, acquiesce, (which occasioned a very great hiss over the court): He added farther, to prove it libellous, the insinuating expressions of gaining the populace, by saying, "It was not for want of due tenderness to dissenters, in relation to whom we are willing to come to such a temper as shall be thought fit, when that matter shall be considered and settled in parliament and convocation." In convocation, said he, what's the meaning of that? But here my lord chief justice gave him a check, and restrained what he seemed greatly disposed to vent against it. There was not very

much said by the rest of the king's counsel, at least nothing more considerable than his. The king's attorney general was pretty moderate.

Sir Bartholomew Shores spoke a little, but was presently silenced; (in the vacancy of stay for my lord president, my lord chief justice said to sir Barth. Shores, now sir Bartholomew, we have time to hear your speeches.)

Serjeant Baldock's argument against the bishops was chiefly upon their refusing, the king requiring such a slender matter so easily to be done; for they were not enjoined to read, but only to send about and disperse it: yet this they would not do. It concluded with the king's counsel.

Then my lord chief justice summing up the business, was favourable to the bishops in the former part of the trial, and could not say the matter of fact was fully proved upon them, but was inclined to make the petition a libel; because of its accusing the king of flaws in government. He said but little to oppose what had been brought by the bishops' counsel against the declaration and dispensing power.

After him spoke judge Holloway, and very much in the bishops behalf, giving it as his judgment, that it could not be a libel, being done from a conviction of conscience by such persons in such an humble, modest manner.

Then judge Powell spoke to the same effect, giving it as his opinion, that it could not be a libel, being the only way to redress themselves. He had also some smart expressions to confirm what the bishops' counsel had urged against the declaration and dispensing power: so that judge Powell gave his opinion also in favour of the bishops.

Then judge Allibon standing up, professed he would not meddle with the dispensing power (though it had been so much canvassed against) but would only speak to the business of the paper being a libel; and he did accordingly, urging it to be so, not barely because it was a petition: for, said he, any one under grievance may petition his majesty, but not about affairs of government, for that would tend to very bad consequences, and promote discontents or worse in the nation. Nor (as he added) can the pretended fairness, as to the manner of it, be an excuse; for the more it hath that way, so much the worse; and so concluded it in his sense a libel. But urging a precedent to confirm what he had said, he was partly mistaken in it, as judge Powell and the bishops' counsel shewed him.

Then the court broke up, the jury went together, and the bishops, with all the privacy they could, to their respective abodes; but wherever the people met with them, they buzz'd and humm'd them in great abundance. There was a prodigious full court and hall, a very great many of the peers and nobility present; and also the bishop of Chester, of whom they took no kind of notice: the bishop of Rochester did not meet with much better regard.

The jury sat up all night, though they

were very soon unanimous in their verdict, which they prudently resolved to give in open court; and accordingly next day about nine or ten they brought them in Not Guilty.

*The Names of the Lord Bishops' Counsellors.*

Sir Fran. Pemberton, Mr. Pollifin,  
Sir Creswell Levins, Mr. Treby,  
Sir Robert Sawyer, Mr. Summers,  
Mr. Finch.

[Here follow the names of the Jurors, see *ante*.]

*Letter to the Archbishop from the Bishop of Norwich.*

Nor. July 2, 1688.

May it please your Grace;  
To give me leave, among the thousands in these parts, heartily to congratulate with you, and your late companions in trouble, for the most joyful and most acceptable news we had this day by the post; namely, your acquittal from the crime endeavoured to be fixed upon you. I do assure your grace it hath mightily revived our drooping spirits; and I beseech God to make us all truly sensible of and sincerely thankful for so great a mercy. I know your grace hath now work enough upon your hands; and therefore it would be the greatest impertinency to interrupt you in those great affairs: wherefore I heartily bless God for your safety, and thereby for his great and singular mercies vouchsafed to his church, and am as in duty bound. Your grace's most obedient servant to command,

WILLIAM NORWICH.

*Letter to the Archbishop from sir George Mackenzie.*

May it please your Grace;

It will doubtless be strange news to hear that the bishops of England are in great veneration amongst the Presbyterians of Scotland, and I am glad that reason has retained so much of its old empire amongst men. But I hope it will be no news to your grace to hear, that no man was more concerned in the safety of your consciences and persons than may it please your grace your grace's most humble servant,  
GEO. MACKENZIE.

The hearers will give you a just account of our affairs.

*Memorand. and Directions, &c.*

1. Heads for instructions.
2. An answer to the 4 bishops letter.
3. Establish a correspondence.
4. A history of the persecution.
5. How to demean ourselves in a case of a Popish visitation.

The way of writing to the archbishop is for every man to write to a private friend, and for him to deliver the letter to my lord archbishop. St. Asaph to the lady Salisbury at Llweny.

Elie to Mrs. Nalson at Ely.

— to madam Womock at Elie—in a woman's hand—with a whimwham.

Chichester—Mr. Lever, or Mrs. Elizabeth Row, at Chichester.

Bath and Wells—Mr. Salmon, mercer, in Wells.

Peterburgh—Mrs. Clarke, at Dosthorpe, near Peterburgh.

Bristol—Mr. George Hart, merchant, in Bristol—or Mr. John Canne, merchant there.

Gloucester—Mr. Sam. Eckley, apoth.

An answer to be made to the Pastoral Letter.

Every man to advise with the chancellor and common lawyers what method to be used to obviate the invasion of our jurisdiction by the 4 vicars apostolical, and return it to my lord archbishop on Saturday next.

This is referred to the bishops of London and Peterburgh.

To prepare materials for a History of the Persecution; by consulting the registries and causing copies to be made of them.

Mr. Pulford, minister of Layton Buzzard, to be remembered for his extraordinary pains in his living.

*THE ARTICLES recommended by the Archbishop of Canterbury to all the Bishops within his Metropolitan Jurisdiction, the 16th July, 1688.*

Sir; Yesterday the archbishop of Canterbury delivered the articles which I send you inclosed, to those bishops who are present in this place; and ordered copies of them to be likewise sent in his name to the absent bishops. By the contents of them, you will see that the storm in which he is, does not frighten him from doing his duty; but rather awakens him to do it with so much the more vigour: and indeed, the zeal that he expresses in these articles, both against the corruptions of the Church of Rome on the one hand, and the unhappy differences that are among Protestants on the other, are such apostolical things, that all good men rejoice to see so great a prelate at the head of our church, who in this critical time has had the courage to do his duty in so signal a manner. I am, Sir, yours.

London, July 27, 1688.

*Some HEADS of things to be more fully insisted upon by the Bishops in their Addresses to the Clergy and People of their respective Dioceses.*

I. That the clergy often read over the forms of their ordination; and seriously consider, what solemn vows and professions they made therein to God and his Church, together with the several oaths and subscriptions they have taken and made upon divers occasions.

II. That in compliance with those and other obligations, they be active and zealous in all the parts and instances of their duty; and especially strict and exact in all holy conversa-

tion, that so they may become examples to the flock.

III. To this end, that they be constantly resident upon their cures in their incumbent houses; and keep sober hospitality there according to their ability.

IV. That they diligently catechise the children and youth of their parishes (as the rubrick of the Common Prayer-Book, and the 59th Canon injoin) and so prepare them to be brought in due time to Confirmation, when there shall be opportunity: and that they also at the same time expound the grounds of religion and the common Christianity, in the method of the Catechism, for the instruction and benefit of the whole parish, teaching them what they are to believe, and what to do, and what to pray for; and particularly often and earnestly inculcating upon them the importance and obligation of their baptismal vows.

V. That they perform the daily office publicly (with all decency, affection, and gravity) in all market and other great towns, and even in villages, and less populous places, bring people to public prayers as frequently as may be; especially on such days and at such times as the Rubrick and Canons appoint; on Holy Days, and their Eves, on Ember and Rogation Days, on Wednesdays and Fridays in each week, especially in Advent and Lent.

VI. That they use their utmost endeavour, both in their Sermons, and by private applications, to prevail with such of their flock as are of competent age, to receive frequently the Holy Communion: and to this end, that they administer it in the greater towns once in every month, and even in the lesser too, if Communicants may be procured, or however as often as they may: and that they take all due care, both by preaching and otherwise, to prepare all for the worthy receiving of it.

VII. That in their Sermons they teach and inform their people (four times a year at the least, as the first Canon requires) that all usurped and foreign jurisdiction is for most just causes taken away and abolished in this realm; and no manner of obedience or subjection due to the same, or to any that pretend to act by virtue of it: but that the king's power being in his dominions highest under God, they upon all occasions persuade the people to loyalty and obedience to his majesty in all things lawful, and to patient submission in the rest; promoting (as far as in them lies) the public peace and quiet of the world.

VIII. That they maintain fair correspondence (full of the kindest respects of all sorts) with the gentry and persons of quality in their neighbourhood, as being sensible what seasonable assistance and countenance this poor church hath received from them in her necessities.

IX. That they often exhort all those of our communion, to continue stedfast to the end in their most Holy Faith, and constant to their profession; and to that end, to take heed of all seducers, and especially of Popish Emis-

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saries, who are now in great numbers gone forth amongst them, and more busy and active than ever. And that they take all occasions to convince our own, that it is not enough for them to be members of an excellent church, rightly and duly reformed, both in faith and worship, unless they do also reform and amend their own lives, and so order their conversation in all things as becomes the gospel of Christ.

X. And forasmuch as those Romish Emisseries, like the old serpent, *insidiantur Calceas*, are wont to be most busy and troublesome to our people at the end of their lives, labouring to unsettle and perplex them in time of sickness, and at the hour of death; that therefore all who have the cure of souls, be more especially vigilant over them at that dangerous season; that they stay not till they be sent for, but inquire out the sick in their respective parishes, and visit them frequently: that they examine them particularly concerning the state of their souls, and instruct them in their duties, and settle them in their doubts, and comfort them in their sorrows and sufferings, and pray often with them and for them; and by all the methods which our Church prescribes, prepare them for the due and worthy receiving of the Holy Sacrament, the pledge of their happy resurrection: thus with their utmost diligence watching over every sheep within their fold (especially in that critical moment) lest these evening wolves devour them.

XI. That they also walk in wisdom towards those that are not of our communion: and if there be in their parishes any such, that they neglect not frequently to confer with them in the spirit of meekness, seeking by all good ways and means to gain and win them over to our communion: more especially that they have a very tender regard to our brethren the Protestant Dissenters; that upon occasion offered, they visit them at their houses, and receive them kindly at their own, and treat them fairly wherever they meet them, discouraging calmly and civilly with them; persuading them (if it may be) to a full compliance with our Church, or at least, that 'whereto we have already attained, we may all walk by the same rule, and mind the same thing.' And in order hereunto that they take all opportunities of assuring and convincing them, that the bishops of this church are really and sincerely irreconcilable enemies to the errors, superstitions, idolatries, and tyrannies of the Church of Rome; and that the very unkind jealousies, which some have had of us to the contrary, were altogether groundless.

And in the last place, that they warmly and most affectionately exhort them, to join with us in daily fervent prayer to the God of peace, for an universal blessed union of all Reformed Churches, both at home and abroad, against our common enemies; that all they who do confess the holy name of our dear Lord, and do

agree in the truth of his holy word, may also meet in one holy communion, and live in perfect unity and godly love.

*Mr. Maurice's Draught of an Answer to the four titular Bishops.*

1. Forasmuch as it is the duty of a watchman, as soon as the enemy begins to appear, to give notice, and alarm those, whose safety is committed to his charge: I cannot but hold myself indispensably obliged (considering the station in which it hath pleased God to place me in this church, and the circumstances of the present time) to give warning to all those, who belong to my care, that many deceivers are gone forth amongst them; and are no longer content, as heretofore, to creep secretly into houses, and to lead captive silly people, laden with sins, and by the corruptness of their minds, or the wickedness of their lives, fitted and prepared for such seduction; but begin now to take the confidence of publicly owning themselves, and their ungodly designs, in the face of the world, and to the amazement of this whole nation. It is time for every true shepherd, when he sees the wolves breaking in upon the flock, to be ready, after the example of our great pastor, to oppose and withstand them, and even to lay down his life for the sheep. He is but a hireling, and betrays himself to be such, who has so little concern for his flock, that he flies from danger, when it comes, and prefers even life itself to their safety and preservation.

2. Among these deceivers there are four persons, exceeding all the rest in confidence, who assume to themselves the titles of bishops of remote places,\* where they have no flocks; and under the pretence of being the pope's vicars in this realm, address themselves to a party of men, styled by them Lay-Catholics; who separate themselves indeed from our communion, but yet in right, and according to the laws of this land, and the discipline of the primitive church, belong to our care: these four (I say) under the pretence of Papal auctority, justly and legally abolished in this kingdom, take upon them now to confirm, and harden those mistaken men in their errors; and to that purpose having (it seems) divided the whole kingdom betwixt themselves "before they separate themselves to enter upon their respective provinces" (as they speak) have thought fit to print and publish a writing, under the title of a Pastoral Letter; with directions to those of their party, not only to continue in their former mistakes, but also to use all means for the seducing of others. So that there lies an absolute necessity upon us, to warn and admonish all the people of this land, who either of due right, or actual communion, appertain to

\* Names of the four bishops: John bishop of Adramite: V. A. Bonaventure bishop of Madaura: V. A. Philip bishop of Aureliople: V. A. John bishop of Callipoli: V. A.

us, that they have no fellowship with these deceivers and corrupters of the faith of our Lord Jesus Christ, that they pay them no subjection, no not for an hour; seeing they have no auctority over any persons here, either from our Lord Christ, or his apostles, or from any order of the primitive church, and stand condemned by the laws of this kingdom, as enemies to the supreme power of the king, to the ancient liberties of the Britannie church, and to the peace and welfare of the nation.

[Thus far in the Archbishop's hand.]

3. Those therefore to whom they address themselves under the style of Lay-Catholics, in the first place I exhort and beseech in the Lord Jesus, and in the bowels and tenderness of a fatherly affection, that they would examine themselves, whether they be in the faith; that they would search diligently into the fountains of life, and read and study the holy scriptures, that can make us wise unto salvation; that they would compare with these pretended auctority, and the doctrine of these Papal vicars; and lastly, that they would impartially use such assistances for the discovering of the truth, as the grace of God offers them at this time, in so many excellent treatises upon the points in dispute between the Roman Church and us. My dear brethren, be not deceived; God is not mocked. He will require at your hands all those opportunities of knowledge, he will exact an account of all those advantages, which his goodness has offered to you: it is not with you as with those of their persuasion in Spain or Italy: they have excuses for their ignorance or mistakes, which you cannot pretend: but you whom God has placed in the midst of so great light are utterly inexcusable, if you love darkness better than light. Or if you will not hearken to my voice, I will direct it to God on your behalf, beseeching him, through the intercession of our dear and common Lord, that he would remove your prejudices; that he would open your eyes, and bless you with the knowledge of the truth, as it is in Jesus; that ye may be knit in one fellowship with us: and truly our fellowship is with the Father and his son Jesus Christ.

4. But to those who profess the same common faith with us I apply myself with greater assurance. I have that confidence in you all, that, at this time especially, you will hearken to the voice of your shepherd; whose concern for you is more strong and affectionate than for life itself. I account nothing dear to me in comparison of your salvation; and this is my joy, this is my greatest dignity, if you stand fast in the faith, once delivered to the saints, and now professed by you. Beware of deceivers who are gone abroad, and proclaim to the world their design to shake you from your stedfastness. In order to stand firm against all the arts of these seducers, take to you the "whole armour of God," recommended to you by St. Paul, the great archbishop of the Gentiles; take "the sword of the spirit which is

the word of God;" this will easily cut asunder all the knots of sophistry; this will overcome and bear down all the subtilty and fallacy of seducers: let not the Holy Bible depart out of your hands, nor out of your minds; "hear, read, mark, learn, and inwardly digest it." So shall ye be free from all infection of error, and remain firm and unshaken amidst all the contrary winds of vain and false doctrine: make use of those great advantages of knowledge which the divine goodness has put into your hands: attend to the preaching and writing of those who are over you in the Lord: attend diligently upon public prayer, and be earnest suppliants to God, that he would preserve his church and household here continually in the true religion. And though we must acknowledge, that we have rendered ourselves unworthy of his saving truth, having held it so long in unrighteousness, yet let us instantly beseech him that he would correct us for our sins with any judgment, so that dreadful final one do not overtake us; so he do not utterly forsake us, and deprive us of his truth.

5. Let patience be your shield against the insolence of your enemies: suffer not yourselves to be provoked out of your duty towards God and the king; and let not the weakness of an insolent adversary tempt you to do any thing against the rules of the Christian religion. "But above all things have charity towards all men: love your enemies, bless them that curse you, pray for them that revile and persecute you; so shall ye be the children of your father which is in heaven." But be sure ye have perfect charity among yourselves, and remember, that ye "fall not out by the way, for you are brethren." And as you are united in one faith, so may your hearts be knit together in brotherly love. Support the weak, confirm the wavering, instruct the ignorant, comfort the afflicted, relieve the poor, rebuke the sinner, and edify one another in love. Let not your conversation be a disgrace to your faith, and a scandal to the weak, but let your lives be answerable to so holy a profession: for if you give yourself licence to sin, it is not likely your faith will be long uncorrupt; a wicked life disposes a man naturally to change for advantage: for since the sinner can take but little pleasure in religion, he will quickly grow indifferent, and be disposed to chase that which comes attended with the greatest worldly profit.

6. Have a singular tenderness for those who, holding the substance of reformed Christianity with us, stand yet divided from us. As far as we have attained, let us speak the same thing, and let us pray to God, that he would unite us into one fold, that we may walk in the same house of God as friends. And now my Protestant brethren, though differing from us in lesser matters, I will direct my speech unto you in the spirit of meekness and charity.

Doubtless you are our brethren, and children of the same father: we call upon the same God, through the intercession of the same

Christ. We direct not worship to saints or angels: we fall not down before any images of Christ or his glorified servants: we worship not the sacraments of Christ's passion as God: we deceive not ourselves with expectation of purgatory fires after this life, nor plead any merit with God, whose unprofitable servants we must confess ourselves to be. We equally renounce all foreign jurisdiction, as contrary to Christian discipline, and the privileges and independence of this church and nation. Having then the same substance of faith, the same sacraments, the same Christ, let us unanimously join in the preservation of that common faith, and not suffer ourselves to be divided by our enemies, who being of themselves destitute of force to overthrow our religion, have no way left to compass their designs upon us, but to divide us among ourselves, and to make us the instruments of our mutual destruction. My brethren I believe better things of you, and will conclude with my prayers to God for you: that he would direct your way, and enlarge your hearts towards us, for our bowels are not streightened towards you: that he would speak peace and unity to us all: that he would preserve us all from corruptions of the faith, and superstition in worship: that he would ever protect us from the tyranny of the Roman bishop, which our fathers, after a sad and long enduring, were no longer able to bear: and if for our sins we cannot attain to the desired blessing of a perfect fellowship, yet as far as we have attained, let us encourage and assist one another, and be ever united in all the good offices of Christian affection and charity.

*Copy of an Address to the King from the Bishops; in the Archbishop's hand\*.*

To the King's most excellent Majesty;

The humble Address of the Bishops, who were by his majesty's order lately summoned to attend him.

May it please your Majesty;

Being sad at the heart for the many great distractions, and disaffections, which we find every where in the minds of your people; and being most heartily desirous (according to the duty we owe to God and your majesty) to do all that we can to remove them; we do hereby crave leave, with all humility, to propound to your majesty the following expedients, which, if you please to hearken to, (we think in our consciences) effectually will, and we are sure only can restore to your majesty the hearts of your people, and quiet and compose their minds: viz.

1. And first in general, if you would please

\* It is related, that upon receipt of the prince of Orang's Declaration, king James exclaimed, "We shall now see what the Church of England will do." He soon had reason to repent of the contemptuous disregard with which he had received the friendly warning of bishop Morley. See Vol. 8, p. 1016.

to restore the government, and the whole management of it to that state, and put it into those hands of the nobility and gentry in each county, in which it was, when your majesty first came to the crown.

2. If you would often remember and consider that excellent speech which you made to the privy council, when you first sat down in your chair there, and which you after repeated to the lords and commons at the opening of your first parliament; in which your majesty was pleased to declare, that you would support the Church of England, for you knew her principles, and complained, that you were misrepresented as a man of arbitrary principles; whereas you knew, that the laws are sufficient to make the monarch as great as you desired to be.

3. If you would please often to read over, and in the fear of God seriously to consider the tenor and importance of your coronation oath, in which you swore solemnly before God, and angels, and men, that you would keep and confirm the laws and customs granted by the kings your predecessors to the people and to the clergy of England, according to the laws of God, and the true profession of the gospel established in this kingdom, &c.

4. In consequence of these obligations, if you would please to annul your high commission for ecclesiastical affairs; as being evidently contrary to two acts of parliament.

5. If you would please effectually to revoke all dispensations, and letters mandatory, or recommendatory, by virtue whereof any not duly qualified by law hath been put into or continued in any place or office, or preferment, in church or state, or in the universities; especially which have the cure of souls annexed to them.

6. Particularly if you would please to restore the president and fellows of the college of St. Mary Magdalen in Oxford to their just and undoubted rights; and permit them to resettle that college according to their statutes, and the laws of the land.

7. If you would please by your royal proclamation to inhibit the four Romish bishops, who style themselves vicars apostolical, and by a foreign authority, not derived from your crown, ride circuit in the land, and have presumed to cantonize this your kingdom into four provinces, and to divide it among themselves; (having printed maps of it accordingly) exercising therein a jurisdiction, of which the respective bishops have been long possessors, and which by the laws of England belongs unquestionably to them; whom your majesty hath often declared (and even in your declaration of Ap. 4, 1687,) that you will protect, and maintain in the quiet and full enjoyment of all their rights and possessions, without any molestation or disturbance whatsoever.

8. That you would please to revoke all licences, or faculties, by which any person, who is not of the communion of the Church of England, pretend to be enabled to teach public

schools, and thereby endanger the corrupting the principles of the youth of the nation.

9. If your majesty would please by your proclamation strictly to command all jesuits, and seminary or missionary priests (who go about continually in great swarms, labouring to perplex, and unsettle, and seduce your good people) immediately to depart out of all your dominions, and not to return, but under the penalty of the law: and particularly, that Mr. Edward Petre be forthwith sent away, and not permitted any longer to sit in your councils, or to be so near your person, to the great and just scandal and scorn of your best subjects, and of the whole nation.

10. If you would please to refer the whole matter, and all the points of your late Declaration for Liberty of Conscience (in and by which so many of the laws of the land, and those of the highest concernment are manifestly violated and invaded) to be debated, adjusted, and finally settled by your majesty, and the three estates of the realm, in a free and regular parliament, in whom alone the power of making, and repealing laws, and the whole legislature of this realm, is legally settled.

11. And that this may be done, and the rest of these expedients (so far as shall be thought fitting) farther considered, confirmed, and finally settled, and that with all convenient speed, as the weightiness of the matter requires; if your majesty would please as soon as may be to cause a parliament to be summoned; and to the end that it may be free, and the representatives that are to serve in it duly and fairly chosen; to supersede all farther prosecution upon quo warrantos or otherwise; and restore all corporations (the city of London especially, and in the first place) to their former and ancient charters, immunities, privileges, and franchises, according to the laws.

These things, if it shall please Almighty God, in who's hands the hearts of kings are, to incline your majesty to do; we doubt not yet—

*An Account of the Bishops presenting an Address to the King, with Ten Advices.*

My Lord; Whitehall, Sept. 21, 1689.

The king thinking it requisite to speak with your grace, and several others of the bishops, who are within a convenient distance of this place, his majesty commands me to acquaint you, that he would have you attend him upon Friday next, at ten in the morning. I am my lord, your grace's, &c. SUNDERLAND, P.

Lord Archbishop of Canterbury.

Letters to the same purpose, and of the same date (or about that time) were sent to the bishops of London, Winchester, Ely, Chichester, Bath and Wells, Peterburgh, Bristol, and Rochester; and all which (but London and Bristol) came to town; and all (but the archbishop) waited on the king at the time appointed. The next day the bishop of Winchester went

out of town, and the day after that the archbishop waited upon the king alone: and by his appointment on Wednesday Oct. 3d, all, who remained in town, went together to his majesty; to whom (in the name of the rest) the archbishop spake, as followeth:

May it please your sacred Majesty;

When I had lately the honour to wait upon you, you were pleased briefly to acquaint me with what had past two days before between your majesty and these my reverend brethren: by which, and by the account which they themselves gave me, I perceived, that in truth there past nothing, but in very general terms, and expressions of your majesty's gracious and favourable inclinations to the Church of England, and of our reciprocal duty, and loyalty to your majesty: both which were sufficiently understood, and declared before; and (as one\* of my brethren then told you) would have been in the same state, if the bishops had not stirred one foot out of their dioceses. Sir, I found, it grieved my lords the bishops to have come so far, and to have done so little: and I am assured, they came then prepared to have given your majesty some more particular instances of their duty, and zeal for your service; had they not apprehended from some words, which fell from your majesty, that you were not then at leisure to receive them. It was for this reason, that I then besought your majesty to command us once more to attend you all together, which your majesty was pleased graciously to allow and encourage. We are therefore here now before you, with all humility to beg your permission, that we may suggest to your majesty such advices as we think proper at this season, and conducing to your service, and so leave them to your princely consideration.—Which the king being pleased graciously to permit, the archbishop proceeded, as followeth. Our first humble advice is;

1. That your majesty will be graciously pleased to put the management of your government in the several counties into the hands of such of the nobility and gentry there, as are legally qualified for it.

2. That your majesty will be graciously pleased to annul your commission for ecclesiastical affairs; and that no such court, as that commission sets up, may be erected for the future.

3. That your majesty will be graciously pleased that no dispensation may be granted, or continued, by virtue whereof any person, not duly qualified by law, hath been or may be put into any place, office, or preferment in church or state, or in the universities, or continued in the same; especially such as have cure of souls annexed to them; and in particular, that you will be graciously pleased to restore the president and fellows of St. Mary-Magdalen-college, in Oxford.†

\* Bishop of Bath and Wells.

† See the Case, p. 1. of this Volume.

4. That your majesty will be graciously pleased to set aside all licences, or faculties already granted, by which any persons of the Romish communion may pretend to be enabled to teach public schools; and that no such be granted for the future.

5. That your majesty will be graciously pleased to desist from the exercise of such a dispensing power as hath of late been used; and to permit that point to be freely and calmly debated, and argued, and finally settled in parliament.

6. That your majesty will be graciously pleased to inhibit the four foreign bishops, who stile themselves vicars apostolical, from farther invading the ecclesiastical jurisdiction, which is by law vested in the bishops of this church.

7. That your majesty will be graciously pleased to fill the vacant bishopricks, and other ecclesiastical promotions within your gift, both in England and Ireland, with men of learning and piety: and in particular (which I must own to be my peculiar boldness, for it is done without the privity of my brethren) that you will be graciously pleased forthwith to fill the archiepiscopal chair of York (which hath so long stood empty,\* and upon which a whole province depends) with some very worthy person: for which (pardon me, Sir, if I am bold to say) you have here now before you a very fair choice.

8. That your majesty will be graciously pleased to supersede all farther prosecution of quo warrantos against corporations, and to restore to them their ancient charters, privileges and franchises, as we hear God hath put it into your majesty's heart to do for the city of London; which we intended to have made otherwise one of our principal requests.†

9. That if it so please your majesty, writs may be issued out with convenient speed, for the calling of a free and regular parliament; in which the church of England may be secured according to the acts of uniformity; provision may be made for a due liberty of conscience, and for securing the liberties and properties of all your subjects; and a mutual confidence, and good understanding may be established between your majesty and all your people.

10. Above all, that your majesty will be graciously pleased to permit your bishops to offer you such motives and arguments, as (we trust) may by God's grace be effectual to persuade your majesty to return to the communion of the church of England: into whose most Catholic faith you were baptized, and in which you were educated, and to which it is

\*According to Wellwood (see a note to lord Castlemaine's Case, A. D. 1689,) the archbishoprick of York was so long kept vacant from want of a dispensation of the statutes of the Jesuit's order to father Petre to enjoy a bishoprick.

† See in this Collection the Case of the city of London, vol. 8, p. 1039.

our daily earnest prayer to God, that you may be re-united.

These (Sir) are the humble advices, which out of conscience of the duty we owe to God, to your majesty and to our country, we think fit at this time to offer to your majesty, as suitable to the present state of your affairs, and most conducing to your service, and so to leave them to your princely consideration. And we heartily beseech Almighty God, "in who's hand the hearts of all kings are, so to dispose, and govern yours, that in all your thoughts, words, and works you may ever seek his honour and glory, and study to preserve the people committed to your charge in wealth, peace, and godliness;" to your own both temporal and eternal happiness. Amen.

We also do heartily concur.

H. LONDON.	W. CANT.
P. WINCHESTER.	FRAN. BLY.
W. ASAPH.	JO. CICESTR.
	THO. ROFFEN.
	THO. BATH }
	& WELLS, }
	E. PETRIBURG.*

\* "These proposals would at another time have raised the king's indignation, but the necessity of his affairs obliged him now to thank their lordships, and to promise that he would comply with them. Accordingly on October 5, His majesty was graciously pleased to declare in council, that in pursuance of his resolution and intention to protect the church of England, and that all suspicions and jealousies to the contrary may be removed, he had thought fit to dissolve the commission for causes ecclesiastical, and accordingly did give directions to the lord-chancellor to cause the same to be forthwith done.' And on Oct. 10, It was farther declared, 'That his majesty having received several complaints of great abuses and irregularities committed in the late regulations of the corporations, has thought fit to authorize and require the lords-lieutenants of the several counties, to inform themselves of all such abuses and irregularities within their lieutenancies, and to make forthwith report thereof to his majesty, together with what they conceive fit to be done for redressing the same; whereupon his majesty will give such further orders as shall be requisite.' On Oct. 12, It was again published from Whitehall, 'That the king having declared his resolution to preserve the church of England in all its rights and immunities, his majesty, as an evidence of it, has signify'd his pleasure to the right reverend father in God, the lord bishop of Winchester, as visitor of St. Mary Magdalen-College in Oxford, to settle that society regularly and statutablely.'

"On Oct. 17, The king published a proclamation for restoring corporations to their ancient charters, liberties, rights and franchises. And orders of the council were the same day made for removing and displacing all mayors,

Letter to the Archbishop from F. E.

[FRAN. BLY.]

Seven at Night.

May it please your Grace;

Just now Mr. Thimne brings me a message from lord Godolphin (whose credit is great at this time) that the king and court seem to wonder that they received no farther applications from the bishops to-day; adding, that it was my lord Godolphin's opinion, That whatever now was fit to be asked by us we might have it granted, at least by degrees, therefore we ought to be plain, and propose most humbly and as a necessary discharge of our duty to his majesty, whatever we thought necessary for the public security.

This I thought fit to impart for your grace's consolation: but, good my lord, press for expedition with some such kind expression as this, that otherwise the trap will be fallen upon us ere we are aware.

We discoursed Mr. Thimne upon their fatal inadvertency for excepting all the clergy, by immediate consequence, out of the general

sheriffs, recorders, town-clerks, aldermen, common-councilmen, &c. which had been put in by the late king, or his present majesty, ever since the year 1679." Kennet.

When the approach of the storm became very sensible, bishop Sprat discontinued to act as one of the Ecclesiastical Commissioners, and addressed the following letter 'To the right hon. my Lords of his Majesty's Commission Ecclesiastical.'

"I most humbly intreat your lordships' favourable interpretation of what I now write, that, since your lordships are resolved to proceed against those who have not complied with the king's command in reading his declaration, it is absolutely impossible for me to serve his majesty any longer in this commission: I beg leave to tell your lordships, that though I myself did submit in that particular, yet I will never be any way instrumental in punishing those my brethren that did not. For, as I call God to witness, that what I did was merely in a principle of conscience, so I am fully satisfied that their forbearance was upon the same principle. I have no reason to think otherwise of the whole body of our clergy, who, upon all occasions, have signalized their loyalty to the crown, and their zealous affections to his present majesty's person, in the worst of times. Now, my lords, the safety of the whole church of England seeming to be exceedingly concerned in this prosecution, I must declare, I cannot with a safe conscience sit or judge in this cause upon so many pious and excellent men, with whom (if it be God's will) it rather becomes me to suffer, than to be in the least occasion to their sufferings. I therefore earnestly request your lordships to intercede with his majesty, that I may be graciously dismissed from any further attendance at your

pardon. He stood amazed and ran away to Whitehall about it before the council should rise.

I must be so just to lord Clarendon as to add this one memoir, that not only one Irish archbishoprick, with three bishopricks there, but

board; and to assure him, that I am still ready to sacrifice whatever I have to his service but my conscience and religion. My lords, I am your lordships' most faithful and obedient servant,  
"THO. ROCHESTER."

In vol. 9, p. 263, mention is made of Sprat's employment to draw up prayers for king James's queen and for the prince of Orange. In the *Collectanea Curiosa*, I find this subservient favorite of Charles and James in prayer, solemnly ejaculating of the very first day of king William's landing, "This is the day which the Lord hath made: we will rejoice and be glad in it."

*Letter to the Bishop of London from the Bishop of Rochester [Thomas Sprat]: relating to an alteration in the 5th of November office, 1689.*

From the original under bishop Sprat's hand, penes S. Knight. For my lord bishop of London.

My Lord;

I suppose you received the message which I left yesterday morning with my lord bishop of Chichester for your lordship: that considering the shortness of time, I could not alone undertake to accommodate the whole fifth of November office to the present occasion, but that I would do something towards it. Now, my lord, I send you here what alterations seem to me to be most necessary, and withal a new collect to be said in the morning prayer, and repeated in the second service, unless you shall be better provided

So that if your lordship shall admit what I have done, there remains but one prayer more to be made for the end of the Litany, which as I told my lord of Chichester, I hope your lordship will be quickly furnished with from better hands.

By reason of some indisposition of body, and some domestic business, I shall not be able to wait on your lordship till Thursday morning at the House of Lords. My lord, I am, &c.

Bronley, Oct. 27, 1689. THO. ROFFEN.

Since I wrote the former I have ventured at a Prayer to be used at the end of the Litany, which has occasioned the blots that I desire your lordship to excuse.

The sentences which begin morning prayer must necessarily be altered, and instead of them these following may seem proper to be used.—  
Ps. 118:

V. 23. "This is the Lord's doing and it is marvellous in our eyes.

V. 24. "This is the day which the Lord hath made, we will rejoice and be glad in it,

all their deaneries, and every parsonage and vicarage that has fallen in the gift of the crown, since Tirconnel's regency, is kept void in Ireland.

God's holy spirit guide your grace and grant

V. 23. "Thou art my God, and I will praise thee, thou art my God, and I will exalt thee."

For "O come let us sing unto the Lord," Ps. 95, perhaps the 96th Psalm may serve better as a proper hymn. The other Psalms will do well as before. In the lessons, epistle and gospel, I cannot see any thing to be altered, unless you can find a fitter second lesson and gospel.

All the old prayers and collects must be so far changed, as to make them fit for the present occasion, which may be done by the alteration of a word or two in each.

After the two collects in the morning prayer, which are in the old book, a distinct collect may be added to this purpose, which may be also repeated in the second service.

O God whose name is excellent in all the earth, and thy glory above the heavens, who on this day didst miraculously preserve our Church and State\*

[forefathers] from the secret contrivance and hellish malice of Popish conspirators; and on

<sup>vouchsafe</sup> this day also didst [begin to give] us a mighty deliverance from the open tyranny and oppression of the same cruel and blood-thirsty faction.

[enemies.]

We bless and adore thy glorious majesty, as for the former, so for this thy late marvellous

loving kindness [in the preservation of our religion and liberties.] And we humbly pray,

that the devout sense of this thy repeated mercy

may renew and increase in us a spirit of [love] and thankfulness to thee its only author; a

spirit of [peaceable submission] to our gracious sovereign, whom thou madest the blessed instrument of it; and a spirit of fervent zeal for

our [holy] religion, which now again thou hast so wonderfully rescued, and established

a blessing to us and our posterity. And this we beg for Jesus Christ his sake. Amen.

At the end of the Litany something may be said to this effect.

Most gracious God, and heavenly father, who by thy all wise providence hast ordained the appointed times and seasons of all things, and hast made this day to be for ever fa-

mous and renowned in [this Church] for the two signal preservations thou hast wrought and for our blessed reformation upon it.

[on us and our holy religion.] Grant, we beseech thee, that we may approve ourselves so worthy of these glorious mercies, by adorning

\* The interlineations by bishop Patrick.

you favour in the sight of his majesty! May you, my good lord, perform *fortiter in re, suaviter in modo*. God send your grace a good night and a happy morning. I am your obliged and obedient servant,

F. E.

*Letter to the Archbishop from the Bishops of Rochester and Peterborough.*

May it please your Grace;  
Having waited upon my lord chancellor we

in all things the holy reformed doctrine we shall profess\*, that the gates of hell [may] never prevail against this church which thy own right hand has planted, and thy out-stretched arm has so often defended amongst us, that thou mayst be with it always to the end of the world. Amen.

At length even Crew remonstrated with James.

1. *Letter from Bishop Crew to King James 2.*

"To the King's most excellent Majesty; the most humble and faithful advice of your Majesty's ever dutiful subject and servant the bishop of Durham.

"That your majesty would be pleased to withdraw your protection of those Romish chapels, which are daily made the occasion of so much disturbance and mischief here, and if continued any longer, I fear, will unavoidably endanger the peace and safety of this your great city, and consequently of your whole kingdom.

"That the archbishoprick of York, which your majesty hath been pleased to offer me, may be filled with some other more deserving person: and that your majesty would be pleased to make another dean of Christ Church in Oxford, instead of Mr. Massey, who is utterly incapable thereof by law: That the fellows of Sidney College in Cambridge, for whom I have so often moved your majesty, may have leave to elect a new master, in the place of Mr. Bassett (he being also unqualified on the same account) and to proceed on all other affairs relating to that society, according to their original statutes and constitutions.

"That your majesty would be pleased to call a free parliament so soon as may be, this being the only probable means for preserving your sacred person, for preventing the effusion of Christian blood, and for establishing your throne and government, both in church and state, upon sure and lasting foundations.

"N. DURHAM."

Kennet, after relating what passed between the king and the bishops concerning the required abhorrence, says, that after that time Crew came no more to the council board, and that he represented to Sancroft, his sorrow for having concurred so far as he had done in the king's measures.

\* And let all the enemies of thy sacred truth know and confess.

have acquainted him with the objection in the proclamation of pardon, who tells us, tis the usual expression in all acts of pardon, and that we are included therein, and that the king has already been told of it by my lord Godolphin this evening; and therefore 'tis thought advisable that your grace should not mention it at all, or else very slightly to pass it over. This we think reasonable should be imparted to your grace by our good lord, your grace's most obedient servants,

TNO. ROFFEN,  
TNO. PETERBURG.

*A JOURNAL of what passed between the King and some of the Bishops, concerning an abhorrence of the designs of the Prince of Orange. 1658.*

On Tuesday, October 16, the archbishop received a letter from Mr. Bridgeman, acquainting him, that the king desired to speak with him that morning, if his health would permit.

Whitchall, Oct. 16th. — 33.

'My Lord;

'I am directed to acquaint your grace, that his majesty desires to speak with you about 10 this morning, if your health will permit you to come. I am with great respect and submission, my lord, &c.

'W. BRIDGEMAN.'

'Lord Archbishop of Canterbury.'

He went over at ten of the clock, and was introduced to the king, who discoursed to him about many things: as about the restoring of Magdalen college in Oxford; that the bishop of Winton mistook his letter, for he never meant to delay the visitation; and about the restoring of the corporations, which, he said, should have been done the day before, had not the lawyers differed about the penning of the proclamation, &c.

The archbishop told him, that he had lately received a letter without a name, complaining of the ill state of the church in Ireland; particularly, that four bishopricks had been long void there, the filling of which was the bishop's 7th advice to his majesty; and some other grievances, of all which the king desired to have a particular account sent to him, the archbishop not having the letter about him.

At last the king came to that, which may be supposed to have been his chief intention in sending for the archbishop; sc. to tell him, that he had received certain intelligence, that the prince of Orange was coming to invade England, and to make a conquest of it, &c.; and in fine, that it would be very much for his service, and a thing very well becoming the bishops, if they would meet together, and draw up an Abhorrence of this attempt of the prince, &c.

The archbishop told him, that, as soon as the bishops had waited upon him the last time together, they (supposing his majesty had no farther commands for them) made haste to return into their several dioceses; so that there

were now none of them in town; the bishop of London being not yet come, and the bishop of Rochester being gone into Essex.

The king replied, that these two last named might quickly be found; and that he was told, that the bishop of Peterborough was still in town.

The archbishop answered, that it was more than he knew; for that bishop had bid him farewell some time before, saying, that he was going into the country: so that in all likelihood no considerable number of bishops could now be got together. Where it is to be noted, that the king did not at all mention the bishops of Chester, St. David's, &c.; though there was now so direct an occasion leading to it.

But the king still insisting upon his former proposal, the archbishop, asking first, and having his majesty's leave to speak freely, said, That there would be (he thought) no occasion for the bishops to make such a declaration; for, said he, I could never believe, nor do I yet, that the prince hath such a design: for which, being demanded, he gave several reasons, too long to be here inserted: and this was all that passed at that time concerning this matter.

On Wednesday, October 31st, the king ordered a letter to be sent by a messenger to the bishop of London at Fulham, commanding him forthwith to wait upon his majesty: but the bishop, having been abroad in the country, came not home till it was too late to do so.

My Lord; *Fulham, Oct. 31.*  
I returned home so late this evening, that I could not hope of waiting upon the king this afternoon according to his commands. But understanding that the rest of your lordships were likewise sent for, I beg to know, only by word of mouth, what the matter is, that I may attend accordingly. My lord,  
Your grace's, &c. H. LONDON.

[Superscription.]

To the most Rev. the Lord  
Archbishop of Canterbury.

On Thursday, Nov. 1st, the bishop of London waited on the king; and what passed between them the bishop thus relates in his letter, dated Nov. 6th: "When I waited on the king by his command on Thursday morning, Nov. 1st, he told me, That he had sent for me, when he had nothing but the Declaration of the States of Holland, but that the Declaration of the prince of Orange was now come to his hands; out of which he read to me the short paragraph of the lords spiritual and temporal inviting his highness over. Upon which I told him, I was confident, the rest of the bishops would as readily answer in the negative as myself: and his majesty was pleased then to say, he did believe us all innocent. Next he told me, he thought it requisite we should make some public declaration of our innocence in this matter, and likewise an abhorrence. I then desired to see the Declaration; but he re-

fused. I told him, this was a matter to be considered. Every one, said he, is to answer for himself: but I will send for my lord of Canterbury, who shall call you together."

On the same day the archbishop received a summons from the earl of Middleton to wait upon the king (with the rest of the bishops) the next day, at ten o'clock in the morning.

My Lord; *Whitehall, Nov. 1, 1688.*  
The king commands me to acquaint your grace, that he desires to speak with you at ten o'clock to-morrow morning, and that your grace would bring with you such others of my lords the bishops as are in town.

I am, my lord, your grace's, &c.  
MIDDLETON.  
Lord Archbishop of Canterbury.

In obedience to which command, on Friday Nov. 2d, the archbishop went to Whitehall; and found in the king's bed chamber the bishops of London, Duresm, Chester and St. David's: and they all being called into the closet to the king, he told them, That he had seized a person, who had brought into the city a great number of the prince of Orange's Declarations, and had begun to disperse them: for his majesty had received five or six copies from several persons, to whom they had been sent in penny-post letters, which he had thrown into the fire; but that he had still one copy (which the lord visc. Preston held in his hand; who had all this while, from the first coming in of the bishops, stood by the king;) in which, said the king to the bishops, there is a passage that concerns you; which he thereupon commanded the secretary to read to them, pointing to the places where he would have him begin and end. The sum of it was, That he, the said prince was coming to invade England being thereunto invited (among others of the English nation) by a great many of the lords both spiritual and temporal. Whereupon the king was pleased to say, That he did not believe a word of it; that he was fully satisfied of the bishops' innocency, and that it was a false accusation; notwithstanding that, he thought fit to acquaint them with it, and that this was the occasion of his sending for them at this time.

The archbishop having thanked the king for his good opinion, so frankly and graciously expressed, spoke to this purpose: that he owed to his majesty a natural allegiance, having been born in his kingdom; that he had oftentimes confirmed this by taking voluntarily the oaths of supremacy and allegiance, and could have at once but one king; that (as his majesty well knew) he never worshipped the rising sun, nor made court to any, but to his king; and to him he did, as often as he was pleased to receive it. And, as to this particular charge, and his personal concern in it, he averred it to be utterly false; † he having been so far from

\* See the whole Letter, p. 507.

† Macpherson, in the first volume of his

inviting the said Prince any way to make this attempt, that he never made any application to him: and farther, that he did not know, nor could believe, that any of his brethren the bishops had given the prince any such an invitation. The bishop of London said, he had given the king his answer the day before: the bishop of Duresm said, I am sure I am none of them. Nor I; Nor I; said the other two.

After this, the king, repeating more than once his former declaration, that he verily believed the whole charge to be a groundless aspersion upon the bishops, did nevertheless require, that some such denial should be published, saying, It would be for his service; yet would not allow time to send for the absent bishops, but commanded the archbishop to call together as many of the bishops as were at hand, and to consider with them, what was fit for them all to do, in order to the vindication of themselves from this accusation. The

"Original Papers," has published the two following Articles as from Tanner's MSS. in the Bodleian Library.

GEORGE (probably sir GEORGE) MACKENZIE to the Archbishop of CANTERBURY.—Hopes his Grace will disavow the Prince of Orange's Declaration.

"May it please your Grace;

"We are strangely surprized with the prince of Orange's Declaration, which seems, upon the misinformaion of fanaticks, fled to Holland for to have accused all such as have served in the government of church and state here as criminal. We hope the worthy and pious prelates of the Church of England, will own the true interest of government and their friends; especially such as never exposed themselves nor their religion to sale, and whom neither fear nor flattery has influenced. I refer the state of our affairs to this bearer, who can make your grace understand them as well as if you had been in employment here; nor will there be any thing to be added, when you shall shortly see your grace's most humble servant,  
"GEO. MACKENZIE."

The Archbishop of CANTERBURY disavows his ever inviting over the Prince of Orange.

"Whereas there hath been of late a general apprehension, that his highness the prince of Orange hath an intention to invade this kingdom, in hostile manner; and, as it is said, makes this one reason of his attempt, that he hath been thereunto invited, by several English lords, both spiritual and temporal; I William, bishop of Canterbury, do for my own discharge, profess and declare, that I never gave him any such invitation by word, writing, or otherwise; nor do I know, nor can believe, that any of my reverend brethren, the bishops, have in any such way invited him. And all this I aver, upon my word; and, in attestation thereof, have subscribed my name here, at Lambeth, the 3d day of Nov. 1688. W. C."

archbishop told him, that there were no bishops at hand, (except those there present) but the bishop of Rochester; to whom he undertook to send that night, and to summon him in. Here the bishop of St. David's interposed, and affirmed, that the bishop of Peterburgh was then in town; that he had been seen the day before in the Temple; and that he had inquired at his lodging, where so much was acknowledged. The archbishop told the king, it might possibly be so, but that he knew it not; and that if he could, he would find him out.

Then the king went on to say, that, when we met, if we should resolve upon a paper, or apology for ourselves in writing, before we did any thing farther in it, the archbishop should bring it to him (or rather send it, said he to the archbishop, for I would not endanger your health: for which his royal compassion the archbishop gave him thanks:) and then (he proceeded to say) it being approved by me, may by you (the metropolitan) be sent to the absent bishops for their concurrence.

All this while there was not one word spoken about the abhorrence. But at last the king said, you may do well, and it will be very much for my service, &c. if in your paper you express your dislike of the prince's design: to which (though he said it twice) neither the archbishop, nor the bishop of London (nor any of the other three, as far as is remembered) returned one word. And so they were dismissed.

On Saturday, Nov. 3d, the bishop of London (who had promised the archbishop the day before to dine this day with him) and the bishop of Rochester (who had been in the mean time sent to, to meet him there) came to Lambeth accordingly. But understanding when they came, that the bishops of Chester and St. David's (though not invited) were come in before them, and were with the archbishop, they went together to dine with a friend not far off; and returning about 3 or 4 of the clock (those two other bishops being then gone) to the archbishop, they consulted, and agreed, that the archbishop should send to inquire after the bishop of Peterburgh, and that all should meet again there on Monday, and resolve what was fit to be done on this occasion.

The archbishop having found upon inquiry, that (whatever the bishop of St. David's pretended) the bishop of Peterburgh was not in London; but that he might possibly be heard of at a place in the country not far remote:

On Sunday, Nov. 4th, before day, he horsed a servant, and sent him with a letter to the bishop; who being found, came that evening to the archbishop, and was by him acquainted with the meeting appointed for the day following, at which he promised to be present.

In the mean time (this day before dinner) his majesty sent the lord Preston to the archbishop, to require him to expedite (as much as might be) the return to the king's proposal. The archbishop acquainted his lordship what

had been done herein hitherto, which, he confessed, was as much as could be done; and said, that he would inform his majesty accordingly.

On Monday, Nov. 5th, the bishops met all at Lambeth according to appointment; and, after due deliberation and debate, agreed unanimously what measures to take, and hold to in their answers upon the whole matter: and what they were, will best appear at their next audience.

This evening the archbishop sent to the lord Preston, to give him notice, that the bishops had this day met, and were ready to wait upon the king the next day between 10 and 11 in the morning, if it were agreeable to his majesty's convenience and good pleasure. The secretary went immediately to the king, and having spoken with him, returned answer, that his majesty accepted of the time, and would then expect them.

On Tuesday, Nov. 6th, when the bishops came together at Whitehall, they found the bishop of St. David's waiting for them in the guard chamber, ready to thrust in with them to the king. But they meeting also (very happily) the lord Preston there, the archbishop took him aside, and desired him to procure for them a private audience from the king. His lordship understood the meaning of the request, and going presently to the king, moved him in it: who thereupon (as the lord Preston informed the bishops) ordered the bishop of St. David's to withdraw; which he did.

When the bishops came into the closet.\*

*Letter to the Archbishop of Canterbury from the Bishop of Rochester.*

May it please your Grace;

When I came out of town on Friday morning, I desired divers of your grace's family to give me notice by a messenger, as soon as your grace should be certain of the time of my lord of London's coming to London. But having heard nothing as yet from Lambeth, I presume his lordship is not yet returned out of Essex. In this time I have drawn up, as your grace commanded, what I can remember of our conference at Whitehall; that if my lord of Peterburgh shall be pressing to go out of town, your grace may be furnished with matter, together with what he shall remember, for the composing an exact account of all that passed. I believe my papers are by much too long; but I thought it was better, in a business of great consequence, to be tedious, than to omit any thing considerable. I shall be ready upon the first summons to attend your grace and my brethren at Lambeth.

I beg your grace's prayers for your grace's, &c.

Nov. 12th, Bromley.

THO. ROFFEN.

\* Here concludes the Narrative in the Archbishop's hand writing.

*The Bishop of Rochester's relation.*

The substance (as I can remember) of what passed between the king, my lord abp. of C. my lord of L. my lord of P. and myself, on Tuesday November 6th, 1688.

We four being sent for into the room within the bed-chamber, whither the king was come before, my lord abp. began to this purpose.

Abp. Sir, we think we have done all that can be expected from us in this business. Since your majesty has declared you are well satisfied in our innocency, we regard not the censures of others.

Here the bishop of Peterburgh and myself having been absent the former meeting, made our personal protestations, (as my lord abp. and my lord of L. had done before us) that we had neither by word nor writing, directly or indirectly, invited the prince of Orange to invade his majesty's dominions, nor did we know of any that had.

K. My lords, I am abundantly satisfied with you all, as to that matter. I had not the least suspicion of you. But where is the paper I desired you to draw up, and bring me?

Bps. Sir, we have brought no paper; nor (with submission) do we think it necessary or proper for us to do it. Since your majesty is pleased to say, you think us guiltless, we despise what all the world besides shall say. Let others distrust as they will, we regard it not: we rely on the testimony of our own consciences, and your majesty's favourable opinion.

K. But I expected a paper from you. I take it, you promised me one. I look upon it to be absolutely necessary for my service; and seeing you are mentioned in the prince of Orange's Declaration, you should satisfy others as well as me.

Here the king, taking notice that my lord of Peterburgh and myself had been absent the time before, took out the Declaration, and read to us what concerned the birth of the prince of Wales, and the prince of Orange's resolutions to come hither for the preservation of our religion and laws, being invited by a great many of the spiritual and temporal lords.

Bps. Sir, we cannot think ourselves bound to declare publicly under our hands against a paper, come forth in such a private manner, which as yet nobody owns; and which, as they say, seems rather to be written like a lawyer's brief, than a princely Declaration. We assure your majesty, scarce one in 500 believes it to be the prince's true declaration.

K. No! said the king with some vehemence, then that five hundred would cut my throat, or bring in the prince of O. upon my throat.

Bps. God forbid.

K. What, must not I be believed? must my credit be called in question? and turning the Declaration over in his hands, one of us asked, whether the prince of Orange's arms were to it? He said, there were all the signs of a true Declaration.

Bps. Sir, your majesty's credit is not here

concerned. It is sufficient for that, that your officers seized <sup>on</sup> it.

*Abp.* Sir, it is a good reason to us to suspect it is not his, that this very clause is in it, of his being invited by a great many spiritual and temporal lords. For either this is true, or false. If true, one would think it were very unwisely done of the prince of Orange to discover it so soon. If it be false, one would not imagine a great prince would publish a manifest untruth, and make it the grounds of his enterprize.

*K.* What! he that can do as he does, think you he will stick at a lie? You all know how usual it is, for men in such cases to affirm any kind of falsehoods for the advantage of their cause.

*Bps.* However, Sir, this is a business of date, which properly belongs not to us. To declare peace and war is not our duty; but in your majesty's power only. God has intrusted the sword with you.

*Abp.* Truly, Sir, we have lately some of us here, and others my brethren who are absent, so severely smarted for meddling with matters of state and government, that it may well make us exceeding cautious, how we do so any more. For though we presented your majesty a petition of the most innocent nature, and in the most humble manner imaginable, yet we were so violently prosecuted, as it would have ended in our ruin, if God's goodness had not preserved us: and I assure your majesty, the whole accusation turned upon this one point—Your attorney and solicitor both affirmed, that the honestest paper relating to matters of civil government might be a seditious libel, when presented by persons who had nothing to do with such matters, as they said we had not, but in time of parliament. And indeed, Sir, they pursued us so fiercely upon this occasion, that, for my part, I gave myself for lost.

*K.* I thank you for that, my lord of Cant. I could not have thought you would believe yourselves lost by falling into my hands.

*Bps.* Sir, my lord of Canterbury's meaning is, he looked on himself as lost in the courts of law; lost in Westminster-hall.

*Abp.* But, Sir, the injustice of the prosecution against us did not cease there. After we had been acquitted by our jury, and our acquittal was recorded, and so we were right in the eye of the law, yet after that we were afresh arraigned, and condemned by divers of your judges, as seditious libellers, in their circuits all over England. And, Sir, I beg leave to say, that if the law were open, (that is, as my lord of Cant. afterwards explained himself, if the same persons were not to be judges and parties) had the meanest subject your majesty has, been used as we have been, he would have found abundant reparation in your courts of justice for so great a scandal.

I will particularly acquaint your majesty with what one of your judges, baron H. by name said, coming from the bench, where he had declared our petition to be a factious libel.

\* See justice Allibon's charge, p. 190.

A gentleman of quality asking him how he could have the conscience to say so, when the bishops had been legally discharged of it? he answered, you need not trouble yourself with what I said on the bench: I have instructions for what I said, and I had lost my place if I had not said it. Sir, added the *abp.* I hope this is not true. But it is true that he said it. There was another of your judges, Sir, baron R. who attacked us in another manner, and endeavoured to expose us as ridiculous, alledging that we did not write true English, and it was fit we should be corrected by Dr. Busby for false grammar.

*Bps.* Sir, that was not all. The same judge, as we are certainly informed, presumed to revile the whole church of England with the most scandalous language: affirming, that this church which your majesty has so often honoured by promising to cherish and protect it, is a cruel and bloody church.

*K.* The king speaking to my lord of Cant. said, my lord, this is querelle d'Alemand: all this is a matter quite out of the way. I thought this had been all forgotten. For my part, I am no lawyer. I am obliged to think what my judges do is according to law. But if you will still complain on that account, I think, I have reason to complain too. I am sure your counsel did not use me civilly. I know what is commonly said, that it is customary for the counsel to speak what they can for their clients. But they went farther, and interposed in matters they had nothing to do with. As for what you say, that it is hazardous to meddle in matters of state, that is true when I do not call you to it. But I may ask counsel or assistance of any, as I now do of you; and then there can be no danger.

Here the king still earnestly urging that we would present him with something under our hands, which he had before sometime called a dislike, sometime an abhorrence, sometime a detestation of the prince of Orange's proceedings; and his majesty insisting much upon a promise of this nature, made by my lords of Cant. and London, when we the other two were absent; they, with all duty and submission, persisted, that they never promised a paper, but only to deliberate with other their brethren about town, whom they could confide in, about framing a paper; and if they should agree upon one, to bring or send it to his majesty. Upon this the king asked my lord Preston, whom his majesty had sent for some time before, whether my lords of Cant. and London had not promised a paper, though they now denied it?

As far as I can recollect, my lord Preston answered in these words, or to this sense—That the said lords bishops promised, that, if they should consent or agree upon a paper, they would present it to his majesty before it was published.

*Bps.* We then said, we were very few of the bishops' bench in town, with whom we could advise: that in so weighty a business the king might be pleased to summon up the rest,

*K.* The king answered, he had told my lord of Cant. before, that it would be too far, and too late to send to Carlisle, or Exeter, or other remote parts: but if we there present would subscribe, he would afterwards send to those who were farther off for their concurrence.

*Bps.* We most humbly intreat, that this small number here present may not be separated from the rest, as if we were most suspected than others: farther we said, that the lords temporal were equally concerned in the accusation; and we prayed, that they might be called together, and joined with us in consulting about this protestation, required of us alone.

*K.* The king hastily answered, Ay, I believe, some of the temporal lords have been already with you and caused you to change your minds.

*Bps.* We all solemnly declared the contrary: and the king put this off by saying, that he knew some, as my lord Preston, had been with us.

*Bps.* We said, we understood, that divers of temporal lords had been with his majesty upon this very occasion; and we humbly asked, whether he had demanded any such thing of them, as he now was pleased to do of us?

*K.* His majesty said, no, he had not. But it would be of more concernment to his service that we should do it, because we had a greater interest with the people.

*Bps.* We replied, that in matters of this nature, belonging to civil government and the affairs of war and peace, it was most probable, the nobility would have a far greater influence on the nation than we: they being persons who have a greater stake to venture, and the managing such matters belonging properly to them, not to us.

*K.* But this is the method I have proposed. I am your king. I am judge what is best for me. I will go my own way. I desire your assistance in it.

*Bps.* Sir, we have already made our personal vindication here in your majesty's presence: your majesty has condescended to say, you believe and are satisfied with it. Now, Sir, it is in your power to publish what we have here said to all the world in your royal Declaration, which, we hear, is coming forth.

Here also something was added, which I do not distinctly remember. I think, it was to this effect; that this way of men's being so called to purge themselves might be a thing of very tender concernment to the liberties and properties of the subjects, especially of the peers: and therefore we begged his majesty would require no more of us in particular, but would rest content with publishing this our declaration of our innocency.

*K.* No; if I should publish it, the people would not believe me.

*Bps.* Sir, the word of a king is sacred: it ought to be believed on its own authority: it would be presumption in us to pretend to strengthen it; and the people cannot but believe your majesty in this matter.

*K.* They that could believe me guilty of a false son, what will they not believe of me?

*Bps.* But, Sir, all the court sees us going in and out: and all the town will know the effect of what has been done and said, and we shall own it every where.

*K.* And all the town will know what I have desired of you; so that it will be a great prejudice to my affairs, if you deny me.

*Bps.* We still earnestly beseeched his majesty, that we might not be divided from the temporal peers: that at least he would appoint a select number of them to consult with us. The king still refusing to hear of that, and urging our immediate compliance, we told him, that the chief place for us to serve his majesty effectually in was in a parliament: and when he should please to call one to compose all the distractions of his kingdoms, he should there find, that as we had always shewn our personal affections to his majesty, so that the true interest of the church of England was inseparable from the true interest of the crown.

*K.* My lords, that is a business of more time. What I ask now, I think of present concernment to my affairs. But this is the last time, I will urge you no farther. If you will not assist me as I desire, I must stand upon my own legs, and trust to myself, and my own arms.

The substance and conclusion of our reply was, That as bishops we did assist his Majesty with our prayers; as peers, we intreated we might serve him in conjunction with the rest of the peers, either by his majesty's speedy calling a parliament, or, if that should be thought too long, by assembling together with us as many of the temporal peers as were about the town. This was not hearkened to; and so we were dismissed.

*The Bishop of Peterburgh's Relation of what past with the King about Abhorrence, Nov. 6, 1688, [in a Letter to the Bishop of St. Asaph]*

My dear Lord and Brother;

About ten we met, but in the way to the place appointed, my lord archbishop met Watson, who desired to thrust himself in amongst us, but was refused. He went into the bed-chamber, and was sent away from thence by lord Preston, by the king's order, who was made acquainted with our exception. We entered the closet, and the king demanded the paper. We knew nothing of any paper. Rochester and I declared we had no hand directly or indirectly in calling in the prince of Orange. The king said he believed so. The archbishop said we had now done all that we could do: for we had satisfied his majesty, and we were no way concerned for any man's opinion besides, but defined and scorned it. But says the king, you ought to vindicate yourselves. No, Sir, says he, we have been often abused by false reports and libels: after we had suffered a sharp prosecution at the bar, your majesty's

judges reviled us all over the nation, and being secure of our innocence we have made no complaints, nor endeavoured to set ourselves fair in men's opinions. If your majesty be satisfied, as you declare yourself to be, we despise the opinions of others. But, says the king, you promised me a paper of your dislike. It was answered, I promised to call the bishops together, and to consult about it, &c. You promised me a paper, and my lord Preston was witness of it; upon which he was called, who said the same thing, with a condition.

We argued against any farther declaration, because the paper against which we were to declare was not thought to be true; one of 500 did not believe it. We were joined with the temporal lords, and if his majesty expected any declaration from us, it ought to be in conjunction with them. The most proper place was a parliament: but if his majesty's business would not suffer the delay of a parliament, the next best was a convention of the peers. No, says the king; give me leave to understand my own business: it is your declaration which I desire: you are men beloved in your diocesses, and your names and examples will draw others. It was answered, the temporal lords are far more proper for that, whose great estates give them great interest. The archbishop added, that we had lately suffered for meddling, as Williams said, with affairs of state, and there told all the story of our trial, and all this for meddling in public affairs. The king still insisted on a paper, and we on calling a parliament, and in the interim the temporal lords: and so we parted under some displeasure. I am your affectionate brother,

November 7th, —88.

T. P.

It was said that the king might use our names in his Declaration, if he so pleased, which would be equal to our declaration, that we had not called in the prince: but, says he, the people will not believe me. We answered, it was a shame that we should give attestations to his majesty's words, which were sacred, &c. He need not fear we should retract our words, especially when the retraction was treasonable, &c. He told the archbishop and bishop of London, that they had changed their minds; the temporal lords had turned them.\*

*Bishop of London concerning our † inviting the Prince of Orange, and abhorrence of his designs.*

My Lord;

Nov. 6.

Having some necessary business in Essex, which calls me away to-morrow for two or

\* The Scots bishops were more compliant than those of England. They published at this time a Declaration, in which they prayed that "Providence might give the king the hearts of his subjects and the necks of his enemies." Dalrymple, part 1, book 5, p. 153, 4to edition.

† The title in the archbishop's hand.

three days, I thought it my duty to give you this account.

When I waited upon the king, by his command, on Thursday morning the 1st of November, he told me, that he had sent for me, when he had nothing but the Declaration of the states of Holland, but that the Declaration of the prince of Orange was now come to his hands; out of which he read to me the short paragraph of the lords temporal and spiritual, inviting his highness over.\* Upon which I told him, I was confident the rest of the bishops would as readily answer in the negative as myself: and his majesty was pleased then to say, he did believe us all innocent. Next he told me, he thought it requisite, we should make some public declaration of our innocence in this matter, and likewise an abhorrence. I then desired to see the Declaration: but he refused. I told him this was a matter to be considered. Every one, says he, is to answer for himself: but I will send for my lord of Canterbury, who shall call you together.

On Friday the 2nd of November, I waited upon the king with my lord of Canterbury, &c. when his majesty told him of the prince's Declaration, and made the lord Preston read it. Then he put the question round, which was answered in the negative. Then the king desired some such denial should be published, saying it would be for his service; but would not allow time to send for the bishops at a distance. So his grace told him he would send for those in and about town to consult about it. Upon which the king repeated twice, that we should add our dislike, which would be very much for his service.

I have not time to write the last conference, which I hope my lords of Rochester and Peterborough will compleat.

\* Dalrymple has given from (as he says) the original in Sidney's hand, in king William's box, the following article:

"June 30, 1688. We have great satisfaction to find by 35, and since by Mous. Zulestein, that your highness is so ready and willing to give us such assistances as they have related to us. We have great reason to believe, we shall be every day in a worse condition than we are, and less able to defend ourselves, and therefore we do earnestly wish we might be so happy as to find a remedy before it be too late for us to contribute to our own deliverance; but although these be our wishes, yet we will, by no means, put your highness into any expectations which may misguide your own counsels in this matter; so that the best advice we can give, is to inform your highness truly both of the state of things here at this time, and of the difficulties which appear to us. As to the first, the people are so generally dissatisfied with the present conduct of the government, in relation to their religion, liberties and properties (all which have been greatly invaded) and they are in such expectation of their prospects being daily worse, that your highness may be as-

*The Bishop of London's REASONS against giving any Paper of Abhorrence.*

1. We humbly beseech your majesty to receive what we offer, in a favourable sense, since we have done nothing that can justly deserve misconstruction.

2. We humbly conceive that a general clause in a Declaration, not avowed nor pub-

lished, is not proof, or a sufficient ground for a man, or number of men, to vindicate themselves, as if they were concerned in it. And further, if this Declaration should be owned and published by the prince of Orange, we beg leave to offer it as our opinion to your majesty, that it would be a new thing, and no good precedent to put it [in] the power of a foreign and a general accusation to bring your ma-

sured there are nineteen parts of twenty of the people throughout the kingdom, who are desirous of a change; and who, we believe, would willingly contribute to it, if they had such a protection to countenance their rising, as would secure them from being destroyed, before they could get to be in a posture able to defend themselves; it is no less certain, that much the greatest part of the nobility and gentry are as much dissatisfied, although it be not safe to speak to many of them beforehand; and there is no doubt but that some of the most considerable of them would venture themselves with your highness at your first landing, whose interests would be able to draw great numbers to them, whenever they could protect them and the raising and drawing men together; and if such a strength could be landed as were able to defend itself and them, till they could be got together into some order, we make no question but that strength would quickly be increased to a number double to the army here, although their army should all remain firm to them; whereas we do upon very good grounds believe, that their army then would be very much divided among themselves; many of the officers being discontented that they continue in their service only for a subsistence, (besides that, some of their minds are known already) and very many of the common soldiers do daily shew such an aversion to the Popish religion, that there is the greatest probability imaginable of great numbers of deserters which would come from them, should there be such an occasion; and amongst the seamen, it is almost certain, there is not one in ten who would do them any service in such a war. Besides all this, we do much doubt whether this present state of things will not yet be much changed to the worse before another year, by a great alteration which will probably be made both in the officers and soldiers of the army, and by such other changes as are not only to be expected from a packed parliament, but what the meeting of any parliament (in our present circumstances) may produce against those who will be looked upon as principal obstructers of their proceedings there; it being taken for granted, that if things cannot then be carried to their wishes in a parliamentary way, other measures will be put in execution by more violent means; and although such proceedings will then heighten the discontents, yet such courses will probably be taken at that time, as will prevent all possible means of relieving ourselves.

“These considerations make us of opinion,

that this is a season in which we may more probably contribute to our own safeties than hereafter (although we must own to your highness there are some judgments differing from ours in this particular) insomuch that if the circumstances stand so with your highness, that you believe you can get here time enough, in a condition to give assistance this year, sufficient for a relief, under these circumstances which have been now represented, we who subscribe this will not fail to attend your highness upon your landing, and to do all that lies in our power to prepare others to be in as much readiness as such an action is capable of, where there is so much danger in communicating an affair of such a nature, till it be near the time of its being made public. But as we have already told your highness, we must also lay our difficulties before your highness, which are chiefly, that we know not what alarm your preparations for this expedition may give, or what notice it will be necessary for you to give the states before hand, by either of which means their intelligence or suspicions here, may be such, as may cause us to be secured before your landing; and we must presume to inform your highness, that your compliment upon the birth of the child (which not one in a thousand here believes to be the queen's) hath done you some injury; the false imposing of that upon the princess and the nation, being not only an infinite exasperation of people's minds here, but being certainly one of the chief causes upon which the declaration of your entering the kingdom in a hostile manner, must be founded on your part, although many other reasons are to be given on our's. If, upon a due consideration of all these circumstances, your highness shall think fit to adventure upon the attempt, or at least to make such preparations for it as are necessary, (which we wish you may) there must be no more time lost in letting us know your resolution concerning it, and in what time we may depend that all the preparations will be ready, as also whether your highness does believe the preparations can be so managed as not to give them warning here, both to make them increase their force, and to secure those they shall suspect would join with you. We need not say any thing about ammunition, artillery, mortar pieces, spare arms, &c. because if you think fit to put any thing in execution, you will provide enough of these kinds, and will take care to bring some good engineers with you; and we have desired Mr. H. to consult you about all such matters, to whom we have communicated our thoughts in many

jesty's subjects in particular to a vindication of themselves, as if they were regularly accused, and legally tried for a criminal correspondence.

3. If your majesty should think fit to make it punishable to read or communicate this Declaration, then by making such an address as is required, we should do an act, grounded upon a thing which must not be produced; and consequently we shall not be at liberty to alledge the reasons of our doing it, which must unavoidably expose us not only to censure, but suspicion.

4. As we have in all times adhered to our duty and allegiance, we are the less willing to do any thing now which may distinguish us as men marked with a particular character of suspicion; since we think our loyalty less blemished by not being called in question, than it would be by the clearest vindication that can be made of it upon this occasion.

5 We beg leave to observe to your majesty, that by an address from these few of us who are now in town, without the concurrence of the greater number, who are absent, it would look to the world as if the bishops (who, we hope, are very well united) were of differing opinions: or, that we, who are now here, had more particular need of a vindication than the rest; which maketh it reasonable for us to be unwilling to come within the danger of an interpretation.

6. We consider, that the clause in the Declaration joineth the lords spiritual and temporal; so that, if it has any meaning, it must intend that there is a concurrence of many of both orders to invite them to this attempt; which would make it more improper for us, even though all the bishops were here, to make a separate vindication, where the accusation is joined and comprehends the temporal lords in it; so that if any notice is to be taken of it, it can be done no where so naturally, or with so good effect, as in parliament, which, whenever your majesty shall think fit to call, we resolve to do our duty, and to employ our utmost endeavours for the good of the church and state, and for the preventing the miseries

particulars too tedious to have been written, and about which no certain resolutions can be taken, till we have heard again from your highness.

25	24	27
Shrewsbury.	Devonshire.	Danby.
29	31	35
Lunley.	London.	Russel.
		Sydney."

He thus decyphers the figures, upon the authority, as he alledges, of a key in the handwriting of Mr. Sidney, enclosed in one of his letters to the prince of Orange.

The how ver... cred... rym... in-titled, is set forth in a work published in 1797.

which now seem to threaten these distracted kingdoms, and to acquit ourselves in all things, which shall be there transacted, as becomes, &c.

*Vote of Thanks from the House of Commons to the Clergy of the Church of England; with an answer from the two Archbishops.*

*Veneris 1mo die Febr. 1688.*

Resolved *nemine contradicente*, That the thanks of this House be given to the clergy of the Church of England, who have preached and written against popery, and refused to read (in their churches) the king's Declaration for toleration, in opposition to the pretended dispensing power claimed in the late reign of king James the 2d: and have opposed the illegal ecclesiastical commission.

Ordered,

That Mr. Leveson Gower and Mr. auditor Done do attend the two archbishops with the said resolve, to the end their graces may communicate the same to the clergy in their respective provinces.

PAUL JODRELL, C. D. C.

The sum of our answer,\* twice, or thrice repeated.

That what the clergy of the Church of England had done in opposition to popery, and the pretended dispensing power, was done out of the sense of the duty we owe to God and our country: for we are true Englishmen, and true Protestants, and heartily love our religion and our laws; and esteem the very doing our duty herein to be in itself a reward, and a great satisfaction, without looking farther. Notwithstanding finding, that in what we have done, we have the general approbation of the nation, and so public a testimony of it as a vote of this honourable House, we bless God for so great an encouragement; and we in the name of the rest return our humble thanks to the House, and will take care to communicate what they have voted to the clergy in our respective provinces.

Mr. Speaker;

We do not think it sufficient that we have signified our grateful sense of the favourable vote of your honourable House, sent to us yesterday by two worthy members thereof, unless we do also repeat the same to you under our hands: and withal give you assurance (as we do hereby) that, so far as our observation can reach, the bishops and clergy of England are unmoveably fixed to the Protestant religion, and absolutely irreconcilable both to popery and arbitrary power. And so beseeching Almighty God, to direct all your councils and resolutions to his own glory, and to the good and welfare both of church and state; we humbly take leave, and subscribe ourselves,

Mr. Speaker ;

We do not think it sufficient, that we have signified our grateful sense of the favourable vote of your honourable House, sent to us yesterday by two worthy members of the same ; unless we do also repeat the same to you under our hands : and wilthal give you assurance (as we do hereby) that so far as our observation can reach, the bishops and clergy of England are unmoveably fixed to the Protestant religion, and absolutely irreconcilable both to popery, and to arbitrary power. And we humbly recommend to this honourable House the care of preventing, and suppressing in the most effectual manner, all popish doctrines and practices ; that henceforth they may find no admittance or encouragement among you, or us, or the people of this nation : in which desire we are secure of the full and hearty concurrence both of the bishops and the whole body of the clergy of this church. And so beseeching Almighty God, to direct all your counsels and resolutions to his own glory, and to the good, and welfare both of church and state ; we humbly take leave, and subscribe ourselves your affectionate friends, and faithful servants,

Lambeth House, Feb. 2, 1688. W. CANT.

THO. EBOR.

*The Earl of Rochester's PAPER.\**

The king told me this morning, that he had spoken to your grace, first by yourself, and a second time with some other of the bishops, about that part of the prince of Orange's Declaration, that says, he had been invited to come into England by the lords spiritual and temporal, in relation to your making some declaration under your hands of dislike of it : that he found your grace both times very backward and slow in it, and complained very much that you were so : that it was two or three days since the last time he spoke to you, and that yet he heard not from you : that he would send again to you, for that it imported him very much to have something from you, on this occasion : he added, that your grace had said to him, if his majesty expected any thing in writing by way of dislike, that you wished he would summon all the bishops ; but his majesty added, that that would be a work of time, and that it was necessary for him to have something speedily. This is, as near as I can repeat it, the effect of what the king said to me, which I thought it fit to acquaint your grace with.

I acquainted the king that I had been yesterday at Lambeth ; that I had dined with your grace ; that after dinner came in the two bishops that were there ; that there was some discourse amongst us, of this matter, and that all that I found it came to was, that your grace had a mind to have the opinion of as many of the bishops as were present, and to sign it

*Archbishop Sancroft's Declaration that he did not invite the Prince of Orange into England : Dated 3d of Nov. 1688.*

Whereas there hath been of late a general apprehension, that his highness the prince of Orange hath an intention to invade this kingdom in hostile manner ; and (as it is said) makes this one reason of his attempt, that he hath been thereunto invited by several English lords both spiritual and temporal : I William archbishop of Canterbury do for my own discharge profess and declare, that I never gave him any such invitation by word, or writing, or otherwise ; nor do I know, nor can believe, that any of my reverend brethren, the bishops, have in any such wise invited him. And all this I aver upon my word, and in [confirmation] thereof have subscribed my name here at Lambeth this 3d day of Nov. 1688. W. C.

*Letter to Archbishop Sancroft from sir Thomas Powys, kn. Attorney General ; relating to the Order of Council for prosecuting the Seven Bishops.*

May it please your Grace ;

I have sent my servant to attend your grace for the order of council, I left last night ; which is not to be taken away, unless your grace have no farther occasion for it : I know your grace will easily pardon me for being solicitous to have it printed ; for I was desirous to lay hold of any thing which might, if not to the world, excuse, yet something perhaps alleviate my acting in that most unhappy prosecution, which (I call God to witness) was the most uneasy thing to me, that ever in my life time I was concerned in : and if I may be so happy as by any future action of my life to testify my sorrow, and my earnest desire, if it were possible, to make reparation, I will surely perform it with the greatest cheerfulness : my lord, I hope, notwithstanding what is passed, your grace will be pleased to have that charity for me, as to believe me to be, what I really am, my lord, your grace's obedient servant, &c.

— Jan. 1688.

THOMAS POWYS.

*Account of the EXPENCES sustained by the seven Bishops on their Prosecution, Trial, &c. with the Valuation and Tax on their several Incomes, for the purpose of defraying the said EXPENCES.*

	The Valuation.	The Tax.
	£.	£.
To be paid by Cant. for	4000	per ann. at 6l. per cent. 240
— St. Asaph for	700	42
— Elie for	2,000	120
— Chich. for	770	46*
— Ba. & W. for	850	51.
— Peterb. for	630	38†
— Riostol for	350	21

	£.	s.	d.
Paid by Cant. for 2 expresses (to Cant. and Norw.)	2	6	11
-----to Mr. Lancaster, May 28th, in silver	20	0	0
-----to the same 20 Gg.	21	10	0
-----to Mr. Ince at Lambeth, Jun. 21st, 40 Gg.	43	0	0
-----to Mr. Ince at Lambeth, Jun. 28th, 110 Gg.*	118	5	0
-----to Mr. Ince at Mr. Whin- yard's, Jun. 30th, 52 Gg.	55	18	0
	<hr/>		
	260	19	11
	<hr/>		
Paid by St. Asaph to Mr. L. Jun. 28th, 15 Gg.	16	2	6
-----more to Mr. L. 20 Gg.	21	10	0
-----to the Abp. at his going away.	12	7	6
	<hr/>		
	50	0	0
	<hr/>		
Paid by Elie to Mr. Lanc. 30 Gg. May 28th.	32	5	0
-----to the same 20 Gg. Jun. 20th.	21	10	0
-----to the Abp. July 10th.	46	5	0
-----to the Abp. Sept. 17th. (by Mr. Spencer.)	20	0	0
	<hr/>		
	120	0	0
	<hr/>		
Paid by Chiechr. to Mr. Hanses, 2 Gg.	2	3	0
-----to Mr. Lanc. Jun. 21st.	4	19	6
-----to Mr. Ince, Jun. 20th.	9	0	0
-----to the Abp. 35 Gg.	37	12	6
	<hr/>		
	53	15	0
	<hr/>		
Paid by Bath and Wells to Mr. Lancaster.	20	0	0
	<hr/>		
Paid by Peterburgh to Mr. Hanses.	4	6	0
More to Mr. Hanses, 20 Gg.	21	10	0
	<hr/>		
	25	16	0
	<hr/>		
Paid by Bristol to Mr. Lanc. 15 Gg.	16	2	6
-----more to the same, 20 Gg.	21	10	0
	<hr/>		
	37	12	6
	<hr/>		
Given freely by the Bp. of Nor- wich, paid to Mr. Lancaster.	5	0	0
	<hr/>		
So that there is paid in more than the Tax;			
by the Abp.	20	9	11
repaid. by St. Asaph.	8	0	0
repaid. by Chiechr.	7	15	0
by Bristol.	16	12	6
Less than the Tax			
by Bath & Wells.	31	0	0

	£.	s.	d.
RECEIPTS.			
The Tax upon the Valuation, and the particular payments in the page foregoing being adjusted and set right, the total receipt upon the Tax is	558	0	0
The Bishop of Norwich his free gift is	5	0	0
	<hr/>		
	563	0	0

	£.	s.	d.
EXPENSES.			
1. By Mr. Lancaster, as in Bill A.	57	7	9
2. By Mr. Hanses, as in Bill B.	49	10	0
3. By Mr. Ince, as in Bill C.	388	12	0
4. By the Archbishop :			
To Major Hawley, gent. Porter at the Tower, 20 Gg.	21	10	0
To Mr. Blaney for taking the Trial in short hand, and for a fair Copy of the same, in full (be- side 5 Gg. given him in hand by Mr. Ince) 35 Gg.	37	12	6
For 2 Expresses, one to Cant. with Papers—another toward Norwich to Waltham Cross	2	6	11
	<hr/>		
	556	19	2

Balance. So that there is re- maining in the Accountant's hands - - - - - 6 0 10

The 4 forementioned ACCOUNTS OF THE EX- PENSES reduced into one, under distinct heads; (that they may be the better judged of) in which A. is Archbishop; L. Lancaster; H. Hanses; I. Ince.

1. FEES TO THE COUNSEL.			
For the retaining 3 of the coun- sel, sc.-----	6	9	0
To Sir F. P. Sir R. S. Mr. P. Mr. F. to each 5 Gg. twice. H.	43	0	0
June 11. To Mr. Pollexfen for advice. I.	2	3	0
12. To Sir Fr. Pemberton. I.	3	4	6
14. To Sir Rob. Sawyer. I.	3	4	6
21. To Sir F. P. Sir R. S. and Mr. Pol. to each 10 Gg. for ad- vice past and future (they hav- ing not been duly paid.) I.	32	5	0
22. To Sir Geo. Treby for a re- taining Fee. I.	5	7	6
23. To him more upon a consult with the rest. I.	5	7	6
To Sir Creswell Levinz a retain- ing Fee. I.	5	7	6
25. To him more upon a consult re res			6
To Mr. Sommers a retaining			

	£	s.	d.
28. To Sir F. P. Sir Cr. L. Sir G. Tr. Mr. Pol. and Mr. Sommers, to each of them 20 Gg. (Mr. F. and Sir R. S. refusing.) I. - - -	107	10	0
July 3. To Mr. S. to consult of moving to discharge the Recognisance. I. - - - - -	2	3	0
To Sir Cresw. Levinz for the same. I. - - - - -	3	4	6
4. To Mr. Radford to move for it the last day of the Term. J. - - -	2	3	0
To Mr. Pollexfen to second the Motion. I. - - - - -	3	4	6
	<hr/>		
	240	16	0

2. TO ATTORNEYS AND SOLICITORS.

To Mr. Grange. H. - - - - -	2	3	0
June 13. To him to prepare the 2 Pleas against the first day of the Term. I. - - - - -	1	1	6
15. For drawing the Rule for a Trial at Bar. I. - - - - -	0	10	0
17. For writing 13 Copies of the Information. I. - - - - -	1	16	0
28. For drawing the Rule for the Clerks of both Houses of Parl. to attend with the Records. I. - - -	0	7	6
	<hr/>		
	5	18	0

3. FEES TO OFFICERS.

June 11. To Mr. Brown to observe the Proceedings in the Crown Office. I. - - - - -	1	1	6
17. To his Man for care and expedition. I. - - - - -	0	10	0
28. To Mr. Brown upon his Bill. I. More to the same in full. I. - - -	10	15	0
15. To Cook for Chairs for the Bishops in Court. I. - - - - -	1	0	0
To the Deputy Marshal for Fees and Attendance. I. - - - - -	2	3	0
To the 4 Tipstaves for 7 Recognisances and their pains. I. - - -	2	4	0
To the Criers for their Fees and pains. I. - - - - -	2	0	0
To the Door-keepers. I. - - - - -	1	0	0
To the Court-keeper. I. - - - - -	0	5	0
25. To Sir Sam. Astry for striking the Jury. I. - - - - -	2	3	0
To the Under-Sheriff for attending with his book. I. - - - - -	2	3	0
July 2. To Sir Sam. Astry for his Fee upon the Trial. I. - - - - -	2	3	0
To Mr. Harcourt his Secondary. I. - - -	2	3	0
To the Clerk of the Rules. I. - - - - -	1	1	6
3. To the Deputy Marshall. I. - - - - -	3	4	6
To the Criers Fees and Gratuities. I. - - - - -	5	18	0

	£	s.	d.
4. To the 4 Tipstaves for attending the Court, and watching the Jury. I. - - - - -	9	13	6
And to Prescott one of their servants.	0	5	0
To Cook for Chairs on Friday and Saturday. I. - - - - -	2	0	0
5. To the Clerk of the Treasury. I. - - -	1	1	6
To the Book-bearers. I. - - - - -	0	15	0
6. To the Sheriff's Bailiffs, that summoned the Jury. I. - - - - -	3	12	6
	<hr/>		
	78	10	0

4. FOR SEARCHING AND COPYING RECORDS.

For transcribing Papers and Journals for Mr. Hanses. H. - - - - -	0	15	0
June 23. To Mr. Walker, Deputy Clerk of the Lords House, for search and Copies. I. - - - - -	9	5	6
To his Man sitting up all night to copy and examine. I. - - - - -	0	10	0
To Mr. Jodrel, Clerk of the H. of Commons, for search and copies. I. - - - - -	4	0	0
To his Man for dispatch 10s.—and June 25th 7s. 6d. more. I. - - -	0	17	6
July 9. To Mr. Walker for attending at the Trial with the Records. I. - - - - -	5	7	6
To Mr. Jodrel for attending at the Trial with the Records. I. - - - - -	5	7	6
To Mr. Miller at the Acorn, for printed Votes and Speeches. I. - - -	0	5	0
July 10. To Mr. Fr. Mills, for Copies of Records for Mr. Hanses, and for writing Breviats for the Trial (v. Bill) I. - - - - -	9	6	6
To Mr. Petit for searching Records for Mr. Hanses. I. - - - - -	10	15	0
And to Mr. Washington for his help therein. I. - - - - -	3	4	6
July 17. To Mr. Halsted for search, and Copies of Records at the Tower. I. - - - - -	15	5	6
	<hr/>		
	64	19	6

5. GRATUITIES.

June 22. To the Clerk of the Tower-Church. I. - - - - -	2	0	0
June 23. To the Tower-Warders (disposed by D. Hawkins.) I. - - -	4	0	0
To Mr. Reinolds the Lieutenant's Clerk. I. - - - - -	3	0	0
July 24. To Major Hawley, Gent. Porter of the Tower. I. - - - - -	21	10	0
July 18. To Sir Fr. Pemb.'s Clerk (the meetings being at his Chamber.) I. - - - - -	1	0	0
To Mr. Finch's Clerk (who's Mr. refused fees.) I. - - - - -	1	0	0
To Sir ... and ...	4	10	0

	£.	s.	d.
July 6. To Hutchinson, Mr. Rouse's Clerk. I. - - - -	0	5	0
July 7. To Mr. Grange's Clerks, for care, pains, and examining. I.	2	3	0
July 20. To Mr. Ince's 3 Clerks, for great pains, sitting up all night, (particularly with the Jury) examining Records in Tower, and Parlt. I. - - - -	3	4	6
June 27. Given at Ld. Middleton's when we petitioned for the Parlt. Records. I. - - - - -	0	15	0
Given at the Ld. Chancellor's upon same occasion. I. - - - - -	0	7	6
June 16. To Mr. Bownd to watch in the Sheriff's Office. I. - - -	1	1	6
July 6. To Mr. Helms for attending the Jury all night, and other helps. I. - - - - -	1	0	0
	<u>43</u>	<u>6</u>	<u>6</u>

G. OTHER OCCASIONAL EXPENCES.

To Mr. G. for printing, &c. L. - -	23	0	0
To the Abp. for two Expresses; sc. to Cant. and toward Norwich. A.	2	6	11
To the Bp. of St. As. for Expresses into Wales. L. - - - - -	9	3	9
— And for a Messenger that brought a Letter. L. - - - -	0	2	6
To the Bp. of Elie for an Express into the North. L. - - - - -	11	12	0
— for an Express to Camb. and Elie. L. - - - - -	0	16	0
— And for three Expresses to Farnham. L. - - - - -	2	5	0
To the Bp. of Chich. for what he paid for Fees, &c. H. - - - -	0	15	0
To the Bp. of B. and W. for Expresses to Oxford and Exeter. L.	3	4	6
— And for a 2d Express from Wells to Exeter. L. - - - - -	0	15	0
June 12. Spent at a Coffee-house in attending the Bp. of Norwich. I.	0	0	2
To Mr. Hauses for Coach-hire, &c. H. - - - - -	0	19	6
More to him for Coach-hire, Waterage to the Tower, &c. H. -	1	17	6
June 30. To the Mr. of the Sun-Tavern for a Supper on the day of Trial for the Parlt. Clerks and Witnesses. I. - - - - -	1	12	8
July 2. To the Mr. of the Bell-Tavern where the Jury were kept.	5	2	6
July 5. For Bread, Beer and Wine, brought into the Court. I. - -	1	13	6
To Mr. Ince for Coach-hire, Waterage, Porterage, and other petty Expences from June 11th to July 1st. I. - - - - -	14	1	
To Mr. Blaney for taking the Trial			

	£.	s.	d.
1. Fees to the Counsel - - - -	240	16	0
2. To Attorneys and Solicitors -	5	18	0
3. To Officers - - - - -	78	10	0
4. For searching and copying Records - - - - -	64	19	6
5. Gratuities. - - - - -	43	6	6
6. Other occasional Expences - -	123	9	2
	<u>556</u>	<u>19</u>	<u>2</u>

THE SECOND ACCOUNT.—EXPENCES.

Oct. 9. To an Express that went in the Night to Copt-Hall to the Bp. of London - - - - -	0	10	0
Oct. 11. To Mr. Ince, for his great care and pains, 40 Gg. - - - -	43	0	0
Oct. 12. To Mr. Scott, for copying the Sheriff's book, and his assistance in striking the Jury, 3 Gg.	3	4	6
To Mr. Grange, for his assistance, 10 Gg. - - - - -	10	15	0
	<u>57</u>	<u>9</u>	<u>6</u>

RECEIPTS.

Due from me upon the Balance of the first account - - - - -	6	0	10
Receiv'd since of the Bishop of Bath and Wells as an additional Tax for 50l. per ann. on the former account; he having found the Rents of his Bishopric to be 900l. per annum - - - - -	3	0	0
A second Tax upon the former Valuation of 9,300l. at 10s. 5d. per cent. amounts to - - - - -	48	8	9
	<u>57</u>	<u>8</u>	<u>7</u>
Balance.—So that this Tax being paid (according to the particular following) there will remain in my hand - - - - -	0	0	1
The particular Tax upon the Bishops to raise - - - - -	48	8	9
The Abp. for 4,000l. - - - - -	20	16	8
The Bp. of St. Asaph for 700l. - -	3	12	11
The Bp. of Elie for 2,000l. - - -	10	8	4
The Bp. of Chich. for 770l. - - -	4	0	2½
The Bp. of Bath and Wells for 850l.	4	8	6½
The Bp. of Peterb. for 630l. - - -	3	5	7½
The Bp. of Bristol for 350l. - - -	1	16	5½
	<u>48</u>	<u>8</u>	<u>9</u>

N. B. That whereas in the 1st Tax Chich. paid 3s. 6d; less, and Pe 3s. 6c e tha  
 1. inst Tax: now to get that right

Note also, that there is left in the hands of the Bishop of B. and W. for his additional 50*l.* upon the 2d Tax - - - - - 0 5 2½

November 22, 1688.

I have examined these two accounts, and find them justly summed.

THO. PETRIBURG.

We have seen (p. 108, of this Volume,) that in 1686, king James granted to Obadiah Walker a license to print and sell several Popish books. Two years afterwards the sale in Scotland, of certain books and pamphlets, was prohibited by the following Proclamation:

‘ James by the grace of God, king of Great Britain, France and Ireland, defender of the faith: To  
 ‘ Macers of our privy council, messengers at arms, our sheriffs in that part, conjunctly and severally, specially constitute, greeting:  
 ‘ Forasmuch as we being informed, that there are many impious and scandalous books and pamphlets printed in Holland, and elsewhere, inciting our subjects to murder and assassination, as well as rebellion, to the great reproach of the christian religion, and the ruin of all human society; in which also our government and the actions of our royal predecessors, and our own, are represented as cruel, barbarous and tyrannical, and all such as have served and obeyed us, are railed at as enemies to God and their native country, notwithstanding of the great care we have always taken to tolerate all different persuasions, and the clemency we have shewn in pardoning the greatest criminals, which books are brought home into this kingdom, and vended, and spread here; and we being most desirous, on this, as on all other occasions, to prevent any of our subjects being brought into a snare, we have thought fit hereby to intimate and make known, that if any of our subjects shall hereafter bring home, vend, or sell, disperse or lend any of the books underwritten, viz. all translations of Buchanan de Jure Regni, Lex Rex, Jus Populi, Nephthali, the Cup of Cold Water, the Scots Mist, the Apologetical Relation, Mene Tekel, the Hynd let loose; the treasonable Proclamations issued out at Sanquhar, and these issued out by the late duke of Monmouth, and the late earl of Argyle, or any other books that are, or shall be hereafter written or printed, defending these treasonable and seditious principles, they shall be liable as if they were authors of the said books; and all other our subjects are com- to bring any of the said books they have, and deliver them into any

‘ same may be destroyed: with certification  
 ‘ that whoever (except privy councillors) shall be found to have any of the said books, and not to have delivered them up, shall be fined, for our use, in such a penalty as our council shall appoint, for each of the said books, that he or they have not delivered up; and appoints the said books and pamphlets to be brought in betwixt and the diets following, viz. These in the town of Edinburgh, and suburbs thereof, betwixt and the first Tuesday of September next to come, and all others within this kingdom, betwixt and the first Tuesday of November next to come. And to the end our royal pleasure in the premisses may be made public and known, our will is, and we charge you strictly and command, that incontinent, these our letters seen, ye pass to the market-cross of Edinburgh, and whole remanent market-crosses of the head burghs of the shires of this kingdom, and other places needful, and there, in our name and authority, make publication of our royal pleasure in the premisses. And recommend to the most reverend the archbishops, and right reverend bishops, to cause read this our royal Proclamation, in all the pulpits of this kingdom, upon some convenient Lord’s day, in the forenoon, immediately after divine service, that none pretend ignorance.  
 ‘ Given under our signet, at Edinburgh, the 15th day of August, 1688 years, and of our reign the fourth year.

‘ Per actum Dominorum secreti Concilii.

‘ WM. PARTERSON, Cl. Sec. Con.  
 ‘ God save the king.’

Of this Proclamation, Wodrow writes:

“ The occasion of it was the seizing of some copies of the Hind let loose, when coming home from Holland. We have had several Proclamations of this sort before, and so I shall not spend time in observes upon this; and indeed it is softer than one would have expected, after their seizing of such a book as the last named, wherein the king’s right and title is impugned and argued against.

“ It is not without a particular emphasis, that the Proclamation declares the books prohibited to have been printed in Holland; now when the noise of the prince of Orange’s expedition began to be talked of. The books and pamphlets discharged, are, ‘ All translations of Buchanan de Jure Regni, Lex Rex, Jus Populi, Nephthali, the Cup of Cold Water, the Scots Mist, the Apologetical Declaration, Mene Tekel, the Hind let loose, the treasonable Proclamations issued out at Sanquhar, and those issued out by the late duke of Monmouth, and the late earl of Argyle.’ The terms upon which they were brought in, and other things, the laws hath in the procl. on its

where they found them, but likewise any books written against Popery, alledging the selling of these tended to alienate peoples minds from his majesty. And I have the following pleasant incident from a very good hand at this time in Edinburgh.

“Some of the counsellors gave themselves the trouble to visit some of the booksellers' shops, and the advocate used to relax himself this way. Either he, or another of the counsellors came into a shop, where the master was a firm whigg, and asked him if he had any prohibited books. The other desired him to search and look for them. After he had looked through and catched nothing, he asked if he had any books against Popery. The other answered he had, and a good number of them. The former called for a sight of them; for, said he, that is the religion of his majesty, and his subjects ought not to be alienated from him upon that score. Upon this the counsellor was directed to the place in the shop where the bibles lay, and the door being cast open he took one of them, and a second, and said to the bookseller, these are bibles. They are so, said the other, and from one end to the other against Popery. This was reckoned an high crime;

and in the afternoon the master of the shop was cited to appear before the council, and there was brought to some trouble.”

Among sir William Williams's papers are his original brief in this cause, and the order (under the councils' seal) directing the attorney and solicitor general to prepare the information against the bishops, and prosecute the same, &c. By this latter instrument, it appears, that the persons present in council when the order was made, were, the king, lord chancellor, lord president, lord privy seal, marquis of Powis, lord chamberlain, earl of Huntingdon, earl of Peterborough, earl of Craven, earl of Berkeley, earl of Moray, earl of Middleton, earl of Melfort, viscount Preston, lord Dartmouth, lord Godolphin, lord Dover, Mr. chancellor of the exchequer, lord chief justice Herbert, sir Nicholas Butler, Mr. Petre.

Sir W. Williams, in his Argument in Prynne's Case, Trin. 2, W. and M. speaking of this case of the seven bishops, said, “I will not undertake to justify the proceedings of the late government: we have all done amiss, and must wink at one another.” See 5 Mod. 463.

359. Trial of JOHN LOVE the younger, and others, for Rebellion, Treason, and Lese Majestie: 3 JAMES II. (of England) A. D. 1687. [Now first published from the Records of Justiciary at Edinburgh.]

CURIA JUSTICIARIA, S. D. N. Regis tenta in Prætorio Burgi de Edinburgh, quarto die mensis Maji, millesimo sexcentesimo octagesimo septimo, per nobilem et potentem Comitum Georgium Comitum de Lamlithgow Justiciarum Generalem, et honorabiles viros dominos Jacobum Foulis de Collingtone, Justiciarium Clericum, Joannem Lockhart de Castlehill, Rogerum Hoge de Marcarss, Patricium Lyone de Carss, Commissarios Justiciarie dictij S. D. N. Regis.

Curia legitime affirmata.

Intran.

John Love, younger, in Little Govan.

John King, elder, in Meikie Govan.

John King, younger, ther.

Alexander Clerk, ther.

William Cadwell, ther.

Umphrey Barbour, in Bisk.

John Cadwell, ther.

William Orr, ther.

John Pattison, elder, in Lochsyde.

Andrew Robiesone, in Trees.

Robert Orre, in Beltreemuir.

William Cadwell, in Branthill.

David Smith, in Glenhead.

Robert King, ther.

Robert Orre, in Beltrees.

James Robiesone, in Wardzett.

THE deceast John Love, elder, in Little Govan, his ——— relict children and nearest kine, citted to appear to hear and see the procc of forfaulture orderlie led: That wher, notwithstanding be the commonlawe, lawes and acts of this kingdome, and constant practice thereof particularie be the third act of the first parliament, and threttie seventh act off the secon parliament of king James the first, and fourteinth act of the sixt parliament and fourteynth act of the twelt parliament of king James the second, and nyntie seventh act of the seventh parliament of king James the fyfth, and the hundreth fourtie fourth act of the twe parliament of king James the sext, and fyft act of the first sessione of the first parliame

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(Principal Act expires 13 Dec 2002)

**Futures Industry (Application of Laws) Act 1986**

[And associated Futures Industry (Western Australia) Code]  
(Superseded by Corporations Law, see "Corporations (Western Australia) Act 1990")

*Futures Industry (Application of Laws) Act 1986*  
44 of 1986 1 Aug 1986  
*Futures Industry (Application of Laws) Act 1986*  
1 Sep 1986 (see *Gazette* 29 Aug 1986  
p. 3161)

sisting, corresponded with them or their agents in any part of the not or not or give effect, abominable lese majestie of lyf the f king- poynt it is of K and 167 Jan to gu an ag st

ng or keeping, bells, suplieing, red or councll, or outbouding one, or giveing ff or confort, or tending of them, off the countrey se of them to that arrid, hynous and one, treasone, and able by forfaiture the eleventh act of and parliament of forfaitures ar ap- ce. Neverthesse said John Balfour stoune off Rathillet, e third day of May, murdered his grace St. Andrews: they, volve others in ther rme shyres, and rose mes and rebellione his authoritie, with rebels, ther accom- of the West and South majestie's lawes and the Mercat Croce of treasonable proclama- of ther owne, drowned commemoratione of our ussoveraine his happie e — day of June the ist and oppose a pairtill, under the command of Claverhouse, killed e of them, and them stoure to our burgh off and ataque the same, ces therin, wher being ed up and downe the forme, randevouzed and apoynted officers and n, did robb and rifle the is of his majestie's good soners kept, counclls of selves at severall places, across, and comissar the Shawehed muire and nd whill the saids rebels es committing all acts of treason, the saids John lder, and younger, and the ins above named, with fyve ills, ther accomplices, did appear in armes in open re- s majesty and his authority some of Renfrew, and places randevouzed and drilled up ercised themselves, apoynted mmanders over themselves

lyke and military postoure, particularlie kept a publict randevouze at Midletounhill within the shyre of Renfrew the week befor the defate at Bothwell-bridge, at which randevouze they disciplined and exercised themselves as soldiers and trained men use to doe, and ther they held a councll of warre, and consulted and advyzed, and positivlie resolved, determined and trysted to march forward and joyue with the bodie of the rebels, who wer encamped at Bothwell-bridge, upon the Munday thereafter, before which tyme the saids rebels were defate, and wher lykwayes they did instigate, perswade and encourage one ane other, and severall others persons, and particularlie Henry Dyks, and ———, to ryse and joyue in the said rebellione, and promised them money and armes, and wher also they did contribute and collect amongst themselves three hundredth merks as a present suplie to be sent to the saids rebels at Bothwell-bridge till they should come up themselves, and ever since the said rebellione the persons complained upon have harboured, receipt and conversed, intercommoned with; and supplied in ther housse and upon ther ground and lands, common and notorious rebels and traitors, who were fourfaulted or declared fugitives or declared rebels for the said rebellione, or whom they sawe or knew to be in the said rebellione, and particularlie James Niving, in Beitrees, and ——— Love, in Cadwell, upon the first, second, third, ore ane or other of the dayes of ——— years. Wherthroue the doeing or comitting wherof, or ane or other of the saids treasonable crymes, the said John Love, John King, elder and younger, and the remanent persons above complained upon, have committed the crymes and incurred the paines of high treason, rebellione and lese majestie, and ar actors, airt, and pairt, of the samen: which being found be ane assyse, they ought to be punished with forfaiture of lyfe, land and goods, to the terror and example of others to comit the lyke in tyme comencing.

*Persewer.*—Sir John Dalrymple, his majesty's Advocat.

Sir Patrick Hume, sir Robert Coll, Advocats.

*Procurators in Defence.*—Sir George Mc. Kenzie, sir David Thoires, Mr. Daniel Lockhart.

His majesty's Advocate restricts his lybell to that pairt thereof concerning the randevouze at Mideltounhill, and what was done ther, and to the conversing with James Niving *allienarlic* in manner lybelled. The Persewer produced ane act of privie councll for insisteing against the forenamed persons and others, wheroff the tenor followes:

Edinburgh the 10th day of March. 1687.

against it) that they have both vindicated it before him, and given me a command in their names to return your grace their hearty thanks for it; and at the same time to express their real concern for your grace and all your brethren, and for the good cause in which you are engaged; and, I dare say, they are not only highly satisfied with your grace's conduct, but reckon themselves particularly obliged by your grace's so steadily maintaining the church; and your refusing to comply with the king is by no means looked on by them as tending to disparage or depress the monarchy; for they reckon the monarchy to be really undervalued and injured by all unreasonable and illegal actions, though never so much pretending to enhance it. Indeed we have great reason to bless and thank God for their highnesses steadiness, in so good a cause, and their affection towards us. They do give us all the comfortable prospect that we ourselves can desire. And I pray God in his good time to answer and fulfill all these our hopes in them. I will not trouble your grace with news from hence; only I cannot but acquaint your grace here hath lately been discovered a great design against the life of the prince by poison. The person, who was to have done it, discovered it, and produced the poisons, but he could not produce the person that hired him; for he would never tell him his name, nor meet him in any house. He gave him some money in hand, and promised him more, if he would but first poison his landlord where he lodged, and then he should have much more for doing the same to the prince; and because this person delayed to do either, he was by an unknown hand stabbed here in the fair time, but is not dead. We discourse but little of it, but it is most true, that there was such a wicked design, which I thank God is defeated; and I pray God for ever to blast all designs against their highnesses, and to make them great and lasting blessings to our church and nation. To which purposes I humbly beg your grace's prayers to God for them, and your blessing on your grace's most humble and obedient servant,

WILL. STANLEY.

MATTER OF FACT: by the E. of CL.—

### I. Concerning the King's Dispensing Power.

December 26th, 1662, king Charles 2 set forth a Declaration to all his loving subjects, containing an indulgence (though far less than hath been since granted) to dissenters; there being then no other test upon any sort of them, but the oaths of allegiance and supremacy. At the opening of the next session of parliament, February 18th, 1662, the king in his speech explained his meaning in his said declaration, lest (as he said) "some should mistake him therein." In that speech he used these words; "I

of that speech, fell upon the questioning the legality of that declaration: and after long debates, upon February 28th presented an address to the king, containing the several reasons against that indulgence; and averring positively, "that the laws of uniformity, then in force, could not be dispensed with, but by act of parliament." This address was received by his majesty very graciously; as appears by his answer, which is in print, with the address and reasons.

While this was doing in the house of commons, a bill was brought into the house of peers, intituled, "An Act concerning his majesty's power in ecclesiastical affairs." The scope of it was to enable the king to dispense with the act of uniformity, and to give indulgence to dissenters. The cause of the bill is thus laid down in the preamble: "considering that this indulgence, how necessary soever, cannot be dispensed by any certain rule, &c. and his majesty being the best judge, when, and to whom this indulgence is to be dispensed, and as may be most consistent with the public peace, and without just cause of offence to others, and to the end his majesty may be enabled to exercise it with universal satisfaction, be it enacted, &c.:" This bill was read the first time February 23d. It was after read a second time, and committed. But whosoever hath the curiosity to look into the journals of that house, will find, that though the committee sat several times, they made very little progress in it, and that at last it died away there, without any report made to the house. By this proceeding it seems very clear, both that the king had then by law no such dispensing power; and that the parliament were not then inclined to grant him any such power.

After this all things continued quiet for above nine years. But March 15th, 1671, the king set forth another Declaration of Indulgence, much fuller than the former. The parliament met not till February 4th, 1672, (which was near a year after the declaration was published.) The king, in his speech at the opening of that session, speaking, (among other things) of his declaration, was pleased to say: "Having said this I shall take it very ill to receive contradiction in what I have done; and I will deal plainly with you; I am resolved to stick to my declaration." The house of commons, February 19th, made an humble address to his majesty; wherein they inform him, "that penal laws in matters ecclesiastical cannot be suspended but by an act of parliament." The king returned an answer February 24th, in which he says, "that he is much troubled, that that declaration, which he put out for ends so necessary to the quiet of his kingdom (and especially in that conjuncture) should have proved the cause of disquiet in his house of