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dately followed her, and when I came out of my door, I met with Mr. Philip Standsfield, and James Dick. Mr. Standsfield declares to me, Lord Mr. Sparway, what should be the Cause of this Man's Discontent, that he should thus leave his Lodgings, and walk out? To which I replied, Sir, do you wonder the Cause of his Discontent, who never gave him Content, but had been the Cause of picking him, from one to the other of them, ever since I knew the Family? But he turned his Back upon me, and made no Reply at all; however I went to Sir James's Houfe, but could not procure the Keys of neither of the Gardens, and I kept about the Captain's Servants, and of my own, fome on Horseback, and fome on Foot, to inquire after him: At fome a Servant of mine, one William Beamson, found him in the River, a little beft the Town. I went at the Place, and faw him lying about two Years, or eight Foot from the Brink of the River, lying upon his Belly, juft at the Top of the Water, as it was flowing, only his Coat and Wholecoat looke about him, and a Shirt on him that I faw. I faw the Place at the Brink of the River, and he had fome all becan to walk with Feet, and the Ground was open and mellow, although a very haft frowly Morning; fo I gave Order to fame to get a Lad- der, and to fet one End into the River, as near the hinder Part of Sir James as they could, and the other End of the Ladder to fall at the Top of the Brue, which was very fteep, and fo they might get him out eaily; fo I came away from the Place, and defir'd Mr. Maff to fee the Body landed, declaring that I would go home, and write to Mr. George Hume, Merchant in Edinburgh, of the faid Night which I had feen, defiring him to commimicate the fame to my Lord Advocate, with a Defire to know by the Meffenger his Lordfhip's Pleafure, what of Advice or Difcretion he wou'd be pleafed to give concerning it, and it fhould be followed: But the Meffenger that I fent, after he had delivered my Letter to Mr. Hume, and Order given by Commiffary Debringt, how to proceed further with the Body of Sir James, which Order was directed to myfelf by a Letter, which when I read the Letter, the Contents was: That I fhould not be at all trouble to procure two or three dif- creet Perfons of New-Mills, and I fet abroad, and together view the Body of Sir James; and if we found no Grounds to tell that his Perfon had been wonred by others, then that all fpeed he fhould be buried, and that as privately, and with as little Noise as could be: But this Letter which was the Commiffary's Order to me, was lent by the Hand of one James Mitchell, Kinman to Sir James; for that Horfe that the Exprefs rode on to Edinburgh, was taken out of the Stable, where he was fet up: And one Mr. Patrick Smith, the Brother-in-Law of Sir James Standsfield, mounted on him to come for New-Mills: So that my Exprefs was thereby disabled to bring me the Anfwear of my Letter; and the faid James Mitchell, who brought my Letter, came home at the Place by Nine of the Clock that Sabbath-Day at Night, and gave an Account of the Letter that he had for me; but they diffudled him from bringing it me, fo that I had it not till three Hours after Sir James was buried. But upon Monday Morning, I rode about three or four of the Clock; and coming out of my Houfe, I faw great Lights at Sir James's Gate, which occhionally my going down
to see what the Matter was; and as I went, I met with one William Robinson, coming up of Home; I asked what the Meaning was of these Lights, and of the Horfes that I then saw at Sir James's Gate? Who answered me, That Sir James's Corps were brought out at the Gate, and that they were carrying it at Morven, to be buried, having received Orders from my Lord Advocate for the Punishment of those who had armed and brought them to my Houfe, thinking it very strange thus to proceed, without having had the Corps viewed by one Perfem, as I well knew was customary in England in such Cases. The next Step, to my Remembrance, was, That upon the Tuesday Night following, after I was in Bed, one Mr. Alexander Campbell in Edinburgh, with one Mr. James Rov, and an Gentleman, one Mr. Hamilton, with two Chirugions, came unto my Houfe, and caufed me to rife out of my Bed, showing me an Order, which they had from my Lord Advocate, for the taking up again the Body of Sir James Standsfield, and commanded me to make ready to go with them; and having been the next Day readily submitted thereto, and when coming upon the Place, Morven, caufed the caid Grave to be opened, and the Coffin taken up. It was carried into the Church, and there opened; and as soon as Sir James's Grave-Cloathes were taken off him, and all his upper Parts uncovered, home to his Privy-parts, me-thought his Face looked not as I expected, nor as others had infinuated, that were at the dressing of him at firft; for they said, that his Body and Face was very fair and fresh; but I found his Face, at firft View, of another Complexion, being blackish, with some Strakes of red, like flaming, or rather tattered Blood; and under his left Ear I saw a fleathing home to his Throat, of a blackish red Colour. After this I saw the Chirugions opening his Body, beginning at the Top of his Chin, and go down to the Pit of his Stomach, and then cut his Skin on both sides his Throat, towards each Ear, and coming at the Place near his left Ear, that I saw twine, I there saw of corroded or congealed Blood, lying a Lump of a great Thickness, and two or three Inches long, which proved to me he had been strangled: And one Thing more I observed, that when Mr. Morehead put off his Cap at firft from his Head, in flipping it back, Sir James's Eye-lids opened, and his Eyes appeared, but his Eye-lids much twine, and very red, which did also prove to me a Symptom of Strangulation.

This being done, and his Breast opened, so that his Intrals appeared, and to me seemed in good Order, and no Appearance of Water in his Body, neither then, nor when first he was taken out of the River: The like, I think, has not been ever known by any Man that caift himself, or that has been cast into a River alive, and not to have his Body full of Water; nor that ever a dead Man should lie at the Top of the Water, where no running Stream is, but a still Water, of about five Foot deep: But to me in this it shews, that as God is a Wonder-working God, so he has in this shewn no less, to convince Men, that this worthy Gentleman murdered not himself, but was murdered.

But my last Observation was of a Wonder more, that the Lord did show, when the Chirugions had caufed the Body of Sir James to be by their Servants wen up again, and his Grave-Cloathes put on. A Speech was made to this purpose: It is requisite now, that those of Sir James Standsfield's Relations, and nearest Friends, should take him off from the Place where now he lies, and lift him into his Coffin. So I saw Mr. James Rov at the left Side of Sir James's Head and Shoulder, and Mr. Philip Standsfield at the right Side of his Head and Shoulder; and going to lift off the Body, I saw Mr. Philip drop the Head of his Father upon the Floor, and much Blood in Hand, and himself flying off from the Body, crying, Lord, have Mercy upon me! or upon us! Wiping off the Blood on his Cloaths, and so lay himself over a Scot in the Church, some supposing that he would wear and frown away, called for a Bottle of Water for him. After this we went for Stermon-Castle, where Mr. Philip Standsfield, my self, and several others, layed until it was Day: In which time I challenged Mr. Philip for his Unkindness to me, by his not inviting me to accompany the Corps of his Father, when first buried, knowing the Intimacy that there was between his Father and my self; and that of all the People in or about the Town, his Father delighted in the Company as in none; and that he did not give me Notice of this business: And lastly, at my late Office of Love and Service to him, by accompanying his Body to his Burial-place; I took it very ill from him. So then Mr. Philip swore, that he had sent two of his Servants to invite me, but if those damned Rogues would not do it, what could he help it? and yet did declare, as is proved, and as himself since confess'd before my Lord Advocate, that he would not invite me, affigning this as his Reason, supposing that my self and James Marr had been Instruments of letting his Father against him, which was a false Suggestion. All which Particulars I have before the Lords of his Majesties honourable Privy Council declared: So, by their Command, I have in this Sheet of Paper written it over with my own Hand, and do hereby subscribe my Name, the faith of December, 1687.

Sir John, per me, UMPIRAY SPURWAY.

Edinburgh, the 7th of February, 1687.

In Preceence of the Justices and Officers, Umpire Spurway owns his Declaration above written to be Truth in all Points; as he shall answer to God.

Sir John, UMPIRAY SPURWAY.

LXIITHOW.

James Mitchel, Nephew to the deceased Sir James Standsfield, aged twenty Years, unmarried, purged and sworn, depones, That about twenty Days before Sir James Standsfield's Death, being in Company with Philip, the Pannal, he heard the Pannal say, that if his Father did dispone his Effate by him, he would kill him, though he should die in the Graf-Merout for it. Depones, that several Times about a Month before Sir James's Death, he heard the Pannal say, that little thought the People had how soon the Pannal would be Laid; and when he was, he would then ride in their Skirts that had been ill to him. And this is the Truth, as he shall answer to God.

Sir John, UMPIRAY SPURWAY.

James Mitchel, John Topping in Monkbrig, aged twenty-five Years, married, purged, and sworn, depones, That upon the Sabbath-Morning after Sir James Standsfield's Death, the Deponent coming from Monkbrig to New-
New-Minn, by the side of the Water, he discovered a Body floating, and saw Philip Standfield looking to that Place of the Water where the Body was, and the Deponent asked the Pannel, what Body that was in the Water? And the Pannel made no answer; and when he came to New-Minn, he heard that Sir James's Body was found in the Water. Deponents, he saw the Body taken out of the Water, and went along with it, near to the Walk-Mills, but observed no Water come from the Body. This is the Truth, as he shall answer to God. Deponents, he cannot write.

Sir John Bowes, LINLITHGOW.

James Dick, in New-Minn, aged forty-seven Years, married, purged and sworn deponents. That the Pannel, Philip Standfield, and the Deponent, being at Marson, after taking up the Corps, and discoursing about the finding of the Body in the Water, the Deponent said to the Pannel, that he saw something in the Water, when they were searching after Sir James, but he did not suppose it to be Sir James's Body, and the Pannel said, I saw him before any of you. Deponents, that he saw the Body after it was taken out of the Water at the Brink of the Brate, and went along with the Body a Piece of the Way, and observed no Water come from the Mouth. And this is the Truth, as he shall answer to God.

Sir John Bowes, JAMES DICK.

His Majesty's Advocate deposed that James Thomson, Son to George Thomson in New-Minn, and Anna Mark, Daughter to Janet Johnshoun, Spouse to the said James Thomson, might be examined as Witnesses against the Pannel, for proving his Accession to his Father's Murder. And the Procurators for the Pannel having adhered, that the foresaid Persons were but Children, and so not by Law capable to be Witnesses, the Boy not being above thirteen Years of Age, and the Girl not above ten Years.

The Lords Justice General, and Commissioners of Justiciary, refused to receive them as Witnesses; but in regard the Persons on the Inquest earnestly deposed the said James Thomson and Anna Mark might be examined, anent their Knowledge of the Pannel's Accession to the foresaid Murder, they allowed the forenamed Persons their Declarations to be taken for clearing of the Affidavit. And accordingly the said James Thomson being examined in Presence of the Justices and Inquest, declared as after follows; That Janet Johnshoun came to George Thomson's House betwixt nine and ten at Night, and Philip Standfield, the Pannel, came there shortly thereafter; and the House being dark, the said Philip gave the Declarant a Turnor to buy a Candle, which he did in the Neighbouring House, and after the Declarant returned with the Candle, his Mother ordered him to go to his Bed, which was in the same Room, and beat him because he did not pretend obey. Declarant he heard one come to the Door, and enquire for Janet Johnshoun, and desired him to come home, and give her Child back. Declares, he knew by the Voice that the Person who came was Agnes Mark, the said Janet's Daughter, and that Janet ordered him to go away, and she should follow her. Declares, he stayed a considerable Time thereafter, and the said Thomson's Wife was desir'd to go for a Pint of Ale, and Philip took out a handful of Money to see if he had any small Money, and finding he had none, the Ale was taken on pursuant. Further declares, that the said George Thomson and his Wife, and Janet Johnshoun did stay together, and whiler stay a considerable Time. Declares, he heard Philip Standfield complain that his Father would not give him Money, and pray the Devil take his Father, and God damn his own Soul, if he should not make an End of his Father, and then all would be his, and then he would be kind to them. Declares, Philip Standfield and Janet Johnshoun went away about Eleven, and shortly after his Father and Mother came to the Bed where the Declarant was lying crost the Bed-foot; and the Declarant in the Night-time perceived his Father and Mother rising out of the Bed, and going out of the House, and that they stayed a considerable Time away, about an Hour and a half, or two Hours, and that the Declarant was perfectly awake when they went and were away, and he wondered what they were going about. Declares, his Mother came in first, and came softly to Bed, and within some time after his Father came in, and put a Stool to the back of the Door, without locking it, for the Lock made always a great Noise when they locked the Door, and the Declarant's Father called to him whenever he came in, but the Declarant made no Answer, that it might be thought he was sleeping; and his Mother asked, what had stayed his Father? And thereupon his Father and Mother did fall a discoursing of several things, and particularly his Father said, that the Devil was done, and that Philip Standfield guarded the Chamber-door, with a drawn Sword and a bendet Pitsle, and that he never thought a Man would have died so soon, and that they carried him out towards the Water-side, and they tyed a Stone about his Neck, and leaving him there, came back to the little Kiln, and reckoned whether they should cast him in the Water with the Stone about his Neck or not, and whether they should call him in far or near the side, and at length they returned and threw him away to the Place where they cast him, and threw him in the Water. Declares, his Father said, that yet he was afraid, for all that, that the Murder would come out, and his Mother answered, Hour, Fool, there is no Fear of that; it will be thought he has drowned himself, because he will be found in the Water. Declares, when Sir James was milking in the Morning, the Declarant's Mother said to his Father, Ride quickly, for if ye be found in your Bed, they will say, that ye have a Hand in the Murder. Declares, the Cost and Walfect, at which were upon Sir James when he was found in the Water, were Seventeen Shillings, the said Thomson's House, and Thomson's Wife said to her Husband, and Janet Johnshoun, in Presence of the Declarant, that she was affrighted to see the said Cost and Walfect, for the thought that some evil Spirit was in it, and desired her Husband to send it away, which he would not: And further, that his Mother said to her Husband, in the Declarant's hearing, that she was affrighted to be in the House alone after Night fell; and accordingly, when ever her Husband went out, she went out with him, which was not in her ordinary. Declares, the said George Thomson did go into Edinburgh several Days before the Declarant's Mother was brought in, and she did immediately after he came into Edinburgh send away Sir James's Cost and Walfect, and that she was never in her own House after
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for the Murder of his Father.

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after Night, since her Husband came in, but did lie in Janet Johnstone's House.

Sir subditus, LINLITHGOW, I.P.D.

Anna Mark, Daughter to Janet Johnstone, declares, that on the said Saturday-Night Philip came up to her Mother's House, and sent for George Thounion and his Wife, and thereafter he sent her to see if Sir James was come Home; declares also, that the saw Philip; with his Hat off, give a loud Salutation to George Thounion when he came up to him; and when she returned and told that Sir James was come, Philip did take a drink, and runs down to New-Mills; that about eleven o'Clock that Night, her Good-father sent her to seek her Mother, and that she found her Mother with Philip in George Thounion's House, and that her Mother bad her go Home, and she would come after her, and that her Good-father thereafter, finding her Mother did not come, sent her for Margaret Hals to give Suck to the Child, and went Home again; but that her Mother did not come long after that, as she thinks, about two in the Morning, and that she heard her Good-father say, Bitch, and Woman, why you have you been so long? And she answered, Wherever I have been, the Deed is done, and then went to Bed; and that after, she heard them speak together, but could not know what they said: She declares also, that her Mother said, she was still scared, and would not abide alone, nor lie alone in the Bed, but said, she was afraid.

Edinburgh, February the 7th, 1687.

The said Anna Mark being examined in Presence of the Affite and Justices, declares affirmatively, conform to the above-writtten Declaration in all Points.

Sir subditus, LINLITHGOW, I.P.D.

Sir George M'Kenzie's Speech to the Jougists.

Gentlemen of the Jougists,

I am glad to see so strong and universal a Propensity for Justice in my native Country, that every Man upon first hearing this Death, concluded it a Murder, and trembled least it should not have been discovered. Every Man became Solicitor in it, willing to be of the Inquest, and also Prayers were generally put up to Almighty God for this End, with as much Earnestness as is for removing general Plagues. And the Almighty, in return of these, did first make so clear Impressions on all Mens Spirits of Philip's being the Murderer, that he had fallen by these: But his divine Majesty, who loves to see just things done in a legal Way, furnished thereafter a full Proclamation in an extraordinary Manner, whereby we might not only convince our selves, but all such as are not wicked enough to have been the Authors. You will discern the Finger of God, in all the Steps of this Proclamation, as evidently as Philip's Guilt; and this extraordinary Discover had been made, as well to convince this wicked Age, that the World is govern'd by divine Providence, as that he is guilty of this Murder. He is accused before you for three Crimes, Treason, the Crawfie of his Father, and the Murdering him: Crimes in great Affinity, and naturally subfervient to one another; for to pray Confession to the King, who is Peter patriae, is a Crawfie of the great Parent; and what can prove better a Design to murder his Parent, than the malicious Harrel that prevails over a Son to curse him? What refrains vicious Men from murdering those, whose whole Death they may expect licentious Liberty, and an opulent Succession, save the Fear of the Laws of the Land, or at least an innate Awe of the Law of Nature? But here you see in the Treason, a Contempt of the Laws of the Land, and in the Curfew, an Abhorrence of the Laws of Nature.

There is no Reason to suspect our Zeal in this Cafe from any State Design; for we took Pains to shun a Probation of the Treason. It was forced upon us, and not sought by us; so violent were, and are we in the Search of the Murder, that even Treason was not able to divert us: Nor prefir I it at this Time, but to let you see there is nothing so wicked or dangerous, which this People durst not attempt. He not only willeth the King's Confusion, but drinks it openly; and not only drinks the King's Confusion himself, but he forces others to do so; nor needed he to be drunk, to be guilty, for this was the first Step of his drinking; and to convince you that he knew it was a Crime, it is proved that he took his Complices sworn never to detect it; the fatal Encouragement which always tempts him to commit his Villainies. The Curfew his Father is not from meer Humour or Disobtuteness, but it becomes yet probable by a previous Design to have his Estate, and from the Retract he found from him, of being debarred from the ravishing Hopes of a boundless Liberty. The Expressions are various and executable, such as, Devi tolle bina, dreen bia, riu bia, let bin never come back, let bin never eat more, &c. and these Expressions, which should never have been once spoken, were frequent and often heard, nor by suspe'd Perfons, or Strangers, but by his Father's, and his own Servant, and such of them as were the King's own Favourites, and who think themselves very unhappy in being obliged to depose against him.

You are then, Gentlemen, in the third Place to judge, how far this Murder and Parricide are prov'd; in which you need to be the lesscrupulous, that the Son, who is accused of it, is to die however; for either of the two former Crimes are so far prov'd beyond all Doubt, that though he should escape this, he cannot thee. And as to the Probation of this Crime, I must first represent to you, that in occult or atrocious Crimes, the Law has relaxed, and remitted much of its Scrupuloseness in Probation, because in thee the ordinary Probation cannot be had; and to admit none but such, was needful: And therefore in Hamefuchten, which is the besting a Man in his own House, but much more the murdering a Man by way of Hamefuchten in his own House, wherein all Mens are used to cover, and few can be got for discovering, you must not expect two Witnesses who saw the Murder committed, but only such Probation as can before God convince you, that this Murder was committed by that Man. No Inquest ever failed to find the Murder of Children to be clearly prov'd, though there were no Witnesses that saw it committed; and the murdering Parents is a more atrocious Crime, because we owe more Duty to our Parents, than any Parent does to a Child, and never Son ow'd more than this did, nor can more be believed to have killed a Parent. For clearing whereof you are to consider,

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first, that he did not drown himself, as was pretended, but was murdered by some Persons; and, as the Law violently prejudices, that no Man would murder himself, fo, without the Help of this Prefumption, it is prov'd most convincingly, by ocular Inspection, that he was strangled; the Marks of Strangling, viz. the congealed Blood, the Blisters, and one of the Verruecs in his Neck, &c. being visible Signs prov'd in the ordinary Way, and we have added to this the Opinion both of the Chirurgions and Physicians, who at once declared, that he was not drowned, and that he was strangled; the outward Marks likewise of his not being drowned appearing as visibly as that he was strangled: So you must conclude, that he was strangled, except you can think, that after he had strangled himself, and broke his own Neck, he drowned himself.

In the next Place, who could have murdered this innocent and obliging Gentleman, except some Person who had Access to his House, wherein he was murdered, and had Malice against himself? And these two can meet in no Person, but this unnatural barbarous Son; for one of the things that heightens his Guilt is, that he should abhor a Father, who engaged more Strangers to love him as a Friend! And we have prov'd that he not only hated his Father, and that he had done so for many Years, but that he vowed he would take away his Life before Christmass next; and that in many various, but clear Expressions, and at many several Times; for sometimes he swore, if he made a Difinition to his father Son, he should take his Life; sometimes, that he should be Master of all before Christmass; and he should use the Servants as they used him: That though his Mother was like to die, that his Father should die before her: And he scarce ever spoke of his Father, without swearing he would strike a Sword to his Heart: Nor would his Passion so much as suffer him to dandle this, even to his Mother; and he who darts out it to her, darts certainly do it whenever he had Occasion.

I proceed now to clear you, that I have prov'd, that he not only defiled and vowed in Papion, that he would murder his Father, but that he actually attempted to murder him; and for this I have led the Witness, who prove, that when his Father came from the Leaden Mines, he fled into Calter, as a trembling Partridge pursu'd by a Hawk, telling some Gentlemen, that he had been purfued seven Miles by his unnatural Son, who accordingly came to the House, and shot several Pittols at the Windows; whereupon the Gentlemen who now depore, were forc'd to watch with his Father all the Night, and were forc'd to convoy him the next Day near to Edinburgh. We have also produced other Gentlemen, to whom his Father declared, that he attempted against his Life; and who will not believe the Left of Fathers depaning against the выше Son? Nor could any thing prove that this from the Father, save the terrifying Dangers to which he was hourly expofed. All the Supreme Courts of Europe have found the Attempt to kill sufficient to infringe Parricide: This is a higher Degree of Guilt than Crawford, and yet that infers Death; and to attempt to kill a Father is more villanous than to kill a Stranger. What shall be said then of frequent and delibera-
but whilst others were mourning for his Father, this Miserable would not suffer him to be carried in to his own Houfe, saying, that he died like a Dog. O criminal Moderation! that never appeared in this passionat Creature, fave upon the Death of his Father. O cursed Justice! never shown, or pretended to, fave in afflicting, that his Father defervered no Reifept, because he drowned himself. Upon this villainous Pretext, he caufed throw him into a remot Houfe, where none were allowed to fee the Body, fay his own Deftinities, &c. &c. And all Discovery by Inpection of it: and for this Reason caufed bury him very suddenly, in fpite of a Countermand from his Friends at Edinburgh. But they, fully perfuaded that Sir James was murdered by his own Son, fent out some Chirurgeons and Friends, who having raised the Body, did fee it bleed miraculously upon his touching it. In which God Almighty himfelf was pleated to bear a Share in the Tellinomics which we produce; that divine Power, which makes the Blood circulate during Life, has oftentimes, in all Nations, opened a Passage to it after Death, upon fuch Occasions, but not in this Cafe; for after all the Wounds had been feal’d up, and the Body defignedly fhaken up and down, and while the Body had been buried for feveral Days, which naturally occasioned the Blood to congeal; upon Philip’s touching it, the Blood darted and fprang out, to the great Afhonishment of the Chirurgeons themfelves, who were defired to watch this Event; whereupon Philip, afternot more than they, threw down the Body, crying, O God! O God! and cleansing his Hand, grew fomewhat, that they were forced to give him a Cordial. But falt any Shadow of Difficulty might remain with you, his Divine Providence, which oftentimes reveals it felf by the Mouths of Babes and Suffrings, has brought us two little Wifieces, whom, as no body could be fo unawary as to corrupt, no none can be fuch Infidils as not to believe, effe- cially fince they depone againft their own Parents, and have owned firm what the Prophets, who utterly depone in yours. From them we have an Account, how Philip that Night came into the Houfe of their Parents, and there fwear, He would be rid of his Father that very Night: How they went out at Midnight, and after their Re- turn made their Reflections, how eafily Sir James had died, and how brilfly Philip had behaved, by guarding the Door with a Piftol in his one Hand, and a Sword in the other; how they had hung a Stone about his Neck, but had thereafter taken it away, and how the Mother durft not stay in her own Houfe, while Sir James’s Coat was there; and if you had fem this little Boy upon his Knees, beggins his Father to confefs, with fo much Affection, fo much Judgment, fo much Pain, you had need not other Probation but lifelf. The Father himfelf, before his Death, was convinced, and frequently foretold, that his Son would kill him; and the Mother, how from the heard of his Husband’s Death, and fome of the Circumstances now infift’d upon, and remembered what he had heard her Son fay to her felf, and what he had faid at Nueland, con- cluded he was the Murderer, in fpite even of that criminal Kindnecfs which he had for him; alfo all the Whole Nation was convinced of this before any Probation was led: And the Lords of the Privy Council, among whom many of our Judges fit, did declare, that they thought that half of the Probation which was led before them, fufficient to convince an Inqueft. How then fhould the leaf Scruple remain with you, before whom fo full, fo clear, and fo legal a Probation has been led, that like a Band, every Part of it sup- ports another, and like a Chain, every Link draws on another?

I need not fortify to proportion a Probation, by laying out before you how often he and his Com- plices have contradicted one another, and even how often he has contradicted himfelf in the most ob- vious and material Points, and how he denies every- thing with Oaths, and with equal Confidence, though never so clearly prov’d: Albeit fuch as these are the chief things that make up the Probation in other Cafes; nor how he feffed the greatest In- dignities imaginable from his Complices in Prefence of the Privy-Council; though this convinced many of their Lordhips, that he was at the Mercy of thofe Complices, who were too far upon his Se- crets, not to be flavilhly submitted to. But I cannot omit, how that fince he came into Prifon, he has lived fo impiously, and atheiftically, as flowers, that he had no Awe upon his Spirit, to refrain him from committing any Crime from a Love to God, a Love to Mankind, or a Love to the Houfe of his Lord; and that he continually fit, led and kept himfelf drunk from Morning till Night, thereby to draw the Voice of his Con- fience, and to make himfelf infamous of the Ter- rors of the Almighty.

The Judges have declared what was neceffary to be prov’d, and you are only to judge, if we have prov’d what they thought neceffary; and therefore there is no Place to doubt, if a Man’s Life may be taken upon mere Prejudices; for the Judges have eafeed you of that of Scruple, by finding the Grounds in this qualified Liber relevant; and his own Advocates have acknowledged this Probation to be fo strong and unanswerable, that before the Half of it was led, they went away and defeated a Client, whom they found they could not defend; nor fhould any Man doubt of a Probation, which one’s mind does not think irrefutable. If then such a mong you as are Fathers, would not wish to be murdered by your own Children; or fuch of you as are Sons, would not with the World to believe that you are weary of your Fathers, you will all concur, to find this Miserable guilty of a Crime that God has taken fuch power of a Crime, and all Mankind had fuch Reason to wish to be punifhed. May then the Almighty God, who form’d your Hearts, convince them; and may this poor Nation cite you, as the remarkable Curers of Vice, to all fucceeding Ages.

Thereafter his Majefties Advocate protefted for an Affift of Error against the Inqueft, in cafe they fhould affillicate the Pannal.

The Perffons who put upon the Affile of Philip Stanfield, return’d their Verdict in Prefence of the fides Lords; whereupon the Tenor follows.

The whole Affile called upon the Jury of Philip Stanfield, upon the three Points following, par- ticularly lyb’d against him; to wit, the Crime of Treafon, the Curfing of his Father, and Ac- ceffion to his Father’s Murder; they unanimously, in one Voice, by the Mouth of William Bailey of Lamington, their Chancellor, finds the Pannal guity of the forfaid Crimes.

Sir Johnfitriter, WILLIAM BAILLIE, of Lamington, Chancellor.
CXLIV. The Trial of the most Reverend Father in God, Dr. William San
croft, Lord Archbishop of Canterbury, and of the Right Reverend Fathers
in God, Dr. William Lloyd, Lord Bishop of St. Aaph, Dr. Francis Turn
er, Lord Bishop of Ely, Dr. John Lake, Lord Bishop of Chicheste,er,
Dr. Thomas Kenn, Lord Bishop of Bath and Wells, Dr. Thomas White,
Lord Bishop of Peterborough, and Sir Jonathan Trelawn, Lord Bishop of
Bristol, at the King's-Bench, for Publishing a Libel, June 29, 1688,
Trin. 4 Jac. II.

FRI DAY June 15, 1688.
Sir Robert Wright, Lord Chief Justice,
Mr. Justice Halley,
Mr. Justice Powell,
Mr. Justice Albyne,
Judges.

THIS being the first Day of the Term
his Majesty's Attorney-General (as
soon as the Court of King's-Bench was
fat) moved on the Behalf of the King
for a Heinous Corpse, returnable innow's, directed
to the Lieutenant of the Tower, to bring up his
Grace the Lord Archbishop of Canterbury, and the
Bishops of St.  

Mr. Sir Geo. My Lord, I pray
that the Writ and Return may be
read, by which my Lords the Bishops are brought
hither:

L. C. 7. Read the Return.

Sir Edward Hales, Baronet, Lieutenant of the
Tower of London, named in the Writ to this
Schedule annexed, To our Most 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, King of England, Charles Lord
Archbishop of Canterbury, William Lord Bishop of
St.  

Sir Geo., 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, mentioned in
the aforesaid Writ, were committed and delivered to,
and are retained in my Custody, by Virtue of a
 certain Warrant under the Hands and Seals of George
Lord Jefferys, Baron of Wem, Lord High Chan
cellor of England, Robert Earl of Sunderland,
Lord President of the Privy-Council of our Lord the
King, Henry Lord Arundel of Warden, Keeper of the
The Privy Seal of our said Lord the King, William Margroffe of Powis, John Earl of Malgrave, Lord Great Chamberlain of England, Theophiles Earl of Huntingdon, Henry Earl of Pembroke, William Earl of Craven, Alexander Earl of Murray, Charles Earl of Middleton, John Earl of Mel- fort, Roger Earl of Causton, Richard Piscator Preston, George Lord Dormont, Sidney Lord Godolphin, Henry Lord Dover, Sir John Emile, Knight, Chamberlain of the Exchequer of our said Lord the King, Sir Edward Herbert, Knight, Chief Justice of the Common Bench of our said Lord the King, and Sir Nicholas Butler, Knight, Lords of his Majesties most honourable Privy Council, to me directed: The Warrant of which Warrant follows in these Words, viz.

"These are, in his Majestys 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 Chester, Thomas Lord Bishop of Bath and Wells, Thomas Lord Bishop of Peterborough, and John Crome Lord Bishop of Bridgeton, for Conceiving, Making and Publishing a Seditious Libel in Writing, against his Majestys and his Government, and them likely to keep in your Custody 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 eighth Day of June, 1688. And this is the Cause of the taking and detaining, &c."

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

Mr. Art. Gen. We pray for the King, that the Return may be filed.

L. C. J. Let it be filed.

Mr. Art. Gen. By this Return your Lordship observes 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 thenceupon 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 Conceiving, Writing, Forming, and Publishing a Seditious Libel against his Majesty and the Government. My Lord, it is our Duty, who are the King's Council, 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 Reaon there is for this Prosecution; but in the mean Time, what we are now to do 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 be plead to it, according to the Course of the Court.

Sir Rob. Sawyer. If it please your Lordship to spare us a Word for my Lords the Bishops.

Mr. Art. Gen. My Lords, we pray for the King the Information may be read.

Sir Rob. Sawyer. We desire to be heard a Word first.

Sir William William. Mr. Sel. Gen. We oppose your speaking any thing, till the Information hath been read.

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

Mr. Art. Gen. Your Time is not yet come, Sir Robert.

Sir Rob. Sawyer. Yes, this is our proper Time for what we have to say, and therefore we move it now, before there be any other Proceedings in this Matter.

Mr. Sel. Gen. It is irregular to move any thing yet: Pray let the Information be read first.

Mr. S. Pinkarton. If your Lordship pleases to spare us a little while, we will offer nothing but what is fit for us to do.

Sir Rob. Sawyer. And now is our proper Time for it.

Mr. Sel. Gen. Gentlemen, You do know the Way of Proceeding in such Cases better than I do; 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 Rob. Sawyer. With Submission, if your Lordship pleases 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.

Mr. Art. Gen. Surely the Gentlemen think to have a Liberty above all other People: Here is an Information, which we pray my Lords the Bishops may bear read, and plead to.

Mr. Sel. Gen. Certainly, Sir Robt. Sawyer, you would not have done thus half a Year ago.

Sir Robt. 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.

Mr. Art. Gen. Under Favour, my Lord, neither the Court, nor they, are ripe for any Motion of this Nature yet.

Mr. S. Pinkarton. If we do not move it now, it will afterwards (I fear) be too late.

Mr. Sel. 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.

Mr. Art. 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 Council for the King, and upon this Writ they are brought here; And what is it we define for the King? Certainly nothing but what is regular. We have here an Information for the King against my Lords, and we define they may plead to it.

Mr. S. Pinkarton. On my Lord, will you please to bear us a little to this Matter.

L. C. J. Brother Pinkarton, 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 the noble Persons, my Lords the Bishops, with an Information, and the King's Council call to have that Information read, but you will not permit it to be read.

Mr. S.
Mr. S. Pemberton. Pray, my Lord, spare us a Word: If we are not here as Prisiners regularly before your Lordship, and are not brought in by the due Process of the Court, then certainly the King's Counsell, or the Court, have no Power to charge us with Information; therefore we beg that you will hear us to that, in the first Place, whether we are legally here before you?

Mr. Sol. Gen. These Gentlemen will have their proper Time for such a Motion hereafter.

Mr. Pelletson. No, Mr. Solicitor, this is, without all Question, our only Time for it; we shall have no Time afterwards.

Mr. Att. Gen. Yes, you will, for what do we, who are of Counsell for the King, now aff 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. Fiencb. But it is, and this is the fittest Time for it.

Mr. Sol. Gen. Pray will you hear us quietly what we have to say, and then answsr us with Reftion, if you can: I think we are in a proper Way, but they are not, my Lord; for (as I told 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 Court, We fear 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 Clerks; 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 obftruft the King's Proceedings, nor oppofe the Reading of the Information to thefe noble Lords, who are brought here in Cubfoity into Court, to this very Purpofe, that they may be charged with this Information.

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

Mr. Sol. Gen. You ought not to be heard as yet. Mr. S. Pemberton. Under Favour we ought to be heard.

Sir Robert Sawyer. My Lord, Mr. Solicitor has opposed our being heard, but we now defire he would hear our Anwser 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 this Point, as we doubt not to make appear it is, no question but when your Lordship has heard what we have to fay, you will give a Right Rule in it. My Lord, we have told you by the Rules of Law, that a Man ought to be charged with an Information; or Indictment, by the express Statute of Edward the Third, unlefs he come into the Court by legal Process; That is a flanding Rule, and the Practice of this and all other Courts is pursuant to it. Now in this Court you have several Proceedings 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 Subpæna; I fay, he that comes in upon thefe Proceedings, may be charged with an Information; but where a Perfon is in Prifon, committed by another Jurisdiction, and another Authority, than that of this Court; when the Prifoner is brought here by Habens corpus, the firt Thing the Court has to do, is to eqquire 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 Cafe. My Lords are brought here upon a Habens Corpus, the Return of which has been read, and now the Return is filed, we are proper to move, that my Lords may be difcharged; for you now fee what they are committed for; it is for a Mifdemeanor in making and publishing a Libel, that's the Matter for which they are committed; and it appears by the Return filed this Day, that neither the Person committed are Persons of the Realm; for so my Lords the Bishops all are, and for a Mifdemeanor 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 fay; but then it must be in its due Time.

Mr. Att. Gen. This very Difcourfe (indeed I have heard) has pass'd up and down the Town for Law; we fee now whence they had it.

Mr. 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 touch about.

L. C. J. Look you, Gentlemen, do not fall upon one another, but keep to the Matter before you.

Mr. S. Pemberton. So we would, my Lord, if the King's Counsell would let us. First, we fay, we being brought here upon a Return of a Habens Corpus, there was neither at the Time of the Commitment Cape to impri fon us, nor was there by the Warrant any Cape to detain us in Prifon; and for that, befoles what has been hinted at, we fay further, that here it is returned, that we were committed by fuch and fuch Perfons, Lords of the Privy-Council; but the Return doth not fay, 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 fuch 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 difcharged.

Mr. Pelletson. Pray, my Lord, spare me a Word; that is the Thing we humbly offer to your Lordship's 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 fuch a Cape to commit their Lords to Prifon, as is legal, then we acknowledge they may in a legal Cape be brought to anwser for their Offence; but, with Submission to your Lordship, if 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 Perfons, 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 Cape to be so; here is a Man committed by one that has no Authority to commit him, and he is brought by Habens 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 Cubfoity, 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 Council 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 Cattle Hands here before you, upon this Return, it does appear, that your Council, and the Authority to commit them, by force of a Warrant they were contrary to; and therefore this Court has nothing to do but to discharge them.

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 Habbus Corpus returned; this Return is filed, and then the King's Council 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 does appear by this Return, that my Lords the Bishops are not here legally in Court, because this Commitment for 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 Misdemeanor, 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 Proper Time for us to make this Objection, before the King's Council can charge my Lords the Bishops with an Information.

L. C. J. What say you to it, Mr. Attorney? Mr. Att. Geo. With Submission, my Lord, these Gentlemen have out of court, 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 define 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 Instance they had a right to; therefore they came in upon a Commitment (as they say) for 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 Inmate 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 Effayn, and may make his Exculp, 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 Inveigles 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 Councils, 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 Peersage, as well as these few Noble Lords! Sir Rob. Sawyer. Is this an Answer to our Objection, Mr. Attorney? Mr. Att. Geo. I say, it is a strange Objection, and I answer, 'tis 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 must 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 Inveigles.

Mr. Att. Geo. Truly I know not what you call legal Objections; I do not think yours are so, nor do I think legal Objections are Inveigles; but I used that Expression, as very proper for what you urged against the Commitment.

L. C. J. Nay, Gentlemen, don't quarrel about Words.

Mr. Finch. My Lord, we would not willingly have Words given us to quarrel at.

Mr. Sel. Geo. 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 Paution.

Mr. Finch. Mr. Sellicor, we desire to have our Objections answered.

Mr. Sel. Geo. Nay, if you begin to be angry, Gentlemen, we can be angry too.

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

Mr. Sel. Geo. 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, which appears by the Return before your Lordship, and that what they were committed. What do we now pray for the King? First, we move for a Habbus 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. 'Tis 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 defer to be committed for: They would have you
you to discharge the Lords from this Commitment (the Return as they say, being not legal) 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 Con- triving, Writing, and Publishing a Seditious Libel against the King's Person, and against the King's Government; and whether the King's Council 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 the Purport; that is, that when was offered in another Cafe that may be remembered, and offered by Way of Plea, and prefaced 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 Way of Parole at the Bar. I suppose the Delign is to entertain this great Auditory with an Harangue, and to persuade the weak Men of the World (for the Wife 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 Courfe of the Court: But which they now urge, is untimely, and out of Courfe.

Sir Rob. Sawyer. My Lord, we offer this to your Lordship—

Mr. Att. Gen. Why, Gentlemen, you have been heard before your Time already.

Mr. S. Pemberton. Pray, my Lord, give us Leave to answer what the King's Council have objected.

L. C. J. The King's Council have answere 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.

Mr. S. Pemberton. I would, if you please, answer what has been objected by the King's Council, and state the Cafe aright.

Mr. Tuf. Albyn. 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 Helios Corpus, than the Warrant it self will justify? The Lords do not use to write themselves Privy-Councilors; 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 Robert 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 except 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 have my Lords 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 Cafe put by Mr. Justice Albyn, of a Commitment by your Lordship, or any of the Judges, it must be returned to be by such a Warrant, not by such a One Chief Justice, for that shews the Authority of the Peron 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 Cafe 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's not a good Return, with your Lordship's Favour, upon which these Reverend and Noble Lords can be obtained in Prifon. 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 before you now in its proper Time (fay we) you ought not to read any Information against us, because we are not legally here before the Court; and fure, that which was faid by the King's Council, that your Lordship may charge any one that you find here in Courfe, which way fewer he comes in, cannot be legal.

Mr. Att. Gen. Who ever faid so?

Sir Rob. Sawyer. I apprehend you faid fo, Mr. Attorney, or else you faid nothing.

Mr. Att. Gen. Sir Robert Sawyer. You of that Side have a Way of letting yourselves in to fay the fame things over again, and of making us to fay what you pleafe.

Sir Rob. Sawyer. Truly I did apprehend you laid down that for Doctrine, which I thought a very strange one; for we fay, with your Lordship's Favour, he that is in Court without a legal Process, is not in Court fo as to be charged with an Information.

Mr. S. Pemberton. My Lord, It is not the Body being found here that intitles the Court to proceed upon it, but the Perfon 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.
1688. B. R. for a Libel.

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

Mr. 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.

Mr. J. Alleyne. Sir Robert Sawyer, that which you said in Answer to the Cafe 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 ad-
ed 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 Rob. Sawyer. That is not our Objection.

Mr. Att. Gen. Your Objection has been heard, and anwied, we pray the Information may be read.

Mr. S. Pemberton. No, we are not come to that yet.

Mr. J. B. Alleyne. Pray, would you have an Avenger by the Lieutenant of the Tower, in his Return to an Haberd Corpus, that it was done by them in the Council? Then Mr. Finch. Mr. 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, be-
cause he is Chief Justice all over England, and hath Authority to commit wherever he is; but a Commit-
ment by such an one, or such and such Lords of the Privy-Council, cannot be a good 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 inbedded in the Privy-Council: That Chief Justice is circumserbed; so that that must needs be a great Difference between a Commitment made by a Judge, who is always fo, and a Commitment 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.

Mr. J. B. Alleyne. Mr. Finch, Indeed your Ob-
jection 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 can do it, but under the Formaten 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 pervert 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 others Au-
thority is limited to a particular Sphere.

Mr. J. B. Alleyne. Why, would you have it averred, that they did it, being inbedded in Coun-
cil?

Mr. Finch. Under Favour, they cannot justify any thing that was done in them as Lords of the Council, but in the Privy-Council.

Mr. J. B. Peach. Truly, my Lord, for my Part, I think there is no such great Necesitit of Haste in this Matter: Here are Exceptions taken to this Return; and the Matter tracted now before us, appears to me to be of very great Weight.

L. C. J. That your Opinion of it, Brother Alleyne?

Mr. J. B. Alleyne. I am full of the same Mind I was, my Lord, That he could make no Re-
torn but this Return he has made; and if his Warrant was insufficient upon this Account, that these particular Persons, Lords of the Privy-Coun-
cil, did this Act without saying, that they did it in Privy-Council; then 'tis 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 'tis a sufficient Averment, this is that in the Re-
torn.

Mr. Pellegyn. They are Lords of the Council every where, but they do not act as Lords of the Council anywhere but in Council.

Mr. J. B. Alleyne. 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.

Mr. J. B. Alleyne. Nor is it to be presumed that they do it.

Mr. Finch. It is not a Prefumption that is to make any thing in this Cafe, but the Question is, whether here be a legal Return of a legal Commit-
mort?

Mr. J. B. Alleyne. Such Publick Persons, in such publick Acts, can never be presumed to act in their separate private Capacities.

Mr. Finch. But, with Submission, your Lord-
ships can judge only what is before you in this Re-
torn, whether it be a good Return, and whether here be a good Authority averted in the Persons that did commit my Lords the Bishops.

L. C. J. Truly, as to this Objection and Ex-
ception that has been made by them, I have con-
ferred of it; and what has been said on all Sides, and I think 'tis the usual Way of Commitment; I never saw any other; not the Warrants that ever I saw, are of this Form; if there were any Pre-
cedents, they should be shown of that Side.

Sir Robert Sawyer. There are Multitudes of Precedents otherwise, and none of this Form.

L. C. J. I confess, 'tis a Cafe of great Weight, and the Persons concerned are of great Honour and Value; and I would be as willing as any Bo-
dy to testify my Respects and Regards to my Lords the Bishops, if I could see any thing in it worth considering of.

Mr. Sol. Gen. There's no Colour for it, if they do but hint they are out of the Statute of the 16th and 17th of the late King, which arranges the Pro-
cedings of his Privy-Council: That tells you what Things belong to the Cognition of the Privy-
council, and what not; and there you have all the Difficulties 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; yet they all come within the Direction of that Statute. My Lord, we are in a plain Cafe, 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 Robert Sawyer. Pray, will your Lordship give us leave to have that Statute look'd 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.

Mr. Solicitor. If it be Ryddle'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. Published 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 spoken before the President and Council in the Sittings of Wales, and before the President and Council in the Northern Parts.

Mr. Solicitor. It is the Paragraph before that.

Clerk reads. And be it also provided and enacted, That if any Person shall hereafter be committed, remaine of his Liberty, or suffer Impression, by the Order and Devise of any such Court of Star-Chamber, or such Court afterwards, now, or at any time hereafter, having, doing or pretending to have the Stile, or the Jurisdiction, Power, or Authority to commit, or imprison, as aforesaid; or by the Command of a Maryds, his Perch of Successors, in their own perfections; or by the Command of a Marquis of the King's Bench, his Perch of Successors, in their own perfections; or by the Command of a Marquis of the Council-Board, or of any of the Lords, or others of his Hapsy's Privy-Council, that in every such Cafe, every Person so committed, remaine of his Liberty, or suffer Impression, upon demand.

Mr. Solicitor. That is all: Your Lordship sees the several Difficulties of the Stile of Commitment.

Mr. Att. Gen. Well, I pray you to consider this Act, which I think the Gentlemen will not deny; but that the Lords of the Council can commit. I must confes, they ask that which was very reasonable, if the Cafe 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 in another: This Preliminary, that what is here said is to be done by all the 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 in, that they did this as Lords of the Council in Council; and no Man can say, but the Lords in Council can commit.

Mr. Solicitor. 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 did it in Scotland.

Mr. 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.

Mr. Jux. Allsbrooke. Truly, as Mr. Solicitor says, you may as well advise 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 'tis before you; and then see whether it can be thought to be a Commitment by the Lords in Council?

Mr. S. Pemberton. Pray, my Lord, spare us a 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 to this Purpuse. 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 Purpuse. My Lord, they tell us we stand upon Preliminary: 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 two noble Persons, my Lord the Archibishop of Canterbury, and the rest of the Bishops, which is said to be by their particular Warrant. 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 should shew the confiant 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 infull, 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 us an Order, much less a Warrant, 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.

Mr. Jux. Allsbrooke. 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?

Mr. Att. Gen. My Lord, we are in your Lordship's Judgment.

Mr. Jux. Allsbrooke. I say, Brother Pemberton, was any collateral Saying of the Lieutenant of the Tower alter the Nature of the Thing, his Return in this Cafe is only an Inducement to the
Warrant of Commitment, and his saying one way or other would neither vitiate nor mend the Commitment.

Mr. Sell. Ga. Your Lordship cannot take Notice of the Commitment but from the Warrant.

Mr. Pellesèuf. The Return is the Fact upon which you are to judge.

Mr. Jaf. 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.

Mr. Sell. Ga. 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.

Mr. Jaf. 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. Pellesèuf. I think in all the Hibebus Cæsars 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 ought I can perceive) in 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 can commit out of Council.

Mr. Att. Ga. Yes, they may, as Justices of the Peace.

Mr. Pellesèuf. This is not pretended to be so here.

L. C. J. No, no, that is not the Case.

Mr. Pellesèuf. Then, my Lord, with Submission, I will suppose it to be an act 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 Hibebus Cæsars, that such a one was committed by Sir Robert Wright, and three others by Name, Justices of this Court, for a Contemn, without saying, that it was done in Court, this would be an ill Return: Although they had Power in Court to commit for a Contemn, 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 exalily have made out our Objection; but we could not foresay what they would return, and therefore we can only make this Objection now upon the hearing of it read. In all the Debates have been herefore in the great Cause of the Hibebus Cæsars concerning my Lord Heliç and those other Gentlemens who were in Privoy 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 laid 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 leths forth the Warrant.

Mr. Pellesèuf. The Commitment you are to judge of, is upon the Return, with Submission, and suppressing the Warrant to be right and good, yet the Return is not legal.

Mr. Att. Ga. We say, in common Understanding, it cannot be but a Commitment in Council.

Mr. S. Pemberton. But common Understanding and legal Understanding are two Things, and we pray the Judgment of the Court.

Mr. Sell. Ga. And do we, my Lord, and pray your Rule in it.

Mr. Jaf. Albemarle. You may by the same Reason Say, That uppon 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. ‘Tis an Objection that would put us upon prejuring what we have no Reason to prejurn.

L. C. J. If you would have our Opinions, let my Brothers declare theirs, I will soon tell you my Mind.

Mr. Jaf. Hellery. Pray let the Return be read again [which was done].

Mr. Att. Ga. 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-six a good Return.

Mr. Jaf. Powell. I have given you my Thoughts already: I think we ought to consult Precedents in a Case of this Wright 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.

Mr. Jaf. Albemarle. For my own Part, it does not fitch 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 Hibebus Cæsars 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 write his Name, and file himself Justice of the Peace, this must be a good Commitment. Every Commitment shall be presumed to be purport 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 Peace 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.

Mr. Jaf. Hellery. 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 Lieutenants have made his Return, that they were committed by Virtue of this Warrant. If the Lieutenant of the Peace had returned any other Commitment, you would have
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
no body doubts it; and being thus sent by this
Warrant, I do not see that this is a very good
Return, and my Judgment is, that the Informa-
tion 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.

Mr. S. Ponsonby. There is no Objection to the
Warrant, except the question upon this Question.

L. C. J. Neither do I take upon me to fay any
thing, nor is there any thing now to be spoken of
touching the Fact for which these Noble Lords
were committed.

Mr. At. Gen. We pray, my Lord, the Infor-
mation may be read.

Mr. Jof. Hallasy. 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 safe, and let them at Liberty, as I
could possibly by Law; but we must not break
the Rules of Law for any one.

Mr. Sel. Gen. Pray read the Information.

Mr. Finch. No, my Lord, we oppose the read-
ing of it.

Mr. Sel. Gen. Why! Will not you be satis-
fixed 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.

Mr. At. Gen. Pray let us hear what it is?

Mr. Finch. My Lord, we did humbly offer one
Objection more to your Lordship against the read-
ing 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 Coun-
cil; 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 Ha-
ave Court, we say they were not legally com-
mitted to Prison, because a Peer ought not to be
committed to Prison in the first Instance for Mid-
emeanor.

Mr. Sel. Gen. If you pleased you may speak
to that by and by; but that is not proper now for
you to offer, or for the Court to determine, whe-
ther a Peer may be committed upon an Accusation
for a Misdemeanor.

Mr. Finch. With Subdivision, 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.

Mr. At. 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 Subdivision, we think this is
the proper Time, and I will tell you Lordship the
Reason why.

L. C. J. Mr. Finch, certainly every thing in the

World that can be said, you will fay for your Cli-
ents, and you shall be heard; for we are very wil-
ing 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 defire to offer what we
have to fay in this Print: The only Question (now
it seems) is about our Time of making our Ex-
ception. Mr. Attorney (we apprehend) did fay
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 him with
an Information.

Mr. At. Gen. Who says fo? I said no such
thing.

Mr. Finch. Then I acquittance Mr. Attorney of it,
he did not fay fo: Then both he and I agree the
Law to be, That a Man that does come into
Court, if he do not come in by legal Proces,
he is not to be charg'd with an Information: Then
fince we do agree in that Proposition, certainly
we must be heard to this Point, whether we are
here upon legal Proces, before you can charge us
with this Information?

Mr. At. Gen. You think you have laid a fine
Thing now, and take upon you an Authority to
make me agree to what you please.

Mr. Finch. I say that the Consequence is plain
upon your own Premiss.

Mr. At. Gen. Do you undertake to speak for
me?

Mr. Finch. I am in the Judgment of the Court,
and to them I leave it.

Mr. At. 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
Milifikas all along. This is that I do fay, If a
Man comes in voluntarily upon any Recogni-
zees, though he be not in Custody; or if he
comes in upon any Proces, if the Court find
him here, though that Proces be not for the
thing charged in the Information, yet the Court
is so much in Possession of the Perfon, that he
shall plead to any Information; and that I do fay,
and will stand by.

Mr. Sel. Gen. My Lord, we are here in a very
great Admiralty, and this Court is always a very
great Court, (but here is a greater and nobler
Assembly than usually we have here) and these
Gentlemen, to shew their Eloquence and Oratory,
would, by conversing Propositions otherwise than
they are delivered, put another Meaning upon
them, and so draw Strange Inferences from them.
But these Arts, we are sure, will not prevail here;
we fay plainly, and we are sure the Law is so (let
them apprehend what they will) that your Lord-
ship cannot exhibit an Information to any Man
that you find accidently here in Court. Then,
says Mr. Finch, we are agreed: But withal (say I)
take my other Proposition; If a Person be brought
into Court by legal Proces, or upon any Con-
tempt whatsoever, by an Attachment or Warrant,
or upon a Heaves Caucus after a Commitment,
being that found in Court, your Lordship may cer-
tainly charge him with an Information. When
these Gentlemen, who are so eager on the other
side, did profide here, and fixed in the Places
where Mr. Attorney and I now are; I can name
them abundance of Cases of the like nature with
this, when Men have been compelled to appear to
Informations, and plead prudently: They are the

Perfons
Perfoms that made the precedents; they made the
Law for ought I know: I am sure I find the Court
in possession of this as Law, and we pray the usual
Cource 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.
Mr. Sel. 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 your,
Mr. Solicitor.
Mr. Sel. Gen. You do not in 1685, agree with
what you were 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. Sol-
icitor, 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. Support a Peer of the Realm be taken
under a Capia, and is committed to the Marshalsea,
and is brought up upon a Habeeb Capias, I would
fain know, whether you could declare against
him.
Mr. Att. Gen. No, we cannot.
Mr. Finch. And why is that, but because the
Process is illegal, and he is not truly in Court:
There 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 Commit-
ment; and if the Commitment be void, the Pro-
cess is void, and then my Lords are not legally
in Court.
L. C. J. That fate is but returning again to
the same Question that has been determined al-
ready.
Mr. Sel. Gen. If your Lordship will permit them
to go over and over the same things, we shall
never have an End.
Mr. Finch. My Lord, we pray these Gentle-
men of the King's Council 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 Judg-
ment.
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 Misdemeanor, effica-
cially 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 War-
nant, 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, but have commit a Man unjustly, that is cer-
tain. 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.
Mr. S. Pemberton. My Lord, we say, that the
Lords of the Council have illegally committed
these Noble Perfoms, who are Peers of the Realm,
or 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 com-
mitted for a Misdemeanor, and to be imprisoned,
especially upon the first Process, than they may
be in a Cafe of Debt. It is true, in the Cafe 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 dis-
charged.
Sir Rob. Sewer. 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
captured by a Habeeb Capias, this is either in
the Nature of a Process, or a final Commit-
ment, as a Judgment; they will not say, that
this is a good Commitment, as to amount to a
Judgment; for the Council-Board could not give
a Judgment in the Cafe; besides, the Commit-
ment is illegal, because it is not a Commit-
ment till they find Security to answer an Informa-
tion here, but 'tis a Warrant to keep them for a Mix-
demeanor: Besides, there is another thing we
have to say, for this Warrant (for I am making
Objections against the Validity of this Commit-
ment) does not appear that there was any Oath
made, and therefore the Court must adjudge that
there was no Oath made, and then no Man 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
Law no such Process can be taken out against the
Perfoms of Peers for bare Misdemeanors. I do
agree, that for Felony, Treason, or Safety of the
Peace, the Perfoms of Peers may be committed;
and does not appear that there was any Oath
made, 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 Security for the Peace. If it
should mean a Breach of the Peace by Implica-
tion, as all Trefapies and Misdemeanors are said
to be contra Pacem in the Indictment, or Informa-
tion, then it was a simple thing to enumerate the
Cales wherein Privileges did not lie; for there
could be no Information whatsoever, but must be
crassa Pacem, and to there could be no such thing
as contra Pacem: But, my Lord, we say, the very
Cource of this Court is contrary to what they
would have; for in the Cafe of a Peer, for a Mix-
demeanor, you go first by Summons, and then
you do not take out a Capias as against a common
Peron, but the next Process is a Dijringer, 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, with-
out it were in the Cafe of an apparent Breach of
the
they do not come in by legal Process; and unless they can meet him any 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 Peer could be flown, that paid for Stills, without Debate or Inference, there would be none that nor could bind the rest of the Peers. If one Man would have a particular Benefit he has, all the whole Body must not lose it; and the Benefit is not final, of Time, to make his Defence; of Imparling, of taking a Copy of the Indictment, and preparing himself to plead as his Cafe will bear; and indeed a common Peer has used to have these Privileges, though in some Cases of late, they have taken the other Course; and if a Copy went out (which we far cannot go again 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 fame with the Parliamentary Privilege in Parliament-Time, which reaches to Informs, as well as other Actions. My Lord Cafe is experts in this Point, in the 5. Inq. 25. that if Objection should hold good, that every Information being contra Peers, 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 only finds a Breach of the Peace, as for which Scrivener 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 Copy against an Abbot, if he were a Niced Abbot, and for in the Lord's House, it was always said, that no such Process ought to go; and so it is in the Cafe of Bishops: But indeed for other Niblemen, 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 allowed 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 Perils) is the same, appears in the Form of the Writ in the Register, Pl. 107. Prior, Hist. Nat. Brit. 2.3. The Words of the Writ are these, That if such a one be fixed as the suit of another, the Writ commands, that a Peer out of Parliament-Time should have the fame Privilege with those summed 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 Control of the Parliament Privilege: So that upon the Grounds, I do pres how that my Lords and the Bishops may be dischardged. 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 Person ought to be privileged from Commitment.

Mr. Pakelton.
Mr. Pelleasen. If your Lordship pleases to take it altogether, you will find it a Cafe very well worth your Conversation, it being the Cafe of all the Peers of England.

Mr. 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 Trafon, Felony, and Breach of the Peace, a Peer may be committed.

L. C. Y. That is, they say, such a Breach of the Peace, as for which Surety of the Peace may be required.

Mr. Att. Gen. Then all the Learning they have been pleased to favour us with, is at an end; for if there be any thing urged upon the Bishops, for which Suresies of the Peace may be required, then this is a good Commitment.

L. C. Y. That they must agree upon their own Arguments.

Mr. Att. Gen. Can then any Man in the World say, that a Libel does not require Suresies 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 Misdemeanour? or Is there any thing on this Side a capital Crime that is a greater Offence? Is there any thing that does tend upon the Heels of a capital Offence, and comes to near the nearest 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 Suresies for his good Behaviour. Sir Rob. Sayer. I say Suresies of the Peace, not of the good Behaviour.

Mr. Sell. Gen. Pray my Lord, would you consider 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 have been better to go home. We are here upon a single Question, as this Cafe bands before your Lordship, upon the Return. Here is a Libel, a Seditious Libel, said to be contrived, 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 & Avis? This is a Libel with a Witness; nay, two or three Degrees more will carry it to High-Treason, and all the Information that were exhibited by Sir Robert Sayer, when he was Attorney-General (and he exhibited a great many for Libels) containly those Words were in, VI & Avis & causa Reaumus. Bilbom of Parkerbury. Was it so in your own Cafe, Mr. Solicitor?

Mr. Sell. Gen. Yes, it was so in my Cafe, and you were one of them that prosecuted me, for ought 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 Cafes, within Time of Memory. Sir Robert Sayer has paid me a tremendous Compliment upon me, of my great Skill in Parliament; but truly there needs no great Skill in Matters where the Law is plain. A Peer they agree may be in Prison for Trafon, Felony, or Breach of the Peace; but that Breach of the Peace, say they, is where the Law requires Suresies of the Peace: But is there any Certainty where Suresies of the Peace shall be required, and where not? Then I would put this Cafe; these Lords have contrived and published a Seditious Libel against the King and His Government; and whether be not such a Breach of the Peace, as will require Suresies of the Peace, is the Question before you: And it plainly appears to be so, in Sir Baptist Hey's Cafe, in Hobart. 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 flirs up to Fighting, which may occasion Blood-splod; 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 Subpena against him, and wait for the Delay of all the ordinary Proces; and they tell you another Thing, that a Captains 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 Cafe of my Lord Lovelace, about some three Years ago, for breaking a Foot-man's Head open; if that be not the King in his own Prefence, that is not to great a Matter as a little Correception to an insolent Foot-man; 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 Sayer and Mr. Finch won't contradict me. This was in the first Year of this King. There was likewise my Lord of Pembroke's Cafe, who went to a disorderly Houfe, 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 in this Cafe, the 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 their learned Gentlemen, that are very well able to advise them what they should do in it.

Sir Rob. Sayer. We pray your Lordship's Judgment, whether the Cafes put by Mr. Solicitor are like our Cafe? Mr. Sell. Gen. They are as like, as Sir Robert Sayer is to Mr. Attorney that was.
Sir Rob. Sawyer. Those Cares are of apparent Breaches of the Peace; so likewise was my Lord of Devonshire's Cafe; but certainly that was not at all like this.

Mr. Finch. With our Lordship's Favour, I would add but one Word, and I would say, 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 Contrafaction of Law, it being contra Secur. Suppose it be laid that a Man did Vi & Armis speak Words, will that make the Words a Breach of the Peace?

Mr. Sall. Gen. It must be Vi & Armis, and certainly is a Breach of the Peace.

Mr. Finch. If a Man write a Petition, are the Pen and Ink that he uses the Arms?

Mr. Sall. Gen. My Lord, I hope, Mr. Finch remembers what I heard him say in Ashgrove Sidney's Cafe, foribere or aere.

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.

Mr. Jef. Hoby. 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 the Bishops, that is a Sedition Label, 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 & Armis, where the Fact will not come near it; but if a Commitment may ensue (as they seem to agree) wherever Suitery of the Peace may be required, nothing seems more important to me, than that Suitery of the Peace should be required, where there is any thing of Sedition in the Cafe; and wherever there is a Sedition Act, I cannot tell how to make any other Contradiction of it, but that it is an actual Breach of the Peace; that is my Opinion.

Mr. Jef. 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 'tis a Thing of that Weight, that it may be very fit for the Court to take Time to confider 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.

Mr. Jef. Albyhuevo. Brother Powell, I am not determining, limitting, or cramping the Privilege of Peers, but I am only considering whether or no a Sedition Label be a Breach of the Peace. 'Tis agreed to be on all Hands a Breach of the Peace. Is there any thing that will require Suitery of the Peace to be given upon the doing of it? For there Sir Robert Sawyer has laid the Foundation of his Diffinition, and if that shall draw any Person under a Commitment, then say I, in my Judgment, wherever there is a Sedition Label, there is that which is an actual Breach of the Peace; for I am sure there is that which is sufficient to require Suiteries of the Peace. I controve 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 Suiteries of the Peace, is a Breach of the Peace.

Mr. Jef. Hellawell. God forbid that in a Cafe of this Nature, any one should take upon him here to say, that every Misdemeanor were a Breach of the Peace, I say not; 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 such a Cafe, Fory, 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 Label as is charged in the Information, that will come in Question another Time; but certainly as this Cafe 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 Suiteries of the Peace; and if Suiteries were not given, a Commitment might follow; and therefore I think the Information must be read.

Mr. Ad. Gen. We pray the Clerk may read it.

Clerk reads: Monumentum, Syed Thomas Powis, Miles, Acharnatus donum regis usque universalis, qui pro eorum Domino Regis in loco pariter jurato, in propriam Persianam suam vitam hic in Carina donum regis usque ad prospetam ultionem.
James Rex.

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 Inclusion as well as Duty, which We think can be done by no Means so effectually, as by granting to them the free Exercit of their Religion for the Time to come, and add that to the Peace and 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 preferred in these Kingdoms during Our Reign over them, as the trust Methods of Our Peace, and Our Glory. We cannot but heartily wish, as it will certainly be believed, that the People of Our Dominions were Members of the Church of Scotland, yet We humbly thank Almighty God, it is, and hath long Time been Our constant Sentiments, that Confession ought not to be constrained, nor People forced in Matters of such 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 the Kingdoms to an exact Conformity in Religion, it is visible, the Succeeds has not answered the Design; and that the Difficulty is invincible. We therefore, out of Our Princely Care and Affection unto all our loving Subjects, that they may live at Ease, and Quiet, and for the Encouragement of Trade, and Encouragement to Strangers, have thought fit, by Virtue of Our Royal Prerogative, to liberate for this Our Declaration of Indulgence, making no Doubt of the present or former Holiness of Our Sacred Office, 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 Exercit of their Religion, as by Law establisht, and in the quiet and full Enjoyment of all their Possessions, without any Molestation or Distur-

bance whatsoever. We do likewise declare, that it is Our Royal Will and Pleasure, that from henceforth the Execution of all and 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 establisht, or for or by reason of the Exercit 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 strictly charge and command all Our loving Subjects, that as We do hereby grant them Leave to meet and serve God after their own Way and Manner, be it in private Hours, or Places purposely hired or built for that Use, so that they take special Care that nothing be preach'd 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 sit apart for their Uses. And that all Our Subjects may enjoy such their Religious Assemblies with greater Assurance and Protection, We have thought fit requisite, and do hereby command, that no Disturbance of any kind be made or given unto 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 Dispropriation or Disability (who are otherwise well inclin'd and fit to serve Us) by reason of some Oaths or Testaments 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 Testaments 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 Intentation, from Time to Time hereafter, to grant Our Royal Indemnifications, under Our Great Seal, to all Our loving Subjects fo to be employed, who shall not take the said Oaths, or subscribe or declare the said Testaments 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 notorious Indulgence hereby interposed, and may be acquired 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 Exercit of their Religion, and from all Suits, Troubles,
biles or Disturbances for the same, We do hereby give Our free and ample Pardon unto all Nonconformists, Remnants, 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 Profission 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 Perfon had been therein particularly named, or had particular Pardons unto each Great Seal, whicb We do likewise declare shall from Time to Time be granted unto any Perfon or Persons defining 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 Affiance 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.

Et ideam Alternatas diu Domini Regis una Gratia praebes Domino Ernesto det Civis huic instructi & instructo, in pace feliciter vivendo septimo die Aprilis ab Regis diuiti Domini Regis unius, & querens, apud W. Walfordiæ praebes in Cantabria Middelstede vassalli, idem Domini Rex non ex eadem Domeni & hanc jus invindicis suis erga sibi reddamus suos Regni sui Anglia, per Regiam suam Prærogativam, idem Regnum suum Declarationem instituimus, His Majestatis gratios Declarationem, gerentem donum eadem die & anno dicto viviendo, quod eadem Anglia feliciter gessisse, proinde quod praedicta Declarationem instituimus.

JAMES REX.

Our Conduct has been so fair in all Times, as ought to have persuaded the World, that We are firm and constant to Our Religion, overs; yet, that even People may be avenged 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 signified Our Declaration for Liberty of Confidence in the following Terms.

His Majestys Gracious Declaration to all his loving Subjects for Liberty of Confidence.

JAMES REX.

Having pleased Almighty God, not only to bring Us to the Imperial Crown of these Kingdoms through the greatest Dificulties, but to preserve Us by a more than ordinary Providence upon the Throne of Our Royal Ancitors, 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 present Enjoyment of their Property, which has never been any in Cefale invaded by Us since Our coming to the Crown; which being the two Things Men value most, shall ever be preferred in others.

If the Kingdoms during our Reign over them, as the true Methods of their 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 Sole and Opinion (which upon divers Occasions We have declared) that Confidence ought not to be constrained, nor People forced in Matters of meer Religion. It has been 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 is never obtained the End for which it was employed. And in this We are the more confirmed by the Reflelions We have made upon the Conduct of the four last Reigns. For after all the frequent and preying Encouragements 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 therefore, at Our Peaceful Concert, to Affection unto all Our loving Subjects, that they may live at Ease and Quietly, and for the Exercise 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 Conceronc of Our two Hauks 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 whatever. We do likewise declare, that it is Our Royal Will and Pleasure, that from henceforth the Execution of all and 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 hereby Brazilian 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 preach'd 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 peaceable, orderly and publickly 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 with great Affiance 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...
with the utmost Severity. And far more much 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 of Our Subjects may for the future be under any Disencourage-ment or Difficult (which are otherwise well inclining and fit to serve Us) by reason of some Oaths or Tefts 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 Supre-macy and Allegiance, and also the several Tefts and Declarations mentioned in the Acts of Parliament made in the twenty-fifth and thirty-third Years of the Reign of Our late Royal Brother King Charles the Second, shall not at any Time hereafter be required to be taken, declara, or sub- scrib'd by any Perfon or Perkons whatever, who is or shall be employed in any Office or Place of Trust, either Civil or Military, under Us, or in Our Government, or in the Execution of it to be held to any Pleasure and Intention, from Time to Time hereafter, to grant Our Royal Dispensation 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 Tefts 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 Difficulties 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 receive all Suits, Troubles or Dis- turrances for the same, We do hereby give Our free and ample Pardon 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 Profecf en 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 Perfon or Perkons declaring 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 We do hereby declare and promise that the service, and Affiance 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 as Church and Abby Lands, as in any other their Lands and Properties whatsoever.

Given at our Court at Whitehall the fourth 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 Disturbance, as We are encouraged to do daily by Multiplicity of Address, and many other Advice We received from Our Subjects of all Persuasions, as Testimonials 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 utmost Endeavours to establish Li-bre conference on such difficulties, and to recom- mend all dispositions as will render it unsoluable, 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 Tefts, which have been unhappily made by some Governments, but could never support any. Nor should Men be advanced by such Means to Offices and Employment, which ought to be the Reward of Services, Fidelity and Merit. We must conclude, that not only good Citizens will join in this, but whoever is concerned for the Encrease 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 the Causes of Co- science 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 es- tablishing the Peace and Greatness of their Country, which We most carnily desire, as unbiased Men may see by the whole Conduct of our Gov- ernment, and by the Coalition of our Foes, 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 Eas and Happines, how for above three Years, that it hath pleased God to permit Us to reign over these Kingdoms, We have not appear- ed to be that Princes our Enemies would have made the World afraid of, Our chief aim having been not to be the Oppreesor, 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 Westminster. 

In the name of Regnorum diei Domini Regis esse ulterius ministrantium idem Dominus Rex a quo potestis firmi tempore die Aprilis Anni Regni fieri quarto et pridie, apud Westminsterium predictum in Camerl XII. M. predictum. In primum statutum Anglicam publicum conveniunt, et pru magis setem demumarationes, notificat, et manifestationes gratia famee Regii beneficientia et benevolentia suo et omnibus legatis post in eadem Declaratione ulterius mentionate specieibus, potestis fi in quo die M. Anni Regni fieri quarto, apud Westminsterium predictum in Camerl XII. predicto idem Dominus Rex debito modo ordinaris prae futuris.

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
T H A T the great Averfences they find in them- selves to the distributing and publishing in all their Churches, your Majesty's late Declaration

for Liberty of Conscience, proceeded 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 Differents, in relation 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 Parliament and Convocation. It is to be observed, that this is not occasioned by any other Conceptions, from this especially, because that Declaration was made upon such a diffusening 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 it is a Matter of to 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 rational Construction.

it is a Cafe of the greatest Consequence that ever was in this Court; and it being a Matter of this Nature, that of great and noble Persons, my Lords the Bishops, are concerned with that is, for making a federal Libel, contained in such a Petition (as it was a Libel to petition the King) we do beg of your Lordship, that (is being of so great Importance) to the End we may come prepared to say what we have against it, we may have an Impediment 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 Drain and Aim of the King's Council was, in the defying 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 Canterbury, and brought here in Canterbury, they may be now so charged with this Information, as to plead presently. This, my Lord, we oppress; and with humble Submission we ought to have Time to implore, and a Charge 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 Cafe, 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 Court 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 force the re-antienter than a few Years Left pall) than with humble Submission, though the Court 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 Charge of the Privileges of all the Privileges that the King's Subjects are by the antient Rules of Law entitled to; they cannot make new Rules to pro-Right or Privilege, which the Subject hath, and call it the Court of the Court. Now that this which we desire for my Lords the Bishops, is the Right and Privilege of the Subject, is must manifest; for there might be many Defences that a Man might have to make 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 Plea 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 Anwer 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 doth allow of, 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 alleged in the Commitment, but finding the Party under a legal Imprisonment, they can exhibit an Information against him for any other Offences. Then, my Lord, would I faint know, which way any Man alive can be prepared to make his jult 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 Case 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. 7. Mr. Finch, you were not here, I suppose, when this Question came in Debate in this Court lately, in the Cafe of a very great Person: 'Twas urged very earnestly and very learnedly by one that stands by you. We upon that Debate affected Sir Samuel After, what the Court of the Court was? and he told us, that the Court 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 Canterbury, or upon a Recognition, they were to plead presently.

Mr. Finch. Sir Samuel After has not been here for years, as to make the Practice of his Time the Court of the Court.

L. C. 7. But I will tell you what he did 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.

Mr. S. Pemberton. My Lord, I hope the Court 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.

Mr. Jaff. Pownall. 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 Canterbury, to plead to an Information professedly.

Mr. Jaff. Pownall. Pray, Brother Pownall, spare no blood 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 Court of the Court. We are not making Courts for particular Facts, that by my Consent we will never do; but if you try such a Thing is not the Court 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 Court? I am sure there is none of all that are here now, can pretend to tell what the antient Court was; for my Part, I declare it, I cannot; and I know no Reafon there should be any Novelty introduced into the Court upon any Ground or Reafon whatsoever, nor will I confess to any while I sit here: Therefore I desire to know what is the antient Court, and how we shall come to the Knowledge of that Court, if not by the Certificates of those who have been antiently in the Court?

L. C. 7. Nay, that is certain, the Court will bring in nothing new in any such Cafe as this.

Mr. Jaff. Alkemade. If that hath not been the antient Court without Exception, I am against it: I know no Reafon my Lords the Bishops should have anything new put upon them: On the other Side, they must not expect to have the antient Court of the Court declined in their Cafe.

Mr. Poleyn.
Mr. Pelleston. Pray, my Lord, hear me a little in this matter: 'Tis not my Deire that any Law should be alterd for any particular Cafe, and the Courte of the Court I know is the Law of the Court; but I humbly crave leave to say, That I take the antient Courte of the Court to be quite otherwise than what the King's Counsell would have it. There may be particular Things of this or that, and then, perhaps in a particular Cafe, and upon particular Occasions, which will not make what is so done to be the Courte 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 these Things, have brought in this Courte: For certain I am, and I dare affirm, there never was any such Courte held, but to the antient upon Warran from the Chief Justice, nor upon Recognition, or any other Processe, was a Man compelled to plead infantly, without having a Capias in the regular Form, after a Contempt for not appearing upon Summons. Truly, my Lord, we had no Interets 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 antient Current. And this I can assure your Lordships, that here was both my Lord Chief Justice Sunderers, and Mr. Scarjeant He1, and myself, who taking Notice when this was first offered at, to make a Man plead immediately, with giving him Time to deliver his Defence, upon his refusal to 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 Confusion of it, which needs must be very mischievous. Sir Samuel Afferly, we know, came to be Clerk of the Crown in my Lord Storge's Time. We know't is usual and customary for the Court to ask what is the Courte of the Court in doubtful Cafes, and to receive the Information from the Officers of the Court on both Sides. If it be on the Plea-fide, from Mr. Afferly; if it be on the Crown-fide, from Sir Samuel Afferly, concerning Things of Practice; if I did not think that what he 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 Precendents, how the old Practice really hath been: Every thing that has been done in hot Times, is not to be made a flanding Rule. If there do any such thing appear to have been done and praefixed antiently, truly, my Lord, I will submit, and say I am under a mighty Mistake; but if this which is now urged for the Courte of the Court, is nothing but what the Zeal of the Times, and Heat of Persecutions hath introduced, surely that is not fit to be a confond Rule for the Court to go by for every one knowes, that the Zeal of one Time may bring in that by Surprize upon one Man, which 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 Confedence of it, if the Law should be as they would have it. Here is a long In-
is, methinks, pretty odd. If you had brought us any Precedents, it had been something: And
within I must tell you, that you must not reckon the Favour of the Court, in any particular Cafe,
to be your standing Rule 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. Jaug. Powell. Truly I have not observed that
ever this Point was started so as to beger a
Question since I came hither, but only in the
Cafes of the Qua Warren's; and truly in that
Cafe I thought it hard they should be denied Time to plead, especially the Confession being
so fatal.
L. C. 7. Yes, yes, Brother, it has been several
Times.
Mr. Jaug. Powell. Truly, my Lord, I have not
observed it, nor do I remember it.
Sir Robert Sawyer. My Lord, I have always
taken the Distinction, as to these Matters, to be
this—
Mr. Jaug. Powell. But, my Lord, if the ancient
Courts of the Law had been an Impar-
lance, and a Copy of the Information before they
plead, I see no Rejoin why my Lords the Bishops
should not have the Benefit of that ancient Course:
For if a Man that is set 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
at all? But indeed, if the Course of the Court
had been antiently otherwise, I can say nothing to
it; for the Course of the Court is certainly the Law
of the Court.
Mr. Jaug. Allibone. Brother Powell, you say
well, if you did produce any one Precedent to give
us Occasion to doubt in the Matter.
Sir Robert Sawyer. Pray, good my Lord, will
you give me leave—
Mr. Att. Gen. Why, Sir Robert Sawyer, will
you never have done?
Exs. Sell. Gu. No, they are so zealous and
eager in this Cafe, that they won't permit either the
court, or any body else to speak a word but
themselves.
Mr. S. 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 Subpœna, or the like, and he has
fripp'd that Opportunity, and so the King is delayed.
In that Cafe they always used to put the Party
upon Pleading presently, when he was taken up
upon Capias, and brought in Caufedy; but when
the Court after any Subpœna taken out (as the Cafe
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 Imparlanse was never yet denied, nor Time to
plead; and that is the Cafe here.
Sir Rob. Sawyer. My Lord, Mr. Serjeant has
given you the true Distinction, where Powell has
gone out to summons any one to appear to an
Information, and he hath failed to appear according
to the Summons, and the Proctor for the King
takes out a Capias; if he be brought in upon that
Capias, the ancient Course hath been so as they say:
But for that other Matter, where a Man comes
upon a Commitment at the first Instance, and
an Information is put in just as this is, the fame
Marming, 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 ma-
ved, it was refused; and he was clear of another
Opinion.
Mr. Att. Gen. I hope now, my Lord, we shall
be heard a little for the King; and I cannot for-
bear observing in the first Place, somewhat that
thec Gentlemen have offered at, who are now in-
viowing against the Heat of the Times, when a
great Part of that Heat we know who were the
Infamors of; but what is all this to the Purport?
The Quetion is barely this, Whether when a
Man is brought into Caufedy into this Court, and
charged with an Information, he shall not by the
Course of the Court be compelled to plead pre-
fiously?
Sir Robert Sawyer. To Indictments for Treadion
and Felony be shall be compelled to plead pre-
fiously, but not to an Information for Misdem-
manors.
Mr. Jaug. Powell. It seems to me very hard he
should.
Mr. Att. Gen. Sir, there are many Things that
seem hard in Law, but yet when all is done, the
Judges cannot alter the Law. 'Tis a hard Cafe
that a Man that is tried for his Life for Treadion
or Felony, cannot have a Copy of his Indictment,
cannot have Council, cannot have his Witnes-
es sworn; but this has been long practis'd, and the
Ufage 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 here-
fore, so it must be now, till a greater Authority
alter it; and so, as to the Cafe here at present, if it
were a new Cafe, 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 judiciously, think that
themselves establishe this Practice, they have no Rejoin
to wonder that we follow them in it. We do not
blame them for what they do now; for Men when
they are of Council may be permitted to argue for
their Client contrary to their former Opinions;
but if these Things, by their Procurement, have
been done thus before, surely without Office we
may pray the like may be done now. 'Tis our
Duty, on behalf of the King, to define that he
may have Right done him, as well as they on
behalf of my Lords the Bishops; and for the
Ufage, 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,
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 prefixed, or infalis-
ified upon the King's Behalf, this Course has always
been pured.
Sir Rob. Sawyer. For a Precedent, my Lord,
there is the Cafe of my Lord Holliet, where there
was given Time after Time.
Mr. Sell.
Mr. Sell. Gen. That was only Time to argue the Plea to the Jurisdiction of the Court.

Mr. Jess. Powell. Mr. Solicitor, have you ever known it contested, and upon Debate to ruled, in an Information for a Misdemeanor, as this Case is?

Mr. Sell. Gen. If you please to ask Sir Samuel Astry, he will inform you how the Court has been.

L. C. J. What say you, Sir Samuel Astry? Sir Samuel Astry. My Lord, when I came into this Place, there was an ancient 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 Samuel Astry. About a Dozen Years, I think, my Lord; and he sat in this Place where Mr. Harcourt does now. He was always accorded 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 as a Person in Custody, or appeared in spectio perpetuo, 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 Rob. Sawyer. But upon what Information, Sir Samuel Astry, were they Informations upon Misdemeanors?

Sir Samuel Astry. Yes, several.

Sir Robert Sawyer. But was there no Process taken out first to call the Party in?

Sir Samuel Astry. Yes, where Process was never taken out.

Mr. Atq. Gen. For how long Time is that you speak of your own Knowledge, Sir Samuel?

Sir Samuel Astry. About a Dozen Years.

Mr. S. Pinkerton. It was never done till very lately, but after the Party was in Contempt for not appearing.

Mr. Sell. Gen. I would ask you, Sir Samuel Astry, one Question: Was the usual Proceeds of Subpœna first taken out? For Mr. Sergeant Pinkerton says it was; do you find any Warrant for such a Difference as that?

Mr. S. Pinkerton. Do you find any such Cafe as that?

Mr. Sell. Gen. Nay, pray Mr. Sergeant, 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 Difficultie they have made?

Sir Sam. Astry. Sir, I would be very loth to enlarge the Precedents of the Crown-Office further than the Truth is; I tell you wherein I took my Instructions, from Mr. Waterhouse, who was an ancient Clerk in the Office; he has been in that Office Above a Dozen, and the Instructions I took from him, were, that this was the Practice all his Time, and it has been affected all my Time. It has been often contested, I confess, and Mr. Pelisse 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 Rob. Sawyer. Sir, can you give any one Precedent before you came into this Office?

Sir Sam. Astry. Sir, I can go no farther than this that I have told you, what Information I received from him,

Sir Rob. Sawyer. What is all this but a Certifi- cate from Mr. Waterhouse?

L. C. J. We can be informed no otherwise than by Certificate from the old Clerks of the Office.

Mr. S. Pinkerton. Also, he is a Child, and not fit to do any thing.

Mr. Pelisse. We all know Mr. Waterhouse very well, he is a very wox Man, and always was so, and there is no depending upon any thing that he says.

Mr. Sell. 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 three years Bishop's lies.

L. C. J. Well, Mr. Solicitor, what say you? Mr. Sell. Gen. My Lord, it appears plainly, that the King is in Possession of this Privilege, and has been so for these Dozen Years; and for so long the Justice of the Kingdom towards all the Subjects, little run in all the Issues of it in this Chapter; and though it hath been contested as often as Mr. Pelisse 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 Duff, and made a Huc 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 by Proceeds, intitled to have Time and an Impar- tiality, it was ever granted, if to the Party not say it ever was; why then should there be more done in this Cafe, then has been done in all other Cases these ten Years? 'Tis not sufficient to make Declarations 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 the 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 few of them, and even 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 Cafe 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 Realisation of the Thing? How can it be believed that the Law will not give a Man Time to make his Defence? They may be altered.
and doth not the same Reason hold? And may not an Argument be drawn à fortiori, in the Cafe of a Middlemann? If I am not to have Time when I plead for my Life, there is less Reason I should have Time to answer a Trefpass: But, my Lord, 'tis not less Reason that weighs in the Cafe, 'tis the Concerns of the Court, which is the Law of the Court that we are contending for: And what is there in the Cafe that should require so much Time for my Lords the Bishops to plead to it? It is charged in the Information, that thee 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 Iffice? They talk of Special Matter to be pleaded, but can they shew any more that they can shew, 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? Thee Lords can tell whether it be true, that they did publish the Paper and in the Information, and then your Lordship will tell them what will be the Consequences of that Publication in Point of Law. We say all this was done at Wemblynger; there the Scene is laid, and it is not an Information for an old Iffice Thing done a great while ago, but a Thing that was done Yesterdav, and a Thing notorious enough, their contecting 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 is that taught us the Trick. If it be a Trick, we have learnt it from those that trick'd before us; and what is it that these Lords do defile? They would have an Impunity 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 any Man have been denied it formerly by the Inquisition of those very Gentlemen that now prays to be heard 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 to trivial a Matter as some would make it. I believe my Lords the Bishops have a Defire to be cleared, I suppose it is only their Counsell that defere 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 prit it therefore for the Sale of the King, and for the Sale of my Lords the Bishops, we shall live have all hang in fulness, and hang in the Air for fix Montis longer; therefore let the Matter be cut upon a fair Issue, so as it may come to a speedy Determination. I am sure if these Lords be innocent to Day, they will be innocent to Morrow, and if it were my own Cafe, I would deifie to have it tried as speedily as I could, and therefore I pray they may plead immediatly.

Mr Jux. Powell, Mr Solicitor, what do you say to the Difference that was taken between a Perfon that was brought in Custody at the first In- fluorescence, where there is no Contemp to the Proces V. IV. 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 Proces, he shall have no Imparllce. Mr 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 Foci goes out, which is in the Nature of a Subpensa, 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 Imparllce of Courte. Mr Jux. Powell, Methinks it seem very reason- able, that this forcing a Man to plead presently should be only a Punishment for a Contemp of the Court, and pray, were my Lords the Bishops in Contemps of the Court when they came here to Day? Certainly they were not, for no Man is in Contempts, but he that being served with Proces, disobeys that Proces; and if my Lords the Bishops had been served with a Subpensa 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 Contemp, and then they would have come within the Rule. Mr Sol. Gen. If you have a Mind to it, you may ask Sir Samuel Anergy again. Mr Att. Gen. If they come in upon Bail, they ought to plead presently. Mr Jux. Albyone. Mr Finch, I'll tell you what I sticks with me, truly you could not but be aware that this would be required of you; for this very thing was in Dulce Inf. Term, and you know what Rules the Officer said was the Courte of the Court, why did you not therefore come prepared with some Precedents, to shew us what the Courte of this Courte is? Mr 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 Courte; and for an Answere 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 Proces of this Courte, and so consequendy there can be no Contemp, and yet they must plead presently. Mr Jux. Powell. There is a particular Reafon for that, because they are bound by Recognizance, Sir Samuel Anergy and others say, that if they come in by Recognizance they must plead presently. Mr Att. 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 Bis- hops, because this 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 Perfon or other, then every body is safe, and all Perfons concerned do their Duty: So in this Case, here be no Precedents produced wherein it has been otherwise; then can no Perfon complain but that Things go in this Cafe 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 is in all other Cases; for 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 surpriz'd, and 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 the Declaration very well known? Is not your own Petition a Thing very well known to yourselves and all the World? Then the 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 Surprise in this? My Lord, I cannot see anything that alters this from the common Case, but only their being Peers; and since this Question has been heretofore under Controversy, 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 declare they may have the same Rule that is in all other Cases, and then to be sure all will go right.

L. C. F. Sir Samuel Abbey, pray will you tell us, whether ever the Court used to grant an Imparlance where a Peison comes in? Or did you ever know, when a Person comes in upon a Commitment, Time was given him to plead?

Sir M. Pemberton. Have you ever known it disputed and denied?

Sir Sam. Abbey. My Lord, I have known that 'tis in the Discretion of the Court to grant what Time they please.

L. C. F. Is it the Court of the Court to give an Imparlance?

Sir Sam. Abbey. No, 'tis the Favour of the Court, and if the Defendants have at any Time showed 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 as to give them Time.

L. C. F. But how is the ordinary Court, Sir Samuel Abbey?

Mr. Jeff. Allbones, Ay, for as I said before, Things done in particular Cases in Favour are not Precedents.

Sir Sam. Abbey. 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 propriis persona, must plead present, and the 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.

Mr. Selk. Gen. He said so before, but thefe Gentlemen will never be contented, unless they have a new Law made for them.

Mr. Pollesen. My Lord, I would not unce-\ncerely trouble your Lordship; but truly this is a Cause 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 Court of the Court; and next I perceive they do not bring any new Instance for any Proceeding of this Sort above ten or twelve Years old. But then say they on the other Side, why do you not bring Previous Matters if you have once otherwise heretofore? My Lord, that cannot be done, for it is a Negative on our Side, that this which they desire is not the Courfe 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 Hibbes Corporis, there was an Information against Elliot and others; they had Time given them to plead over and over, so that there is one Proceeding: And as many of these Cases in former Times as can be found, will shew that this was always the Court. But pray, say they, produce us one Instance, that ever there was a Man that came in upon a Recognition, 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 forty Years, hath certified that this hath been the Practice of all his Time. My Lord, we 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 Abbey.

Sir Sam. Abbey. No, Sir, it was in Mr. Harcourt's Place.

Mr. Pollesen. 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 as tame in his Business as could be; for there are some Men that will never do Business, let them be never so honest; and he was as much in the Office of the Court, and every thing else, as 'tis possible for one that has been bred in an Office can be; and at this Time he is grown so decr ipt 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 left 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 such a Matter.

Mr. Selk. Gen. Ay, that is very well indeed.

Mr. Pollesen. Good Mr. Solicitor (pore us, certainly there needs not such great Halifax 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 Cafes of this Nature. We do say indeed, that by the Reason of the Heat and Zeal of thefe last ten Years, such a Ulage has been introduced, but Sir Samuel Abbey 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
we had Time to plead a whole Vacation after an Imparlance, and were not at all hurried on, as the King's Counsel would do in this Case. My Lord, if they can produce any antient Precedent for it, I will say no more; but there is no Cafe 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 pre- feribly he must plead, or else 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 Lord- ship 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 Con- dition, especially when the Matter carries in the very Face of it, a great deal of Unreacomanbleness and Injustice. They on the other Side will argue, that it is more unreaconable than the Practice in the Cafe of Trefon and Felony, where Perfons are compelled to plead infantly. But under Fa- vor, my Lord, there is no Comparison between this Cafe and that, though I know it was always thought a Hardship and Defect, that a Man should not have Time to plead in Cafe of Life and Death, except he can shew some specia- lar Matter of Law that he has to plead, and then he has always Time allowed him to put it into Form; and I could never think there was any Reaon to be given for it, but becaufe the com- mon Defences of Felons would be little Shifts and Arts, which would destroy Proceedings, and make them tedious, and that would be an Encour- age ment to People to commit Felony; and besides there is a Truth which the Law repels in the Court in capital Cafes, to take Care that the Men should not suffer upon any little Tricks in Law; but if you come below Trefon and Felony, the Law puts no fuch Hardship upon the Defendant, nor repels fuch a special Truth in the Court; but a Man may plead any thing he has to plead, and can any Man plead before he fers what he is to plead to? And shall the Law allow him Counsel to prepare his Plea, and not allow him Time to confult with that Counsel about it? These are Things, my Lord, that tru- ly to me seem unreasonable: But as to the Pra- cts and Courfe of the Court, I pray your Lord- ship to give Order, that the Precedents may be fetched, that you may know what the antient 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 Bifhops 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. Waterboue told him, that it had been so all his Time, which is fifty Years.

Mr. Pollesfen. My Lord, there are Perfons here that will upon their Oaths declare, That Mr. Waterboue 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. Jace. My Lord, If I might have Liberty to speak, I can say Mr. Waterboue has told me ——

L. C. J. Pray be quiet Mr. Jace.

Mr. Jufb. Mibone. But pray Mr. Pollesfen 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 past pai: If that be true, I think it goes a great Way, for the Pra- ctice of twelve Years is Precedent enough, Printed Acts that much 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 com- ing into the Office, when it could not be so doubtful as now, it seems, it is, he took Instruc- tions from Mr. Waterboue: I allow you 'tis but his Certificate, but that must go a great Way with the Court.

Sir Rob. Sawyer. Such a Practice as this has been always very rare in Informations for Mifde- meanors; and they bring you nothing of any Pre- cedent older than Sir Samuel Astry's Time.

Mr. Finch. Pray, my Lord, give me leave to vary the Question; I do not now make it a Que- stion, whether your Lordships should grant my Lords the Bifhaps an Imparlance, but whether you would think fit to look into the Courfe of the Court before that Time that Sir Samuel Astry speaks of, and take Time to consider and search into the Precedents.

Mr. Jufb. Alibone. Do you, Mr. Finch, give us any one Reaon or Precedent that may make us douht, whether this be the Courfe 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. Pollesfen and the rest of the Prafticers in my Lord Hafe's Time will tell you, that the Courfe was otherwise in his Time. Sir Sa- mul 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. Waterboue, so doubtful was his Practice.

Sir Samuel 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 Courfe on this Side, till I came into this Office.

Mr. Srt. Gen. These Gentlemen differ among themselves, one would have an Imparlance, the other only Time to plead; I believe truly they can- not tell what they would have, I pray the Rules of the Court may be kept to.

Sir Samuel Astry. Here are two Clerks that fit 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 Know- ledge of this Matter.

Mr. Ati. Gen. Certainly these Gentlemen think they have a Privilege above all other People, that they must not be subject to the fame 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 Sufpicion in the Court, that the Courfe is otherwise? They can give no Influence of it, and all they say, 'tis a Nega- tive, that this is not the Courfe of the Court, but the
Impartiality that they beg is in the Affirmative, surely that they can find Proof of, if it be so. As for my Lord Halstead’s Cafe, that is in us, and not against us; let Mr. Pellesfe show that ever any one of the Men that were brought into Court in Cuffeby, either had Time to plead, or an Impartial

L. C. J. Sir Samuel Afery says he has given you his Opinion, and here are two others Clerks of the Office that he refers himself to, are you willing that they should be asked?

Mr. S. Pemberton. Yes, my Lord, with all our Hearts.

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

Mr. Harcourt. About seventeen or eighteen 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 the six or ten or Twelve Years past (I remember) it has been as the King’s Counsel preferred, and as Sir Samuel Afery has declared.

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

Mr. Silfyard. I have been a Clerke here about thirty Years.

L. C. J. Well, and how has the Practice been all your Time?

Mr. Silfyard. 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 Cuffeby should plead immediately; it was a Thing hereofore that did not so often happen as it hath done here of late, therefore I cannot so well speak to it; but it hath fallen out frequently within some Years last past, and that hath been the constant Course.

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

Mr. Att. Gen. Pray let me ask you, Mr. Silfyard, you say you have known the Office thirty Years; when you first came to the Office, were Information as frequent as they are now, and have been of late?

Mr. Silfyard. It was so in the Cofe of Mr. Hampden; when you were Attorney-General, Sir Robert Sawyer, he was forced to plead immediately to an Indictment, for a Crime that perhaps you will say was near upon Treason.

Sir Rob. Sawyer. Yes, truly, it wanted but one Wince, that was all.

Mr. Silfyard. But yet the Indictment was only for a Midlenear, and there we struggled and debated the Matter, but were forced to give it over, because the Course of the Court was against us, so it has been by the unquestionable Testimony of Sir Samuel Afery for these twelve Years last past; and in these twelve Years we have had many Changes, perhaps there may have been twelve Chief Judges, and they have all affirmed it, and if I then make it out, that in all these Judges Times that are within our Remembrance, it has gone thus, then there are enough Precedents in the Matter.

Sir Rob. Sawyer. But, my Lord, I desire to know, whether that were the antient Court, Mr. Solicitor?

Mr. Silfyard. They that make the Objection ought to prove it; but I will name Sir Robert Sew-
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for a Libel.

Mr. SELL. Gen. But not received.

Mr. ATT. Gen. No, we define to know what it is sift.

SIR ROB. SAYYER. Mr. Attorney, if they will plead, the Court fine is oblige to receive it.

L. C. F. 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 subordinated by our Counsel, and we pray it may be admitted by the Court.

Mr. S. PEMBERTON. I hope the Court will not deny to receive a Special Plea, if we offer one.

L. C. F. Brother, let us hear what it is.

Mr. SELL. Gen. Read it if you please, but not receive it.

Clerk reads the Plea, which in English is that:

**The Bishops PLEA.**

AN D the aforesaid William Archibishop of Canterbury, William Bishop of St. Alaph, Francis Bishop of Ely, John Bishop of Chichester, Thomas Bishop of Bath and Wells, Thomas Bishop of Peterborough, and Jonathan Bishop of Bristol, being present here in Court in their own Person, pray your Honor of the Information aforesaid, and it is read to them, which being read and heard by them the said Archbishop and Bishops, the said Archbishop 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 unaltered) Peers of this Kingdom of England, and Lords of Parliament, ought not to be compelled to answer infamously for the Misdemeanors aforesaid, mentioned in the said Information exhibited here against them in this Court, but they ought to be required to appear by due Process of Law issuing out of this Court here upon the Information aforesaid, and upon their Appearance have a Copy of the said Information exhibited against them, and reasonable Time to implore their Counsel, and to advert 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 Company, without any Process upon the Information aforesaid issued against them, and without having any Copy of the said Information, or any Time given them is improper, or be defrauded, they pray Judgment, and the Privilege of Peers of this Kingdom, in this Cause to be allowed them; and that they the said Archbishop, and Bishops, may not be compelled infamously to answer the Information aforesaid, &c.

ROBERT SAWYER, 
HEM. FINCH, 
HEM. PELLEXYEN.

Mr. 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 arising, and when the Opinion of the Court has been delivered, then to put in a Plea to the Jurisdiction of the Court—

SIR ROB. SAYYER. It is no such Plea.

Mr. 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 Cafe; and I hope you will give to 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.

Mr. S. PEMBERTON. We hope the Court and you are not of one Mind, Mr. Attorney, in this Matter; we define the Court to receive the Plea.

Mr. 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 mere trifling dilatory Plea, the Court may reject it. Does this Plea contain any thing in it, but what has been argued and debated for & 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. PELLEXYEN. Do you demur to it? if you please, Mr. Attorney, we will join in Demur with you.

Mr. ATT. Gen. No, there will be no need of that.

Mr. SELL. 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.

Mr. SELL. Gen. If you were here, you would say the same thing that we do. My Lord, this Plea, is that the Lords the Bishops are not bound to plead infamously; so that this is 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 Impartiality, and Time to consult with their Counsel what they shall plead, which is all but one and the same Thing; and what is the Reason they give for this? They insist on this, thus, These Noble Persons 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 fort decline the Justice of the Court: Is it a Plea in Abatement? No, it is not; for it is only to gain Time: And do they now offer any thing more for themselves, than what was said by their Counsel before only, that we are Peers of the Realm, and that such is the Privilege of Peers, that they ought to have an Impartiality, and Time to plead, and that they ought not to answer preferably. My Lord, this Matter hath been long agitated in the Court already; your Lordship, and the Court, have given your Judgments, and we know your Lordship, and the Court, will not admit of Tricks to delay the King's Cause. We all know the Term is a short Term, and what I said in the Beginning upon this Matter, I say again, it is the Interfet, and for the Honour of My Lords the Bishops (if they understand their own Interest, and value their Honour) to have this Case tried as soon as may be; but this Trilling and Tricking
is only for Delay; For what if shee can be taken upon this Plea? Certainly none. And if we should demur, what will be the End of that, but only to get Time to flip over the Term? If there were any thing worth the considering in this Plea, and that had not been already debated and settled, then it might concern us to give some Anwer to it; but we have spent three Hours, by my Watch, in the Dilettate, and the Matter being over-ruled already, it is Time to have an End of it. Sure the Court will never be so treated by these Prfons that are of Counsel for my Lords the Bishops, for it cannot be thought that my Lords the Bishops do it of themselves; and whether the Court will be so served, we submit 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 their Lords Time to trifle with the Court. If any such thing as a Plea be render'd 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 Liceation interloquendi upon the Roll, but not such a Plea as this; for this in effect is no more than defining an Imparlance, which if it be granted of course, upon such a Prayer entered upon the Roll, you take it of course; but if it be not of course, you cannot come in by way of Plea, it must be by Suggestion upon the Roll, and a Consentiar entered. If this be admitted as a Precedent, every Man hereafter that comes in upon any Information, will take Advantage of it, and plead such a Plea as this; and if you grant an Imparlance in this Case upon this Plea, you must grant an Imparlance in every Cafe. Certainly the Law is not to be altered, the Methods of Proceedings ought to be the same in every Cafe. And I hope you will not make a particular Rule in the Cafe of my Lords the Bishops, without a special Reason for it.

Mr. S. 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.

Mr. 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 over-ruled 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.

Mr. Sel. 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.

Mr. Pellesfen. I do hope, my Lord, you will not judge this is a frivolous Plea; I think our Cafe 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.

Mr. Sel. Gen. The Court will certainly reject a frivolous Plea, and this may do it.

Mr. Pellesfen. 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 deter 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, thereupon you, by your Resolution, in a judicial way, will determine that which has hitherto been in Controversy.

L. C. J. Mr. Pellesfen, 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. Pellesfen. 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 Disafecd to the Court, with Submission, to put the same Matter into a Plea, for the judicial Opinion of the Court.

Sir Rob. Sawyer. That, without all Question, has been done a great many times.

Mr. Sel. Gen. How many times have you been accused of playing Tricks, Sir Robert Sawyer?

Sir Robert Sawyer. Not so many as you, Mr. Solicitor.

Mr. Sel. 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. Pellesfen. Truly, my Lord, I would not trick with the Court in any Cafe, 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 impaire to this Information; and we have been the more earnest in it, because it concerns us, and 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 impaire, but the Court upon Motion refused to give him an Imparlance. Is it not, think you, very improper 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 answr 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 not agree to hinder any Man from pleading where he may plead by Law. Here is a Plea put in, and the Court must take what 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.

True
Truly for the Court to reject and refuse the Plea, would be as hard as the refusing of the Impar- liance, and we know no Way we have to help our fellow-men.

Mr. Sell. 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.

Mr. Sell. Gen. No, Sir, 'tis fencing with the Court, and that the Court won't suffer. 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 Robert Sawyer. I would put Mr. Solicitor in Mind of Fitz-Harris's Cafe, which he knows very well: He put in a Plea, and we for the King defined it might not be received; but the Court gave him Time to put it into Form, and I was fain to join in Denurrer presently, and may these Gentlemen do if they please.

Mr. Sell. Gen. Yes, Sir Robert Sawyer, I do know the Cafe of Fitz-Harris very well; I was affiged of Council 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 Indict- ment of High-Treason against him, in which Cafe it is agreed on all Hands, that the Party must answer presently; but because he suggested here at the Bar, 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 Treason, for the same Matter of which I am here accused. The Court did give him Time to put this into Form, and we were affiged his Counsel to draw it up for him, and accordingly we did put that Matter into a Plea, that we were here indicted for one and the same Treason for which we were impeached in Parliament, and that that Impeach- ment was still depending, and so we rested in the Judgment of the Court, whether we should be put to another, or not. We was a duty that carried something of Weight in it, and not such a trilling one as this. 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 Coun- sel 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 trilling Plea as this?

Mr. Att. Gen. Pray, my Lord, favour me a few Words about that Cafe of Mr. Fitz-Harris. It is true, there was a Plea put in, and it is true also, that such a thing brought that Plea to be argued, was the Denunt that was put in by Sir Robert Sawyer, who was so zealous and saucy in the Matter, that because the Court did not presently over-rule the Plea, as he defined, he immediately demurred, before the rest of the King's Counsel could offer at any thing about it; and therupon 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 Abufe of the Court, the Court never gives any Countenance to them: Nay, truly I have known another Courte taken; I am unwilling to mention a Cafe that happened much about that Time too in this Court, be- cause of that Regard I have to my Lords the Bishops, but Sir Robert Sawyer remembers it very well, I am sure: It was the Cafe 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 Cafe, because there the Court or- der'd an Attachment to go against him; but I will put these Gentlemen in Mind of another Cafe, and that is the Cafe of a Peer too: It is the Cafe of my Lord Delamere, which they cannot, but remember, it being in the highest Cafe, a Cafe 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 Denurrer put into the Plea, but it was absolutely refuted. My Lord, in this Cafe we have had the Judgment of the Court already, and therefore we must now define that this Plea may be rejected.

Mr. Sell. Gen. My Lord, we have now gone out of the Way far enough already; it is Time for us to return, and bring the Cafe into its due Methods. We pray your Lordship to reject this Plea.

Sir Robert Sawyer. My Lord, we are in your Judgment, whether you will receive this Plea or not. L. C. J. You shall have my Judgment present- ly; but my Brothers are to fak as fith.

Mr. Jeff. Alvibet. Mr. Pellstten makes it a Que- tion, whether this Plea may be rejected or not, or whether it ought to be received, and the Court give their Judgment upon it.

Mr. Jeff. 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.

Mr. Att. Gen. You do it every Day; the fre- quency of this is enough. If you put in a Plea before it be entred upon Record as a Plea, the Court may refuse it, if they see Cause.

Mr. Jeff. Allibet. Truly if it may be, this appears to me a frivolous Plea.

Mr. Jeff. Powell. I do not know how the Court can reject any Plea that the Party will put in, if he will fland by it, as they say they will here; and I cannot think this a frivolous Plea, it concern- ing the Privilege of Peers and Lords of Par- liament.

Mr. Jeff. Allibet. Brother Powell, I would be as tender of the Privileges of Parliament, and speak with as much Respect of the Privileges of the Peersage, 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.

Mr. Jeff. 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.

Mr. Jeff.
Mr. Tyrrell, Albright. Pray let the Plea be read again.

[Which was done.]

Mr. Tyrrell, Albright. 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.

Mr. Tyrrell, Powell. I declare my Opinion; I am for receiving the Plea, and considering of it.

Mr. Tyrrell, Hollaway. I think as this Case is, this Plea ought not to be rejected, but rejected, because 'tis 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 our selves from the Bar, whether we may or can reject a Plea; and truly what they have said, hath convinced me no more, than that, if the Plea be frivolous, and this being a Plea that contains no more than what has been over-ruled already, after hearing what could be said on both Sides, I think the Court is not bound to receive the Plea, but may reject it, and my Lords the Bishops must plead over.

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

Clerk. My Lord Archbishops of Canterbury, is your Grace guilty of the Matter charged upon you in this Information, or not guilty?


Clerk. My Lord Bishop of St. Albans, is your Lordship guilty of the Matter charged upon you in this Information, or not guilty?

Bishop of St. Albans. 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?

Bishops 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.

Mr. Att. Gen. My Lord, I pray my Lord may join in the Behalf of the King, that so 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 Law.

L. C. J. Are you not too haughty in that Motion, Mr. Attorney?

Mr. 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.

Mr. Solid. Gen. We now give them Notice, that we intend to move.

Sir Robert Sawyer. For that you need not trouble yourselves we are very deferious it should be tried at Bar, and that as soon as you please.

Mr. 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?

Mr. Att. Gen. They are Bailable, no question of it, my Lord, if they please.

L. C. J. Then, my Lords, we are ready to call you, if you please.

Sir Robert Sawyer. We define 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.

Mr. Att. Gen. My Lord, with all my Heart, we will do it.

L. C. J. In what Penalty shall we take it?

Mr. Att. Gen. One thousand Pound I think, my Lord, his Grace, and five hundred Pounds a-piece the rest.

Sir Robert Sawyer. What Necesity is there for so much?

Mr. Att. Gen. Look you, Sir Robert Sawyer, I shew you that we do insist upon nothing that shall look like Hindship, what my Lords have been pleased to offer, concerning their own Recognizance, we agree to, and what States the Court affirms.

Mr. Sol. Gen. It is all one to us; we leave it wholly to the Court.

Sir Robert 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.

Mr. Att. Gen. I tell you what we will do; Sir Samuel Abery shall have the Freetholders Book, if you please, and shall return twenty-four.

Sir Robert Sawyer. Eight and forty has been always the Course, when the Jury is returned by Sir Samuel Abery.

Mr. Sol. Gen. My Lord, I pray the Officer may return the Jury, according as is usual in Cases of this Nature.

Mr. Att. Gen. Do you admit of a Trial at Bar, Gentlemen?

Sir Robert 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 Robert Sawyer. We pray it may be in the Presence of the Attorneys or Solicitors on both Sides.

L. C. J. What is the usual Course, Sir Samuel Abery? Do you ule to return twenty-four, or forty-eight, and then strike out twelve a-piece, which I perceive they desire for the Defendants?

Sir Samuel Abery. 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.

Mr. Att. Gen.
Mr. At. Gen. We agree to it; we define nothing but a fair Jury.
Sir Rob. 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 reft of my Lords in 100 l. a-piece.
Mr. At. 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 100 l. upon Condition that your Grace shall appear in this Court on this Day Fortnight, and 60 from Day to Day, till you shall be discharg'd by the Court, and not to depart without Leave of the Court. Is your Grace contented?
Archib. of Canterbury. I do acknowledge it.
Clerk. My Lord Bishop of St. Albans, 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 60 from Day to Day, until you shall be discharg'd by the Court, and not to depart without Leave of the Court; Is your Lordship contented?
Bif. of St. Albans. I do acknowledge it.
[The like Recognizances were taken of all the reft of the Bishops, and then the Court adjourned.]
Friday, June 29th, 1668.
Clerk. O Rier, make Proclamation thence.
Crier. O yes! O yes! O yes! Our Sovereign Lord the King sufmighty charges and commands everybody one to keep Silence, upon Pain of Imprisonment.
Clerk of the Crown. Call the Defendants.
[And so the reft of the Bishops were called, and answered severally.]
Clerk. Gordon cotres Challenges.
Swear Sir Roger Langle.
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,
Clerk. You Gentlemen of the Jury who are sworn, hearken to the Record: Sir Thomas Povey, Knight, his Majesty's Attorney General, has exhibited an Information, which does set forth as followeth,

M Unanimity, That Sir Thomas Povey, Kt. Attorney General of our Lord the King, who for our said Lord the King in this Behalf pre- fects, 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, gave the Court here to understand and be informed, That 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 third Year of the Reign of our said Lord the King, at Westminster in the County of Middlesex, did publish his Royal Declaration, entituled His Majesty's Gracious Declaration to all his loving Subjects for Liberty of Conscience, bearing Date the same Day and Year, sealed with the Great Seal of England; in which Declaration is contained, James R. prsent in the first Declaration before recited.
And the said Attorney General of our said Lord the King, on Behalf of our said Lord the King, further gave the Court here to understand and be informed, That afterwards, to wit, on the 27th Day of April, in the fourth 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, entituled 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 Conduitt has been such, &c. prsent 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 fourth 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 fourth 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, 4th of May, 1668.

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

I t is this Day ordered by his Majest's in Council, That his Majest's Gracious Declaration, bearing Date the twenty-fourth of April last, be read at the usual Time of Divine Service, upon the twentieth and twenty-fourth of this Month, in all Churches and Chapels within the Cities of London and Westminster, and ten Miles thereabout, and upon the third and twelfth 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 read and distributed throughout all their 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, gave 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 fourth Year of the Reign of our said Lord the King, at Westminster aforesaid, in the County of Middlesex, our said Lord the King, at Westminster, Archibishop of Canterbury, of Launde in the County of Surrey, William Bishop of St. Albans, of St. Albans in the County of Essex, Francis Bishop of Ely, of the Parish of St. Andrew Holloway in the County
To this Information the Defendants have so 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.
and Punishment of, than all Accusations and
Arraignments of the Government. No Man is
allowed to accuse even the most inferior Magi-
strate of any Misbehaviour in his Office, unless
it be in a legal Courte, though the Fact is true.
No Man may lay a Jusitice of Grace to his
Face, that he is unjust in his Office.
No Man may tell a Judge, either by Word or Peti-
tion, that he has given an unjust, or an ill Judg-
ment, and I will not obey it; it is against the
Rules and Law of the Kingdom, or the like.
No Man may lay of the great Men of the Na-
tion, much less of the great Officers of the King-
dom, that they do act unreasonably or unjustly,
or the like; least of all may any Man lay any
tuch thing of the King; for these Matters tend
to disturb the People, that the Government is ill
administered; and the Consequence of that is,
to set them upon defining a Reformation; and what
that tends to, and will end in, we have all had a
fot and too dear brought Experience: The last
Age will abundantly justify us, whether such a
Thing does not tend to the great and proper
Remedies for Redress of any Grievances they lie
unwritten, and the Law has provided sufficiently
for that. These things are so very well known to
all Men of the Law, and indeed to the People of
England of any Understanding, that I need not,
nor will, flout any longer upon it, but come
to the Matter that is now before you, Gen-
tlemen, to be tried. The Fact that we have laid
unto you, and which we have, to keep the Formality
of a Trial, then to pretend to inform you, or tell
you what you do not know: It is publicly noto-
rious 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 Majes-
ty, out of his great Clemency and Goodness to
his People, and out of his Desire that all his Sub-
jects might live easily under him (of which I think
never Prince gave greater or more plain
Evidence of his Intentions that way) the fourth of
April, 1687, he did issue forth his Royal De-
claration for Liberty of Conscience. This Matter,
without all Question, was welcome to all his Peo-
ple that Rood 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 pretently it must
be formized, that the King was not in Earnest,
and would not, nor could not, make good his Pro-
mise: But to take away all Surnotes, his Majesty
was pleas’d by his Declaration of the twenty-
feveth of April last, only to repeat his for-
mer 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 drew 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 defi-
rant shoul be repeated in the Churches, and
read in that sacred Place, that all his People
might hear what he had promis’d, and given his
own Fard 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 there-
upon 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 what they came to read that which they call a
Penitent, 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 Accesion to the
Crown, by his Enemies, is now accuited by his
Friends for this Effect of his Mercy. My Lord,
and Gentlemen of the Jury, his Majesty refented
this ill Ufage so far, that he has ordered, and
thought fit to have a publick Vindication of his
Honour in this Matter, by this Trial; and we
must go to their People, and we do not doubt but
you will do his Majesty (as you do all other
Persons) Right.
Mr. 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 pertinent 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.]
Mr. 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.
Mr. Sol. Gen. Read the Title of it, Sir.
Clerk. It is entituled, His Majesty’s Gracious
Declaration to all his loving Subjects for Liberty of
Conscience.
Sir Rob. Sawyer. Is it under Seal? Is the Great
Seal to it?
Mr. Sol. Gen. Give it down to Sir Robert Sawyer,
that he may see it, for I would have everything
as clear as possible.——Sir Robert Sawyer, will
you have it read?
Sir Rob. Sawyer. No, we would give as much of
the Time of the Court as may be.
Mr. Sol. Gen. Then pray put in the second De-
claration of the 27th of April last.
Clerk reads. Given at Our Court at Whitehall,
the 27th Day of April, 1687, in the fourth Year
of Our Reign; and it is entituled, His Majesty’s Gra-
cious Declaration.
Sir Robert Sawyer. Is that under the Great
Seal too?
Clerk. Yes it is.
Mr. Sol. Gen. Deliver that down likewise, that
they may see it.
Sir Robert Sawyer. We are satisfied, you need
not read it.
Mr. Sol. Gen. Then where is the Order of Coun-
cil for the reading of it?
Mr. At. Gen. Swear Sir John Nicholas.——There
he is.
[Sir John Nicholas sworn.]
L. C. J. Come Mr. Attorney, what do you ask
Sir John Nicholas?
Mr. Sol. Gen. Hand the Order to Sir John
Nicholas.——Is that the Order of Council, Sir
John?
Sir John Nicholas, The Book, Sir, is not in my Custody. — There is the Register that keeps it, he has it here to produce.

Mr. Sel. Gen. Swear Mr. Gantlett.

[Mr. Gantlett sworn.]

Mr. Sel. Gen. Is that the Council-Book? Mr. Gantlett. Yes, this is the Council-Book.

Mr. Sel. Gen. Then turn to the Order of the fourth of May, the King's Order of Council for the reading the Declaration.

Mr. Gantlett. There it is, Sir.

[The Book delivered into Court.]

Mr. Sel. Gen. Read it, I pray.

Clerk reads. At the Court at White-hall, the fourth of May, 1668. — and fo reads the Order of Council.

Mr. Sel. Gen. My Lord, we have one Thing that is mentioned in the Information, that this Declaration 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.

Mr. Sel. Gen. Crier, call Henry Hills.

[He was called, but did not presently appear.]

Mr. Sel. Gen. Call Mr. Bridgeman. — Though these Declarations prove themselves, we have them here printed. But swear Mr. Bridgeman.

[Mr. Bridgeman sworn.]

Mr. Sel. Gen. Show Mr. Bridgeman the two Declarations.

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

Mr. Sel. Gen. We ask you, Sir, if the two Declarations were printed.

Mr. Bridgeman. What Declarations do you mean, Mr. Solicitor? Mr. Sel. Gen. You know what Declarations I mean well enough; but we'll ask you particularly. You know the Declaration that was made the 4th of April, in the third Year of the King, — was it printed?

Mr. Bridgeman. Yes, it was printed by the King's Order.

Mr. Sel. Gen. Was that of the 27th of April in the fourth Year of the King, printed?

Mr. Bridgeman. Yes, they were both printed by the King's Order.

Mr. At. Gen. Then the next Thing in Course is the Rhetors Paper.

Sir Rob. Sawyer. Mr. Bridgeman, pray let me ask you one Question: Did you ever compare the Print with that under Seal?

Mr. Bridgeman. I did not compare them, Sir Robert Sawyer.

Mr. Sel. Gen. He does swear they were printed by the King's Order.

Sir Rob. Sawyer. Good Mr. Solicitor, give me Leave to ask him a Question. — Can you swear that they are the same?

Mr. Bridgeman. I was not alluded that Question, Sir.

Mr. Sel. Gen. Come then Mr. Bridgeman, I'll ask you. — Do you believe they are the same?

Sir Rob. Sawyer. Is that an Answer to my Question?

Mr. Sel. 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. Bridgeman.

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

Mr. At. Gen. If there were Occasion, we have them here compared, and they are the same.

Sir Rob. Sawyer. With Submission, my Lord, in all these Cafes, if they will prove any Fact that is laid in an Information, they must prove it by oath that know it of their own Knowledge. — Do you know it to be the same?

Mr. Sel. Gen. That's very well, Sir.

Sir Robert Sawyer. Ay, so it is, Mr. Solicitor. It is a wonderful thing, my Lord, that we cannot be permitted to ask a Question — Do you know it to be the same, Mr. Bridgeman, I ask you again?

Mr. Bridgeman. I have not compared them, I tell you, Sir Robert Sawyer.

Sir Robert 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 Robert Sawyer. Is that Proof of an Information?

L. C. J. Well, you'll have your Time to make your Objections by and by.

Mr. At. Gen. Then swear Sir John Nicholas, Sir John Nicholas, I am sworn already.

Mr. At. Gen. I fee you have a Paper in your Hand, Sir John Nicholas; Pray who had you that Paper from?

Sir John 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 Printing this Declaration.

Mr. At. Gen. Where is Mr. Hills?

Mr. Juff. Albury. 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, Sir.

Mr. Sel. Gen. There is Mr. Hills; now I see him.

L. C. J. I was going to give Order, that you should fend to the Printing-house for him.

Mr. Juff. Albury. They may put this Matter out of Doubt too, if they will, on the other Side; for I fee they have a Copy in Print, and there's the Original; they may compare them if they please.

Mr. Sel. Gen. I am very glad to hear such a strong Objection.

Sir Rob. Sawyer. We could clear the Way for you, Mr. Solicitor.

Mr. Sel. 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.]

Mr. Sel. 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.

Mr. Sel. Gen. Shew one that you have compar'd with the Original.

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

Crier. He is sworn.

Mr. At. Gen. Pray were the King's Declarations for Liberty of Conscience printed, both of them?

Hills.
Hills, Ay, n't please you, Sir.
Mr. At. Gen. You printed them, I think.
Hills. Yes, I did print them.
Sir Rob. 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 Rob. Sawyer. Did you examine them?
Hills. I did not, here's one that did.
Mr. Sol. Gen. Who is that?
Hills. It is Mr. Williams here.
Mr. Sol. Gen. Sware him.
[Williams sworn.]
Mr. Sol. Gen. 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.
Mr. Sol. Gen. Did you examine them after they were printed, by the Copy they were printed from?
Williams. I did.
Mr. Sol. Gen. Where had you the Copy? who had you it from?
Williams. I had it from Mr. Hills.
Sir Rob. Sawyer. Mr. Williams, did you examine them with the Original under the Great Seal?
Williams. The first Declaration I did.
Sir Rob. Sawyer. The second Declaration is the main.
Williams. The second was compos'd by the first.
Sir Rob. Sawyer. Why, is there no more in the second Declaration than there was in the first?
Williams. Yes, there is, Sir.
Sir Rob. Sawyer. Did you examine that with the Original under the Great Seal?
Williams. No, I did not.
Mr. 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 receiv'd from Mr. Hills.
Mr. At. 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.
Mr. At. 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 Rob. Sawyer. But it ought to be compared with the Original, or it is no good Proof that it is the same.
Mr. Sol. Gen. Sir Robert Sawyer, you underhand Collusion better Surer, you should be ashamed of such a weak Objection as this.
Williams. We never bring our Proof to the Great Seal.
Sir Rob. Sawyer. But if you will have it Proof at Law, you must have it compared with the Original.
Mr. Sol. Gen. Do you think there is any great Strifes to be laid upon that? We only say it was printed.
Sir Rob. 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. Pelletten. Well, my Lord, we must submin, let them go on, we won't stand upon this.
Mr. At. Gen. Then pray let me go on. Where had you that Paper, Sir John Nicholas?
Sir John Nicholas. I had this Paper from the King's Hand.
L. C. J. Put it in.
Mr. Sol. Gen. Who had you it from, do you say?
Sir John Nicholas. From the King.
Mr. Sol. Gen. About what Time had you it from the King, Sir?
Sir John Nicholas. I had it twice from the King.
Mr. Sol. Gen. When was the first Time, Sir?
Sir John Nicholas. The first Time was in Council the 8th of this Month.
Mr. Sol. Gen. What became of it afterwards?
Sir John Nicholas. The King had it from me the 12th, and the 13th I had it from the King again.
Mr. 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.
Mr. At. 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 Council will put you to prove it; I perceive your best way is to ask nothing of them.
Mr. At. Gen. My Lord, we will define nothing of them, we will go on to our Proofs. Call Sir Thomas Exton, Sir Richard Kaynes, Mr. Brooks, Mr. Recorder, and Mr. William Middleton.
[Sir Thomas Exton appeared, and was sworn.]
L. C. J. What do you ask Sir Thomas Exton?
Mr. At. Gen. Pray convey that Paper to Sir Thomas Exton.
Mr. 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 Tho. Exton. I'll give your Lordship what Account I can.
Mr. Sol. Gen. Pray, Sir, answer my Question; Do you know his Hand-writing?
Mr. Sol. Gen. But I ask you, upon your Oath, do you believe that to be his Hand-writing?
Sir Tho. Exton. I do believe this may be of his Hand-writing.
Mr. Sol. Gen. Do you believe all the Body of it to be of his Hand-writing, or only part of it? Sir
Sir Theo. Estyn. I must believe it to be so; for I have seen some of his Hand-writing, and this is very like it.

Mr. Sal. Gen. What say you to the Name? Do you believe it to be his Hand-writing?


Mr. Sal. Gen. Do you know any of the rest of the Names that are upon that Paper?


L. C. J. Do you for the Defendants ask Sir Thomas Estyn any Question?

Sir Rob. Sawyer. No, my Lord.

Mr. At. Gen. Then call Sir Richard Raynes.

Sir Theo. Estyn. My Lord, Sir Richard Raynes has been sick this Month, and has not been at the Commons.

Mr. Sal. Gen. We have no need of him. Call Mr. Brookes.

[Mr. Brokes sworn.]

Mr. At. Gen. Pray swear Mr. Brookes that Paper.

Mr. Sal. Gen. Mr. Brookes, I ask you this Question, Do you know my Lord Archbishop's Hand-writing?

Mr. Brookes. Yes, my Lord.

Mr. At. Gen. Pray look upon that Paper; do you take that to be my Lord Archbishop's Hand?

Mr. Brookes. Yes, my Lord, I do believe it to be my Lord Archbishop's Hand.

Mr. At. Gen. What say you to the whole Body of the Paper?

Mr. Brookes. I do believe it to be his Hand.

Mr. At. Gen. What do you say to his Name this Day?

Mr. Brookes. I do believe this Name is his Hand-writing.

Mr. Sal. Gen. Call Mr. William Middleton.

Mr. At. Gen. Pray Mr. Brookes don't go away, but look upon the Names of the Bishop of St. Asaph, and my Lord of Ely.

Mr. Sal. Gen. Do you know my Lord Bishop of St. Asaph's Hand-writing?

Mr. Brookes. 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.

Mr. Sal. Gen. Look upon the Name of my Lord of Ely; do you know his Hand-writing?

Mr. Brookes. My Lord, I am not so well acquainted with my Lord of Ely's Writing.

Mr. Sal. Gen. But have you seen his Writing?

Mr. Brookes. Yes, I have.

Mr. Sal. Gen. Is that his Writing do you think?

Mr. Brookes. It is like it.

Mr. Sal. Gen. Do you believe it to be his Hand?

Mr. Brookes. Truly I do believe it.

Sir George Treby. Did you ever see him write?

Mr. Brookes. No, Sir.

Mr. Sal. Gen. But he has seen his Writing.

Sir George Treby. How do you know that it was his Hand-writing that you saw?

Mr. Brookes. Because he own'd it.

L. C. J. How do you know it, do you say?

Mr. Brookes. I know it, I say, because I have seen a Letter that he wrote to another Perfon, which he afterwards own'd.

L. C. J. What did he own, Mr. Brookes?

Mr. Brookes. That he wrote a Letter to another Perfon, which I saw.

Sir George Treby. To whom, Sir?

Sir Rob. Sawyer. Have you the Letter here, Sir?

Mr. Brookes. No, Sir, the Letter was writ to my Lord Bishop of Oxford.
L. C. J.' My Lord of Peterborough, I hope I have not behaved myself any otherwise hitherto than as becomes me: I was fayting this (and I think I said it for your Lordship's Advantages) that this was not sufficient Proof; and I think, if your Lordship observed what I faid, it was for you, and not against you.

Bifh of Peterborough. It was to direct them against us, how they should give Evidence.

Mr. Ser. Penherton. Pray, my Lord of Peterborough, fit down, you'll have no Wrong done you. Sir Rob. Sawyer. We that are of Council 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 serv'd, and I will not be used so.

Mr. Sol. Gen. If your Lordship pleases to pass that by; for what your Lordship said was in Fav'our of my Lord the Bishops, but I see they do not take it so.

Mr. At. Gen. Pray, Mr. Chetwood, do you look upon the Name of my Lord of Elly; do you believe that he is his Hand-writing?

Mr. Chetwood. I do believe it is.

Sir Rob. Sawyer. That's very well, when he fays he never faw him write.

Mr. Juff. Powl. What is the Reafon of that Belief of his I would fain know?

Mr. Chetwood. I have formerly feen his Hand, I think it was his; but I never faw my Lord of Elly write his Hand.

Sir Rob. Sawyer. Then the Quction is, whether this be Evidence?

Mr. Pitch. How do you know that that which you fay was formerly was my Lord of Elly's Hand?

Mr. Chetwood. I have no fuch Certainty as posi-
tively to swear that that was his Hand.

Mr. Sol. Gen. We will go on to other Proofs, and if we want better Evidence at the End, we will argue with them.

Mr. Chetwood. I am not certain that what I faw was my Lord of Elly's Hand-writing, because I never faw him write.

Mr. Sol. Gen. You do very well to fwear your good Affection.

Mr. At. Gen. Mr. Smith, I would ask you this Question, Do you know my Lord of Elly's Hand-writing?

Mr. Smith. I have feen it often.

Mr. At. Gen. Look upon the Name of my Lord of Elly in that Paper; do you believe it to be my Lord's Hand-writing, or no?

Mr. Smith. I did not fec him write it, Sir; I cannot tell whether it is or no.

L. C. J. Did you ever fee his Name?

Mr. Smith. Yes, but it was a great while ago, and here are but feven Letters, and I cannot judge by that: I was better acquainted with his Hand-
writing herebefore.

Mr. Sol. Gen. Pray, Sir, anfwer me; Do you believe it to be his Writing, or do you not?

Mr. Smith. I believe it may, for I did not fee him write it.

Mr. Sol. Gen. But my Question is, Do you believe it, or do you not?

Mr. Smith. I fay, I was better acquainted with it herebefore than I am now.

Mr. Sol. Gen. But pray anfwer my Question: Do you believe that to be my Lord of Elly's Hand-writing, or do you not?

Mr. Smith. I believe it may, Sir.

Sir Rob. Sawyer. Why do you believe it?
Mr. Sol. Gen. do you know my Lord Bishop of Peterborough’s Hand-writing? Mr. Tso. Pinifold. 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.]

Mr. Sol. Gen. Well, Sir, what say you to it? Mr. Tso. Pinifold. Then upon my Oath, I say, I cannot well tell upon my own Knowledge that it is his Hand. Mr. Sol. Gen. I ask you, do you believe it to be his Hand? Mr. Tso. Pinifold. 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 it to be the same; upon that Score I do believe it, but upon any other Score I cannot say what to say.

Mr. Sol. Gen. I ask you upon your Oath, Sir, do you believe it is his Hand-writing or no? Mr. Tso. Pinifold. Sir, I have answerved 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? Mr. Tso. Pinifold. I have been in his Chamber several Times when he has been writing, but I had more Manners than to look upon what he wrote.

L. C. J. Did you never see him write his Name? Mr. Tso. Pinifold. 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 Name.

Mr. Sol. Gen. You have seen him write you say.

Mr. Tso. Pinifold. 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.

Mr. Jutt. Powell. Then did you never see any of that Writing?

Mr. Tso. Pinifold. I cannot say I did, my Lord.

Mr. At. Gen. Pray did you never see any of his Writing but that Letter you speak of?

Mr. Tso. Pinifold. No, not that I remember.

Mr. Jutt. Powell. Mr. Solicitor, you must call other Witnisses, for this does not prove any thing.

Mr. At. Gen. We will go on ——— [Swear Mr. Clavel.]

[Mr. Clavel sworn.]

Mr. Sol. Gen. Do you know my Lord Bishop of Peterborough’s Hand-writing or no?

Mr. Clavel. I have seen it many Times.

Mr. At. Gen. Do you know it when you see it?

Mr. Clavel. I believe I do.

Mr. Sol. Gen. Pray look upon that Paper, and upon your Oath tell us, do you believe that Name to be his Writing or no?

Mr. Clavel. I do believe it is, my Lord.

Mr. At. Gen. Pray look upon the rest of the Hands there, do you know any of the other Names?

Mr. Clavel. No, I do not.

Mr. At. Gen. Have you ever seen any of their Writing?

Mr. Clavel. It is probable I may have seen some, but do not now remember it.

Mr. Sol. Gen. I think your are a Bookseller, Mr. Clavel?

Mr. Clavel. Yes, I am so, Sir.

Mr. 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?

Mr. Clavel. I have seen the Names of some of them, but it is so long since, that I cannot remember.

L. C. J. Did you ever see my Lord of Peterborough write?

Mr. Clavel. I cannot tell whether I ever saw him write his Name or no; but I have had several Letters from my Lord of Peterborough.

Mr. Sol. Gen. Is that his Hand-writing?

Mr. Clavel. I cannot say it is, I believe it is.

Mr. Sol. Gen. You have had Letters from him you say?

Mr. Clavel. Yes, and it seems to be like his Hand.

Mr. Pollifeshen. But you never saw him write his Hand you say?

Mr. Clavel. I cannot say I ever did.

Mr. Sol. Gen. These Letters that you have received from my Lord of Peterborough, did he own them? Do you think they were counterfeited, or of his own Hand-writing?

Mr. Clavel. I suppose he has owned them, Sir.

Mr. Jutt. Powell. But you must answer directly, Sir, Did he own them?

Mr. Sol. Gen. What did those Letters concern? Were they about Books, or what?

Mr. Clavel. They were sometimes about one Business, sometimes about another.

Mr. Sol. Gen. Was the subject Matter of any of those Letters about Money, and was it paid you? Did you receive, or did you give any Account of it?

Mr. Clavel. They were about several Business.

L. C. J. Look you, Mr. Clavel, you must give us as particular Account as you can.

Mr. Sol. Gen. Pray, Sir, upon those Letters were the Things done that those Letters required?

Mr. Clavel. Yes, they were.

Mr. Sol. Gen. Did you do your Part?

Mr. Clavel. Yes, I did.

Mr. 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?

Mr. Clavel. I believe it is.

Mr. Jutt. 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?

Mr. 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?

Mr. Clavel. I have received Letters from him, and his Secretary too.

Sir George Treby. But were you present with him when he wrote any Letters with his own Hand?

Mr. Sol. Gen. You do not mean a Letter to yourself, Sir George?

Sir George Treby. No, Sir, I say any Letters.

Mr. Clavel. I have been present with my Lord often, but I cannot say I have seen my Lord write,

L. C. J.
L. C. J. He has here told you, he has had several Letters of my Lord's own Hand, and from his Secretary too.

Mr. Juff. Powell. He has said it, but you see he says he never saw him write.

Mr. Sel. Geo. We have given Evidence against my Lord Archbishop, Lord Bishop of Ely, St. Asaph, Peterborough, and Bristol.

Mr. Juff. Powell. Certainly, Mr. Solicitor, you mistake—but go on—

Mr. Sel. Geo. We have given Evidence I say against them, Sir, but whether it be sufficient Evidence, we shall argue by and by—Call Mr. Hooper and Mr. Chetwood again.

[Mr. Chetwood appeared.]

Mr. Sel. Geo. Do you know the Hand-writing of my Lord Bishop of Bath and Wells?

Mr. Chetwood. I have seen it twice or thrice, but it is a considerable Time since I did see it.

Mr. Sel. Geo. Do you believe that is his Handwriting?

Mr. Chetwood. I never saw him write his Name in my Life.

Mr. Sel. Geo. Pray look upon the Name, and tell us what you believe of it.

Mr. 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 Hand, than I believe that other to be my Lord of Peterborough's.

Sir George Evly. Do you believe that to be my Lord of Peterborough's Hand or no?

Mr. Chetwood. I say, I rather believe that this is the Bishop of Bath and Wells his Writing, than that which is shown to or below it, to be their Writing; but truly I do not distinctly know my Lord Bishop of Bath and Wells his Hand.

Mr. Sel. Geo. Call Mr. Hooper.

L. C. J. You are very lame in this Matter.

Mr. Sel. Geo. The Witnnees are unwilling, and we must find out the Truth as well as we can.

[Mr. Hooper did not appear.]

Mr. Sel. Geo. Call Mr. James and Mr. Powell.

[Mr. James appeared and was sworn.]

Mr. Sel. Geo. Do you know my Lord Bishop of Bristol's Writing, Mr. James?

Mr. James. Yes, I believe I do, but I am not so certain, because my Lord writes several Times several Hands.

Mr. Sel. Geo. Show him the Paper: Is that my Lord of Bristol's Hand?

Mr. James. I cannot say it is or no.

Mr. Sel. Geo. What do you believe?

Mr. James. It looks like his Hand, and that's all I can say.

Mr. Sel. Geo. But pray hearken, and answer to what I ask you; you are prepared for one Question it may be, and I shall ask you another: Upon your Oath, do you believe it to be the Hand-writing of my Lord of Bristol?

Mr. James. Upon my Oath, I can only say it looks like it, that's all.

L. C. J. Did you ever see him write?

Mr. James. Yes, my Lord, I have seen his Hand-writing several Times, and it is like his Hand-writings, that is all I can say.

Mr. Sel. Geo. Sir, remember you are upon your Oath, and answer my Question.

Mr. James. Upon my Oath, I know no more than that, Sir William Williams.

Mr. Sel. Geo. I ask you, Sir, whether you believe it to be his Hand or not?

Mr. James. My Lord, it looks like his Hand, and it may be his Hand.

Mr. At. Geo. But you do think and believe one way or other: What do you believe?

Mr. James. It may be his Hand for what I know, and it may not.

Mr. Sel. Geo. It may be your Hand.

Mr. James. No, Sir, it cannot be mine, I am sure.

Mr. Sel. Geo. What do you believe?

Mr. 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?

Mr. James. Yes, I do believe it.

Mr. At. Geo. You are very hard to believe methinks.

Mr. James. No, I am not.

Mr. Sel. Geo. You do very well now, Mr. James; when you do well, we'll commend you.

Mr. At. Geo. Call Mr. Nathaniel Powell.

[Mr. Powell was sworn.]

Mr. Sel. Geo. Pray, Sir, let's know what's your Name?

Mr. Powell. My Name is Nathaniel Powell.

Mr. Sel. Geo. Pray do you know the Hand-writing of my Lord Bishop of Chichester?

Mr. Powell. I have not seen the Paper, Sir.

Mr. Sel. Geo. Do you know his Hand-writing?

Mr. Powell. Yes, I believe I do.

Mr. Sel. Geo. Look upon that Name of his.

Mr. Powell. I did not see my Lord write that.

Mr. Sel. Geo. Who says you did? No body alks that of you; how you answer! Pray Sir, remem ber your Oath, and answer truly, Do you believe it to be his Writing or no?

Mr. Powell. I believe it is like my Lord's Hand-writing, but I never did see him write it.

Mr. Sel. Geo. No body says you did.

Mr. Powell. Therefore I cannot swear positively it is his Hand.

Mr. Sel. Geo. We do not ask that neither.

Mr. Powell. I cannot tell whether it be his Hand or no.

L. C. J. Sir, you must answer the Question directly and feriously: Do you believe it, or do you not believe it?

Mr. Powell. I cannot tell what to believe in the Case.

Mr. Sel. Geo. Then I ask you another Question, upon your Oath, do you believe it is not his Hand?

Mr. Powell. I cannot say that neither.

Mr. Sel. Geo. 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 you.

Mr. Powell. I tell you, Sir, I cannot tell what to believe.

Mr. Sel. Geo. My Lord, if these Things be endured, there will be an End of all Testimony, if Witnnesses do not answer fairly to the Questions that are asked them.

Mr. Juff. Powell. Truly to me, for a Man to swear his Belief in fuch a Matter, is an extraordinary Thing.

Mr. Sel. Geo. He is obliged to answer Questions when they are fairly put to him.

Mr. Pollent. I think that is a hard Question, not to be answered.

Mr. Sel. Geo. Make your Exceptions to the Evidence if you please.

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Mr. Pellefon. The Question is, Whether Belief in any Cafe be Evidence? Mr. Sel. Gen. If they have a Mind to a Bill of Exceptions upon that Point, let them feel 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.

Mr. Mr. Gen. We have given sufficient Evidence sure to have it read, therefore we defray it may be read.

Mr. Sarj. Lexions. My Lord, before this Paper be read, we hope you will let us be heard to it: We think that what they defray (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 Companion of Hands, which in a criminal Cafe ought not to be received: And, besides, my Lord, what is it that Companion of Hands that they have offered? Some Pefons come here and say, they cannot tell whether it be their Hand's, they believe it may or may not, for ought 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 Companion of Hands; and secondly, The Companion 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 his 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.

Mr. S. Pankerton. Pray, my Lord, let me a Word or two in this Matter for Evidence sake; there is a great Deal of Reafon we should take Exceptions to the Evidence that has been given: For truly, I think I have never heard such a Sort of Evidence given before. It is a Cafe of so great Concernment as ever was in Woffington-Hall; and for them to come to prove Hands only by theirfaw Letters, but never saw the Perfons write this, I hope, will not amount to so much as a Companion of Hands. Your Lordship knows, that in every petty Cafe, where it depends upon the Companion of Hands, they use to bring some of the Party's Hand-writing which may be shown to, to prove the Party's own Hand, and then it is to be compared in Court with what is endeavour'd 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 Cafe, that is but of the Value of forty Shillings. And therefore as to this Evidence, First, We say Companion of Hands ought not to be given at all in the Cafe of Criminals; and I believe it was never heard of that it should. In the next Place, if it is admitted to be Evidence, yet it is not such an Evidence, as that by Companion of Hands the Jury can take Notice of it; for in such Manner of Proofs by Companion of Hands, the Usage is, that the Witnesfs is first allied, concerning the Writing he produces, Did you see this wit the Defendant, whose Hand they would prove? If he answers yes, I did, then should the Jury upon Comparison of what the Witnesfs 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 wrote both the Paper and the Witnesfs said, 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 Witnesfs 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.

Mr. S. Pankerton. It never was admitted to be so, that I know of, my Lord, or ever read of.

Mr. Sel. Gen. You may remember several Cases about that, particularly Sidley's Cafe.

Mr. Pellefon. Pray, my Lord, let me a little more as to that: It is a Point of very great Moment, that this is not a Misdemeanor, nor is it an Indictment or Information, it is good Evidence to offer Companion of Hands; and that this Court did adjudge quite contrary upon an Indictment of Forgery against my Lady Carr, appears in Wyld's Report: They went to prove her Letters written by her to Cox; the Court rejefted 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 fear will agree, for frequent daily Experience shews so coldly that it 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 Licenfs by comparing with something that he hath formerly seen? This strikes mighty deep; the honest民 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 Cafe of Sidney, that was a Cafe of Treatton, Now in the Cafe of Treatton there is always other Evidence brought; and this Evidence comes in but as a collateral Evidence, to strengthen the other; but in this Cafe it is the only Evidence, for ought that appears, for there is nothing more, for ought I can fee, in the Cafe, but whether this were their Hands, and proved only by what another believes: Now shalI any be condemned by another's Belief without Proof? Surely, my Lord, I am never Evidence yet to convict any one; so that their Proof fails in both Points; for first, it ought to be considered whether Companion of Hands be Evidence in a Cafe 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 Companion of Hands.

Mr. S. Pankerton. My Lord, they are pleaded to mention.

Mr. Sel. Gen. Mr. Serjeant, you have been heard already and you are not to reply upon us; or if you would, we must beheard first.

Mr. S. Pankerton. I would only speak to that Cafe of Sidney: My Lord, that Cafe differs from this, the Writing was found in his Pen.
Pettitson, in his Study; there was the Proof that
milled it.
Mr. Sel. Gen. You shall see how we'll apply it
by and by.
Mr. At. Gen. Pray, my Lord, favour me a
Word in this Matter: That there is stranger and
weaker Evidence no Man doubts but that which
the Gentlemen then have on this Cafe there is.
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
fist of Evidence as may induce the Jury to be-
lieve 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 Know-
ledge in the Law; for is there anything more
usual, or any other Course taken for the Proof of
Handwriting than this for a Writ to say. He knows
the Hand of the Party very well, for he has often
seen his Hand-writing, or received Letters from him?
And if 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 Cafe of Mr. Sid-
ney, which your Lordship has heard mentioned, it
is certainly very opposite to this Purpuse; it is in-
scribed upon and pretended, That that was Evi-
dence, 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 inscribed upon it is 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 Cafe,
though it be not so strong Evidence as we had
brought those that had seen them write it; yet
Evidence it is, and whether it be sufficient to fa-
tify the Jury, may be a Question; but no Que-
tion, it is good Evidence in Law.
Mr. Sel. Gen. It is a wonderful Things, they say,
that such Evidence should be offered: But truly,
my Lord, it is a much stronger Thing to hear
Mr. Sergeant Pemberton say, it was never done be-
fore; and then to make that Remard to your Lord-
ship upon the Cafe of Sidney, which I'll pretend
Lordship and the Court as a Cafe, and let him con-
tradict me if he can; and then we shall see how far
it goes. Sidney was indicted for High-Treason,
and the Treacon insinced upon, was a Writing sup-
posed to be his, it being found in his Study: The
Question was; Whether it was his Hand-writing
or no? There was no positive Evidence that it was
his Hand-writing; there was no Evidence pro-
duced, that pro'ved it to be his Hand-writing;
for there was no one that swore that they saw
him write it; there was nothing proved but the
Similitude of Hands. Ay, but says Mr. Ser-
geant Pemberton, it is found in his Study. Will
Mr. Sergeant Pemberton be contented that all the
Libels that are found in his Study, shall, for that
Reason, be adjudged to be Libels, to be his
Hand-writing, and he to be a Libeller for them?
I think he will make a favours Declaration against
that, and he would have very good Reason for it:
Certainly that which was Evidence in one Man's
Cafe, will be Evidence in another. God forbid there
should be any such Dilthillation in Law; and there-
fore I conclude, that this is good Evidence.
Mr. 8. Pemberton. The Court went upon this,
That it was found in his Study, and compared with
Books and Bill of Exchanges produced in Court,
which were sworn to be of his Hand-
writing.
Mr. Sel. Gen. My Lord, I was by all the Times:
for I was ordered to attend him in the Tower;
and therefore I can tell what passed as well as any
body. My Lord, they proved no more as to that Libel,
but only by Comparison of Hands; they had no
other Proof in that Cafe, but by comparing the
Hand-writing; and that was insinced upon to be a
mighty fallible Thing: That which they would
have for us to compare, Paper with Paper, it is
ture, would make the Proof somewhat stronger,
if we could, in such a Cafe as this, be able to pro-
duce such Evidence: But I appeal to your Lord-
ship, and shall leave it to the Jury, to consider
whether is stronger Evidence, to have a Cafe
been produced, that have been concert with
these Lords, and acquainted with their Hand-
writing, and who (as your Lordship says) are
not willing Men to give Evidence, they avoid it
as much as they can; and they swear it all to
be the Hand-writing of the Archbishop of Can-
terbury, as they believe; which is as far as any
Man can swear. 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 upon a
single Name, but a 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 the Company, the Evi-
dence is not so strong against every one of them,
as it is against my Lord Archbishop; but is strong
enough certainly to convince them of what we ac-
cult them of: And pray, my Lord, what was the
Objection in Sidney's Cafe, but what has been men-
tioned here? That any Man's Hand might be coun-
terfeited. I remember in that Cafe, there was one
Mr. Wharton, a young Gentleman, then in the
Court, that undertook to the Court, that he
would counterfeit his Hand pretently; and he that
was to swear the Comparison, should not know
which was the one, and which was the other;
which certainly was a stronger Cafe than this: And
I see some of the Gentlemen that are now hand-
ling at the Bar, who prefixed this Matter very
hard against Mr. Sidney, and Mr. Sidney lost his
Life upon that Comparison of Hands; though
Mr. Wharton did testify how easy it was
to have a Man's Hand counterfeited, and we
all knew was a Man of Value and Quality;
so there is a Precedent for Mr. Sergeant
Pemberton, that never heard of this Law before.
They say the proving of Similitude of Hands is
no Evi-
dence, unless you prove the actual Writing; what
a Condition then will England be in, when Wit-
necies are dead? Is it not the most common Pra-
ctice that can be, to produce Witneces to prove
such Men are dead, whole Names are set as Wit-
necies to Deeds; and they swear, they believe
it is the same Hand, and hand writing. Can there
be any greater Evidence of such a Cafe, unless it
be the Coheslion of the Party himself? My Lord, we
are now only upon reading
this Paper. We have been heard, and they
have
have been heard; now we pray the Paper may be read.

Mr. Recorder. We pray it may be read.

Mr. Serj. Lewins. If your Lordship please——

Mr. Sol. Gen. We are not to be replied upon, Mr. Serjant.

L. C. J. You have spoke Brother Lewins, 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.

Mr. Serj. Lewins. 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?

Mr. Serj. Lewins. 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 hid, and the Matter is local.

Mr. Sol. Gen. First read it, and then make your Objection.

Mr. 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 Bernardifin: And the great Evidence there, was the Proof of its being Handwriting; and that being proved, was sufficient to convict him of a Libel; for I believe Sir Samuel Bernardifin was guilty of making Libels, unless they were proved to be his Handwriting.

Sir Rob. Pemberton. He owned them to be his Handwriting.

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.

Mr. Sol. Gen. If there be not Proof enough to induce the Jury to believe this is their Paper, yet there is enough to read it.

Sir Rob. Sayer. My Lord, we have not been heard to this yet.

Mr. Sol. Gen. Why, is this fit to be suffered? L. C. J. Mr. Solicitor, I am always willing to hear Mr. Finch.

Mr. Sol. Gen. But I hope your Lordship, and the Court, are not to be complemented into an unusual Thing.

Mr. S. Pemberton. It is not a Complement, but Right and Justice.

Mr. Sol. Gen. Certainly it is Right and Justice, that there should be some Limits put to M mens speaking, that we may know when to have an End.

Sir Rob. Sayer. Mr. Solicitor does misjudge the Right my Lord, for we desire to be heard to this Point, as not having spoke to it yet.

Mr. Sol. Gen. Pray, Sir, let me make my Objection to your being heard: For I believe you and I have been chafed several Times, for speaking over and over the same Thing.

Sir Rob. Sayer. This that we now offer, is not to the same Point that we have spoken to already.

Mr. Sol. Gen. We are now speaking to the reading of the Paper, and you have spoken to it already.

Sir Rob. Sayer. 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 Sayer, I take it, it is in the Break 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 lay what can be laid upon the Point, and that enough; but if fewer be desired to be heard over and over to the same Thing, certainly the Court may stop at three or four, if they will.

Sir Rob. Sayer. 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.

Mr. Sol. Gen. What a fine Declaration you have now made! I never claimed any such Right; but that you being heard over and over to the same Thing.

Mr. At. 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.

Mr. 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, if you intend he can or cannot offer to speak, but you professedly stop his Mouth.

Mr. Finch. My Lord, that which I was going to say, is another Matter than any thing that his 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 Submissibum to your Lordship, I know not; and they can neither 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.

Mr. At. Gen. For that Point, my Lord, we say, this would have been as properly laid after the Paper had been read, when they come to make Objections against our Proof, by way of Defence: And, with Submissibum, it hath been more proper then, than it is now: For what are we now doing? My Lord, we are proving that such a Paper was submissibum by my Lords the Bishops; and Sir John Nicolas 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.

Mr. S. Pemberton. That's very well. Mr. Attorney; are you do not think as you speak!

Mr. At. Gen. Here is a paper compiled and written by you, that Sir John Nicolas says he had from his Majesty: How he came by it, I
suppose you will tell us by and by. 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. Mr. S. Pemberton. That's pretty Doctrine indeed, and very new.

Mr. Sol. Gen. My Lord, here's an Objection made too timely: We are now upon 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.

Mr. S. Lewes. When we are upon an Information of a Fact in Middlesex, will you hear them give Evidence of a Fact in Yorkshire?

Mr. 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.

Mr. S. Pemberton. Surely, my Lord, this is our Time to oppose the reading of it, as not proved.

Mr. Jux. Powl. Mr. Solicitor, I think you have not sufficiently proved this Paper to be forged by my Lords the Bishops.

Mr. Sol. Gen. Not to read it, Sir?

Mr. Jux. Powl. No, not to read it; it is too slender a Proof for such a Cafe. 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 Correspon.; or the like; but in Criminal Cases, such as this, if such a Proof be allowed, where is the Safety of your Life, or any Man's Life here?

Mr. Sol. Gen. We tell you a Cafe where it was allowed; and that is Mr. Sidney's Cafe; a Cafe of Trafon, and printed by Authority: We tell you nothing but what was done '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 affamed, nor afraid to say it; for I know I speak with the Law. Say what you will of Criminal Cafes, and the Danger of People's Lives, there were more Danger to the Government, if such Proof were not allowed to be good.

Mr. Jux. Powl. 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. Albans, and my Lord of Ely, their Hands are proved: It is proved to be my Lord Archbishop's Writing by Mr. Broder, and he proves my Lord of Ely's Hand by Comparion, and so my Lord of St. Albans. 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 for that they bring you Witnisses 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 Witnies, I do believe it to be his Hand. Can there be a greater Evidence, or a fuller?

Mr. S. Pemberton. Admit it be a full Evidence against my Lord Archbishop, what's that to this right? There's no Evidence against them.

Mr. Jux. Ashb. 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. Pelloxen do so much insist upon: If a Man should be accused by Comparison of Hands, where is he? He is in a large Cafe; for his Hand 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: That may be an Objection in Matters of Fact, that will have very little Weight, if compared and set altogether: For, on the other side, where shall the Government be, if I will make Libels, and traduce the Government with Prudence and Discretion, and all the Secrecy imaginable? I'll write my Libel by my self, prove it as you can; that's a fatal Blow to the Government; and therefore the Cafe is not the same, nor is your Doctrine to pass for current here, because every Cafe depends upon its own Fact. If I take upon me to swear I know your Hand, the Indicements are to my self, 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 what 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 of 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.

Mr. Jux. Holloway. Good my Lord, let me give my Opinion.

L. C. J. Ay, with all my Heart, Brother.

Mr. Jux. Holloway. My Lord, I think as this Cafe 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 flight Proof, such as the Comparison of Hands, for proving a Deed, or a Witnise'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 Cafe; 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.

Mr. 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.

Mr. At. Gen. Truly, my Lord, we did forbear that Evidence, and would not have proceeded this Way, if we had had fair Play on the other Side.

Sir Re-
Sir Robert 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.

Mr. At. Gen. Sweet Mr. Blathwayt, [Mr. Blathwayt sworn.]

Mr. Sal. Gen. Pray hand the Writing to him. [The Writing flung to him.]

Mr. Sal. Gen. Have you seen that Writing formerly, Sir?

Mr. Blathwayt. Yes, Sir.

Mr. Sal. Gen. What did you hear my Lord Archbishop say about that Paper?

Mr. At. Gen. And the rest of my Lords the Bishops?

Mr. Sal. Gen. First we'll ask, to my Lord Archbishop; Did he own it to be his Hand-writing?

Mr. Blathwayt. My Lord, I believe this to be the Paper that my Lord Archbishop did own to be subscribed by him.

Mr. Sal. Gen. When was it owned by him?

Mr. Blathwayt. On the Council-day, the 5th of this Month.

Mr. Sal. Gen. Where was it owned? because we would obviate that Objection of the County.

Mr. Blathwayt. It was at the Council-Table at Whitehall.

Mr. Sal. Gen. What say you to the Bishop of St. Asaph? Did he own it?

Mr. Blathwayt. Yes, all my Lords the Bishops did own it.

Mr. Sal. Gen. Name them particularly. What say you of the Bishop of Ely?

Mr. Blathwayt. In the same manner, my Lord.

Mr. Sal. Gen. The Bishop of Chichester?

Mr. Blathwayt. In the same manner.

Mr. Sal. Gen. The Bishop of Bath and Wells.

Mr. Blathwayt. Yes, my Lord.

Mr. Sal. Gen. The Bishop of Peterborough?

Mr. Blathwayt. Yes, my Lord.

Mr. Sal. Gen. And the Bishop of Bristol?

Mr. Blathwayt. Yes, my Lord.

Mr. Sal. Gen. So, we have proved they all owned it.

Mr. Jull. Holkham. Could not this have been done at first, and saved all this Trouble?

Sir Rob. Sawyer. Have you done with Mr. Blathwayt, Mr. Attorney, that we may ask him some Questions?

Mr. At. Gen. Ask him what you will.

Mr. S. 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.

Mr. Blathwayt. My Lord, I am called here by a Subprena to answer on 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.

Mr. S. Pemberton. There is nothing defined, but that you would speak the Truth.

Mr. 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?

Mr. S. Pemberton. We define Mr. Blathwayt to tell the whole Discourse that passed at the Council, when he says my Lords the Bishops own'd this Paper.

Mr. Sal. 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 enquiring Question, and that the Court will take Care of.

Mr. Blathwayt. If your Lordship please to ask me any Question, I shall readily answer it.

L. C. J. You must answer them.

Mr. S. Pemberton. We ask you upon what Occasion they came to own their Hands? What Discourse was made to them, and what they answered?

Mr. Blathwayt. My Lord, I beg your Lordship's Directions.

L. C. J. Come tell us, Sir.

Mr. 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 Archbishop, and my Lords the Bishops, they were asked whether they did own that Paper, and, my Lord, they did own it.

Sir Robert Sawyer. Mr. Blathwayt, was that the first Time that my Lords the Bishops came in?

Mr. Blathwayt. Sir, I was not asked that Question.

L. C. J. What would you have, Sir Robert Sawyer?

Sir Robert Sawyer. We would have an Account what passed at the Council.

L. C. J. Would you have all the Discourse between the Council and my Lords the Bishops?

Mr. S. Pemberton. All that relates to their Association, my Lord; their whole Confession, and what was said to them.

Mr. At. Gen. Do you think, Mr. Serjeant, that when we call a Witness, you are at Liberty to examine him to every Impertinent thing?

Mr. Sal. Gen. My Lord, we define they may only ask of such Questions as.

Mr. S. Pemberton. Mr. Solicitor, he is sworn to answer, and tell the whole Truth, and that's all we ask of him.

Sir Rob. 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?

Mr. Sal. Gen. That is not a fair Question Sir Robert Sawyer; 'tis a leading Question.

Mr. S. 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 Robert Sawyer. And God forbid that half Evidence should condemn any Man.

L. C. J. God forbid the Truth should be concealed any way.

Mr. S. Pemberton. Pray, Sir, when they were first asked, whether that was their Hands or not, what Answer did they give?

Mr. Blathwayt. Sir, I have begg'd 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 enquiring Questions.

Sir Robert Sawyer. Mr. Blathwayt, you are upon your Oath to testify the Truth.

Mr. Blath-
Mr. Blackw. Sir, I am not acquainted with the Methods of Law; I desire my Lords the Judges would instruct me.

Mr. Jull. 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.

Mr. Blackw. I desire the Question may be repeated.

Mr. S. Pemberton. When they were first asked if it were their Hands, what Answer did they give the King?

Mr. Blackw. His Grace the Archbishop and my Lords the Bishops, at first did not immediately answer whether the Paper were theirs or no.

Mr. S. Pemberton. What did they say?

Mr. Blackw. They said, they did humbly hope if they were put to answer, no Advantage should be taken against them.

Mr. S. Pemberton. What did they say further at that Time concerning his Majesty's Pleasure?

Mr. Sel. G. That is a leading Question, Mr. Solicitor Pemberton; you cannot have your Way of Lying Witnesses.

Mr. S. 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. Blackw., what did they say concerning the King's Pleasure, whether they would answer if the King commanded them?

Mr. S. Tresider. 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.

Mr. S. Lec. 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?

Mr. Sel. G. What is that to the Purpose?

Mr. Pellecin. Mr. Solicitor, his Oath is to tell the Truth, and the whole Truth, and therefore he must answer my Question.

Mr. S. 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.

Mr. At. G. 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 poison People with foolish Notions and strange Conjectures, that is not to the Fact that we are now trying.

Sir Robert Sawyer, 'Tis only to have the Truth out that we do it.

Mr. S. Pemberton. There is no body here that will be enflamed, Mr. Attorney; I have asked a fair Question, the Court has ruled it so.

Mr. Blackw. I shall readily answer any Question that the Court thinks fit.

Mr. S. Pemberton. Sir, be the Oath you have taken you are to tell the whole Truth.

L. C. J. Is he to tell you all that was done at the Council-Board that Day?

Mr. S. Pemberton. No, my Lord, only what passed there about my Lords the Bishops Confession, the whole of that Matter.

Mr. Blackw. 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.

Mr. S. 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?

Mr. Blackw. 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 Robert Sawyer. Were they commanded to withdraw?

Mr. Blackw. Yes; therupon they were commanded to withdraw, which they did.

Mr. S. Pemberton. When they came in again, what Questions were asked them?

Mr. Blackw. 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?

Mr. S. Pemberton. Yes, Sir.

Mr. Blackw. The second Time they seemed unwilling to own the Paper.

Sir Robert Sawyer. And what did they do the third Time?

Mr. S. Pemberton. But first let us know what more was done the second Time.

Sir George Treby. How was that Unwillingness of theirs overcome?

Mr. S. Pemberton. When they expressed their Unwillingness, what did they say further?

Mr. Blackw. If I remember right, they said as they did the first Time, they humbly hoped his Majesty would not take Advantage against them.

Mr. S. Pemberton. Then what did they say the third Time?

Sir Robert Sawyer. Pray were they asked whether they published it?

Mr. Blackw. As to the publishing it, it was laid before them, and I think they were asked the Question, whether they published it?

Sir Robert Sawyer. And what Answer did they make?

Mr. Blackw. I remember his Grace, and my Lords the Bishops, did not own they had published it, but they denied it.

Sir George Treby. After they disavowed their Unwillingness the second Time, what followed next?

Mr. Blackw. They did withdraw after the second Attendance.

Mr. S. Levies. But what was said to them? Was that all that was said to them the second Time?

Mr. Blackw. 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 Utage of a Witness, to put him to tell every thing that was said.

Mr. S. 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